

KENYANS FOR PEACE WITH TRUTH AND JUSTICE (KPTJ)

Statement Regarding ECK and the Independent Review Commission into the 2007 General Election

Kenya for Peace with Truth and Justice (KPTJ) notes with deep concern and disappointment the findings of the Electoral Commission of Kenya's internal review workshop on the 2007 General Election, held in Mombasa from March 9 to 13, 2008. The workshop report is astounding in its avoidance of the elephant in the living room. The ECK essentially argues that, since no petition was made regarding the counting and tallying of the Presidential vote, it was in order to present the certificate to the person sworn in as president. It, however, then goes on to admit to grave problems with:

- The recruitment of ECK staff;
- Communication between their presiding officers (POs) and returning officers (ROs);
- Its black books, which it notes are too many, (entries to which are not dated);
- The quality of election materials;
- The ECK's capacity to monitor and address electoral violence;

And, as concerns counting and tallying:

- Lack of consistency in the announcement of results (admitting that some ROs gave certificate to losers while others changed the persons to whom certificates were given);
- The sequencing of announcements (with not all announcements being released in order, i.e. with presidential results first, parliamentary results second and civic results third);
- The filling of requisite forms by POs and ROs;
- The non-production of forms by ROs, with some being filled in at the ECK's tallying centre;
- Making corrections to forms which were obviously understood as being alterations;
- Team leaders pressurising ROs, resulting in provisional results being announced;
- Lack of consistency between the day and night teams in their handling of verification;
- Team leaders' conduct in the ECK's tallying centre.

These admissions of error and malfeasance on the part of ECK only vindicate what KPTJ members, many of whom were individually involved in the observation of the 2007 General Election, found and reported. The individual KPTJ member reports on the 2007 General Election — such as the Kenya Human Rights Commission (KHRC) — detail these shortcomings. Collectively, KPTJ has also released statements and reports on the 2007 General Election that paint a shocking portrait of the cocktail of criminality and incompetence that attended the ECK's conduct. Most notable among these are:

- Based on the statements of four of the five domestic observers present during the verification process that took place the night before the announcement of the supposed

Presidential results, a narrative account of that verification process;

- Based on that narrative account, a table documenting the illegalities, irregularities and malpractices noted with respect to the counting and tallying of the presidential vote, showing figures for the constituencies in which these occurred from the Electoral Commission of Kenya (ECK), the Kenya Domestic Observers Forum (KEDOF) and the Kenya Television Network (KTN);
- An analysis of the discrepancies between the supposed presidential and parliamentary votes cast in the 2007 General Election, benchmarked against a similar comparison from the 2002 General Election.

The findings of these documents have made it clear to KPTJ that the illegalities, irregularities and malpractices witnessed during the 2007 General Election were, in fact, sufficient to alter the supposed presidential outcomes and that it was not possible to tell who won the presidential election. KPTJ has consistently made this point to the public. By doing so, KPTJ aimed first to have the supposed outcomes addressed and second to ensure that all the parties in the dispute submitted to the mediation process in good faith so as to end the post-election violence that the announcement of the supposed presidential results triggered across the country.

But KPTJ has also always aimed to ensure that all Commissioners and staff of the ECK who participated in enabling or committing these illegalities, irregularities and malpractices are held to full account. This is not for the sake of ending impunity alone — it is also intended to ensure that the entire electoral process — and the ECK itself — is reconstituted so as to ensure that Kenyans never again go through the trauma induced by that institution's handling of the 2007 General Election, particularly at the presidential level.

In January, KPTJ made a complaint to the police about offences its members had witnessed being committed. To date, the Commissioner of Police and the Attorney General have failed, to act on this complaint. It is in light of this that KPTJ will be pursuing individual private prosecutions against Commissioners and staff of the ECK responsible for the 2007 General Election.

KPTJ stresses here that this action is in no way intended to undermine the proceedings of the Independent Review Commission into the 2007 General Election. KPTJ welcomes the institution of the Independent Review Commission and hereby gives notice of its intention to formally make presentations to it when it begins its work. KPTJ, like all Kenyans, is anxious that the truth of what happened with the presidential

vote be known and that justice be obtained for the same.

KPTJ notes with concern the ECK's decision to ask all staff to produce written statements as to their conduct during the counting and tallying process. This decision can only be understood as an attempt to standardise its position before making formal presentation to the Independent Review Commission. As such, KPTJ joins with other Kenyans in insisting that all ECK Commissioners and staff step aside to enable the Independent Review Commission to conduct its investigation without undue pressure on those Commissioners and staff members who may have useful information to present on what happened with our presidential vote.

Kenyans need to know the truth, and justice needs to be sought for that truth. The ECK cannot be allowed to subvert that process.

March 31, 2008

Signed:

Africa Centre for Open Governance (AfriCOG)
Awaaz
Bunge la Mwananchi
Centre for Law and Research International (CLARION)
Centre for Multiparty Democracy (CMD)
Centre for Rights, Education and Awareness for Women (CREAW)
The Cradle-the Childrens Foundation
Constitution and Reform Education Consortium (CRECO)
East African Law Society (EALS)
Fahamu
Haki Focus
Hema la Katiba
Independent Medico-Legal Unit (IMLU)
Innovative Lawyering
Institute for Education in Democracy (IED)
International Commission of Jurists (ICJ-Kenya)
Kenya Human Rights Commission (KHRC)
International Centre for Policy and Conflict
Kenya Leadership Institute (KLI)
Kenya National Commission on Human Rights (KNCHR)
Kituo cha Sheria
RECESSPA
Law Society of Kenya (LSK)
MARS Group Kenya
Muslim Human Rights Forum
National Civil Society Congress
National Convention Executive Council (NCEC)
NASCON
Society for International Development (SID)
Citizen Coalition for Constitutional Change (4Cs)
Urgent Action Fund (UAF)-Africa
Youth Agenda