

**REPORT BY THE ORANGE DEMOCRATIC MOVEMENT  
ON ELECTORAL FRAUD AND MALPRACTICES COMMITTED  
BY THE ELECTORAL COMMISSION OF KENYA  
IN FAVOUR OF MWAI KIBAKI IN THE PRESIDENTIAL ELECTIONS**

**Nairobi, January 2, 2008**

## **Summary**

This report presents a summary of the instances of electoral fraud committed by the Electoral Commission of Kenya while tallying the Presidential votes at the Kenyatta International Conference Centre. ECK fraudulently manipulated the Presidential votes by unilaterally increasing the numbers for Mwai Kibaki and reducing those of Raila Odinga with a view to closing and eventually eliminating the earlier lead taken by Raila Odinga. The results from Raila Odinga strongholds were tallied first and then those from Mwai Kibaki's strongholds were deliberately increased.

At the count of the Presidential votes in 170 Constituencies out of the total number of 210 countrywide in which the figures provided by ODM Polling and Counting Agents agreed with the returns announced by ECK, the position was as follows:

<b>Raila Odinga</b>	<b>Mwai Kibaki</b>
<b>3,941,919</b>	<b>2,456,025</b>

At the count of the Presidential votes from [ ] Constituencies in which the figures provided by ODM Polling and Counting Agents did not agree with the figures announced by ECK at KICC, the position was as follows:

<b>Raila Odinga</b>	<b>Mwai Kibaki</b>
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Documentary evidence of this fraud already obtained from ECK confirm that a total number of 251,481 votes were added by ECK at KICC to Mwai Kibaki's tally is as follows:

Kieni	17,677
Molo	22,086
Juja	52,092
Limuru	7,596
Mwea	2,470
Lari	8,063
Kirinyaga Central	1,353
Kandara	36,618
Gatundu South	1,013
Igembe South	22,079
Tigania	4,875
Nithi	29,348
Kimilili	9,849
Naivasha	8,680
Kajiado North	27,682

Documentary evidence of this fraud already obtained from ECK, confirm that a total number of votes 27,282 were deducted by ECK at KICC from Raila Odinga's tally is as follows:

Limuru	210
Igembe South	1,836
Igembe North	3,585
Malava	6,047
Kapenguria	5,000
Changamwe	10,604

## **The Law on Reporting and Releasing of Presidential Election Results in Kenya**

At the close of counting of votes at each Polling Station, the Presiding Officer, the Candidates or their Agents shall sign a declaration as set out in Form 16A which shall state:

- a) the name of the Polling Station;
- b) The total number of registered elector for the Polling Station;
- c) The total number of valid votes cast at the Polling Station;
- d) The number of votes cast in favour of each Candidate at the Polling Station;
- e) The number of votes that were rejected at the Polling Station; and
- f) The number of disputed votes at the Polling Station.

The Presiding Officer shall then:

- a) immediately announce the results of the voting at the Polling Station before communicating them to the Returning Officer; and
- b) Provide each Candidate or Agent with a copy of the declaration of the results as summarised in Form 16A.

Immediately after the results of the poll for all Polling Stations in a Constituency have been received by the Returning Officer, he shall, in the presence of the Candidates or their Agents present:

- a) tally the results from the Polling Stations for each Candidate without recounting the ballots that were not in dispute;
- b) publicly announce to persons present the total number of valid votes cast for each Candidate in case of an election for the President; and
- c) complete Form 17 set out in the First Schedule in which he shall declare:-
  - i. votes cast for each Candidate in each Polling Station;
  - ii. give to any Candidate or Candidates Agent present a copy of the Form; and
  - a. deliver to the Electoral Commission the original of Form 16A together with Form 17A and Form 18.

The Results of a Presidential election in a Constituency shown in Form 16A shall be subject of confirmation by the Electoral Commission after a tally of all the votes cast in the election.

On receipt of the returns by way of Form 16A submitted by the Returning Officers, the Chairman of the Electoral Commission, shall, as the National Returning Officer for Presidential Elections receive and tally the results in the presence of the Candidates or their Agents. The Candidates or their Agents have a right to peruse, review, confirm or dispute the authenticity of each return submitted by a Returning Officer based on Form 16A. The law recognises Form 16A as the only source of election results. Any results not backed by Form 16A or backed by Form 16A that is not in conformity with the requirements of National Assembly and Presidential Elections Act are not valid results.

(See Sections 36(4) and 40(1) of the National Assembly and Presidential Elections Act, Act, Chapter 7 of the Laws of Kenya).

## **Deliberate Failure by Electoral Commission of Kenya (ECK) to Establish a National Tallying Mechanism for the Presidential Elections**

The ECK failed, refused and deliberately avoided establishing a National Tallying Mechanism through which it would, as required by the law, formally and publicly receive from each Returning Officer the Constituency Results of the Presidential votes i.e. Form 16A. The Returning Officers submitted their return to the ECK in the absence of the Candidates and/or their duly appointed Agents. ECK officials would unilaterally receive results away from the public scrutiny by the Candidates or their Agents and simply come to the Press Centre and make announcements of the results.

When asked by ODM Agents to confirm whether or not he, as the National Returning Officer for the Presidential Elections, had established a National Tallying Mechanism and to allow ODM Agents into such a room, the Chairman of ECK referred them to the Press Centre set up by ECK for communicating the the results to the press. These announcements were being made in the absence of the concerned Returning Officers and without prior verification of the returns i.e. Form 16A by ODM Agents.

There was no public, transparent and objective tallying of Presidential votes by ECK at all at the national level.

### **Announcement of Presidential Election Results not Supported by Form 16A by ECK**

The ECK announced, at the Press Centre, Presidential Election Results for 48 Constituencies without any supporting mandatory Form 16A as confirmed by physical examination of the files on the night of December 28, 2007 by ODM Agents in the presence of ECK officials and the Agents of Mwai Kibaki. In the absence of Form 16A, ECK results were therefor not recognised as true results under the law and were null and void and should not have been announced.

### **Announcement of Presidential Election Results Different from Form 16A**

The ECK announced Presidential election results that were different from the results issued and confirmed by Returning Officers and ODM Agents in 39 Constituencies. In each of these cases, either the votes allotted to Mwai Kibaki by the ECK were greater than the number that had been recorded in Form 16A and announced at the Constituency level or the votes allotted to Raila Amolo Odinga were fewer than the number which had been recorded in Form 16A and announced at the Constituency level. In some cases, votes for the two candidates were unilaterally reduced or increased so as to maintain the original percentages.

### **Votes Cast Exceeded Registered Voters**

There were instances when the votes cast exceeded the number of registered voters.

## **Refusal by ECK Official to avail Form 16A to ODM Agents in Constituencies within the Strongholds of Mwai Kibaki**

Presiding Officers in 42 Constituencies controlled by Mwai Kibaki refused, neglected and/or failed to make available Form 16A at the close of polling and counting for recording figures relating to the Presidential vote. Returning Officers in these Constituencies did likewise at close of tallying. They simply announced that they did not have Form 16A and as such they could not fill and issue to the ODM Agents the relevant copies for their records and onward transmission to Nairobi:

The whole intention was to avoid a paper trail of the correct results and to lay the framework for altering votes at the National Tallying. In some cases where the Form 16A were filled, ECK subsequently amended the results by adding more votes in favour of Mwai Kibaki.

### **Denial of Entry by ODM Presidential Counting Agents to Polling Stations**

ODM Presidential Polling and Counting Agents were denied entry for more than three hours or forcefully evicted from or denied entry into the Polling Stations or Tallying Stations in 14 Constituencies. This was intended to deny ODM the opportunity:

- a) to verify the tallying of Votes;
- b) to know the votes cast in favour of each of the Presidential Candidate; and
- c) to question any irregularities.

In addition, it provided the government with the opportunity to manipulate the figures either by adding the numbers of the votes cast in favour of Mwai Kibaki or reducing those cast in favour of Raila Amolo Odinga:

There are instances where the ODM Candidates and Agents were subjected to physical assault, intimidation and harassment by armed policemen at the tallying of votes in Constituencies controlled by Ministers.

### **Disputed Presidential Election Results**

ODM has rejected, on grounds of fraud, the results of the Presidential elections announced by the ECK at KICC in Nairobi for the following Constituencies:

#### **Kieni**

- Form 16A dated 28/12/2007 is unilaterally altered by ECK at KICC to have Mwai Kibaki's votes increased from 54,377 as declared and recorded by ECK at the Constituency level to 72,054;
- A new Form 16A dated 29/12/2007 is issued by ECK with conflicting figures and signed by a new official now increasing Mwai Kibaki's votes to 72,054 and increasing Raila Odinga's votes from 513 to 580; and
- Presiding Officers and Returning Officer at the Constituency level refused, neglected and/or failed to make available Form 16A at the close of polling and counting so that the Form may be filled in public under the supervision of the Agents and copies availed to them.

- Evidence attached hereto.

### **Molo**

- Form 16A dated 28/12/2007 is unilaterally altered by ECK at KICC to have Mwai Kibaki's votes increased from 50,175 as declared and recorded by ECK at the Constituency level to 72,261;
- A new Form 16A dated 29/12/2007 is issued by ECK with conflicting figures and signed by a new official now increasing Mwai Kibaki's votes to 72,261; and
- The Returning Officer at the Constituency having made available Form 16A at the close of polling and counting and had the Form filled in public under the supervision of the Agents and copies availed to them, appeared in person at the ECK Press Center at KICC to challenge the results announced by ECK but the ECK Chairman refused to listen to him or receive from him the original Form 16A.
- Evidence attached hereto.

### **Juja**

- Form 16A dated 28/12/2007 is unilaterally altered by ECK at KICC to have Mwai Kibaki's votes increased from 48,298 as declared and recorded by ECK at the Constituency level to 100,390;
- A new Form 16A dated 29/12/2007 is issued by ECK at KICC with conflicting figures and signed by the same official now increasing Mwai Kibaki's votes to 100,390 and increasing Raila Odinga's votes from 6,081 to 13,752; and
- Presiding Officers and Returning Officer at the Constituency level refused, neglected and/or failed to make available Form 16A at the close of polling and counting so that the Form may be filled in public under the supervision of the Agents and copies availed to them.
- While Mwai Kibaki is supposed to have received 100,390 votes according to ECK officials at KICC, the total number of votes received by all Parliamentary Candidates in Juja stood at 85,861.
- Evidence attached hereto.

### **Limuru**

- Form 16A dated 29/12/2007 is unilaterally altered by ECK at KICC to have Mwai Kibaki's votes increased from 40,788 as declared and recorded by ECK at the Constituency level to 48,384;
- A new Form 16A dated 29/12/2007 is issued by ECK at KICC with conflicting figures and signed by the same official now increasing Mwai Kibaki's votes to 48,384 and reducing Raila Odinga's votes from 3,144 to 2,934; and
- Presiding Officers and Returning Officer at the Constituency level refused, neglected and/or failed to make available Form 16A at the close of polling and counting so that the Form may be filled in public under the supervision of the Agents and copies availed to them.
- Evidence attached hereto.

### **Mwea**

- Form 16A dated 28/12/2007 is unilaterally altered by ECK at KICC to have Mwai Kibaki's votes increased from 59,904 as declared and recorded by ECK at the Constituency level to 62,374;
- A new Form 16A dated 29/12/2007 is issued by ECK at KICC with conflicting figures and signed by the same official now increasing Mwai Kibaki's votes to 59,904 and maintaining Raila Odinga's votes; and
- Presiding Officers and Returning Officer at the Constituency level refused, neglected and/or failed to make available Form 16A at the close of polling and counting so that the Form may be filled in public under the supervision of the Agents and copies availed to them.
- Evidence attached hereto.

### **Lari**

- Form 16A dated 29/12/2007 is unilaterally altered by ECK at KICC to have Mwai Kibaki's votes increased from 41,213 as declared and recorded by ECK at the Constituency level to 49,276;
- A new Form 16A dated 29/12/2007 is issued by ECK at KICC with conflicting figures and signed by the same official now increasing Mwai Kibaki's votes to 49,276 and increasing Raila Odinga's votes from 266 to 457; and
- Presiding Officers and Returning Officer at the Constituency level refused, neglected and/or failed to make available Form 16A at the close of polling and counting so that the Form may be filled in public under the supervision of the Agents and copies availed to them.
- Evidence attached hereto.

### **Kirinyaga Central**

- Form 16A dated 28/12/2007 is unilaterally altered by ECK at KICC to have Mwai Kibaki's votes increased from 52,866 as declared and recorded by ECK at the Constituency level to 54,219;
- A new Form 16A dated 29/12/2007 is issued by ECK at KICC with conflicting figures and signed by the same official now increasing Mwai Kibaki's votes to 54,219 and increasing Raila Odinga's votes from 580 to 593; and
- Presiding Officers and Returning Officer at the Constituency level refused, neglected and/or failed to make available Form 16A at the close of polling and counting so that the Form may be filled in public under the supervision of the Agents and copies availed to them.
- Evidence attached hereto.

### **Kandara**

- Form 16A undated is unilaterally altered by ECK at KICC to have Mwai Kibaki's votes increased from 33,825 as declared and recorded by ECK at the Constituency level to 70,443;

- A new Form 16A dated 29/12/2007 is issued by ECK at KICC with conflicting figures and signed by the same official now increasing Mwai Kibaki's votes to 70,443 and maintaining Raila Odinga's votes at 295; and
- Presiding Officers and Returning Officer at the Constituency level refused, neglected and/or failed to make available Form 16A at the close of polling and counting so that the Form may be filled in public under the supervision of the Agents and copies availed to them.
- Evidence attached hereto.

### **Gatundu South**

- Form 16A dated 28/12/2007 is unilaterally altered by ECK at KICC to have Mwai Kibaki's votes increased from 51,467 as declared and recorded by ECK at the Constituency level to 52,480;
- A new Form 16A dated 29/12/2007 is issued by ECK at KICC with conflicting figures and signed by the same official now increasing Mwai Kibaki's votes to 52,480 and increasing Raila Odinga's votes from 423 to 425; and
- Presiding Officers and Returning Officer at the Constituency level refused, neglected and/or failed to make available Form 16A at the close of polling and counting so that the Form may be filled in public under the supervision of the Agents and copies availed to them.
- ODM records show that Mwai Kibaki received 41,836 votes while Raila Odinga received 388.
- Evidence attached hereto.

### **North Imenti**

- Form 16A dated 28/12/2007 is unilaterally altered by ECK at KICC to have Mwai Kibaki's votes increased from 78,684 as declared and recorded by ECK at the Constituency level to 84,006;
- A new Form 16A dated 29/12/2007 is issued by ECK at KICC with conflicting figures and signed by the same official now increasing Mwai Kibaki's votes to 84,006 and maintaining Raila Odinga's votes at 3,370; and
- Presiding Officers and Returning Officer at the Constituency level refused, neglected and/or failed to make available Form 16A at the close of polling and counting so that the Form may be filled in public under the supervision of the Agents and copies availed to them.
- Evidence attached hereto.

### **Igembe South**

- ECK increased Mwai Kibaki's votes from 37,931 to 60,010.
- ECK reduced Raila Odinga's votes from 3,950 to 2,114.

### **Igembe North**

- ECK reduced Raila Odinga's votes from 5,508 to 1,923.

### **Tigania West**

- ECK increased Mwai Kibaki's votes from 33,304 to 38, 179.
- The total Parliamentary vote cast was 38, 848.

### **Nithi**

- ECK increased Mwai Kibaki's votes from 66, 345 to 95,693

### **Malava**

- ECK reduced Raila Odinga's votes from 25,938 to 19,891.

### **Kimilili**

- ECK increased Mwai Kibaki's votes from 23,126 to 35,787.

### **Kapenguria**

- ECK reduced Raila Odinga,s votes from 39,966 to 34, 966.

### **Naivasha**

- ECK incraesed Mwai Kibaki's votes from 50,145 to 58,825.

### **Changamwe**

- ECK reduced Raila Odinga's votes from 28, 310 to 17,706.

### **Kajiado North**

- ECK increased Mwai Kibaki's votes from 21,356 to 49, 038.