



**CRITICAL CONCERNS OVER THE RECENT NOMINATION EXERCISE:
IRREGULARITIES AND FAILURE OF INSTITUTIONS TO EXERCISE THEIR
RESPECTIVE MANDATES TO GOVERN NOMINATION AND THE
ELECTORAL PROCESS**

We, the members of Kenyans for Peace with Truth and Justice (KPTJ), having observed and monitored the recent nomination exercise by political parties ahead of the March 4th general elections, are concerned by the extent of malpractice and lack of enforcement of election related laws by the institutions charged with enforcing political party discipline and managing the conduct of elections, i.e. the Independent Electoral and Boundaries Commission and the Registrar of Political Parties.

Of particular concern is the continued disregard of parameters and principles set out in the Constitution and other relevant legislation through practices such as party hopping; the use of violence and intimidation as an electioneering tactic; lack of internal party democracy, including favoritism and nepotism in disregard of the Political Parties Act, the Elections Act and the Constitution. We are concerned that many of the aspirants cleared by political parties do not meet the threshold of leadership and integrity as set out in Chapter six (6) of the Constitution.

Further, the institutions charged with the regulation of political affairs have displayed a disturbing reluctance to enforce their respective mandates with regard to regulating political competition and ensuring adherence to electoral laws. The IEBC has displayed, within the last week, a tendency to buckle under to political pressure by repeatedly shifting timelines relating to the submission of nomination lists at the whim of the stronger political parties. This reinforces concerns around the independence of the IEBC, which were already raised in connection with the intervention by the executive in procurement of biometric voter registration (BVR) equipment.

The IEBC has also displayed a ‘hands off’ policy with regard to its regulatory mandate in respect of the nominations exercise. This is of particular concern because the IEBC will have to make bold decisions and interventions at the March 4th general elections if the country is to observe a credible, peaceful, free and fair election. Of further concern is the huge delay in rolling out civic education. This is despite the forthcoming elections being of an unprecedented nature in the history of elections in the country.

It must be noted that the failure by the Commission to efficiently manage the procurement of BVR Kits led to delays in voter registration. This in turn has resulted in political parties conducting their primaries with no voter register to guide the process since the provisional register had not been gazetted and, in any event, is still undergoing inspection and verification.

There is a clear failure by the IEBC to effectively regulate electoral processes and political parties. Parties are not adhering to timelines set out in the Elections Act on conducting nominations. Section 28 of the Elections Act requires nominations to be concluded at least 45 days to the elections. The Commission extended that timeline for political parties by directing them to submit names of nominees on the 21st January 2013. Some parties had still not submitted their party lists of nominees by the 25th January 2013. This indecisiveness of the Commission shows lack of leadership and resolve to enforce the law.

Political parties fraudulently registered members of the public as their members and this was widely reported and captured by the media. Nevertheless no action has been taken against any political party for these fraudulent acts.

The IEBC is required to regulate and monitor the process by which political parties nominate their candidates. The Commission only monitored that process and did not in any way regulate it. It was left to political parties to regulate themselves with disastrous consequences.

The Registrar of Political Parties has displayed an unwillingness to enforce her mandate and powers conferred upon her office by the Political Parties Act to rein in rogue political actors. Both the IEBC and Registrar of Political Parties have not expressed themselves on questions of constitutional interpretation, particularly with regard to Chapter Six.

The public has noted with concern instances in which the IEBC has been intimidated by powerful politicians into changing its position on timelines and issuance of certificates. This inability to stand firm in the face of hostility is indicative of a weakness at the IEBC. It is reminiscent of the ugly scenes witnessed by Kenyans in 2007 when the ECK buckled to political pressure and intimidation leading to questions over the credibility of its management of the electoral process and outcome. As civil society we will not stand by and watch the acceptance of nomination certificates from losers in the nominations and shifting of further deadlines by the IEBC.

We therefore wish to reiterate and demand as follows:-

1. Whether Kenya will hold credible, peaceful, free and fair elections largely depends on the confidence that Kenyans have in the electoral Commission. All processes of the IEBC should therefore inspire confidence in the electoral management body.
2. The current lack of leadership and resolve to enforce the law with regards to the nomination deadlines does not inspire confidence that the IEBC will be able to stand firm and not buckle to political pressure in the much more challenging context of the general elections. We therefore call for the Commission to firmly execute its mandate without fear or favour.
3. We further urge that the Commission investigates all election related offences that were conducted during the nomination exercises and strictly punish all offenders be they individuals or parties.
4. The IEBC must urgently begin to conduct the voter education and information exercise, which should include information on the spirit of the provisions on leadership and integrity chapters of the constitution to enable voters to make informed choices at the general election.
5. The IEBC should immediately adopt a system of maximum disclosure in all its processes as a way of keeping the public informed and engaged. For a start, we demand that the IEBC publishes a weekly update of their level of preparedness for the March 4th election. This should include specific information on issues such as progress on dispute resolution related to nominations, progress on printing of ballots; progress on development of plan to roll out civic education, progress on finalizing a results-reporting mechanism etc.
6. The registrar of political parties has willfully failed to exercise her mandate in reigning in political parties, a dereliction and abdication of duty which should constitute grounds for her removal.

Further we demand that the Commission:

- **Applies the law without fear or favour to all those who violated electoral laws during the nominations;**
- **Disqualify parties and candidates who continue to violate the law and regulations including aspirants who do not meet the threshold of leadership and integrity set out in Chapter Six (6) of the Constitution;**
- **Recommend the deregistration of political parties which have engaged in violence and fraudulent practices during the nomination**

exercise;

- **We also demand that the Commission not accept any aspirant who submitted their nomination papers after the deadline stipulated by the IEBC, midnight on Monday 21st January;**
- **And that it does not accept nomination certificates from defectors who changed parties after the deadline stipulated by the IEBC;**
- **The Commission should, in conjunction with the Registrar of Political Parties, punish those parties which presented nomination certificates of candidates who had not been consulted and had no knowledge that they had been presented as candidates;**
- **The Commission should also, in conjunction with the Registrar of Political Parties, punish parties which were found to enter names and details of unknowing citizens falsely in their register of members;**

Having failed to either meet or enforce any stipulated deadlines during its tenure and having condoned indiscipline by political actors, the IEBC must remember that we are watching it closely and that it will be held accountable if it bungles the March 2013 elections. Commissioners should know that they will be held individually liable for any failure of the elections.

Finally, we are determined to use all means within the law, including moving the courts, to protect the public interest in credible, free and fair elections. We remind Kenyans that it was lack of confidence in the integrity of institutions such as the defunct Electoral Commission of Kenya and the old Judiciary that plunged Kenya into chaos in 2008. A recurrence of that chaos is a risk we cannot afford to take as a nation.

(ends)

KPTJ/27/1/13/JGCT