



JOINT CIVIL SOCIETY STATEMENT ON ELECTION PREPAREDNESS AND OTHER PERTINENT ELECTORAL ISSUES IN KENYA

FOR IMMEDIATE PRESS RELEASE

Sunday, 17th July 2022, Nairobi

With 22 days left until the August polls, political campaign activities across the country are now entering their homestretch with election management bodies putting in place final preparations for the elections. We, members of the CSO organizations under the banner of *Uchaguzi Platform*, have been reflecting on the state of electoral preparedness and therefore wish to address the following emerging issues and concerns:

1. USE OF TECHNOLOGY IN THE ELECTIONS

Use of technology in the electoral processes is a critical component of enhancing credible electoral outcomes and as a country, we have made considerable strides in this. Cognizant of the 2017 Supreme Court's directions on election technology, *Uchaguzi Platform* is concerned about the management and transmission of election results, as well as testing of the requisite election technology especially now that we are well past the statutory timelines of such an exercise. Further, the country is still not properly informed as to the status of procurement, testing and functionality of the strategic technologies to be used in the elections. Indeed, as we asked in our previous communications, the country does not know whether the Commission undertook any audit of the existing kits before purchase of any new ones and if it did, why the report has not been made public.

The Commission informed Kenyans of another planned simulation exercise on the election results transmission. We urge IEBC to ensure that gaps and failures noted in the previous exercise are eliminated. The country cannot afford another systematic failure as was witnessed in the first simulation exercise that was carried out on 9th June 2022 as there is no time to undertake another third one without completely eroding trust in the systems.

2. REGISTER OF VOTERS (RoV)

A Register of Voters is a comprehensive list of all the Kenyans who have registered to vote in any given election, it contains their biometric and biographic details. As such, a voter Register is the gateway to the ballot box and therefore a very critical element of any election. The voter register has been a contentious issue in Kenya and courts have had to clarify the necessary steps IEBC should undertake when preparing the Register line with the Constitution, the Elections Act and Regulations. Without a credible register, it is difficult to assess the quality or honesty of elections. IEBC has consequently concluded the voter verification process and proceeded to gazette the revised Register after the conclusion of the exercise and recommendations from the KPMG Audit Report. Unfortunately, IEBC is yet to make the Audit Report public. Many organizations have raised concerns that they are yet to receive the aggregated voter's register despite making requests to IEBC.

We therefore urge IEBC to make the KPMG audit report public and fastrack the process of sharing the aggregated register of voters for inspection by interested individuals and organizations. Further, we call for more proactive communications around voter identification protocols at the polling stations.

3. ELECTION OFFENCES

The Uchaguzi platform is also concerned by the number of electoral offences happening in the public without any serious action being undertaken by the relevant institutions. For example, the IEBC chairperson is on record stating that some IEBC officials were involved in irregular transfer of voters to particular voting stations and assured that action will be taken against them. Despite the sensitivity of the offence, we are yet to see any stern action being taken against the said individuals. In the likely possibility that this is not an isolated incident, the integrity of the voter register and the elections is seriously compromised. We call upon IEBC, DCI and ODPP to make public the progress of this case.

We applaud political leaders, especially the four Presidential candidates, for committing in writing to observe the electoral code of conduct before, during and after the August 2022 elections. Although this was a positive gesture, we are concerned that the same has not been translated in practice as the politicians continue publicly hurling insults at each other further eroding the intent and spirit of the code of conduct.

It is also clear that the use of public resources and personnel during the campaign is proceeding unchecked at all levels including among some presidential candidates. This is a clear violation of the law and we call upon IEBC to take stern action against the vice. We reiterate the fact that public resources, especially during these difficult economic times, must be solely used for the purposes they were procured for which is to promote public good.

We also call upon the ODPP who has been on record that his office will prosecute cases of use of public resources for campaigns and prosecute perpetrators to make good his directive which we are in support of. We also call for clarity on the institution responsible for investigation of offences related to the use of public resources, as it has come to light, that some of the cases forwarded to the Inspector General of Police and Ethics and Anti-Corruption Commission are still pending following a stalemate on which entity is responsible for investigation of such offences.

We are particularly concerned of what is now become a pattern of leaders and other candidates using violence and intimidation and abusive language that is intended to disparage the conduct of opposing candidates. We call upon all political actors to campaign on issues as opposed to personal attacks as these continue to polarize the political landscape of the country.

We urge political leaders to instruct their agents, supporters and campaigning teams to respect the Code by avoiding violence and intimidating or abusive language in any media of communication. On its part, IEBC should enforce the code to level the playing field for all candidates in order to have a free and fair election.

4. INTEGRITY AND LEADERSHIP

Over the past few months, the question of suitability for office on the basis of Chapter 6 of the Constitution has been largely deliberated by the public, the media, institutions involved in the electoral process and other stakeholders including the Uchaguzi platform. The deliberations have highlighted two main crucial aspects, firstly, the suitability of candidates based on ethical and moral standards required under Chapter 6 and secondly, the lack of understanding and uniformity in interpretation and application of standards of Chapter 6. This misunderstanding has seen several individuals facing prosecution, investigations and convictions on criminal and corruption charges being cleared for office. We have also seen questions on the credibility of documentation particularly academic certificates presented to IEBC by several candidates.

We reiterate the obligation and importance of leaders to satisfy ethical and moral standards which are different from criminal standards. We also highlight the fact that several cases have been filed in our courts which if resolved, would determine in finality the suitability of several candidates to be cleared for public office. We note that a good number of these cases take significantly long periods to be completed which leaves room for individuals with unresolved issues to contest for office. We implore our judiciary to ensure matters which touch on suitability of individuals for public office to be expedited to avoid uncertainties and ambiguities during the clearing process in future.

That notwithstanding, we acknowledge the judgment by the Supreme Court issued on 15th July which found that the impeachment proceedings against Mike Sonko were properly conducted. The significance of this ruling is that Mike Sonko is unsuitable to hold public office by virtue of his impeachment in accordance with Article 75(3) of the Constitution on

the disqualification of individuals dismissed or removed from public office. We strongly encourage all courts to be bold, timely and progressive on issues on chapter 6 of the Constitution of Kenya.

CONCLUSION

The realization of credible, peaceful, free and fair election requires the concerted and synergized efforts of all actors in the electoral processes with each actor discharging its mandate as required. With election day just around the corner, we call upon citizens, political parties, law enforcement agencies, electoral institutions and other relevant actors to work together in ensuring that every vote counts in this election.

Signed by

1. Name: Sheila Masinde, Executive Director, Transparency International Kenya (TI-Kenya)

Sign:

2. Name: Franklin Mukwanja, Executive Director, Center for Multiparty Democracy (CMD-Kenya)

Sign:

3. Name: Mulle Musau, National Coordinator, Elections Observation Group (ELOG)

Sign:

4. Name: Caroline Gaita, Executive Director, Mzalendo Trust

Sign:

for Caroline

5. Name: Joshua Changwony, Executive Director, Constitution and Reform Education Consortium (CRECO)

Sign:

6. Name: Felix Odhiambo, Executive Director, Electoral Law and Governance Institute for Africa (ELGIA)

Sign:

FOR FELIX ODHIAMBO.