



Unfinished Business: an examination of the IREC report

Kenyans for Peace with Truth and
Justice (KPTJ)

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Benchmark?

- “Change for the sake of change is folly. Change without having established the ill is worse. Until and unless one has made a proper diagnosis, the prescription is unlikely to be efficacious and might well prove fatal.”
- IREC report p.23

Positive aspects

- Many useful recommendations adopted that Kenyans have long proposed:
- Important to insist on rapid implementation of most important recommendations
- Constitutional and legal frameworks: anchoring the right to vote in the Constitution/electoral dispute resolution court with timelines etc.
- Identifies problems such as appointment process of ECK commissioners etc. etc.
- IREC clearly names ECK's lack of legitimacy and loss of public confidence and calls for radical reform

Some Criticisms of IREC's approach

- IREC's methods were flawed or insufficient
- IREC did not adduce sufficient evidence
- IREC's conclusions are not supported by the evidence
- In particular IREC's finding that there was no fraud at KICC is based on neither evidence or logic since it uses ECK data which it otherwise mistrusts.
- IREC's methodological treatment of sources is highly uneven.

Some criticisms of IREC's approach

- IREC indicts ECK for incompetence and cites institutional collapse but fails to assign individual responsibility or point a way forward on reforming and reconstituting/creating new EMB/ECK
- IREC negates its mandate by failing to make a conclusive finding on the integrity of the tallying process at KICC
- Significant statistical shortcomings.

Sampling problems

- “The IREC analysis of tallying etc. in nineteen sample constituencies demonstrates convincingly that there are so many more or less erroneous constituency results (...) and that one cannot rely on any figures from the ECK”
- (Source: IREC report p. 136)
- Comment: sampling error. The 19 constituencies were not representative therefore no general conclusions could be drawn for all 250 constituencies from it.

Dismissal of statistical modeling

- “IREC decided that it was not worthwhile to conduct any more profound statistical analysis of the available turnout data etc. The results would be almost useless for IREC’s purposes as they could not form a basis for useful conclusions”
- (Source: IREC report p.136)
- Comment: Even if this were true, statistical tools exist to sift through messy data and shed light on possible anomalies and whom they benefited.

Failure to examine statutory forms using appropriate statistical tests

- “ In the case of 2007, where there were vast allegations of changes in statutory forms, this again could very well pass statistical tests, but can only be faulted on account of breaching certain laws or electoral codes and practices”
- (Source:IREC report Annex 6A, p. 9)
- Comment: Statistical tools exist to identify possible anomalies in series of numerical data and check veracity of data and make clear findings between fraud and incompetence.

Improper research design relative to the mandate

- “the conduct of the 2007 elections in Kenya was so materially defective that it has been , and will remain, impossible for IREC to establish true and reliable results for the presidential and parliamentary elections”
- (Source: IREC report, pp. 125-6)
- Comment: IREC could have used several types of evidence: statistical analysis, plus collection of evidence, and testimony would have helped in developing solid recommendations on reform

Concerns on evidence taken by IREC

- Number and spread of witnesses weak:
Reliance on uncorroborated evidence:
Formal evidence on oath only taken from
13 witnesses, all but one from ECK.
- KPTJ monitors note that IREC could have
identified many more potential witnesses
in its countrywide visits.
- The IREC had the legal powers and the
duty to identify and summon witnesses to
get objective evidence on the issues.

Concerns on IREC approach

- Statutory forms and allegations on tallying process: no forensic processes to determine if failures were error or fraud. “Irrelevant” according to IREC since entire process was so flawed. However, inexplicably and with no investigation, IREC concludes there was no fraud at KICC. All are guilty and Kenyans must adopt a new culture. More robust conclusions may have made the present divisive and potentially conflict-laden debate in the political arena less likely.

What could IREC have done differently?

- Focus its investigations and collect more primary evidence
- Use more advanced forensic statistical models and tests on ECK data at polling stations and constituency levels
- Engage a document management firm to re-tally all Form 16As
- Focus on Form 17A and 16 and compare with final ECK figures either for all 210 constituencies or a substantial random sample
- Use forensic techniques to establish whether documents were altered through error or fraud
- Make recommendations for further investigation and prosecution

Way forward- combating impunity

- Without accountability impunity will continue to thrive.
- Implement IREC's recommendations particularly on the ECK
- Leverage the report to push need for implementation and reform
- Continue the search for truth and accountability

(ends)