



CHAIRMAN’S REMARKS DURING THE LAUNCH OF THE 2022 POST ELECTION EVALUATION REPORT HELD AT THE SAFARI PARK HOTEL ON MONDAY 16TH JANUARY 2023

Introduction

I am pleased to welcome you to the launch of the Post-Election Evaluation report for the 9th August 2022 General Election. This launch is not only the last event on our election calendar but also marks my last duty to this country as the Chairman of the Independent Electoral and Boundaries Commission.

The conduct of a post-election exercise by the Commission is in line with Article 88(4) (b) that mandates it to, among others, facilitate evaluation of elections. It is also an integral part of the past election phase of the electoral cycle and best international practice that affords an election management body an opportunity to reflect on lessons learnt and make recommendations for implementation in subsequent election.

I have had the unprecedented opportunity to preside over the two General Elections and a fresh Presidential Election during my six-year tenure of office at the helm of the Commission. As I look forward to my exit from office tomorrow, I wish to share my reflections of that journey as Chairman of the Commission.

I was appointed Chairman of IEBC on 18th January 2017 and took office on 20th of the same month. In the oath I swore to obey, respect and uphold the Constitution of Kenya and all other laws of the Republic that I would faithfully and fully, impartially and to the best of my ability, discharge the trust and perform the functions and exercise the powers devolving upon

me by virtue of the appointment without fear, favour, bias, affection, ill-will or prejudice and I asked God to help me remain true to this oath.

I joined the Commissioners that had been appointed along with me to oversee the conduct of the 2017 General Election that was less than seven months away. We had very limited time to understand the infrastructure of the election and the architecture of the Commission. Additionally, the processes had been concluded and there was no time to make any major reviews or adjustments. We conducted the 2017 General Elections that were nullified and holding of fresh presidential elections ordered by the Supreme Court. The fresh presidential election was held on Oct 23rd 2017 and its results upheld by the Supreme Court in the subsequent election petition.

As it will be recalled, one Commissioner resigned before the fresh Presidential Election while three others resigned shortly after, leaving the Chairperson and two Commissioners. Those were difficult moments but Commissioners Prof. Abdi Guliye and Boya Molu, and I could not falter on our oath of office. We had a duty to this country to start preparing for the 2022 General Election. Secondly, we had a responsibility to ensure the preservation of the Commission with its long tested experience in election management that had created a large body of technical competence and practical knowledge that drives its preparation and conduct of Elections.

Drawing from the lessons learnt during the General and fresh presidential elections, and the Supreme Court judgement of the presidential petitions, we set out to prepare for the 2022 General Election by developing a strategic plan and an implementation mechanism that would incorporate the reasoning of the Supreme Court in the Presidential election petitions and recommendations arising from the 2017 Post-Election Evaluation. The Commission developed its Strategic Plan 2020 – 2024 and an Election Operation Plan (EOP) that provided a roadmap for the implementation of the Commission's strategic objectives.

Achievements:

Over the past six years of our tenure at the Commission, we successfully conducted a number of activities and tasks that we set out to discharge. These include:

1. Devolvement of Commission operations from 17 regions to 47 county election manager offices complete with key staff ready to undertake elections at any given time. The County Election Managers and Senior Election Officers at the constituencies are permanent staff who are gazetted as County and Constituency Returning Officers respectively.
2. Development of various policy manuals and standard operating procedures (SOP) to address systemic challenges within the Commission's systems and operations, these included;
 - a) Human Resource and Administration Manual (Policies and Procedures),
 - b) Finance and Accounts Policies and Procedures Manual,
 - c) Internal Audit Charter,
 - d) Audit and Risk Committee Charter,
 - e) Risk Management Framework,
 - f) Risk Management Policy,
 - g) Compliance Management framework,
 - h) Gender and Inclusion framework,
 - i) Research, electoral boundaries and risk management Policy and Standard Operating Procedures Manual, and
 - j) Legal Services Policy and Standard Operating Procedures Manual, and

These manuals provided clear operational and administrative procedures for effective governance and streamlined procedures.

3. Submission to Parliament of four draft bills proposing amendments to various electoral laws. These bills included:
 - a) The Referendum Bill 2020
 - b) The IEBC Amendment Bill 2020
 - c) The Election Campaign Financing (Amendment bill)
 - d) The Election Laws (Amendment) Bill 2021

However, these draft bills were not enacted into legislation and this compelled the Commission to gazette administrative guidelines to address gaps in the law for instance the elections results path.

4. Preparation of a report titled '**Electoral Law Reform in Kenya: The IEBC Experience**', that was presented to Parliament and is readily

available to the public on our website. The report has a comparative analysis of electoral systems from other jurisdictions, provides basic threshold that electoral systems must meet and defines areas for electoral legal framework review and enactment to regulate conduct of elections. It is my firm belief that the report provides a comprehensive basis for the realization of a robust electoral legal framework for the country.

5. Enrolment of 2,743,498 new registered voters and increasing registration centres in the diaspora by adding United States of America (USA), United Kingdom (UK), Canada, United Arab Emirates, Qatar, Germany and South Sudan to Tanzania, Uganda, Rwanda, Burundi and South Africa. The Commission, after subjecting the register to verification of biometric data, audit and cleaning up of the register, produced a Register of 22,120,458 voters with 46,229 polling stations.
6. Reduction of the cost of election through:
 - a) Reuse of KIEMS kits purchased in 2017 and procuring only 14,000 new devices to replace the faulty ones.
 - b) Early procurement of ballot papers through a framework contract that saw the cost of one ballot paper reduce from 150/- to 25/-.
 - c) Procurement of ballot papers equal to the number of registered voters for electoral areas where election was contested.
7. Elimination of avenues that could provide opportunity for electoral malpractice like multiple voting or ballot stuffing. This included:
 - a) Printing ballot papers equal to the number of registered voters in the various polling stations where elections were contested.
 - b) Strictly identifying voters electronically using Biometric Voter Identification system and using the printed register ONLY in instances where technology fails.
 - c) Transmitting ONLY the image of the election result form 34A using the Results Transmission System from the polling station to the National and Constituency Tallying Centre as well as the public portal.
 - d) Deploying a secure public portal where elections results form 34A, 34B and 34C were hosted for the nation and the world to access.

Records indicate that over 386,000, 000 logins to the portal and those that tallied got the same results as those posted in form 34C. This was the game changer in the elections and elevated transparency in election to a whole new level.

8. Implementation of the Election Security Arrangement Programme (ESAP) in collaboration with the National Police Service. The overall aim of ESAP was to ensure coordinated security management for a peaceful election environment. The Commission and the National Police Service cascaded training on election security down to the constituency level to ensure that election staff and the security apparatus work together towards ensuring elections are conducted peacefully within their respective jurisdictions. I am pleased to report that the Commission and the National Police service worked harmoniously in ensuring peaceful conduct of elections except in some isolated incidences at tallying centres.
9. Development of 17 elections manuals that were used in training staff and other stakeholders like the Judiciary, political parties and the Media. These trainings gave stakeholders a clear understanding of the election process to engage in their various areas related to elections.
10. Collaboration with the Kenya Media Sector Working Group (KMSWG) to enhance transparency and ensure quick flow of information in election reporting to the public. Through the IEBC-KMSWG Joint Taskforce a tripartite Memorandum of Understanding (MOU) by the Commission, Kenya Editors Guild and Kenya Union of Journalist was signed to enable collaboration in training over 600 media practitioners on elections thereby empowering them to interrogate electoral issues and accurately report on processes.
11. Construction and equipping of a media centre at the Bomas of Kenya to provide work stations for local and foreign media and a venue for the Commission to periodically give media briefs. It was also expected that the media would form a consortium that would use the media centre to conduct independent tally of election results and share with the public (which is a common practice in mature democracies). However, local media houses opted to tally results

individually, and even after that never shared their final tallies except for one that published on its website.

Challenges

The Commission in the course of achieving the foregoing milestones, encountered a number of challenges that slowed its quest to meet the democratic aspirations of the people of Kenya. While the Commission on its part addressed internal systemic challenges, some key external ones remain unaddressed. These include:

1. Highly ethnicized and divisive politics

The combination of highly competitive elections and negative ethnicity in Kenya's politics always leads to divisive elections that often results into poll violence. Ethnicity is often the main currency of competitive elections and it habitually mutates into conflicts between dominant competing ethnic tribes thus undermining national unity, security and stability. Such divisive elections have always led to enormous political pressure being applied on the Commission as Commissioners and Staff of IEBC are always subject of ethnic profiling during campaigns and public rallies making them insecure and susceptible to attacks. Although the challenges posed by highly competitive elections and negative ethnicity are recognized by all stakeholders in Kenya, there has never been deliberate efforts to conclusively deal with the same. Instead, symptomatic treatments such as disbandment of the Commission has been routinely undertaken which has not led to a lasting solution. It is time the nation had a candid discussion on the electoral system that the country should adopt to suit the circumstances of our country's political anatomy.

2. Late Enactment of Electoral Laws

The persistent late enactment or amendment of electoral laws too close to elections undermines planning and implementation of electoral activities within the set electoral timelines. The international best practice is to cease enactment of electoral laws at least two years to a General Election. This is also one of the key recommendations made by the Kriegler Commission.

During election season, some political players have a habit of filing numerous cases in courts in order to influence Commission decisions/operations. Unfortunately, pronouncements of some of the court decisions are made too close to election date thereby affecting Commission's preparedness.

It is imperative that amendments to the electoral laws are concluded at least two years to the election date to enable the Commission plan and prepare for election on the basis of a settled legal framework.

3. Inadequate and Untimely Disbursement of Funding

The conduct of elections is not an event but a process that follows a 5-year electoral cycle, which continues from one election to the next. Over the years, the Commission's funding has not been adequate and in tandem with the electoral cycle activities. Funding of election activities is usually provided by the National Treasury during the election year. After general elections funding of Commission's programmes is curtailed thereby constraining activities in subsequent phases of the election including; regular maintenance of election technology in readiness for subsequent general election, continuous voter registration, voter education and staff capacity building. Moreover, delayed disbursements of funding for elections is responsible for rushed procurement of goods and services, often at inflated costs as vendors take advantage of the Commission's urgency to catch up with the electoral cycle activities. Such delayed procurements also negatively impact on training and deployment of electoral technologies.

The Commission strongly recommends the operationalization of the Independent Electoral and Boundaries Commission Fund as provided for in Section 18 of the Independent Electoral and Boundaries Commission Act.

4. Attempts to erode the Commission's Independence

The Constitution of Kenya, 2010 in Article 88 as read together with Article 249 (2)(b) lays great emphasis on the independence of the Commission, both in decision making as well as operations. Despite these clear legal provisions, attempts are always made to undermine the independence of the Commission especially during elections. The 2022 General Elections witnessed probably the gravest attempts to usurp the Independence of the Commission and the sovereign will of the people of Kenya as expressed in the polls. These attempts took the form of:

- a) Ethnic profiling and open threatening of some members of the Commission and staff.
- b) Arrest and holding incommunicado of Commission staff and service providers without any lawful basis.
- c) Abduction and illegal detention of staff and service providers by state security.
- d) Attack and assault of some members of the Commission, staff and service providers by goons and law enforcement agencies at the Bomas of Kenya and some County and Constituency Tallying Centres.
- e) Abduction and murder of a Constituency Returning Officer.
- f) Intimidation of some members of the Commission by some members of the National Security Advisory Council to moderate results in favour of a presidential candidate.

The gravity of these attempts to subvert the will of the people cannot be wished away or swept under the carpet because they may reemerge in the future election. For this reason, the Commission wrote to the President of the Republic of Kenya requesting for a public inquiry in respect of the process leading to the declaration of the final results for the Presidential election 2022. The outcome of the inquiry will bolster the independence of the Commission and ensure that it maintains the stature contemplated by the Constitution of Kenya. It will also enable a future election environment devoid of harassment, intimidation, profiling and harm of Commission Staff while discharging their election duties. It will also ensure that the institutions that support the Commission during elections discharge their duties and responsibilities in accordance with the law and not as directed by individuals with partisan interest hell bent on subverting the will of the people.

5. Misinformation and Disinformation

The spread of false/incorrect statements or facts in a political is a recipe for tension, unrest and chaos. In Kenya, just like in other jurisdictions misinformation and disinformation is the latest and probably the greatest threat to elections even in mature democracies. False accusations that have the potential to cause violent conflict are often levelled against the Commission's conduct of elections by political players. In most instances no action is taken against authors of these remarks as they are considered to enjoy freedom of speech yet they can discredit an otherwise free fair

and credible election. It is surprising that despite the remarkable enhancement of checks to guarantee the integrity of our electoral processes, the old notion that elections are stolen or rigged still pervades our political rhetoric. It is even grave that misinformation and disinformation is unashamedly presented in our hallowed Courts as evidence during election petitions.

There is need for action to draw the line between should pass as free speech protected by the Constitution and outright misleading statements that are an incitement to conflict and violence.

Conclusion

The tenure of Commissioners Prof. Abdi Guliye and Boya Molu and myself ends on 17th January 2023. We have made our fair share of contribution towards strengthening democracy in Kenya. We hold that the 9th August 2022 General Election, whose presidential results were upheld by the Supreme Court, were free, fair, credible, transparent and impartial elections. This could not have been achieved without strict adherence to robust corporate governance structure of the Commission and its guiding legal regime. The Commission as established and mandated by the Constitution of Kenya and the Independent Electoral and Boundaries Commission Act has clear roles, duties and responsibilities of its members and staff.

Pursuant to these provisions the Commission established a decision making structure that includes Commission Plenary and Committee. These corporate governance structure is functional throughout the electoral cycle and decision making follows the set up. During elections the Commission appoints Returning Officers who take responsibility for conduct of elections and results within their respective electoral areas. The Constitution, the Elections Act, the Election Offences Act and other enabling statutes clearly provide for their roles, duties and responsibilities as well as mechanisms to address any breach.

It is therefore incumbent upon the Commission and Staff to conform to this corporate governance model, adhere to the rule of law and fidelity of the Constitution. To act in any other manner is tantamount to straying into the forbidden territories of breaching the objects Commissions and Independent Offices, that is:

- a) Protect the sovereignty of the people;

- b) Secure the observance by all state organs of democratic values and principles; and
- c) Promote Constitutionalism.

This launch marks my last duty as Chairman of the Commission. I exit contented that we gave it our best to this Commission. We charted and weathered storms that threatened the existence of the Commission. We endured relentless fatigue in our preparation for election. We mastered higher courage to overcome the perils of democracy and we delivered the sacred will of the people of Kenya.

We believe the pace has been set and I take this opportune moment to wish our successors all the best as they pick the baton from us to take the elections of this country to the next level.

I wish to acknowledge the assistance we have been accorded by our development partners that includes the direct support through the UNDP led Deepening Democracy Programme with the membership of European Union, United Kingdom, Republic of Germany, Republic of Italy and Republic of Ireland. We also appreciate the various initiatives from USAID.

Finally, I thank the people of Kenya for this opportunity to serve you for the past six years. I equally, with abiding respect, applaud your resolve to vote peacefully during this election. It's a gift I will cherish and carry with me always.

God bless IEBC

God bless Kenya



**W.W. CHEBUKATI, EGH
CHAIRMAN**