

UNANSWERED QUESTIONS

The October 2017 Presidential Election



The Africa Centre for Open Governance (AfriCOG) and Kenyans for Peace with Truth and Justice (KPTJ) are pleased to present the latest report in their series covering the 2017 General Elections.

In these reports, AfriCOG and KPTJ analyse developments throughout the electoral cycle, with a focus on pre-election preparedness, the administration of Election Day, results announcement processes, and post-election dispute resolution. Following the historic Supreme Court of Kenya decision annulling the August 2017 presidential election, this current report reviews the conduct of the fresh election held in October 2017

AfriCOG is an independent, non-profit organisation that provides research and monitoring on governance and public ethics issues so as to address the structural causes of Kenya's governance crisis. KPTJ is a coalition of governance, democracy, and human rights organisations that was formed following the 2008 post-election violence to work for electoral justice and accountability for the widespread atrocities and political violence that the country had experienced. AfriCOG and KPTJ are members of the steering committee of the Kura Yangu Sauti Yangu (KYSY) electoral platform, which actively monitors the electoral process, engages key stakeholders, and facilitates dialogue amongst a broad range of stakeholders to promote credible elections.

We would like to thank our partners at InformAction for their work in collecting and availing the data on which this report is based.

We offer these objective assessments to educate Kenyans on the conduct of their elections and to inform the public debate on the strengthening of our electoral framework.

UNANSWERED QUESTIONS

**Findings from the Scrutiny of the
October 2017 Fresh Presidential Election**

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Abbreviations/Acronyms

AfriCOG	Africa Centre for Open Governance
BVR	Biometric Voter Registration System
IEBC	Independent Electoral and Boundaries Commission
KIEMS	Kenya Integrated Election Management System
KPMG	Klynveld Peat Marwick Goerdeler
KPTJ	Kenyans for Peace with Truth and Justice
KYSY	Kura Yangu Sauti Yangu
NASA	National Super Alliance
SCoK	Supreme Court of Kenya

Foreword

This report has been prepared by the Kura Yangu Sauti Yangu¹ (KYSY) electoral platform, which actively monitors the electoral process, engages key stakeholders, and facilitates dialogue amongst a broad array of stakeholders to promote credible elections.

It is the latest report in a series examining the management of the 2017 elections in Kenya. It focuses on the conduct and findings of the scrutiny of the October 2017 fresh election during the Supreme Court presidential election petition.

Repeated problematic elections are at the root of Kenya's governance problems. Kura Yangu Sauti Yangu believes that thorough electoral reform is essential if Kenya is ever to escape the unending cycle of impunity, violence, and endemic corruption that continues to plague it. In order to promote this, KYSY highlights the challenges and pitfalls facing the electoral process and makes recommendations to resolve them.

The year 2017 can be regarded as a watershed in the efforts to achieve electoral reform. However, if concerted efforts are not made to seize the opportunities afforded by developments then and since, Kenyans will once again be disappointed in their decades-long struggle for lasting transformation in the way that Kenya's elections are managed.

Gladwell Otieno

Executive Director

Africa Centre for Open Governance (AfriCOG)

¹ "My Vote, My Voice"

Introduction

On November 6, 2018, Njonjo Mue and Khelef Khalifa, acting on behalf of the Kura Yangu Sauti Yangu (KYSY) coalition of Kenyan civil society organizations, filed a Supreme Court petition challenging the credibility of the October 26th fresh presidential election. This petition argued that the Independent Electoral and Boundaries Commission (IEBC) had failed to meet constitutional standards for free, fair, and credible elections, and it requested that, among other things, the Court find the results null and void.

At the beginning of the case, the petitioners asked the Court to grant them access to the IEBC's original results forms from the polling station level (Forms 34A), constituency level (Forms 34B), and national level (Form 34C). The Court granted access and initially agreed to allow petitioners to submit a written report of its findings. Upon completion of the scrutiny exercise and barely one hour before the written submission deadline, the Court revoked its decision and instructed the petitioners to instead present their findings during their oral arguments.

In this publication, KYSY presents its written report on the scrutiny findings to the public.

Background and Context

On September 1, 2017, the Supreme Court of Kenya (SCoK) handed down a landmark determination on the credibility of the August 8th presidential election. That determination, which faulted the IEBC for failing to conduct the election in a manner consistent with the dictates of the Constitution and which found that multiple illegalities and irregularities had affected the integrity of the election, nullified the results and called for a fresh election to be held within 60 days.

The ruling, which confronted longstanding, unresolved questions regarding the threshold for irregularities, errors, and other problems in the administration of elections, sparked a rigorous national debate about the legitimacy and capability of the IEBC and about what constituted a free, fair, and credible election. Indeed, the National Super Alliance (NASA), which had filed and won the presidential petition, immediately insisted that, given the IEBC's role in perpetrating the illegalities and irregularities, it was not fit to administer another election.

In the days and weeks that followed, Kenya was in a state of limbo. At the national and international levels, stakeholders engaged in a rigorous debate about the definition of a credible election. The European Union (EU), The Carter Center, NASA, and the KYSY civil society coalition each developed their own set of minimum standards for a free, fair and credible electoral cycle. The Kenyan Parliament, where the Jubilee Party enjoyed a large majority, also engaged in the discussion and passed a set of controversial laws that it ostensibly deemed necessary for credible elections, but which seemed to fall far short of commonly accepted international standards. Even as the debate raged, it was clear that the 60-day timeline would be woefully inadequate to implement many of the proposed changes. Indeed, NASA's presidential candidate, Raila Odinga, withdrew from the race in early October, citing the IEBC's failure to institute the reforms that would guarantee a credible election.²

At the same time, the IEBC was rocked by the sudden resignation of Commissioner Roselyn Akombe, who fled Kenya in fear of her life. Speaking from New York, Akombe made startling revelations regarding commissioners' political biases, political actors' influence within the IEBC, and the Commission's inability to conduct a credible election.³ Immediately thereafter, IEBC Chair Wafula Chebukati announced that he could not guarantee the credibility of the fresh election. In his public statement, Chebukati cited a divided commission and blamed the other commissioners for opposing changes that he considered crucial in the lead up to the October poll.⁴ In fact, Chebukati's statement came after a series of leaked internal memos that revealed disagreements over how to interpret the Court's judgment and if/how to proceed with reforms.

The political crisis was paralleled by chaos on the streets of Kenya. Public protests against election irregularities, which largely took place in opposition strongholds around the country, were met with excessive, brutal police force. The national death toll, estimated to be as high as

² Waweru Titus. October 10, 2017. "Raila Odinga withdraws from repeat presidential election." *The Star*. Available at <<https://www.standardmedia.co.ke/article/2001256965/raila-odinga-withdraws-from-repeat-presidential-election>>.

³ Business Today Reporter. October 18, 2017. "Dr Roselyn Akombe Resigns; Here's her full statement." *Business Today*. Available at <https://businesstoday.co.ke/dr-roselyn-akombe-resigns-heres-full-statement/>.

⁴ Patrick Lang'at. October 18, 2017. "Wafula Chebukati: I can't guarantee credible poll on October 26." *Daily Nation*. Available at <<https://www.nation.co.ke/news/Wafula-Chebukati-on-repeat-presidential-election/1056-4145232-oyj67sz/index.html>>.

104⁵, included infants and children. Victims died as a result of police shootings and beatings, from teargas and pepper spray fired at close range, and as a result of trauma and shock. Hundreds of Kenyans suffered debilitating injuries, including gunshot wounds, broken bones, and extensive bruising from the police violence. Police and paramilitary reinforcements also suppressed reporting on the violence by destroying cameras and phones as well as beating, arresting, and threatening human rights defenders and journalists.⁶ One particularly poignant story – and one that has come to epitomize police action in the aftermath of the August election – is that of six-month old Samantha Pendo. The infant was sleeping in the house with her mother when police in Kisumu forced open the door, fired teargas, and beat the family with batons. Samantha eventually died from her injuries.

Despite the clear uncertainty and instability, the IEBC proceeded with elections on October 26, 2018. KYSY's Election Day analysis revealed serious irregularities and problems with results forms, many of which mirrored what had been found in August. On November 6th, civil society filed a petition in the Supreme Court alleging that the IEBC had again failed to meet constitutional standards of a free, fair, and credible election. As part of their pleadings, the petitioners asked the Court for permission to scrutinize the original Forms 34A, 34B, and 34C in the IEBC's possession.

Although the Court granted the petitioners' request for scrutiny, it declined to order its registrar to oversee the process as she had done during the September petition. Without the presence of a court representative, petitioners struggled to access the forms in a timely and efficient manner. In fact, in direct contradiction to the order, which included a provision that the IEBC should assist with photocopying the forms, the Commission initially refused petitioners permission to take photographs or photocopies. In addition, the scrutiny team was not permitted to take its own reference material or instructions into the room. Since the instructions contained written guidance regarding the specific forms to investigate, the IEBC's refusal made it impossible for the team to conduct its work. Only after the issue was again raised in court did the IEBC finally allow petitioners to take photographs and use their reference documents. Also, IEBC and Jubilee Party representatives distracted and interrupted the petitioners' team, often taking down their conversations and notes verbatim. Interventions also had to be made in order to force the IEBC officials to allow teams to carefully look at forms, because IEBC officials initially flipped through forms so quickly that teams could not scrutinize the details. Towards the end of the exercise, when petitioners requested certain folders, they were faced with aggression and anger from the IEBC, who were unwilling to allow them more time because they had been working into the early morning hours. A heated argument followed and petitioners were only given access after they refused to bend in the face of clear intimidation tactics. Barely one hour before petitioners submitted their scrutiny report, the Court revoked its willingness to accept any written submissions. Instead, petitioners were forced to find a way to cut other parts of their final oral arguments to have time to explain the scrutiny report findings.

Moreover, after the Court ordered the IEBC to provide the petitioners with a copy of the Register of Voters, the Commission said that printing the document would cost Kes. 80 million (\$791,000)⁷. In response, the petitioners expressed their inability to meet these costs. In the end, the IEBC provided the petitioners with a soft copy of the Register. It is regrettable that the Commission was allowed to, in effect, hinder the petitioners from easily accessing information to which they have a constitutional right.

⁵ A joint report by Human Rights Watch and Amnesty International documented 67 deaths during the August election and 37 deaths during the second election. See Human Rights Watch. February 25, 2018. "Kenya: Fresh Evidence of Election-Period Abuses." Available at <<https://www.hrw.org/news/2018/02/25/kenya-fresh-evidence-election-period-abuses>>.

⁶ Human Rights Watch. October 15, 2017. "Kill Those Criminals." Available at <https://www.hrw.org/report/2017/10/15/kill-those-criminals/security-forces-violations-kenyas-august-2017-elections>

⁷ Sam Kiplagat. 15 November 2017. "Haron Ndubi: We can't afford Sh80m to print voter register." *Daily Nation*. Available at <<https://www.nation.co.ke/news/politics/IEBC-asks-for-Sh80m-print-voter-register-Uhuru-election-petition/1064-4188412-3xtnj8z/index.html>>.

Issue 1: The Register of Voters

What is the Register of Voters?

The Register of Voters is a list of all of the Kenyans who are registered to vote. The Register contains each voter's fingerprints and biographic details. According to a KPMG audit of the Register, completed just two months before the August 2017 election, the Register was problematic for several reasons, including⁸:

- The reference documents that the IEBC relies on to keep the Register of Voters updated are incomplete and inaccurate
- The system through which the IEBC receives data from the civil registry is highly dysfunctional and inefficient and thus the Register contains potentially more than one million dead voters' records
- **171,476** records have national ID numbers that do not match any ID in the National Registration Bureau's data
- **17,523** records contain details of voters who could not be found in the data from the Directorate of Immigration
- **264,242** records are duplicate IDs or incomplete passport records
- **5,247** records do not have fingerprint images

What problems did KYSY identify with regard to the Register of Voters?

KYSY analysis of voter registration and the Register of Voters identified several serious problems, including discriminatory vetting procedures for marginalized communities seeking to obtain national IDs, malfunctioning BVR kits, the transfer of voters without their knowledge or permission, instances in which first time registrants found that they were already in the Register, and previously registered voters who had been removed from the Register. Despite these issues, the IEBC finalized and gazetted **19,611,423** voters in June 2017.

Since that time, the IEBC has released a number of different totals of registered voters. On August 11th, when IEBC Chair Wafula Chebukati announced the results of the presidential election, he also announced the number of registered voters per county. This total was **19,631,796**. On Form 34C from the October 26th fresh election, the total changed again to **19,611,457**. Neither of these numbers corresponds to the gazetted number of registered voters, which was **19,611,423**.

⁸ KPMG. 31 May 2017. "IEBC Independent Audit of the Register of Voters."

Implications & Questions

A credible Register of Voters is a critical part of the electoral process. It acts as a check on voter fraud and serves as the primary document for the calculation of voter turnout. Without a credible number of registered voters, it is impossible to verify turnout, prevent fraud, or to plan for future elections.

Pending Questions

- What is the source of the figures announced by Chebukati in August?
- What is the IEBC's plan to address all the issues raised in the audit?

➤ **Garissa Medical Training College, Stream 4**

Galbet Ward, Garissa Township Constituency, Garissa County

- Numbers appear to have been changed on Form 34A for this station. The changes are especially suspicious because total valid votes for the other two streams in this station were so much lower. In this station, total valid votes were recorded as **348**, but the other streams in this station show **126**, **154**, and **178** total valid votes. It is highly unlikely that one stream would differ so significantly from the other streams in the same station.

➤ **Rahma Village Centre, Stream 1**

Iftin Ward, Garissa Township Constituency, Garissa County

- Numbers on Form 34A appear to have been changed from **70** to **170** votes for Kenyatta and from **70** to **170** total valid votes.

Figure 2: Garissa Medical Training College, Stream 4

Name of Candidate	No. of Valid Votes Obtained
1. AUKOT JOHN ENURU LONGOGDY	0
2. DIDA MOHAMED ABDUBA	0
3. JIRONGO SHAKHALAGA KHWA	0
4. KALUPU JAPHETH KAVINGA	0
5. KENYATTA UHURU	348
6. MWALURA MICHAEL WAMUNA	0
7. NYAGAH JOSEPH WILLIAM NYTHIGA	0
8. OONGA RALA	0

Total number of valid votes cast: 348

Total number of registered voters in the Polling Station: 627

Figure 3: Rahma Village Centre, Stream 1

Name of Candidate	No. of Valid Votes Obtained
1. AUKOT JOHN ENURU LONGOGDY	0
2. DIDA MOHAMED ABDUBA	0
3. JIRONGO SHAKHALAGA KHWA	0
4. KALUPU JAPHETH KAVINGA	0
5. KENYATTA UHURU	170
6. MWALURA MICHAEL WAMUNA	0
7. NYAGAH JOSEPH WILLIAM NYTHIGA	0
8. OONGA RALA	0

Total number of valid votes cast: 170

Total number of registered voters in the Polling Station: 210

Missing Information

➤ **Kazuko Primary School, Stream 2**

Galbet Ward, Garissa Township Constituency, Garissa County

- The number of registered voters was not recorded on Form 34A.

➤ **ASK Show Ground, Stream 2**

Galbet Ward, Garissa Township Constituency, Garissa County

- The IEBC portal does not have a Form 34A for this station. Instead, it posted the photo of Form 34A from Stream 1 here.

➤ **Najah Primary School, Stream 2**

Iftin Ward, Garissa Township Constituency, Garissa County

- Form 34A lists 0 registered voters in this station.

➤ **Baomo Primary School, Stream 1**

Garsen North Ward, Garsen Constituency, Tana River County

- Form 34A records 0 registered voters for this station.

Incorrect Maths

➤ **Tumbeni Primary School, Stream 2**

Chemuche Ward, Malava Constituency, Kakamega County

- This form shows that Dida received 2 votes and Odinga won 4 votes. All other candidates received 0 votes. This amounts to 6 total valid votes. However, the form shows that 77 total valid votes were cast. The error is replicated on Form 34B.

➤ **Nasib Primary School, Stream 3**

Waberi Ward, Garissa Township Constituency, Garissa County

- The maths is incorrect on Form 34A. All candidates received a total of 61 valid votes, but the form records total valid votes as 62 (in one of the two sections for total valid votes).

Figure 4: Tumbeni Primary School, Stream 2

FORM 34A
INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION
PRESIDENTIAL ELECTION RESULTS AT THE POLLING STATION

Name of Polling Station: TUMBENI PRIMARY SCHOOL POLLING STATION 2 Code 015 - 2 of 2
Ward: CHEMUICHE Code 1993
Constituency: MALAVA Code 221
County: KAKAMEGA Code 037

Name of Candidate	No. of Valid Votes Obtained
1. AUKOT JOHN EKURU LONGOGGY	00
2. DIDA MOHAMED ABDUBA	02
3. JIRONDO SHAKHALAGA KHWA	00
4. KALIFU JAPHETH KAVINGA	00
5. KENYATTA UHURU	00
6. MWaura MICHAEL WANAINA	00
7. NYAGAI JOSEPH WILLIAM NTHIGA	04
8. ODINGA PAULA	77

Total number of valid votes cast: 77

Polling Station Counts	Decisions on disputed votes if any
1. Total Number of Registered Voters in the Polling Station: 539	None of Candidates assigned for vote
2. Total Number of Rejected Ballot Papers: 00	1.
3. Total Number of Rejected Spoiled Ballot Papers: 00	2.
4. Total Number of Spoiled Stems: 00	3.
5. Total Number of Valid Votes Cast: 77	4.

Declaration
We, the undersigned, being present when the results of the count were announced, do hereby declare that the results shown above are true and accurate count of the ballots at TUMBENI PRIMARY SCHOOL, MALAVA Constituency.
Presiding Officer: BENGOSE S. CHIKAMIA Signature: [Signature] Date: 26/10/2017
Deputy Presiding Officer: JOHNSA MATENA Signature: [Signature] Date: 26/10/2017

No.	Name of Candidate or Agent	ID/Passport No.	Party Name/Independent Candidate	Tric. District	Signature	Date
1.	TEREMAH SIKHANA	0366	JUBILEE	072161	[Signature]	26/10/17

Reasons for Refusal to Sign (if any)

Presiding Officer's Comments:
POLLING PROCESS WAS CARRIED OUT WITHOUT ANY PROBLEM AND RESULTS WERE COUNTED WITHOUT ANY DISPUTE. THE AGENT SIGNED AND ACCEPTED RESULTS

These problems took on new significance during the hearing of the presidential petition in the Supreme Court, when a Court-ordered scrutiny of the IEBC's original Forms 34A revealed that the Forms 34A posted on the portal were not always the same as the ones in the IEBC's possession. This finding revealed that there were at least two sets of presidential results.

Examples

The following examples illustrate the cases in which Forms 34A posted on the portal and submitted to the petitioners on a hard drive were different from the IEBC's "original" Forms 34A, seen by KYSY during the scrutiny.

Jaribu Primary School, Stream 2, Garissa	IEBC Portal/Hard Drive	"Original" IEBC forms	Difference
Kenyatta	45	245	+200
Odinga	1	1	0
Dida	1	1	0
Total Valid Votes	47	247	+200

Bulla Mzuri Market Centre, Stream 2, Garissa	IEBC Portal/Hard Drive	"Original" IEBC forms	Difference
Kenyatta	93	493	+400
Odinga	1	1	0
Dida	2	2	0
Total Valid Votes	96	496	+400

Figure 5: Jaribu Primary School, Stream 2, IEBC "Original"

Figure 6: Jaribu Primary School, Stream 2, IEBC Hard Drive

Garissa Secondary School, Stream 2, Garissa	IEBC Portal/Hard Drive	"Original" IEBC forms	Difference
Kenyatta	219	519	+300
Mwaura	2	2	0
Dida	2	2	0
Total Valid Votes	223	523	+300

Figure 7: Bulla Mzuri Market Centre, Stream 2, IEBC "Original"

Figure 8: Bulla Mzuri Market Centre, Stream 2, IEBC Hard Drive

Other "original" Forms 34A also contained errors and inconsistencies:

➤ **Marura Primary School, Stream 1**

Makuyu Ward, Maragwa Constituency, Muranga County

- The Form 34A shows that Uhuru Kenyatta won **375** votes and Raila Odinga won **1** vote. No other candidates won any votes. The total valid votes was incorrectly recorded as **377**. The correct figure of total valid votes was **376**.

➤ **Kabati Polytechnic, Stream 1**

Kimorori/Wempa Ward, Maragwa Constituency, Muranga County

- The Form 34A shows that Uhuru Kenyatta won **515** votes, John Aukot won **1** vote, Japheth Kaluyu won **1** vote, and Raila Odinga won **2** votes. No other candidates won any votes. The total valid votes was incorrectly recorded as **524**. The correct figure was **519**.

Figure 9: Garissa Secondary School, Stream 2, IEBC "Original"

Figure 10: Garissa Secondary School, Stream 2, IEBC Portal

➤ **Iruri Primary School, Stream 1**

Kamacharia Ward, Mathioya Constituency, Muranga County

- Form 34A shows that Japheth Kaluyu won **1** vote, Uhuru Kenyatta won **400** votes, and Michael Mwaura won **1** vote. No other candidates won any votes. The total valid votes was stated as **403**. The correct figure was **402**.

➤ **Kaharati Primary School, Stream 1**

Kamahuha Ward, Maragwa Constituency, Muranga County

- John Aukot won **2** votes, Uhuru Kenyatta won **425** votes, and Raila Odinga won **1** vote. The total valid votes was incorrectly recorded as **431** in the "Polling Station Counts" section of Form 34A. The correct total was **428**.

➤ **Wangai Primary School, Stream 3**

Gaichanjiru Ward, Kandara Constituency, Muranga County

- John Aukot and Shakhalaga Jirongo won **1** vote each, Uhuru Kenyatta won **562** votes, and Michael Mwaura and Japheth Kaluyu won **2** votes each. The total valid votes was recorded as **573**. The correct number of valid votes was **568**.

📍 **ASK Show Ground, Stream 2**

Galbet Ward, Garissa Township, Garissa County

- Uhuru Kenyatta's votes appear to have changed from **68** to **368** and total valid votes appear to have changed from **69** to **369**.

In addition, there were differences observed between Forms 34A posted on the portal and Forms 34A seen by KYSY observers. Examples include:

📍 **Bashaal Market Centre, Stream 1**

Waberi Ward, Garissa Township Constituency, Garissa County

- Form 34A seen by KYSY observers in the field recorded **133** votes for Kenyatta, but Form 34A posted on the IEBC website and on the hard drive showed **433** votes for Kenyatta. The Form 34A seen by KYSY observers in the field showed **140** total valid votes, but the IEBC Form 34A on the portal and on the hard drive showed **440** total valid votes.

📍 **Nanighi Primary School, Stream 3**

Nanighi Ward, Fafi Constituency, Garissa County

- The Form 34A seen by KYSY observers in the field showed **56** votes for Kenyatta and **60/59** (difficult to read the figure) total valid votes. However, Form 34A from the IEBC portal and on the hard drive showed **427** votes for Kenyatta and **430** total valid votes.

Figure 11: ASK Show Ground, Stream 2, IEBC "Original"

Implications & Questions

Since Forms 34A serve as the primary record of results, it is critical that they are clear and accurate. As the Supreme Court stated in its September judgment, results forms must be clear enough for the public to independently cross check and verify results. When there are signs that unauthorized alterations, tampering, and/or mistakes have been made on these forms, it decreases public faith in the credibility of the electoral process.

Pending Questions:

- What is the IEBC's procedure for correcting mathematical errors?
- What are the IEBC's rules regarding changes on Forms 34A?
- When are changes permitted, and what is the procedure for making such changes?
- Why would the final forms posted on the IEBC portal and those served to the petitioners be the same, but those seen in the scrutiny be different?

Issue 3: Forms 34B

What is Form 34B?

Form 34B records results from all the polling stations within a constituency. There are thus 291 Forms 34B, including all constituencies within Kenya and the diaspora. In the August 2017 election, Forms 34B were highly irregular – some showed valid and rejected votes only and others showed all categories of votes (valid, rejected, rejected-objected-to, and disputed). In the October 2017 election, Forms 34B were more standardized, each listing valid and rejected votes. Forms 34B also contain agents' signatures as well as "handover" and "takeover" sections, which indicate the number of Forms 34A submitted by constituency returning officers and received by the IEBC Chair at the National Tallying Centre.

What problems did KYSY identify with regard to Form 34B?

The Forms 34B posted on the IEBC's public portal were missing significant amounts of information. Specifically, many Forms 34B were missing handover and/or takeover sections. Handover sections indicate how many Forms 34A the constituency returning officer submitted to the IEBC Chair and how many Forms 34A were received by the IEBC Chair. These sections include spaces for the constituency returning officers' names, ID numbers, signatures, dates, and times. They also include spaces for the IEBC Chair's name, ID number, signature, date, and time.

Only **15** of the **266** Forms 34B included fully complete handover sections. None of the Forms 34B included complete takeover sections.

At the Court-ordered scrutiny, KYSY discovered significant differences between the forms posted on the portal and the forms that the IEBC presented as "originals" in the scrutiny.

The differences are as follows:

HANDOVERS IN FORMS 34B	IEBC Hard Drive	IEBC Scrutiny
Completely Empty Handover	196	0
Partially Complete Handover	55	0
Fully Complete Handover	15	266
TOTAL	266	266

TAKEOVERS IN FORMS 34B	IEBC Hard Drive	IEBC Scrutiny
Completely Empty Takeover	266	0
Partially Complete Takeover	0	0
Fully Complete Takeover	0	266
TOTAL	266	266

Issue 4: Forms 34A v. Forms 34B

Forms 34B are created from Forms 34A. They aggregate the total number of valid and rejected votes cast at each polling station within each constituency.

What problems did KYSY identify with regard to the transfer of results from Forms 34A to Forms 34B?

KYSY found several instances in which Forms 34A and Forms 34B on the portal contained different figures. The IEBC's hard drive contained forms that were the same as the ones on the portal and which confirmed KYSY's initial findings of differences between 34A and 34B.

Examples

📍 Kipturi Primary School, Stream 2

Muhoroni Ward, Muhoroni Constituency, Kisumu County

- Form 34A on the IEBC portal and in the IEBC hard drive showed that Aukot won **60** votes, but Form 34B shows **0** votes for Aukot.

📍 Muhoroni Constituency

- Form 34B showed that there were **0** votes in both streams of Kipturi Primary School. There was no publicly available Form 34A for Stream 1.
- Form 34B showed results from **7** polling stations (out of **142**) in the constituency. This included two stations with **0** votes (as opposed to stations for which the data cells are blank). Out of these, there were only **6** Forms 34A on the portal and on the hard drive.

In the scrutiny, this form contains hand written results (see above).

📍 Garissa Secondary School, Stream 2.

Waberi Ward, Garissa Township Constituency, Garissa County

- Form 34A recorded total valid votes as **225**. Form 34B for this constituency showed **523** total valid votes for this polling station.

📍 Bulla Mzuri Market Centre. Stream 2.

Waberi Ward, Garissa Township Constituency, Garissa County

- Form 34A for this polling station recorded total valid votes as **96**, but Form 34B recorded total valid votes as **496** for this station.

➤ **Jaribu Primary School, Stream 2**

Galbet Ward, Garissa Township Constituency, Garissa County

- Form 34A from this station recorded **47** total valid votes. Form 34B recorded **247** total valid votes from this station.

➤ **NEP Girls Secondary School, Stream 1**

Township Ward, Garissa Township Constituency, Garissa County

- Form 34A on the portal and on the hard drive recorded **58** total valid votes, but Form 34B recorded **358** total valid votes from this station.

➤ **ADC Primary School, Stream 1**

Galbet Ward, Garissa Township Constituency, Garissa County

- Form 34A on the portal and on the hard drive for this station recorded total valid votes as **122**. Form 34B showed total valid votes as **123** for this station.

Implications & Questions

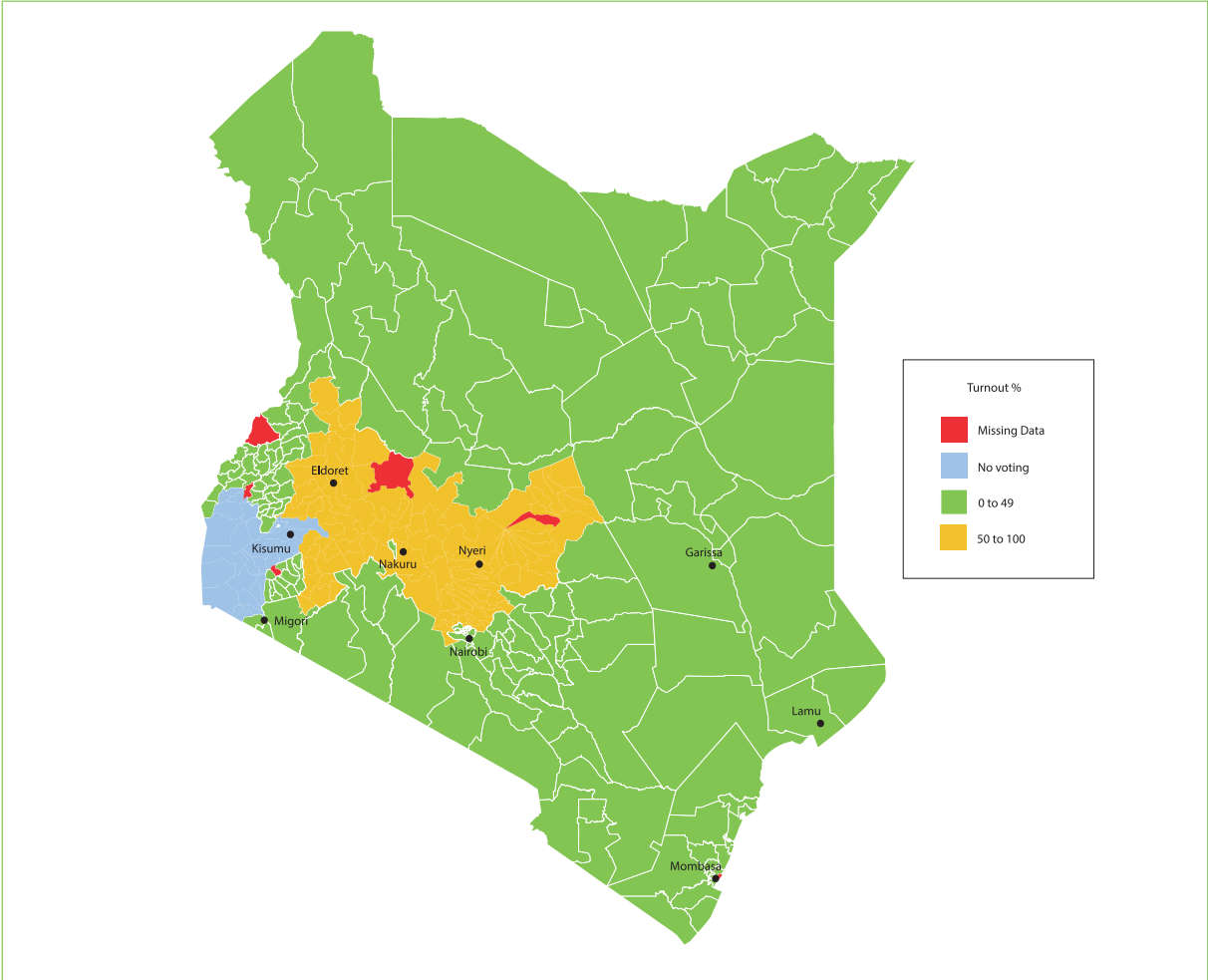
Discrepancies and differences between polling centre and constituency level results raise alarming questions about how results are transferred. If there are unexplained differences, it undermines public faith in the credibility of election results.

Issue 5: Voter Turnout

What is voter turnout?

Turnout is calculated as a proportion of the number of registered voters who cast ballots on Election Day. Form 34A contains the raw data for turnout calculations. That is, this form contains the number of valid votes, rejected voters, rejected-objectioned-to votes, and disputed votes. Adding these votes together and dividing by the number of registered voters provides the turnout percentage. Turnout for the October election was **38%**.

Figure 14: Turnout Above and Below 50%



Source: KYSY, 2017.

What problems did KYSY identify with regard to turnout records?

After the IEBC published a report from the company that provided the kits used to identify voters on Election Day, petitioners compared the number of voters identified by the KIEMS kit (as recorded in the supplier's report) with the number of voters recorded on Forms 34A. Ideally, these numbers should be the same because that would mean that the KIEMS kits

successfully identified all voters. In many polling stations, however, this was not the case. A small sample of polling stations in Garissa and Muranga showed that there are gaps as large as **400** voters in some area. That is, there were stations where **400** more voters were recorded on Form 34A than were identified by the KIEMS kits. See table below for more information.

Examples

Figure 15: Comparison of turnout in 34A vs KIEMS kits

Constituency	Polling Station	Stream	34A Turnout	KIEMS Turnout	Variance
Kangema	Ichichi Primary	1	492	490	2
Kangema	Ichichi Primary	2	498	497	1
Kangema	Gitugu Primary	1	603	602	1
Kangema	Kibutha Priary	2	468	467	1
Kangema	Gatangara Nursery	1	344	343	1
Kangema	Kiairathe Primary	2	577	576	1
Kangema	Ihiga Primary	3	416	413	3
Kangema	Kahiti Primary	1	372	371	1
Kangema	Mugechi Kabora Primary	1	368	367	1
Kangema	Kihoya Primary	1	475	474	1
Kangema	Kihoya Primary	2	483	482	1
Kangema	Kayu Primary	1	361	360	1
Kangema	Kayu Primary	2	367	366	1
Mathioya	Njumbi Primary	1	523	522	1
Mathioya	Kanjahi Primary	2	552	551	1
Mathioya	Karunge Primary	1	502	290	212
Mathioya	Gitugi Primary	1	506	504	2
Mathioya	Gakambura Primary	1	462	461	1
Mathioya	Kiganjo Nursery	1	459	458	1
Mathioya	Kairo Primary	1	424	423	1
Mathioya	Kiambuthia Primary	1	421	418	3
Mathioya	Kiria-ini Primary	3	487	486	1
Mathioya	Umbui Primary	2	398	396	2
Mathioya	Kiru Primary	1	309	308	1
Mathioya	Kiru Primary	2	313	312	1
Mathioya	Kagumo-ini Primary	1	590	589	1
Mathioya	Warugara Primary	1	535	534	1
Mathioya	Mioro Primary	1	536	533	3
Mathioya	Ruru Primary	1	319	318	1
Mathioya	Kirithiiru Primary	1	509	508	1
Mathioya	Kirithiiru Primary	2	516	515	1
Mathioya	Gikindu Primary	1	569	568	1
Mathioya	Iruri Primary	1	404	403	1
Mathioya	Iruri Primary	2	406	404	2
Mathioya	Mukui Primary	1	461	460	1
Mathioya	JJ Kamotho Primary	1	297	296	1
Kiharu	Koimbe Primary	1	407	406	1
Kiharu	Kianderi Primary	2	386	385	1
Kiharu	Kahuti Youth Polytechnic	1	443	444	-1
Kiharu	Kahuti Youth Polytechnic	2	437	435	2
Kiharu	Gituto Primary	1	478	474	4
Kiharu	Kahuhia Primary	1	573	572	1
Kiharu	Mukangu Primary	3	428	427	1
Kiharu	Gitui Primary	2	558	556	2
Kiharu	Gathinja Primary	2	508	507	1
Kiharu	Kiumu Primary	3	611	606	5
Kiharu	Kiaguthu Secondary	1	583	197	386
Kiharu	Gitiri Primary	1	469	468	1
Kiharu	Kari Primary	1	409	408	1
Kiharu	Kari Primary	2	418	417	1
Kiharu	Githagara Primary	2	431	430	1
Kiharu	Kagumo Primary	1	417	416	1
Kiharu	Muchungucha Primary	1	533	532	1
Kiharu	Gaitega Primary	3	469	467	2
Kiharu	Kiangochi Primary	1	572	571	1
Kiharu	Muthigiriri Primary	1	476	473	3
Kiharu	Kiangange Primary	3	505	504	1
Kiharu	Vidhu Ramji Primary	2	518	517	1
Kiharu	Makuyu Social Hall	2	504	503	1
Kiharu	Makuyu Social Hall	6	513	490	23

Kiharu	Makuyu Social Hall	7	501	500	1
Kiharu	Makuyu Social Hall	8	503	502	1
Kiharu	Mbiri Primary	5	505	502	3
Kigumo	Kihoko Tea Buying Centre	1	533	331	202
Kigumo	Makomboki Primary	1	545	152	393
Maragwa	Kimorori Primary	4	531	201	330
Kandara	Kirirwa Primary	1	317	165	152
Kandara	Kirirwa Primary	2	303	104	199
Kandara	Mairungi Primary	1	423	136	287
Kandara	Wangai Primary	3	578	124	454
Gatanga	Gati-Iguru Primary	2	570	336	234
Constituency	Polling Station	Stream	34A Turnout	KIEMS Turnout	Variance
Garissa Township	GARISSA SEC	4	391	91	300
Garissa Township	GARISSA SEC	5	502	102	400
Garissa Township	BULLA COLLEGE PRI SCHL	2	170	137	33
Garissa Township	BULLA COLLEGE PRI SCHL	3	139	136	3
Garissa Township	BOYSTOWN PRI SCH	1	82	74	8
Garissa Township	BASHAL MARKET CENTER	1	440	140	300
Garissa Township	TUMAINI PRI	1	218	18	200
Garissa Township	KEFRI CENTRE	1	310	10	300
Garissa Township	GARISSA MEDICAL TRAINING COLL	2	156	154	2
Garissa Township	GARISSA MEDICAL TRAINING COLL	4	348	148	200
Garissa Township	ASK SHOW GROUND	1	374	74	300
Garissa Township	GARISSA NDOGO OPEN GROUNDS	3	190	186	4
Garissa Township	GARISSA NDOGO OPEN GROUNDS	5	143	139	4
Garissa Township	GARISSA NDOGO OPEN GROUNDS	6	164	156	8
Garissa Township	KENYA NATIONAL LIBRARY CENTRE	2	142	141	1
Garissa Township	GUEST HOUSE	1	443	214	229
Garissa Township	YOUNG MUSLIM PRI SCH	2	436	337	99
Garissa Township	KORAKORA PRI SCH	1	355	155	200
Garissa Township	ELDERT VILLAGE CENTRE	1	40	16	24
Garissa Township	BOLARGY PRIMARY SCHOOL	1	287	87	200
Garissa Township	RAHMA VILLAGE CENTRE	1	170	70	100
Garissa Township	NAJAH PRIMARY	1	278	177	101
Garissa Township	KIWANJA BURE MARKET	1	16	15	1

Source: KYSY, 2017.

In order to account for this gap, it is necessary to look at the Forms 32A, which are required for cases where voters cannot be identified by the KIEMS kit but can be found in the copy register. Since the Court did not grant petitioners access to the Forms 32A, it is impossible to verify how the IEBC accounted for these gaps in turnout.

Conclusion

The 2017 fresh presidential election in Kenya was the result of a deeply flawed process that had already led to a nullified August poll. In fact, many of the problems and irregularities that marked the results forms from October mirrored the issues that had been raised in the aftermath of the August election.

The October Supreme Court case hinged on the findings of the scrutiny exercise. Unfortunately, the Court's failure to oversee the scrutiny process and its decision to not allow a written report meant that it never fully saw or understood that the same issues which had led to its annulment of the August election reappeared in October. Overall, Kenyan election standards have been taken backwards. Issues such as non-serialized results forms and incorrectly completed and erroneously calculated results have again become acceptable.

Moreover, if the Court had granted the petitioners' request to have access to and scrutinize Forms 32A, which are records of all voters who could not be identified on the KIEMS kit but could be found on the hard copy of the Register, the petitioners would have been able to illustrate the gaps in reported turnout. Overall, this meant that the IEBC continued to maintain very low standards for results tabulation and transmission with no accountability.

After having had two presidential elections within a matter of months, Kenyan voters are still unable to independently verify the results of their elections. The absence of a verifiable set of results severely dents the legitimacy of the election result and of the government that then assumed power.



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