



**NATIONAL SUPER ALLIANCE  
COALITION STATEMENT ON  
WITHDRAWAL OF THE  
CANDIDATURE OF RT.HON. RAILA  
ODINGA AND H.E STEPHEN  
KALONZO MUSYOKA IN THE**

**PRESIDENTIAL ELECTION  
SCHEDULED FOR 26TH OCTOBER,  
2017.**

1. On August 8 Kenyans voted in the 6th election since the return to multiparty

politics in 1992—the political reform we call the Second Liberation. As is customary voting went smoothly. But when it came to tallying and transmission of results, everything that could go wrong did go wrong. It became the first presidential election in Africa to be

annulled by the Court, and only the fourth in the world.

2. In the aftermath, the annulment has plunged the country into uncharted waters. That was to be expected. What we would not have expected is that the

country's leadership would be divided by a fundamental tenet of democracy, namely free and fair elections.

3. We at NASA have insisted that the fresh election ordered be held to the standard ordered by the Supreme Court,

that is, in strict conformity with the Constitution and written law. We have provided a checklist of what we deem to be the “irreducible minimum” changes required to ensure compliance.

4. The validity of the checklist of the requirements for free and fair elections proposed by NASA has not been disputed by anyone, not by the IEBC, not by Jubilee or other actors and observers. The EU Observer Mission recommendations

are in conformity with our ‘irreducible minimum.’”

5. Instead, the case for proceeding with the fresh election on 26 October without these changes is being made on the grounds of time constraints. Jubilee and

the other proponents of an election without reforms are saying “bora uchaguzi” (any election will do). But we in NASA are calling for “uchaguzi bora” (a credible election).

6. In a constitutional democracy, we should not be debating about a free and fair election, or compliance with court orders, or accountability for breach of public trust. We should have been working together to ensure that we uphold these values as they are not only our

national values but are also the foundations of a credible electoral system.

7. Instead the IEBC has stonewalled meaningful deliberations on the necessary reforms to ensure that the elections of 26<sup>th</sup> October are free and fair. It has wasted

valuable time engaging in public relations exercises intended to create the illusion of motion without any movement.

8. We have come to the conclusion that there is no intention on the part of the IEBC to undertake any changes to its

operations and personnel to ensure that the “illegalities and irregularities” that led to the invalidation of the 8<sup>th</sup> August, 2008 do not happen again. All indications are that the election scheduled for 26 October will be worse than the previous one.

9. On its part, the Jubilee administration's proposed amendment to the election laws demonstrates that it has no intention of competition on a level playing field. The only election Jubilee administration is interested in is one that it must win, even unlawfully.

10. Both Uhuru Kenyatta and William Ruto have gloated that they have the numbers in parliament to amend even the Constitution. The Jubilee Vice-Chairman is on record stating that Kenya requires a benevolent dictator and proceeded to

exhort Uhuru Kenyatta to exercise dictatorial powers. These utterances provide the motive for the blatant across the board rigging of the August 8 elections— it was to secure the majorities that Jubilee needs to overrun our Constitution. Kenyatta and Ruto are

beneficiaries, believers and defenders of the old order. They intend to overthrow our new constitutional order and re-install the old order. The over 300 elections petitions filed, majority against Jubilee are evidence that this claimed majority is fraudulent.

11. We wish to reiterate what we have stated in the past that we will not allow autocracy back into Kenya. It is unfortunate that international actors who have supported Kenyans in their quest for democracy and good governance are now

on the side of appeasing dictatorship in the mistaken belief that it will maintain stability.

12. We shall not allow anything to dampen our morale. We won the battle for multiparty democracy. We won the battle

for a new Constitution. We are going to win the battle for a free and fair election.

13. After deliberating on our position in respect of the upcoming election, considering the interests of the people of Kenya, the region and the world at large,

we believe that all will be best served by  
NASA vacating its presidential  
candidature in the election scheduled for  
26 October 2017.

14. We have based our decision on the foregoing, and the following constitutional and legal basis.

**15. SUPREME COURT DECISION IN  
THE ELECTION PETITION No. 1 of**

# **2017 RAILA ODINGA vs IEBC and others**

16. In arriving at its decision to nullify the presidential election held on August 8 2017, the Supreme Court made the following findings of illegalities and

irregularities based on which the National Super Alliance (NASA) Coalition proposed a 12 point irreducible minimum required to make the fresh election fully compliant with the Supreme Court decision;

## **17. Statutory Forms**

18. On the matter of statutory forms used in the elections, the court found that contrary to the assertion by the Commission that it had fully complied with the Constitution and the law; and, the position taken by the Commission

(through the Affidavit of Immaculate Kassait) that the Commission had developed standards for its electoral goods prior to their procurement including specific security features for each ballot paper and statutory form in order to prevent duplication, misuse,

piracy, fraud, counterfeiting and to improve controls, and that the statutory forms and ballot papers had the features which included: *guilloche patterns, anti-copy patterns, watermarks, micro text, tapered serialization, invisible UV Printing, polling station data*

*personalization, self-carbonating element and barcodes, different colour for each ballot paper and that the forms were in a standard form or format, the scrutiny supervised by the Registrar of the Supreme Court and authenticated by the*

agents of all the parties to the case to the case had revealed that: -

- a) The Commission declared Uhuru Muigai Kenyatta the President elect before it received results from 11,883 polling stations and 17 Constituencies;

b) Form 34C used to declare Uhuru Kenyatta President elect, was not original but a photocopy; and, that no explanation was given as to the whereabouts of the original form. And, that the form, as crucial as it is, bore neither a watermark nor serial number;

c) Forms 34B used to declare Uhuru Kenyatta president elect were of dubious authenticity; and, that some of the forms were photocopies, carbon copies or were not signed by the Returning Officers. Out of 291 Forms 34B, 56 did not have watermark feature, 31 did not bear serial

numbers, 5 were not signed at all, were not in a standard form or format, among other discrepancies;

d) Out of a random sample of 4,299 Forms 34As examined, a total of 189 forms had not been filled in the “hand-over” section, 287 forms had not been filled in the “take-

over” section, 481 forms were carbon copies, 11 forms had no water mark; and, that considering the sample size, it is apparent that the discrepancies were widespread.

e) The forms were not in a standard form or format. The Supreme Court ended its

examination of this part of the judgment by raising the following question: “**Who introduced these forms into the system?**”

## **19. Application of Technology**

20. On the matter of application of technology, the Supreme Court found and held that:

- a) The Commission failed to electronically transmit the statutory Forms 34As and 34Bs as required by section 39(1C) of the Elections Act;

b)The Court accepted the Petitioner's claims that the Commission's IT system was infiltrated and compromised and the data therein interfered with or IEBC officials themselves interfered with the data or simply refused to accept that it had bungled the whole transmission system

and were unable to verify the data; this being the only logical reason the interlocutory orders for audit and access thereto were frustrated by the Commission;

c) While among the 11,000 polling stations the Commission claimed were off the 3G

and 4G ranges were in: *Bomet, Bungoma, Busia, Homa Bay, Kajiado, Kericho, Kiambu, Kisumu, Kisii, Kirinyaga, Nyeri, Siaya and Vihiga* Counties, most parts of these counties have fairly good road network and infrastructure that it would take a short time for the Presiding

Officers to travel to vantage points from where they would electronically transmit the results.

d) The Commission had known the areas where network is weak or totally lacking beforehand and should have made provision for alternative transmission. In

one of its press briefings before the elections, the Commission had assured the country that it had carefully considered every conceivable eventuality regarding the issue of electronic transmission of the presidential election results and categorically stated that technology was

not going to fail. The Commission had engaged three internet service providers to deal with any network challenges.

e) The Commission had contumaciously disobeyed the order of scrutiny which was a golden opportunity for the Commission to place before court evidence to debunk

the Petitioner's claims of hacking; by denying access to two critical areas of their servers; its logs which would have proved or disproved the Petitioner's claim of hacking into the system and altering the presidential election results and its servers with Forms 34As and 34B

electronically transmitted from polling stations and Constituency Tallying Centres.

f) If the Commission had nothing to hide, even before the order was made, it would have itself readily provided access to its

ICT logs and servers to disprove the petitioner's claims.

21. These blatant illegalities and irregularities were not without motive. It is inconceivable that election body would falsify 80 out of 290 constituency tallies (27.5%) for the sake of it. The meaning

of the Supreme Court decision is that the so called numbers claimed by Uhuru Kenyatta are fraudulent. The election was not shambolic. It was rigged for Uhuru Kenyatta. Uhuru Kenyatta lost the election. It stand to reason that we won it.

22. The IEBC has refused, neglected or failed to put in place mechanisms to correct these illegalities and irregularities. We deem that the fresh election ordered by the Supreme Court cannot therefore be held. Allowing the candidature of Raila Amolo Odinga and Stephen Kalonzo

Musyoka to lend credence to the election now scheduled is to participate in an illegality.

## **23. II. BAD FAITH**

### **(A) The IEBC**

(i) For over five weeks, the commission has engaged us in a ping pong game well knowing they had no intention to streamline the electoral system to accord with the constitution and electoral laws.

(ii) It is now clear that the same criminal enterprise that perpetuated the fraud in the August election is firmly in charge of the Commission and setting up even more lethal mechanisms to defraud the Kenyan voter.

(iii) The conservative wing of the IEBC have now firmly crystalized their stranglehold of the operations of the Commission with every decision of the chairman being countermanded and with the proposed amendments to the electoral laws to dilute the powers,

authority and standing of the chairperson of the Commission as the Returning officer of the Presidential elections.

(iv) This is coupled with the retention of the same service providers that were complicit in the worst electoral fraud

ever witnessed in modern times including Safran/OT Morpho, Al Ghurair etc.

(v) The Commission CEO who was the coup plotter in chief and his litany of senior secretariat staff continue to dominate the operations of the

commission and stifle any attempt to initiate reforms at the commission.

(vi) It is now evident that jubilee is firmly in charge of IEBC through four commissioners who have set out to implement the jubilee agenda within the commission.

## **(B) Jubilee Administration**

(i) The ill-conceived amendments to election laws are not only unconstitutional but go against international best practice that in the middle of an elections contest one

cannot change the rules and put in place rules that seek to favour him. Moreover, these profound changes to the electoral architecture are being pushed through without the broad based consultations as required by the Constitution.

(ii) Furthermore, it is clear that the amendments are intended to legalize and regularize the illegalities that led to the invalidation of the August 8 election. It stands to reason that the motive for these amendments is to use

the same tactics to rig the scheduled election.

(iii) The State has in the period intervening the nullification of 8 August presidential election, gazettement of fresh and pending the 26 October fresh elections, withdrawn

security to the NASA Presidential and deputy Presidential candidate. This has made it untenable for the candidates to campaign freely without fear of being harmed. The State has done this well aware that under Article 138 (8) (b) a presidential election would be

cancelled if a presidential candidate or his deputy dies.

**VACATING THE ELECTION THE  
ONLY ROUTE TO A FREE FAIR  
AND CREDIBLE ELECTION WAY**

24. The IEBC published the gazette notice declaring the fresh dates for the Presidential elections with Rt. Hon. Raila Amolo Odinga and Uhuru Muigai Kenyatta based on the Supreme Court decision of 2013 on a question brought

for direction by Attorney General who is the Chief Government legal advisor. In paragraph 289 and 290, the Supreme Court found as follows:

25. 289... It is clear that a fresh election under Article 140(3) is triggered by the

invalidation of the election of the declared President-elect, by the Supreme Court, following a successful petition against such election. Since such a fresh election is built on the foundations of the invalidated election, it can, in our opinion, only involve candidates who participated

in the original election. In that case, there will be no basis for a fresh nomination of candidates for the resultant electoral contest.

26. 290. Suppose, however, that the candidates, or a candidate who took part

in the original election, dies or abandons the electoral quest before the scheduled date: then the provisions of Article 138(1)(b) would become applicable, with fresh nominations ensuing.”

27. As per a correction issued on 6 May 2013, the Supreme clarified that the relevant article is above is 138 (8) (b) which deals with cancellation of a presidential election in the event of the death of the president or the deputy on or before scheduled date. The Supreme

Court finding expanded this clause to include when a candidate withdraws from the presidential election.

28. The implication of this provision is that upon our withdrawal, the election

scheduled for the 26 October stands cancelled.

29. Our withdrawal from the election requires the IEBC to cancel the election and to conduct fresh nominations. The procedure for nomination of presidential

candidates is provided for in the Elections Act 2011, Section 13 (1) which states:

30. “A political party shall nominate its candidates for an election under this act at least ninety days before a general election

under this Act in accordance with its constitution rules.”

31. It is clear that this provision gives adequate time to undertake the reforms necessary to conduct an election that is in

strict conformity with the Constitution,  
the relevant laws and the Constitution.

32. This being the case, it is our conviction  
that our withdrawal is in the best interest  
of the country and a win-win for  
everyone.

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**RT. HON RAILA AMOLO ODINGA**

H.E STEPHEN KALONZO MUSYOKA

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HON. WYCLIFFE MUSALIA  
MUDAVADI

HON. MOSES MASIKA WETANGULA

Dated at Nairobi this 10th day of October  
2017