

REMARKS BY THE CHAIRPERSON OF THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION DURING THE LAUNCH OF THE POST ELECTION EVALUATION REPORT ON THE 12TH OF FEBRUARY 2019 AT THE KENYATTA INTERNATIONAL CONVENTION CENTRE

Distinguished Guests Ladies and Gentlemen,

I am pleased to welcome you to the launch of the Post-Election Evaluation (PEE) Report of the Independent Electoral and Boundaries Commission (IEBC) for the 2017 General Elections and the Fresh Presidential Election. The Report is a product of: interviews with key informants; Focus group discussions; development partners round table meetings; national stakeholder's forum; political parties' and independent candidates' forum; and review of various observer and stakeholders' reports. These approaches that are participatory and inclusive yielded valuable discourse that enriched the process. However, by no means is the chapter closed for more input that will benefit the planning phase for the 2022 General Elections. Through continuous engagement with our stakeholders and partners, we will endeavor to keep alive discourse over the report.

For the IEBC, the Post-Election Evaluation process is neither a cosmetic or a public relations exercise; it is an occasion to critically examine and audit the extent in which the toil of our institution achieved our collective aspirations as captured in our strategic Plan and Elections Operations Plan (EOP) 2015-2017. The purpose of this report therefore is to:

- Inform the legal reforms to be proposed for enacted
- Guide the Commission in implementing institutional and operational reforms
- Reviewing the Commission's Strategic Plan
- Direct the review of the Commission's Strategic Plan

- Inform the development of the Election Operation Plan for 2022

The Current Commission took over the reins of leadership at the IEBC on 20th January 2017. At the time, the nation was calling for electoral reforms that had far reaching implications on election operations, systems and procedures. Among these reforms were; the integration of election technology, audit of the Register of voters, voting by Kenyans living outside the country and voting by prisoners.

At the outset, I applaud our IEBC staff whose dedication to duty, self-sacrifice and resilience in the face of adversity propelled the Commission to delivering on its mandate. To the staff; you may never be honoured with accolades, but I want you to know that you are among the unsung heroes of our time. Your stories may never be told. From those of you who spent strenuous days and nights planning for elections, to those who suffered various forms of violence and fatigue in the course of work.

Unfortunately, one of the most dedicated members of staff lost his life in the course of duty. The late Chris Msando was brutally murdered at the height of preparing for the elections. To date nobody has been held accountable for the death. We call upon the investigative agencies to ensure justice is brought to whoever had a hand in the death. Similarly, we condemn the assaults meted out to our staff by unruly persons including candidates. Such acts cannot be condoned and we urge the security and investigative apparatus to conclude the reported cases. I thank the International Centre for Parliamentary Studies for honoring the late Mr. Msando with a posthumous award for Integrity in February this year. In honour of our departed Chris Msando, lets observe a moment of silence.

To better manage activities in the field and establish a cadre of permanent County Returning Officers, the Commission abolished the Offices of the Regional Election Coordinators and introduced the offices of County Election Managers at the

County level. Further, the Commission successfully worked on the full implementation of the Electoral Laws (Amendment) Act, 2017, by among others, spear heading legislation of various Regulations, including: Elections (Technology) Regulations, 2017; Election (Voter Registration) (Amendment) Regulations, 2017; Election (General) Regulations) (Amendment) Regulations, 2017; Election (Voter Education) Regulations, 2017; Elections (Party Primaries and Party Lists) Regulations, 2017.

In the course of preparing for polls, the Commission encountered unprecedented legal, administrative and political challenges that threatened the successful conduct of elections. Manifest among these were; the limited time of seven months to prepare for polls; weighty statutory law amendments too close to polls; and a considerable number of court cases touching on various aspects of elections that had far reaching changes to election planning, logistics and operations.

Apart from the foregoing, the commission had to adjudge a myriad of disputes arising from nominations and campaigns within impossible deadlines.

Despite the foregoing bottlenecks, the Commission eventually conducted the August 8th General Election within the prescribed legal framework including the successful deployment of the Kenya integrated Elections Management System (KIEMS).

After the elections, some of the election results, including the Presidential results, were challenged in Court. The Supreme Court nullified the Presidential Elections Results which necessitated the conduct of Fresh Presidential Election, whose results were upheld by the same court.

Apart from the Presidential petition, two hundred and ninety-nine (299) petitions for other elective positions were filed in various High Courts and subordinate courts across the Country. After determination by the Courts of first instance and

appeals at various levels, five election results were nullified while one is pending Judgement at the Supreme Court. In Summary the Courts upheld 98% of the contested election results.

As we embark on the planning stage for the strategic plan 2020-2025, we must take note of a number of pertinent issues:

First, the Independent Electoral and Boundaries Commission fund as provided for in the Elections Act must be operationalized. This will guarantee the financial independence of the Commission in planning and funding its operations throughout the electoral cycle. There is often a misconception that work at the Commission ends with elections. Nothing could be further from the truth

The electoral cycle has three phases, that is, the pre-election, election and Post-election period.

During the Pre-election period the Commission is engaged in:

- Continuous voter registration, voter education, voter inspection and voter verification;
- Development of the electoral legal framework;
- Formulation or review of the strategic plan, plans of operations and the election calendar;
- Budgeting and procurement;
- Staff development through training;
- Maintenance and security of electoral equipment;
- Accreditation of observers and voter education providers.

The election phase, which is more discernable to the public, encompasses:

- Registration of candidates;
- Determination of disputes arising from nominations, campaigns and breach of code of conduct;

- Setting up election technology in the constituency and county tallying centres;
- Recruitment and training of poll officials;
- Delivery of election materials;
- Polling;
- Announcement and declaration of results;
- Election petitions and by elections occasioned by nullification of election results by courts.

The post-election phase is characterised by:

- Audit, evaluation and review of systems and processes including; the law, technology, logistics and procedures.

All these activities in the electoral cycle demand funding. The non-allocation or under funding of activities undermines the Constitutional mandate of the Commission. To demonstrate this, the Commission is legally obligated to audit election technology (what is popularly demanded by the public as fungua server). Consequently, the Commission submitted the requisite work plan and related budget estimate to the National Treasury, for procurement of an independent audit firm to carry out a system audit of the technology. The request has never been granted.

Furthermore, National Treasury consolidated the acquisition and maintenance of all government ICT equipment and services under the Ministry of Information, Communication and Technology (MOICT). In as much as this was done in good faith, the move will jeopardize the independence of the Commission, curtail operations and expose the Commission to political perceptions of leaning towards the executive.

We remain alive to the need for adopting electoral processes and technologies that are cost effective and sustainable where the public gets value for money. We

note that the country has considerably invested in election technology. The Biometric Voter Registration (BVR), Electronic Voter Identification (EVI), the Candidates Registration Management System (CRMS) and the Results Transmission System were deployed in 2017 General Elections. Following the legal requirement for an integrated system of technology, The EVI and RTS was inputted into the Kenya integrated elections Management System (KIEMS). While the BVR, CRMS and EVI was successfully deployed. However, the RTS as a results management system was questioned by some stakeholders in the electoral process. Results management takes both manual and electronic processes. The manual process derives its transparency from the involvement of agents. On the other hand, the Commission granted access rights in the RTS to contestants at the National Tallying Centre during the tallying process. However, this did not achieve the intended objective as claims of opaqueness of the system emerged. To ensure transparency in the electronic management of results through a system that is simple and open, the Commission proposes to adopt the distributed technology model, where information in one server is replicated on other servers for read only purposes. The Commission will provide each presidential Contestant with a server for purposes of monitoring activities under the block chain system.

As we cast our eyes on the future, the Commission is keen on implementing institutional reforms that will improve processes. The cost of our election is USD 25 per person which is quite expensive compared to other countries. To address the high cost of elections and root out corruption at the IEBC, the Commission conducted its own internal audit and requested Kenya National Audit Office to carry out external audit. The two audits made similar findings. The Commission submitted the internal audit to the Ethics and Anti-corruption Commission (EACC) and the Office of the Director of Public Prosecution (ODPP) 23rd August 2018. The

external audit is before the Public Accounts Committee (PAC). We shall not relent in ensuring that financial impropriety is dealt the death blow.

Furthermore, the Commission is in the process of restructuring the organization and assessing staff suitability for better production and execution of duty. The process will be guided by fidelity to the law.

Moreover, the Commission is exploring the adoption a Hansard reporting model for its plenary meeting to ensure transparency and accountability to the citizens of Kenya in decision making.

Additionally, the Commission is developing proposal for legal reforms to facilitate complete discharge of its mandate as enshrined in the Constitution.

- Open procurement to increase transparency, fight corruption and reduce cost of elections arising from corruption
- Relocation of IEBC offices

We look forward to developing other concrete strategies that will assuage, if not cure, the missteps that may have been evident in the grand march towards a widely accepted election outcome

I invite readership to this report, with the hope that it will provoke further discourse on better ways and means of managing elections that are free, fair and credible.

God Bless Kenya