



**Mr. Isaack Hassan**  
**Chairman**  
**Independent Elections and Boundaries Commission**  
**University Way, Anniversary Towers, 6<sup>th</sup> Floor,**  
**P.O. Box 45371-00100**  
**Nairobi.**

**Date: 7<sup>th</sup> March 2012**

Dear Sir,

**MEMORANDUM: ACCOUNTABILITY FOR AND TRANSPARENCY OF RESULTS  
VERIFICATION AND PREMATURE CERTIFICATION AND ANNOUNCEMENT OF  
ALLEGED OFFICIAL RESULTS WITHOUT PRIMARY DOCUMENTATION  
(FORM 34)**

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Under the law, when polling stations close, ballots are counted, verified by presiding officers and political party agents and the results then posted publicly on the door of the polling stream, thereafter transmitted electronically for the announcement of provisional results by the Independent Electoral and Boundaries Commission (IEBC) at the national elections tallying centre in Nairobi. Subsequently, these results are verified and made official based on the receipt of hard documentation from the constituency returning officers and its verification by the IEBC and political party agents.

Results were counted at the polling stations. The presidential results were counted first. At each polling station five original copies of Form 34 were to be signed by presiding officers and political party agents. One original was to be posted on the door to the polling station counting area and thus made public for all Kenyans. This should have been done as soon as counting ended on the evening of 4<sup>th</sup> of March 2013 and 5<sup>th</sup> of March 2013.

The presidential results should have been counted and posted publicly at each polling stream on Form 34 before the counting of the votes for National Assembly, Governor, Senator, County Representative and Women's Representative—thus there should have been no controversy about the Form 34 being openly available to the public before results were announced.

The results were then meant to be transmitted electronically to Nairobi for the announcement and posting of provisional results but the IEBC electronic transmission system failed. The causes and nature of this failure have not been disclosed to the public—despite this transmission being required by law and being the first measure to guarantee securing of the integrity of the vote.

With the failure of the legally mandated system for the electronic transmission of preliminary results, the vote count from each of the polling stations must be made publicly available immediately.

Similarly, the derivative Form 36 from each constituency tallying centre must be publicly available. However, because it is a derivative document totaling the numbers from the constituency polling stations, it cannot be considered a substitute for these original forms.

Further, given systemic anomalies in Form 36 across the country noted by political party agents and observers it is imperative that these anomalies be addressed by reference to the original forms.

Because of this failure, the IEBC should follow all other required procedures for verification of the hard documentation—including allowing full and transparent access to the verification process by political party agents. This is the import and value of public participation which is a cardinal principle in the Constitution.

Yet, political party agents were expelled from the IEBC audit and verification centre, creating an unlawful climate of non-participation and lack of transparency as per the Constitution of Kenya, 2010. The IEBC has continued to then unlawfully announce final results based on Form 36 signed by agents of only one political party.

Based on this, the IEBC has failed, under Article 81(e) to administer the elections in an accurate, accountable and impartial manner—in line with its guiding constitutional principles.

We therefore demand:

- ❖ **That the IEBC stop announcing results until the concerns raised above can be addressed and a credible, transparent and fair process be instituted;**
- ❖ **That the IEBC publicly explain the causes and nature of the failure of the electronic transmission system. Related to this, the IEBC should secure from the service providers the preservation of all transmissions and the servers as they were at the time of the failure;**
- ❖ **That Form 34 containing the vote count from each polling station be made publicly available;**
- ❖ **That the Form 36 from each constituency tallying centre be made publicly available;**

❖ **Given anomalies in Form 36, that these discrepancies be addressed by reference to the original forms, which are Form 34.**

Signed

**Kenyans for Peace with Truth and Justice (KPTJ)**

c/o Africa Centre for Open Governance

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Kenya