

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

### **Kenyan Elections Observers' Log: December 29-30, 2007**

The following account is drawn from the statements of four of the five domestic election observers<sup>1</sup> allowed into the verification process the Electoral Commission of Kenya (ECK) afforded political party representatives the night before the announcement of the supposed results for the Presidency.

The account illustrates the list of anomalies, malpractices and illegalities that lay behind those results, raising questions as to the ethics, non-partisanship and professionalism of the ECK Commissioners and staff as well as to the validity of the supposed results. The expectation of all concerned was that any findings of the verification process would be addressed by the ECK Commissioners when they met the following morning, but this did not happen.

#### **Countdown to deception: 30 hours that destroyed Kenya**

On Sunday, December 30, 2007 at 1830, Mwai Kibaki was sworn in as President of the Republic of Kenya at State House in Nairobi. Three forms of violence immediately broke out across the country: disorganised and spontaneous protests; organised militia activity; and disproportionate use of force by the Kenyan police force and General Service Unit (GSU). As a result, over 500 people were killed, 4,000 exiled in Uganda and over 250,000 people internally displaced. Many more are in hospital nursing injuries. Domestic election observers who monitored the final hours of the presidential ballot tallying and announcements noticed transgressions at once brazen and shocking. The following log captures the critical highlights of Kenya's deviation from democracy.

#### **Saturday December 29, 2007**

##### **1343: Results for 174 constituencies received and the gap narrows**

While sitting with Institute of Education in Democracy (IED)'s Executive Director, Koki Muli (observer), and journalist Kiss 100's Paul Ilado (journalist) on the second floor of Kenyatta International Conference Centre (KICC), the ECK's Chair, Samuel Kivuitu, receives results that put the gap between the Party of National Unity (PNU)'s Kibaki about 107,779 votes behind the Orange Democratic Movement (ODM)'s Raila Odinga—Kibaki has 3,697,768 and Odinga 3,805,547 votes, while ODM Kenya's Kalonzo Musyoka has 498,361 votes.

##### **1500: Nail-biting wait**

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<sup>1</sup> The four domestic election observers were: Julius Melli, Association of Professional Societies of East Africa (APSEA), Koki Muli, Institute for Education in Democracy (IED) and co-Chair of the Kenya Domestic Observers Forum (KEDOF); Dr Bernard Sihanya, Faculty of Law, University of Nairobi; Hussein Mohammed Yusuf, Supreme Council of Kenyan Muslims (SUPKEM). Their statements were recorded by hand, on computer and audiotape recording by Kenyans for Peace with Truth and Justice (KPTJ) and are also being turned into affidavits for the filing of criminal complaints against the ECK and, if necessary, private prosecutions against the ECK.

Some ECK Commissioners express concerns to Muli about the long delays and remark that, since the gap between the two front-runners is narrowing, the ECK may have to await results from all the constituencies before announcing the final tally. This, it is feared, will heighten tensions and anxiety among political parties, their candidates and supporters. No one seems to understand why the delays were so long, especially as the ECK had been better prepared than in 2002, when such delays were not experienced.

### **1600: Ballots scrutiny**

Kivuitu becomes more suspicious of discrepancies and begins to contemplate a re-examination of results. Most results are not available as they have only been telephoned in. Kivuitu yields to pressure from ODM and PNU to scrutinise the tallying of presidential ballots in all the 210 constituencies after party agents point out that votes being announced by the ECK's tallying centre in KICC do not agree with those announced at the constituency tallying centres. He agrees to have two political party agents each for every presidential candidate and five domestic election observers verify the results. Kivuitu says he wants the findings in a report to be discussed by all ECK Commissioners the following morning.

### **1800: The night shift begins**

The atmosphere inside the ECK is tense. The day teams leave without properly handing over to the night teams. Kipkemoi Kirui, deputy leader for Team II (night), notes that although results for Lamu East, Lamu West, Wundanyi and Dujis have come in, they do not have the statutory documents, Forms 16A, 16 and 17A, accompanying them. The day team leaders responsible have therefore not signed for them. Kirui also refuses to receive them without the necessary documents because there are doubts about the verity of the data. Word goes round that his team is not accepting results without the accompanying Form 16As. For most of the night, he and his team repeatedly call the returning officers for results together with statutory documents. Statutory documents for Ijara, Galole, Wundanyi and Dujis are not received even though the results are phoned in.

### **1900: Setting up for verification**

The tallying centre at KICC is set up for ten teams, each sitting around a table to receive, verify and forward constituency results to the internet technology (IT) team to prepare for announcement. The teams are managed by a team leader and a deputy leader. Most of the teams consist of returning officers and ECK staff. Each team is working on about 21 constituencies shared according to ECK's own plan so that, for example, Team I deals with Mombasa and Nairobi.

In addition to tables for the ten teams, more are reserved for use by ECK Commissioners and senior staff as well as filing clerks, spread out strategically in the room to enable any of the abovementioned people to operate from a station. There are also waiting chairs reserved for returning officers, security staff and other people allowed inside the rooms.

### **2000-2100: Initial hitches**

Observers are denied access to the tallying room at KICC. They get the ECK Chair and Secretary to intervene and are finally let in. ECK Deputy Secretary, Suleiman Chege,

who receives them congenially, insists that they be accorded all the help they need. Observers are conducted on a tour of ECK's offices enthusiastically.

### **2237: Verification begins**

After arguments about how and where to begin the verification, work finally begins. James Orengo for ODM insists that results for all 210 constituencies be reviewed while Martha Karua for PNU wants scrutiny to be limited to Forms 16A of only contested constituencies, which she insists they have to identify and agree on since the discrepancies and problems associated with tallying are not only in constituencies that the ODM identified in the afternoon, mostly in Central and central Eastern Provinces, but were in Nyanza and the Rift Valley. Julius Melli, Association of Professional Societies in East Africa (APSEA) (observer) encounters a hostile reception at the verifying tables. Karua complains about there being too many observers, prompting a domestic observer to move from the table where agents of political parties are seated to another table where he is not noticeable.

### **2247: Extent of the problem**

All results for the presidential election are in except for 14 constituencies.

Observers immediately notice discrepancies in the results transmitted from the constituencies to the ECK's headquarters at KICC. They also notice that a number of the statutory documents for the constituencies' returns have serious anomalies:

- a) they are not signed by the returning officers;
- b) they are not countersigned by agents;
- c) in some cases, only photocopies of these forms are available even though the law requires that the originals be filed;
- d) although all these forms (Form 16A, 16 and 17A) require an ECK stamp to stamp to validate them, those that have a stamp are the exception rather than the rule;
- e) ECK Commissioners have thus announced constituency results without verifying their authenticity with the necessary statutory documentation. For example, provisional results were telephoned in and even though the ECK called back the returning officers to ensure the results indeed came from them, most returning officers phoned in different results from what they delivered in person to KICC. Yet the ECK Commissioners accepted and included these results in the final tally;
- f) Although the ECK Regulations (Parliamentary and Presidential Elections Act, Cap 7 of 2007) clearly states that the ECK shall not accept for results that showed voter turnout of 100 per cent and above, the ECK Commissioners allowed returning officers who had returns over 100 per cent to "correct them." They subsequently accepted and included such results for tallying without any explanation, for example, Maragwa constituency had given results amounting to a 115 per cent voter turnout but the returning officer was allowed to reduce them to 85.24 per cent at KICC and these results were accepted for the final tally!
- g) It is unusual for ECK senior staff and Commissioners to accept results from constituencies without proper documentation and to allow returning officers to

prepare the documentation at the ECK headquarters as they did at KICC. Most returning officers did not arrive with proper documentation yet were allowed to prepare their documents at KICC. This was the case for Kipipiri, Starehe, Kinangop, Garsen, Turkana Central and Turkana North and Kajiado North.

Observer inquiries establish that agents were unable to sign Form 16A in areas of Central and Eastern provinces because they were not allowed to do so or they were sent out of the counting halls altogether. In some areas, the returning officers inform the observers that agents did not feel secure enough to stay through the counting. This apparently happened in the Meru districts, in Central, Nyanza and parts of the Rift Valley.

The agents of PNU, ODM and ODM-K settle on 44 constituencies found to have filed results, already announced by ECK Commissioners, without any primary or original evidence for example, original signed, countersigned and stamped Forms 16A, 16 and 17A. These constituencies include the following: Gatundu South, Makadara, Likoni, Kaloleni, Galole, Lamu East, Wundanyi, Malindi, Voi, Ijara, Dujis, Igembe South, South Imenti, Nithi, Kitui West, Kitui South, Mwala, Kinangop, Ol Kalou, Mukurweini, Juja, Githunguri, Kiambaa, Lari, Eldoret East, Baringo East, Baringo Central, Laikipia West, Nakuru Town, Naivasha, Kuresoi, Rongai, Kimilili, Bumula, Alego, Bondo, Kisumu Rural, Kasipul-Kabondo, Ndhiwa, Migori, Kuria, Bomachoge, Bobasi, Nyaribaru Chache and Kitutu Masaba.

Results for these constituencies were thus announced in contravention of the law.

In addition, results for Dagoretti constituency were found to have been announced while vote tallying was still in progress.

Documents for Kinangop, Kipipiri, Ol Kalou, Ndaragwa, Tetu, Kieni, Mathira, Othaya and Ndaragwa had no ECK stamp.

Many constituency results were received and announced by Commissioners without the signatures of ECK officials and all party agents. Indeed, some of the documents conveying the results contained only the results without the presiding officers' signature, ECK stamp or any agent's signature. For example, there were no signatures and stamps in most Forms 16A, 16, and 17 A from Nithi, Kitui West, Kitui South, Mwala, Kinangop, Ol Kalou, Mukurweini, Gichugu, Lari, Mathioya, Eldoret East, Mosop, Aldai, Baringo East, Baringo Central, Laikipia West, Naivasha, Nakuru, Kuresoi, Kajiado North, and Kajiado South yet the Commissioners had already announced the results from these constituencies.

Some constituencies had only a few statutory forms, but their total votes were still announced. These included Ndaragwa, which had 25 Forms 16A not signed by party agents.

There were 34 Forms 16A not signed for Mathira. There was one Form 16A that had a double entry, and two returns for parliamentary results were entered in the presidential file. The total presidential tally of 16A returns was actually 77,442 votes after additions were verified by a Commissioner, ECK Deputy Secretary and observers against the 80,024 announced by the ECK.

The ECK's legal officer, Jemimah Keli, is notified of these discrepancies by Melli, but she takes away the file and hands it to the ECK's head of research, [redacted] Laichena, for storage. She says rechecking numbers would slow everyone down. The

focus of the scrutiny, she adds, should be limited to whether or not there are Forms 16 and 16A, and not stretch to calculations or checking for consistency in the figures. She says that she and other ECK staff had not slept for many days and wished they could do voluntary work like the observers. She asks if Melli is being paid to observe the elections. When answers in the negative, she asks why he is paying so much attention to detail. She is taking notes but seems more preoccupied with justifying every concern raised than addressing it. There are questions about the accuracy of her record of the goings-on.

16 Forms 16A for Othaya have not been signed by party agents.

Results for the following constituencies were announced without some statutory documents including Forms 16A, 16 and 17A Makadara, Starehe, Likoni, Malindi, Galole, Wundanyi, Ijara, Lamu East, Voi, Dujis and Igembe South.

Some results were also faxed as provisional tallies, as in Kirinyaga Central. In other cases, results were announced when there was no documentation to support the announcement, for example, Kimilili, Bumula Alego, Kitutu Masaba, Nyaribari Chache, Bomachoge and Kuria constituencies.

In some cases, the returning officers' files available at ECK's tallying centre are in duplicate and ECK senior staff claim they cannot find the original files for scrutiny. Examples include Kieni, Ol Kalou and North Imenti. Indeed, most photocopies of Forms 16A were neither signed by the presiding officers nor by party agents, yet the results on such forms were included in the tally of results.

In some cases there were disparities between the total votes cast for parliamentary and civic elections on one part and those cast for the presidential election on the other.

### **2300: Results without documents**

Work slows to a near-stop until around midnight when a sleepy-looking fellow is ushered in. He is the returning officer from Moyale. He does not have Forms 16A, 16, 17 or 17A. He slips into a doze as Kirui consults. Hours later, Kivuitu announces the Moyale results—without any documentation.

After Moyale, results for Saku and Laisamis follow. They are not supported by any of the statutory documents and Kirui refuses to receive them. His Team Leader goes ahead to receive them nonetheless. The ECK Chair announces the results. The figures are, in a number of instances, overstated. Kirui feels perturbed because there is no reason for the returning officers' failure to bring in the statutory documents three days after the vote tallying at the constituency level.

Disparities between provisional results phoned in earlier and those relayed to KICC were also noted for Kipipiri, Kieni, Maragua, Juja and Dagoretti constituencies

### **2300: Slippery returning officers**

Observers Melli and Muli meet the returning officer for Starehe and ask about the constituency. He says the people who had been causing trouble wanted to disrupt the electoral process. They had wanted him to announce results that favoured their candidate and had been threatening him and pushing him forward but he says he had insisted on doing what the ECK had sent him to do.

He says that he first called for police reinforcements and then announced the winner because they had recounted the vote twice. There had been an anomaly in one of the stations, he says, and when it was rectified, the winner was known. He does not,

however, let observers examine the file for the constituency. Observers never got to examine the file.

The Kipipiri results reported on the telephone give 36,470 votes to Kibaki against the 37,315 announced by the ECK. The final tally on file shows 37,279 votes.

### **Sunday, December 30, 2007**

#### **0100: Insider information**

One ECK senior staff member calls Muli outside the hall and asks her if she is aware that something terrible is happening. The ECK senior staff member points out that it is important for observers to scrutinise all returning officers' returns especially of Mombasa, Central, Eastern, North Eastern, Rift Valley and Nyanza. The senior staff member also cautions her that the discrepancies have been planned systematically and are not accidental. She says the scheme involves most Commissioners, who have organised how the tallying will be carried out. There is also the concern that Commissioners were in charge of their regions—which had not been the practice in the past—and most of the Commissioners engaged returning officers who owed them loyalty, in some cases, replacing returning officers who had experience, having worked with the ECK in the past.

#### **0200: Missing returns**

The only constituencies without results are Kibwezi and Emuhaya. In the case of Kibwezi, the returning officer had reportedly been threatened with dire consequences by one of the candidates if he released the results. Although he was assured of transport by helicopter and additional paramilitary police escort, he still would not come in. Emuhaya was bogged down by logistical problems. The ECK Chair announced the results the following day.

#### **Electoral official quits**

Kirui's colleagues tell him that results are being reduced or suppressed for certain constituencies. He raises the alarm. He takes his Team Leader, [redacted] Njuguna, aside and starts saying: "My brother, this is an important national exercise. I am concerned that we are not following the law and we are letting down Kenyans ...". Njuguna tells him he would be recommending Kirui's removal because he was proving difficult. He goes ahead to report him to Daniel Koech, who asks Njuguna to cooperate with Kirui.

Njuguna goes back to their work station. Kirui follows him and tells the team that he regards their work as an important national exercise that demands patriotism and neutrality. Kirui also demands respect and cooperation from Njuguna, who says that if he wishes to, he could leave. Kirui leaves the ECK offices for the last time.

#### **0400: Fatigue and irritation set in**

Melli says, "I started noticing general irritation and resistance from ECK officials. I asked for the Nithi constituency file, but the returning officer grabbed it and held it close to his chest. The same was the case for the Starehe constituency file. The returning officer for Nithi went outside and carried all his documents with him wherever he went." ECK Commissioners who are asked to intervene defend their staff, saying they had not completed work on the files.

**0500: Invented figures show up**

Molo constituency returning officer provides results showing that Kibaki has 50,145 votes at completion of counting but ECK prepares to announce 75,261 votes for him and provides a computer print out of the increased results. ECK Commission staff deny observers the opportunity to verify information on file, saying the result had not been announced.

Observers at the ECK tallying centre at KICC who take a break from the tallying room to freshen up are denied re-entry. Those who come in to relieve their colleagues on night duty are also barred from entering. Police presence is strong and the atmosphere tense.

**0930: Agents ordered out**

A message goes out on the public address system asking all agents to leave the premises. Observers are also ordered out and evicted.

**1000: ECK goes underground**

A media briefing scheduled for 1000 to announce presidential results is put off indefinitely.

**1100: Odinga press conference**

The ODM presidential candidate claims he has won the election according to results from his call centre.

**1300: Trial balloon**

Word goes round that the ECK could announce the results of the presidential election at any time.

**1421: ODM press conference**

ODM holds a press briefing at KICC and discloses rigging by the ECK in 48 constituencies after a joint parties and ECK audit of all the 210 constituencies. William Ruto discloses that all 48 constituencies lacked supporting documents and inflated Kibaki's figures. The ECK does not provide any evidence to the contrary.

**1620: Protests on the floor**

The ECK Chair attempts to announce the final results of the presidential election. He, however, begun with announcing the results of Molo which were inflated, 75,261 instead of the 50,145 votes announced at the constituency tallying centre. Kivuitu is shouted down by ODM which insists that the contested results need to be resolved, including those of Molo, and also insist the delayed results from Eastern and Central provinces had been inflated. The ECK Commissioners leave the briefing centre under police escort.

**1642: Bombshell**

An ECK staff member, Kipkemoi Kirui, tells an ODM-convened press conference that the poll results and documents are being manipulated at the KICC, and that he and many other people had deserted their work stations in frustration.

**1700: Dogged determination**

A signal goes out to the diplomatic corps that the ECK is about to announce the results.

**1739: The Final announcement**

Paramilitary police clear KICC as the ECK Chair announces Kibaki winner of the presidential election in a sealed room. The news is relayed via the public Kenya Broadcasting Corporation (KBC) and picked up by other networks.

**1824: Swift swearing-in**

Kibaki is sworn in as President at State House in Nairobi as protests erupt all over Kenya. A live press conference by ODM is pulled off air as the Minister for Internal Security suspends live broadcasts.

*(end/kptj/08)*