



CHAIRMAN'S REMARKS DURING THE FAITH BASED ORGANISATIONS
(FBO) ENGAGEMENT FORUM HELD AT HERMOSA GARDEN HOTEL
AND SPA, KAREN ON WEDNESDAY 22ND SEPTEMBER 2021

I. INTRODUCTION

I wish to most sincerely thank you for agreeing to come to this stakeholder's forum to share with you the Commission's position on the theme of **"Enhancing voter participation for a stronger democracy"**.

As members of the religious community and Faith-Based Organizations (FBOs), you are one of our major stakeholders as we plan for the next General Elections.

1. ELECTION DAY

The General Elections shall be held on August 9th, 2022. The Elections Operation Plan (EOP) released by the Commission on June 15th is geared towards that date.

As a Commission, we are aware of cases in court to change that date. However, there are no court orders hindering our preparations for the election.

I note with tremendous pride that Kenya has had regular and periodic General Elections and not even once have we postponed them. In fact only on one occasion the election date was brought forward by the late President Moi.

Admittedly, despite our historical felty, our constitutional electoral calendar and experiences have not always been positive both within political parties and the General Elections as well.

2. There have been cases of violence, ethnicity and dark money that has scarred and stained our electoral politics sometimes in disturbingly enduring ways. These are the contaminating elements that we need to remove from our elections in order to remove impurities of retrogressive politics.
3. It is a self-evident truth that the business of electoral democracy is a tough call but is a call we must heed.

First because the constitution demands it and second, because the arc of humanity has judged it the best form of government.

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Kenya must not take its electoral record for granted, however imperfect, contested and unsatisfactory some of her elections have been.

The fact that we have credible and tested mechanisms for electoral disputes of any kind is an achievement to be proud of as any democracy.

4. Elections are a process and not an event, an enlightened electorate is a conditioned precedent for determining leadership and allocating power for public good.

It is essential that we select leaders that will serve us not self; leaders who will gather all citizens with grace and not regard other compatriots as “enemies”. To knowingly choose bad leaders is an abuse of choice. Indeed, if leaders can abuse office or powers, an electorate choosing unsuitable leaders is also guilty of abuse of power of choice. An abuse of power by leaders or electorate never ends well.

II. ELECTION PREPAREDNESS

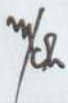
5. The Independent Electoral and Boundaries Commission (IEBC) is a constitutional commission established under Article 88 of the Constitution of Kenya and its mandate is provided for under Article 88(4) of the constitution.

The two dominant mandates are firstly, supervising referenda and elections to any elective body or office, and any other elections as prescribed by an Act of Parliament. Secondly, delimitation of boundaries and wards.

The electoral legal framework has at its core, at least six statutes and nine regulations. The legal regime and statutes broadly show how the Commission shall exercise its powers and perform its functions in accordance with the Constitution and national legislation, while the regulations provide the processes and procedures of its roles and responsibilities. Furthermore, the Commission is empowered to sit as a dispute committee. It also sits as an electoral code of conduct committee for breach of conduct.

6. In the last decade of its constitutional life, IEBC has conducted two General Elections and three Presidential Elections. The 2022 election will be the third in the series.

Since the 2017 General Election, IEBC has also conducted: 42 By-elections – with 3 more upcoming ones on 15th October and 16th December, 26 for MCAs and 13 for National Assembly and 3 for



Senate; all variously occasioned by deaths, resignations or election petitions.

7. IEBC's long experience in election management has created a large body of knowledge and technical competencies that informs its preparations for the General Election. IEBC is tapping into this experience and is on course in preparation for an elaborate and comprehensive framework for the forthcoming election.

This task is building on the operational and jurisprudential lessons of the past, based on its realization that free and fair elections can only be delivered by an institution that possesses sufficient operational capabilities functional under the four corners of the law.

Consequently, the Commission prepared and presented the following documents on 15th June 2021:

- The IEBC Strategic Plan 2020-2024
- The Elections Operations Plan (EOP)
- Boundaries Review and Operations Plan (BRPOP)

Our journey to the 2022 election is clearly marked out in the Elections Operations Plan.

8. Management of elections in Kenya is a complex undertaking. It is an accumulation of five years of planning, implementation, monitoring

and evaluation of various electoral activities within strict legal and administrative timelines. The conduct follows a five-year cycle, that is, pre-electoral, electoral and post-electoral phases.

III. KEY CHALLENGES IEBC FACES

The Commission, in the course of its duty, faces both internal and external challenges. The Supreme Court of Kenya in election petition number 1 of 17 cited systemic institutional problems.

The Commission has since adequately addressed the internal problems through development and implementation of policies, procedures and operations guidelines.

However, some key external systemic challenges remain unaddressed and continue to undermine the creation of a stable electoral management culture.

9. High turnover of Commissioners and members of staff has greatly impacted the operations of the Commission.

Since 1992 there have been incessant demands for disbandment of the electoral management body and its Commissioners after every General Election, instead of resolving the real issues affecting the management of Elections in Kenya.

10. The real issues are the late enactment of electoral laws too close to the election undermining planning and implementation of activities within the set electoral timelines. The international best practice is to cease enactment of electoral laws at least two years before a General Election.

The Commission prepared and forwarded to Parliament the following Bills in 2020 and to date, none of the said legislature proposals has been enacted into law.

- The draft Referendum Bill, 2020 currently on the floor of the National Assembly,
- The IEBC amendment bill submitted on 20th May 2020
- The Election Campaign Finance (amendment) Bill 2020, submitted on 21st August 2020
- **“A General Report on proposed electoral legal reforms in Kenya: The IEBC Experience”** submitted to both houses of Parliament on 19th October 2020.

Incessant numerous court cases are sometimes filed to influence the Commission's decisions and operations.

Unfortunately, pronouncements of the court's decisions are made too close to the election date thereby affecting the Commission's preparedness.

IV. Erosion of the Commission's Independence through political interference

This is contrary to Article 88 as well as Article 249 (2) (b) of the constitution which demands that Electoral Management Bodies are free from influence of political parties and candidates.

11. Despite these clear provisions, politicians and political parties always try to undermine the independence of the Commission during the elections and engage in false accusations of the Commission and its staff; thereby bending and damaging the image of the Commission well before elections are held.

This is made worse by another challenge which is ethnicised and divisive politics which make it highly charged and exposes staff and Commissioners to ethnic profiling, making them insecure and susceptible to attacks.

Other challenges include inadequate and untimely disbursement of funding. Over the years, the Commission's funding has not been adequate and in tandem with the electoral cycle activities.

The decision to allocate budget and release exchequer to IEBC is at the discretion of the Treasury. This exposes the Commission to risk of state capture.

12. Funding is usually provided by the National Treasury during the last year of the electoral cycle. However, after every General Election, funding of the Commission's programs is routinely curtailed thereby constraining activities in the subsequent cycle.

Delayed disbursement of funding for elections are responsible for rushed procurement of goods and services at inflated costs as vendors take advantage of the Commission's urgency to catch up with the electoral cycle. Such delayed activities have negatively impacted on deployment of electoral technologies having a deleterious effect on the electoral process.

13. High cost of elections

Partly attributed to over legislation for example the Elections Act caps the number of voters per polling station at 700. It is estimated that for the 2022 elections there will be 53,000 polling stations.

As a result, thereof, some of the main drivers of the high cost is:

- Wage bill of temporary polling officials - 6 billion
- Election's technology – 4.5 billion
- Ballot papers 5.9 billion (occasioned by the large number of security features to curb trust deficit issues)

V. Preconditions and determinants of a successful 2022 General Election and suggested recommendations

14. The Commission has a robust framework and plan to deliver the 2022 General Elections. But the delivery of a free and fair election is dependent, not just on the clarity of IEBC plans which we are supremely confident about, but also on a host of factors as well.

15. There must be sufficient budget support and timely exchequer releases. Delay in this budget support will interfere with electoral calendar activities and therefore electoral management.

Electoral management requires continuous and stable resourcing given that it is not a “spot” but cumulative and cascading expenditure exercise.

However, IEBC’s experience has been due to budget cuts and delay from the exchequer releases from the National Treasury.

16. It defies all logic in this financial year, when most of the advance preparation work is supposed to have been taken – which has substantial financial implications both in terms of the sensitive procurement and actual costs, the National Treasury has arbitrarily slashed the budget from 40.9 billion to 26.5 billion

17. The IEBC act and regulations if established, will grant the Commission full control of the cycle of activities for the electoral calendar.

VI. Interagency Collaboration

18. The independence that the Constitution grants the IEBC as well as other institutions does not mean we exist separate from each other or in aggression to each other. The Constitution envisages constructive interdependence between institutions.

The Commission is committed to working with all agencies involved in the election process in one way or another in preparation for the 2022 General Election.

It is therefore imperative that the National Police Service, the Office of the Attorney General, National Cohesion and Integration Commission, Ethics and Anti-Corruption Commission, the Communications Authority of Kenya, National Treasury, Parliament and Judiciary, work with IEBC to ensure a free and fair election.

19. Now that we are 10 months to the 2022 election, the electoral laws that complement the Commission's activities should be done by December 2021. But those changes that result in a change to the EOP, must be discouraged as they will only serve to interfere with the ongoing preparations for 2022.

20. With the appointment of 4 new commissioners the Commission is now fully constituted.

21. The Commission will on 4th October roll out Enhanced Continuous Voter Registration (ECVR) targeting 6 million unregistered voters especially youth 18 years and above in possession of IDs.

In this regard, we must be clear that the only document known in law is the ID for purposes of registration and voting.

22. Inadequate technological infrastructure remains a significant challenge. According to the Communications Authority of Kenya, 83.6% of the country has 3G network.

It is not possible to transmit result forms without 3G network. In 2017 the Commission gazetted 11,155 polling stations out of the 40,883 polling stations as lacking 3G network. Although it isn't the work of the IEBC to develop network infrastructure, the Commission was blamed for lack of network connectivity.

VII. CONCLUSION

In conclusion, I want to remind us all that we have a collective responsibility to ensure that we have a peaceful free and fair election in August 2022. As a Commission, our fidelity is to the law and not to an individual or authority.

I want to appeal to you as our major stakeholders, to extend your support to the Commission for us to extensively undertake a successful General Election slated for 9th August 2022.



Thank you.

God bless IEBC and God bless Kenya.

W.W CHEBUKATI


CHAIRMAN