



Friday, 20th April, 2018

MEDIA UPDATE

1. INVITATION TO SENATE

The Commission was invited to appear before the Senate's Standing Committee on Justice Legal Affairs and Human Rights today at 9am. The said meeting was to appraise the Committee on the circumstances which led the Commission Plenary to adopt a resolution to send the Commission Secretary/Chief Executive Officer (CS/CEO) on compulsory leave. We were also to discuss the reported resignation by three [3] Commissioners.

We were on our way to the said meeting when they sent a message that the meeting had been postponed until further notice. The Communication from the Senate did not give reasons for the postponement of the meeting but it said a new date will be communicated in due course.

2. THE SUSPENSION OF THE CEO

From the onset, the Commission reiterates that the matter at hand is squarely an issue of financial audit and accountability as anchored in the law. Part of the post-election review process, and a matter of great interest to the stakeholders, is how significant sums of public money have been expended by the Commission.

The Commission must be allowed to carry out a conclusive financial audit on usage of public resources without any interference.

The CS/CEO, Mr. Ezra Chiloba, continues to enjoy his full benefits/entitlements even as he paves way for the audit. If found culpable by the audit, he will be subjected to disciplinary proceedings in accordance with the Commission's HR Policy and the Law, which includes the right to fair hearing.

The ongoing audit is not an indictment against the CS/CEO but an opportunity for the Commission to audit and establish the manner and propriety of the management of public resources entrusted to the Commission. The audit report will inform the next courses of action.

We observe, by way of introduction, that the Commission is a Constitutional creature under Article 88 of the Constitution, and its mandate additionally prescribed by Parliament under the IEBC Act. We have been created by the law, the Chairperson and Commissioners selected and appointed within the provisions of the law, the Commission's secretariat equally created under the IEBC Act and bound by various legal enactments including the Public Finance Management Act and the Public Procurement and Assets

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Disposals Act amongst other applicable legislations, and we are required to strictly conduct our affairs within these legal boundaries. As earlier communicated the law obligates all the Commission members and employees to adhere to principles of Good Governance, Integrity, Transparency and Accountability in the discharge of their mandate.

Significantly, we have only ONE entity called the IEBC but with a fundamentally intricate dichotomy of Commission and Secretariat. Section 11A of the IEBC Act, sets out distinct but inherently interlinked roles for the Offices of the Chairperson and Commissioners [being the 'Commission' of the one part] vis-à-vis that of the Secretariat of the other. The Commission formulates policy and strategy, which the Secretariat implements. The Commission also undertakes an oversight role. The Secretariat enjoys sufficient discretion in law to discharge its mandate, but remaining answerable and accountable to the Chairperson and Commissioners through the oversight mandate of the 'Commission'.

It is significant to note that in recognition of this relationship, the Commission Secretary/CEO reports to and is responsible to the Commission through the Chairman. The Commission legally relies on the CS/CEO to ensure that the Commission's finances are managed prudently and in accordance with the law.

The Commissioners, in lawfully exercising their collective oversight role, raised various concerns on certain contracts in relation to the 2017 elections. The Commission resolved to have a substantive audit on the issues in its Plenary meeting of the 16th of March, 2018.

The Commission's Internal Audit tendered a preliminary audit report which was discussed in a properly constituted Plenary meeting held on the 6th of April, 2018. The Plenary, by a majority vote, resolved to send the Commission Secretary/CEO on compulsory leave to pave way for an in-depth audit.

It is important to state that it is not the first time Commissioners have expressed different views in a Commission's Plenary meeting and subsequently put the motion under deliberation to a vote. In fact, the Commission Plenary has previously in eight [8] instances put various motions to a vote. Even the Chairman, has lost some of the motions on some matters, which motions have nonetheless remained Commission resolutions. On certain motions, the Chair and remaining two Commissioners took different positions, depending on their view on the motion at hand. Therefore, the supposition that the Commission had ganged up against any officer is not only misleading but only serves to divert attention from the real issues. The voting procedure is further entrenched in the Second Schedule of the IEBC Act.

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The Commission has previously sent officers on compulsory leave to facilitate independent audits into various issues as may have arisen from time to time, including the ICT Director and the Acting Supplies Chain Management Director who resumed work upon conclusion of an audit which did not find them culpable on the issues then under investigation.

This Commission in the 2017 General Election ran what is arguably a very expensive election. It is only prudent that as the Commission, in our oversight role we are able to account to the Kenyan people and demonstrate that this expenditure was justified. There is nothing inappropriate about the questions being posed. On the issues of accountability, the Chairman of the Commission's Finance and Procurement Committee [*who has also since reportedly resigned*] ought to have been at the forefront in asserting accountability but surprisingly has adopted a position that opposes the current audit and accountability on procurement and finance matters.

The Commission and country must nonetheless remain focused on ensuring that public resources allocated to the IEBC are utilized in accordance with the law without wastage or pilferages. Any Public Officers, inclusive of my Commissioners or I, who are found to be culpable of wastage or pilfering public resources must be held to account in accordance with the law.

The Commission Plenary passed numerous resolutions in the lead up to the 2017 elections, some of these resolutions have remained unimplemented, with a direct impact of activities of the Commission. This issue has equally been forwarded to the internal audit for investigation.

3. THE RESIGNATION OF THREE [3] COMMISSIONERS

The Commission has not been formally notified of the three Commissioners who have been reported as having resigned from the Commission. As stated before, we only learnt of their resignation from the media. We have also read from a section of the media allegations that the reported resignations were instigated by external forces out to undermine independence of the Commission.

In my first year as Chairman, I have led the Commission not just with professionalism but with unwavering dedication even when circumstances seemed impossible or call for commitments that are beyond the call of service. I have diligently provided leadership when the Commission came under sharp scrutiny. I am committed not only to the Commission but also to my Country Kenya. Discrediting my name and that of my Commissioners is in bad taste and perpetuates an ill agenda that can only undermine the independence of a critical institution in our Country's democracy.



As Chairman of the Commission, amongst other responsibilities, I have presided over sixty one [61] Plenary sittings to date. Most motions have been resolved by way of consensus. It is only on eight [8] occasions that we have adopted motions after a majority vote. Blaming the Chair and the two Commissioners in office for a lost motion or for an adoption of a resolution to undertake a financial audit is insincere and unfortunate. The claims by the Commissioners who are reported to have resigned are misleading and have no legal basis.

The undue pressure, unwarranted, nasty mudslinging and unlawful attacks on the Chairman, Commissioners and the Commission should cease. It is unfair to the Commission, their families and their acquaintances.

4. DELIVERY ON OUR CONSTITUTIONAL MANDATE

In the last one year we have been office, we have been able to deliver on our mandate. In addition to conducting the General and Fresh Presidential Elections, we have amongst others:

- i. Successfully improved efficiency at the Commission through adoption of a devolved structure with establishment of 47 county election management offices – from the previous 17 regional offices;
- ii. Oversaw a successful deployment and use of integrated electoral technology evinced by:



- a. 74% transmission rate [with remaining 26% supplemented by satellite transmission]; and,
 - b. Successful identification and verification of voters before polling.
- iii. Successful enforcement of electoral campaign discipline with enhanced code of conduct enforcement – barred candidates who misconducted themselves and issued prohibitive fines to others amongst other remedial actions
- iv. Proactive stakeholder engagement and pursuit of public confidence in the electoral process including establishment of the Fresh Election Project team, embedding of ICT agents from all parties, redesigning the Results Transmission System (RTS). This remains work in progress and I have been emphasizing this in my county outreach programme.
- v. Development/Review of various policies and strategies to facilitate realization of the Commission's mandate including greater participation of women and youth, more inclusive voting including the Diaspora, active engagement in the Electoral Management Body's (EMB) networks in Africa and globally.
- vi. Meaningful oversight over the Secretariat in the realization of the Commission's mandate – which unfortunately has occasioned the recent developments at the Commission.



There is absolutely no personal vendetta, witch-hunt, bias, ill-will or tender wars as sensationalized in the media: this is a demand for accountability by the Commission. The main issue in question which the Country must demand answers to is simple and clear – have public resources been utilized prudently and in accordance with the law? Everything else is a distraction.

5. BY-ELECTIONS IN RUGURU AND KINONDONI

The IEBC has successfully conducted two County Assembly Wards (CAW's); one in Kinondo (Msambweni Constituency, Kwale County) and the other in Ruguru (Mathira, Nyeri County).

Mr. Hamisi Mohamed Omar of Orange Democratic Movement (ODM) won the Kinondo seat with 3,412 votes while Mr. Erastus Karanja Muriuki of Jubilee Party emerged the winner in the Ruguru County Assembly Ward polls with 4,270 votes. Details of the by-election have been posted on the Commission's website. We are in the process of gazetting the results.

The Commission condemns the incident that took place at Kiamariga Police Station, Nyeri, where Ms. Martha Miano, who was accredited observer through Political Parties Liaison Committee (PPLC), was assaulted. The Commission is investigating the allegations against the observer that she was campaigning for one side. As we await both the police and our investigation, it must be clear that the use of violence in electoral disputes can



never be justified. There are legal avenues provided for resolving such matters.

6. CONCLUSION

As Chairman and Commissioners we have interacted and worked with staff at the national office very well, and I have personally visited 14 county offices in the last 2 months [Turkana, Uasin Gishu, West Pokot, Trans Nzoia, Nakuru, Nyandarua, Laikipia, Nyeri, Tana River, Kilifi, Mombasa, Kwale, Taita Taveta and Makueni] – with 33 more to go: and confirm to the Country that there are many dedicated and selfless men and women in the organization, committed to realizing the Commission’s constitutional mandate.

With the appropriate support from all arms of government and the Kenyan people, the mission to transform the management of elections in Kenya is attainable and should be safeguarded. The national conversation has to be bigger than replacement of the Chairman, Commissioners or even the Secretariat. It should center on objective transformation of the institution involving all stakeholders.


W.W. CHEBUKATI

CHAIRMAN