



NASA IRREDUCIBLE MINIMUMS ON ELECTORAL REFORMS BEFORE THE FRESH PRESIDENTIAL ELECTIONS ARE HELD

No.	ISSUE	NASA PROPOSAL	COMMISSION RESPONSE
1.	ICT Framework	Safran & OT Morpho not to be engaged in this election owing to their complicity in mishandling the ICT component in previous election.	<p>The Commission has not received any evidence to support the allegations of complicity on the part of OT Morpho.</p> <p>The Commission has opted to retain OT Morpho for the following reasons:-</p> <ol style="list-style-type: none"> 1. Section 44(4) of the Elections Act requires that any technology acquired for the conduct of elections must be tested, verified and deployed at least 60 days before the election. The Commission cannot contract another technology vendor as there is no time to allow a new technology before the fresh presidential election (FPE) within the provisions of the statutory timelines. 2. Currently Commission cannot source another vendor as it has an existing contract and a one year warranty support for the 45,000 KIEMS kit with OT Morpho. The system was implemented, tested and worked efficiently without any problems during the General Elections and can still be used for the FPE. 3. The Commission has invested heavily in the acquisition of the current KIEMS and the integrated technology can still be used for the subsequent GE. Spending money on a similar system for the FPE may not only raise audit queries but also waste public funds.

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			<p>4. Change Management and Timelines - It will require at least 6 months to implement a new election system (procurement, supply, commission, implementation, testing, training and support). For this reasons the Commission had to retain the services of OT Morpho.</p> <p>5. Integration – The Commission has an existing biometric voter registration (BVR) system that is maintained by OT Morpho. The Register of Voters was audited and certified by an independent audit firm. The KIEMS has been integrated with the biometric voter registration system. For this reasons the Commission had to retain the services of OT Morpho.</p>
		<p>Commission to provide the physical location of servers and ensure that all systems hosting data are in the country and in conformity with various ICT related legislations such as ‘Data Sovereignty Act’</p>	<p>The Commission’s primary and secondary data centers exist and are operational. However, due to security reasons, the physical locations cannot be disclosed. The Commission’s data is stored in the local servers.</p> <p>The Commission’s core objective in regard to the election technology is to ensure, highly available, reliable, scalable and secure election systems and infrastructure for the election.</p> <p>The data on Register of Voters is securely stored locally in the country, election day data is stored on the KIEMS Kits which will be archived on local servers, the results forms are stored locally and downloadable from the public portal and the results data are available on the local servers.</p> <p>The Commissions is not aware of any existing Data Sovereignty Act.</p>
		<p>NASA ICT team to be granted access to ICT platforms where raw results are received.</p>	<p>The Commission concurs with this request. Appropriate access to the electoral technologies will be granted to presidential candidates’ agents or representatives within the provisions of existing laws and Commission’s ICT security policies upon request.</p>

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		<p>Independent International Experts to be engaged to manage the entire ICT framework of the elections with close supervision of Candidates Agents and the IEBC.</p>	<p>It is not prudent for a third party to manage the Commission's entire ICT elections framework given that IEBC is an independent institution. In a bid to enhance its capacity to successfully implement the electoral systems the Commission, with the support of development Partners, has engaged independent ICT experts to complement the existing capacity of the Commission's ICT in the management of the elections technology.</p>
		<p>Results Transmission Database to be designed on the Oracle Platform and overseen by Oracle Consulting.</p>	<p>The Commission concurs with this request. The RTS database is already implemented on the Oracle platform and the Commission has adequate Oracle expertise to support the platform.</p>
		<p>IEBC should migrate the production databases to the environments configured by Oracle and contract Oracle to directly support the databases during elections.</p>	<p>As per explanation above.</p>
		<p>No use of Cloud Servers in Results Transmission.</p>	<p>Given the sensitivity surrounding the election results transmission and having weighed all other options the Commission made the decision to continue using Cloud as a service.</p>
		<p>IBM contracted to provide end-end security testing of the KIEMS devices using Qradar. IBM to be contracted to provide support Qradar during repeat election.</p>	<p>The Commission concurs with the request. Elaborate security measures have been implemented including the use of Qradar to guarantee confidentiality, integrity and availability of all our systems. A number of companies including IBM have been engaged as system security service providers.</p>
		<p>Direct login should be disabled for privileged accounts such as Administrator and root on all servers used for the repeat election. All system administrators accessing the servers must use their own accounts to enable future audits for the servers.</p>	<p>The Commission concurs with this request. The Commission's elaborate ICT security and management policy shall be strictly adhered to.</p>

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		IEBC to avail API to be made available to all stakeholders in time and relevant documentation.	The Commission concurs with this request. API will be provided to participating parties upon request.
		The Commission invested in Oracle Database vault and Audit vault and firewall, and if configured properly should guarantee data security. However, DB Vault configuration should be enhanced to include the static IPs (Use Realms to control access to data) of the KIEM devices to prevent rigging through ungazetted polling stations, this task can be done by Oracle Consulting.	The Commission has implemented elaborate security measures to guarantee confidentiality, integrity and availability of all our systems. Each KIEMs device is assigned to a specific polling station and can ONLY be accessed by use of specific access code.
		IEBC should provide information on stored procedures on the database plus the procedure bodies, this will prevent usage of formulas or algorithms to manipulate data, this can be verified by all parties through an inspection.	It is not feasible to provide the requested information as this will compromise the integrity of the system. However, the electoral technologies shall be certified by independent certifying bodies and reports availed to participating parties.
		IEBC must be able to demonstrate that database tables used for presidential results are empty before the election date and should publish the table names to allow parties to provide them with 'sql' statements to query data during and after transmission. This would cure the current situation where nobody knows who won the election. Commission must also be willing to allow parties to access data in servers by allowing parties to provide queries to be run to ascertain the authenticity and credibility of results.	As a standard procedure the tables are always emptied before the start of the election. This shall be confirmed through the certification reports of the RTS technology. Appropriate access to the electoral technologies will be granted to presidential candidates' agents or representatives within the provisions of existing laws and Commission's ICT security policies upon request.
		Commission to provide full information on the following: <ul style="list-style-type: none"> ▪ Entire ICT Infrastructure, list of support 	The Commission acknowledges the need of stakeholders to access information as observed in the Supreme Court ruling and has put in place mechanisms to allow access to agents subject to its

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		<p>partners and their respective Service Level Agreements (SLAs), full disclosure of implementation documentation by each partner.</p> <ul style="list-style-type: none"> ▪ Firewall configuration including post configuration. ▪ Physical view and inspection of servers, portal access to servers and IP addresses of all 20 servers. ▪ Full access and copy of all servers and databases in use. ▪ Disclosure of all partners with SLAs and escalation matrix. ▪ Disclosure of firewall configuration including ports configuration. ▪ Entire enterprise architecture of the landscape. ▪ GPS coordinates of KIEMs ▪ KIEMS SIM card numbers for all kits. ▪ Telkom and network structure with all service providers (provide agreements and implementation details) 	<p>information security policy and existing laws.</p>
2.	Form 34Bs	<p>All Forms should be preprinted indicating names of polling stations and candidates.</p> <p>Returning Officers to physically fill in the Forms and make a formal announcement at the Constituency level. The process to be done in the presence of agents, media, observers and the public.</p> <p>There should be no use of Excel documents in filling Result Forms. All Forms to be standardized.</p>	<p>The Commission has explored the suggestion of using pre-printed result forms. However, due to the large number of polling stations (40,883) it would not be practical to manually fill in the results Form 34B.</p> <p>The Commission shall use the appropriately customized spreadsheet to generate Form 34B and 34C to minimize errors and increase efficiency in the results management process.</p> <p>The announcement of the results at the tallying centres is done in the presence of agents, accredited media and observers and other authorized persons as governed by Regulation 76 of the Elections</p>

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			<p>(General) Regulations.</p> <p>In addition, the Commission has reached out to the Media Owners Association to work out modalities to ensure live coverage of the electoral process.</p>
3.	Presidential Elections to be constituency based.	<p>The Court of Appeal in IEBC-vs-Maina Kiai held that presidential elections are constituency based and hence the entire process should be constituency focused.</p>	<p>The Commission concurs with the request. As guided by Section 39(1A) the results are announced at the constituency tallying centre by the Constituency Returning Officer and collated using Form 34B upon verification of all received Form 34As from all polling stations in the constituency.</p>
		<p>Constituency Returning Officers to oversee presidential elections and make public announcement of results at the constituency and the media to give live coverage of tallying process and results announcement.</p>	<p>The Commission concurs with the request. The Constituency Returning officer is in charge of Elections at the constituency as explained above.</p>
4.	Media access to polling station and constituency results	<p>The media should be given unfettered access to all polling station and constituency tallying centers to cover and report directly results as announced at these respective tiers.</p>	<p>The Commission concurs and as explained above, accredited Media is allowed to cover the results preparation and declaration process.</p>
		<p>Elections being constituency based, finality of results announced at this level to be demonstrated by live media coverage of announcements at constituency tallying Centre. This will enhance transparency in the electoral process.</p>	<p>The Commission concurs. Refer to explanation above.</p>
5.	Returning Officers	<p>A new slot of returning officers to be appointed for</p>	<p>Due to limited time the Commission will not be able to recruit, train and deploy but will use its permanent employees as ROs for</p>

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		all 290 Constituencies.	accountability purposes.
		Current serving ROs to remain as Constituency Elections Managers and not play any role as Returning Officers in the fresh elections but provide logistical support to the appointed ROs.	As explained above.
		Posting of ROs should be done through open balloting in public to determine constituencies where the officers are to be posted.	The Commission has taken administrative measures to ensure accountability and responsibility.
6.	Results Transmission	No text messaging in sending election results. Only scanned images to be sent through the KIEMs kit to the Constituency and National Tallying Centre.	<p>The RTS system has been modified to enable simultaneous transmission of both text results and the corresponding scanned image of the results Form 34A to the Constituency and National Tallying Centre and that the text and image are both transmitted as a unit from each KIEMS kit at the polling station.</p> <p>The results system shall display the name of polling station from which the respective results have been transmitted.</p>
		Commission to proactively announce exact number of persons who have voted at 5pm based on tabulations from KIEMs Kits before the counting starts.	The Commission concurs and notes that activities at the close of polling are guided by the law. Agents in each polling station will be provided with the exact number of persons who have voted before counting starts.
		Election Results to be announced at the Constituency Level. Only scanned images to be sent through the KIEMs kits or results transmitted by Presiding Officers and Returning Officers may be tabulated.	<p>The Commission concurs on announcement of results at the Constituency level and notes the following:</p> <ol style="list-style-type: none"> 1. The RTS is designed to transmit results from the polling stations in both text and scanned Form 34A image simultaneously to the Constituency Tallying Centre and National Tallying Centre. 2. Transmission and display of text results promotes transparency and facilitates generation of provisional results. 3. Results are announced by the constituency Returning Officer at

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		<p>National Tallying Centre should not display results before they are verified and announced at the Constituency level. No results should be displayed unless political party and candidate agents are given full access to all transaction logs and databases.</p> <p>National Tallying Centre should only display scanned images of Result Forms once publicly announced at the Constituency Tallying Centers.</p>	<p>the constituency tallying centre pursuant to Section 39(1A) of the Elections Act.</p> <p>The results displayed before verification by the National RO are considered Provisional in compliance with the Supreme Court judgment.</p> <p>A link for accessing the Scanned Result Form 34A and 34B is provided on the Commission's Web portal for inspection and download by the electorate.</p> <p>Access to the electoral system logs and databases will be provided to ICT Agents in accordance with the Commissions security policy.</p>
7.	Candidate Agents & Tallying Centers	<p>Candidates' Agent should be part of receiving teams at the Constituency and National Tallying Centers.</p> <p>Candidates Agents should be part of receiving teams at the Constituency and National Tallying Centre's. Receiving teams to verify all Forms 34As delivered and confirm that accurate entries are made on the Forms 34Bs and sign off before announcement is made.</p> <p>Observers should be allowed access to this process.</p> <p>Candidate Agents should be present at all levels and processes of the elections. These include the deployment and receiving of election materials.</p>	<p>The Commission concurs and notes that this has been the procedure and shall continue to be maintained by the Commission.</p> <p>The Commission concurs and pursuant to the provisions of Section 42 of the Elections Act, the Commission accredits observers to access the polling stations and tallying centers to observe the electoral process.</p> <p>The Commission concurs and notes that Section 30 of the Elections Act provides for political parties and candidates to appoint agents for each polling station and tallying centre. The agents have the responsibility of representing the interests of their parties and/or</p>

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			<p>candidates and this includes observation of the polling process and signing off of materials used at polling stations and signing of statutory forms.</p> <p>Like Election Observers, and Candidates' Agents will be allowed to witness, observe and monitor – at their own cost – deployment and distribution of election materials right from the National Tallying Center to the polling stations</p>
		<p>Candidates should have IT agents present to oversee the entire IT infrastructure of the Commission and be present or have access at all data Centre's, where controls are maintained and servers hosted/configured.</p>	<p>Appropriate access to the electoral technologies may be granted to presidential candidates' agents or representatives in line with the provisions of existing laws and Commission's ICT security policies.</p>
8.	Polling Stations	<p>IEBC should provide a list of all polling stations and registered voters per all those polling stations in advance. List should indicate the GPS locations of all polling stations and network coverage.</p>	<p>The Commission concurs and notes that pursuant to Regulation 7 Elections (General) Regulations publishes in the Gazette a notice specifying the polling stations to be used before the elections as evidenced in the 8th August 2017 General Elections vide gazette notice No. 6397 of 30th June 2017. In addition, the Commission published in Kenya Gazette No. 6251 of 27th June, 2017 (Registration of Voters) Regulations specifying the numbers or registered voters in each county assembly ward.</p> <p>The GPS coordinates for every polling station is available and may be shared upon request.</p>
9.	Ballot Paper Printing	<p>Al Ghurair Company printed non-standardized Election Results Declaration Forms which were used in the impugned Presidential Elections. Another Printer should be contracted to print Ballot Papers and Results Declaration Forms in the fresh election.</p>	<p>Al Ghurair printed the election results declaration forms as per specifications provided by the Commission. Due to time constraints and in view of procurement procedures and contractual obligations in place, the Commission is not in a position to source another printer.</p> <p>The Commission has put in place the following measures to enhance the quality of election materials:</p>

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			<ol style="list-style-type: none"> 1. The specifications for the printing of Ballot Papers and statutory forms have been refined. Both Results and Administrative forms for use by election officials have been standardized. 2. Enhanced quality assurance checklists have been developed to ensure quality Ballot papers and Forms at the point of production
		<p>A scrutiny of Forms 34Bs from the Constituencies showed that 80 Constituencies Forms were fake and therefore illegal.</p>	<p>No illegal or fake forms were used. The Commission has further enhanced the management of result forms by establishing the following controls:</p> <ol style="list-style-type: none"> 1. There shall be adequate statutory forms with specified security features to ensure that all pages of the result forms will have security features. 2. The Commission has standardized the appearance of Form 34B across all the constituencies. 3. Checklists have been developed for use by Presiding officers and Returning Officers to assist in ensuring full compliance with electoral laws in the preparation of the result forms.
10.	<p>Complicit Elections Personnel</p>	<p>Officers who were complicit in processing results through these illegal Forms being the respective Returning Officers and National Tallying Centre Officers who allowed the illegal documents to pass as results should not play any role in the fresh electoral process.</p> <p>Officers who facilitated the display of figures purporting them to be results but which at the Supreme Court hearing were disowned by the Commission as mere statistics should equally be</p>	<p>There were no officers found to have been complicit in processing results and displaying figures that were not results. Further, as observed in the Supreme Court of Kenya judgment, there was no evidence adduced to prove the commission of any election offence by the Commission officials.</p>

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		<p>barred from participating in the fresh elections:</p> <ul style="list-style-type: none"> ▪ Comm. AbdiGuliye: In charge of the failed ICT RTS ▪ Comm. MoluBoya: In charge of North Eastern Region where many fake Forms were used in the elections. ▪ Ezra Chiloba/CEO: Accounting Offficer and the Returning Clerk at the National Tallying Centre. ▪ Marijan Hussein Marijan: In charge of receiving Form34Bs and allowed fake 34Bs to be admitted into the National Tallying. ▪ Betty Nyabuto/Deputy Commission Secretary Operations: Head of Operations and ensured fake forms were distributed. ▪ James Muhati/DICT-Executive in charge of the botched ICT RTS at National Tallying Centre. ▪ Immaculate Kassait-In charge of following up to ensure that the Presiding Officers and Returning Officers sent the correct Forms. Prepared Form 34C before all polling station Forms had been delivered to the National Tallying Centers. ▪ PraxedesTororey: Head of Legal affairs and gave wrong legal advice on premature declaration of results. ▪ Moses Kipkogey: Legal Adviser to the CEO and gave wrong legal advice on premature declaration of results. ▪ Sidney Namulungu: In charge of Kisii County where fake Forms were used to 	

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		<p>declare results.</p> <ul style="list-style-type: none"> ▪ Nancy Kariuki: In charge of Mombasa County where fake Forms were used to declare results. ▪ Silas Rotich: In charge of Nakuru County where fake Forms were used to declare results. 	
11.	Election Monitors	Introduce Election Monitors selected from a multi-sectoral group to have a role in signing off for election materials and Results Declaration Forms at polling stations and Constituency Tallying Centers.	Section 30 of the Elections Act provides for political parties and candidates to appoint agents for each polling station and tallying centre. The agents have the responsibility of representing the interests of their parties and/or candidates and this includes observation of the polling process and signing off of materials used at polling stations and signing of statutory forms. Therefore, it is not necessary to have election monitors in place to duplicate the same process. Accredited Independent election observers and monitors are by law allowed to observe the process and file independent reports.