



## **Open Letter to the IEBC Demanding the Final Results of the March 2013 General Elections**

Following our own requests, those of voters and of the Parliamentary Justice and Legal Affairs Committee for release of the final election results, we hereby request the immediate publication of the final and detailed results of the March 4, 2013 general elections.

The IEBC has a Constitutional mandate to deliver results efficiently as a requirement of the IEBC Act of 2012, Section 4(c), to discharge all of their duties in a professional, timely and efficient manner and in line with the rule of law. The requirement for timely results transmission falls within any definition of an efficient election in keeping with Article 25 (e) (5).

Electoral results are public information, by the legal requirement of Article 27(1) of the IEBC Act of 2012: "The Commission shall publish and publicize all important information within its mandate affecting the nation." As such, this is information which the public has a right to receive in its entirety and without delay. Without the results of this process, Kenyan citizens are unable to take stock as a country, to analyse, and learn from past mistakes to continue to refine and improve our electoral processes.

The March 4th 2013 election was a critical event for the establishment of Kenya's ongoing faith in electoral democracy. The upstanding conduct of Kenyan voters throughout the country should guarantee them access to the results of their election. Kenyan citizens, in good faith, duly presented themselves for registration, participated in party nominations processes, and voted, many queuing for long hours, in order to cast their votes for all elected offices under the new Kenyan constitution.

They did so in the legitimate expectation that the results of their participation in the democratic process would be made known to the country immediately after tallying, and NOT five months after the election.

It is necessary for the IEBC to release complete results with polling-station-level detail on all contests in every locality, rather than the summary results that were delivered to Parliament this week, in order to create public confidence in elected office holders, and in the IEBC as a credible alternative to its disbanded and defunct predecessor, the Electoral Commission of Kenya (ECK).

The chaos which followed the announcement of the contested election results is both a cause of and a reaction to the lack of confidence voters had in the electoral process. The previous electoral management body, the ECK, failed to maintain public confidence in the results it produced, which ultimately led to its dissolution.

Ongoing petitions against the IEBC have resulted in significant costs to the public beyond administering the most expensive election in Kenya's history. The Commission's failure to conduct pre-election preparations in an efficient and transparent manner in relation to the

procurement of election management technologies, as recognized by the Supreme Court, greatly increased the likelihood of future challenges. Additionally, the overall conduct of the elections and the tallying process did not occur in a manner which would guarantee their integrity or minimize the likelihood of court challenges.

The history of previous lawsuits, investigations by the Ethics and Anti-Corruption Commission and the fact that the IEBC has been the subject of over 180 court petitions to date, are clear indications of significant shortcomings by a body tasked with upholding the principle of conducting free, fair, transparent, credible, accurate and efficient elections. According to the Commission's enabling legislation, these include ethical conduct, (Article 25(g) of the IEBC Act) and the discharge of all duties in a professional, timely and efficient manner, in line with the rule of law, under Article 4(c) of the Commission's own Code of Conduct.

Similarly, the refusal of IEBC Commissioners to take an oath prior to reporting the results of the election raises grave concerns that individual IEBC employees do not have faith in the process which produced these results. As their own standards for personal integrity do not allow them to vouch for the accuracy of the numbers being produced before the Parliamentary Committee on Justice and Legal Affairs, the public can have little confidence in these results. In their defiance of a parliamentary committee order, the commissioners lost a significant opportunity to reaffirm their own and the public's confidence in the results being released this month by the IEBC.

Failure to meet initial and subsequent deadlines has created a widespread public perception of incompetence and divisions within the IEBC. If tallying is done correctly, there can be only one set of numbers and one opinion from the IEBC. In order for the outcome of the election to have been announced, the results must have been tallied and have remained in the custody of the IEBC. These must now be released to the public in their entirety, with the guarantee that they are the final and official results of the March 2013 Election, in keeping with the IEBC's mandate, Kenyan election law, and the East African Community Principles for Election Observation, Monitoring and Evaluation, to which Kenya is a signatory.

Failure to release electoral results immediately following the conclusion of the election in accordance with Section 39(1) of The Elections Act of 2011 has raised concerns about discrepancies between figures released for total votes cast, presidential votes cast, and gubernatorial votes. The on-going election petitions have led to judicial orders for recounts. Evidence of tallying discrepancies was admitted by IEBC officials leading to the declaration of a new winner in Kibwezi West.

Accordingly, we hereby affirm our request for the immediate and comprehensive final results of the election, for all elective positions and all polling stations, without further delay, and bearing the full authority of the Independent Electoral and Boundaries Commission.

KPTJ 22/7/13