



ELECTIONS MANAGEMENT AND ADMINISTRATION

Safeguarding Electoral Integrity in Kenya

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The Independent Electoral and Boundaries Commission (IEBC) meets most of the key requirements and principles that make an Elections Management Body (EMB) independent. All these are safeguarded in the Kenya Constitution, 2010 and the attendant laws, regulations and administrative orders governing elections. The IEBC is established by Article 88(1) of the Constitution as an independent constitutional commission with political independence. Its independence of action and operations are further safeguarded by the Constitution in the article and the IEBC Act (Rev. 2012) Section 26.

Financial independence of the IEBC is also guaranteed by Article 249(3) of the Constitution, which provides that each independent office or constitutional commission shall have its independent vote and its funds allocated by Parliament. Additionally, Article 249(2)(a) and (b) states that constitutional commissions are subject only to the Constitution and the law and are independent and not subject to direction or control by any person or authority. Section 19 of the IEBC Act provides that the Commission's expenses are charged to the consolidated fund and managed by its secretary in the IEBC Fund in accordance with public finance management laws (Section 18(3) of IEBC Act). Therefore, the Commission should enjoy full financial, administrative, institutional and operational independence.





IEBC has full authority over the election process as it is the only institution mandated to conduct all elections and referenda in Kenya in accordance with the constitution and legislation. It defines the mechanisms through which it implements its operations to fulfil its mandate. It further issues and enforces the regulations that interpret and elaborate its core functions.

The IEBC members and staff's appointment procedures are clearly stipulated in the Constitution, the IEBC Act and the Elections Act. The IEBC Act provides for a selection procedure of the members of IEBC that, in theory, allows for competence and inclusiveness. However, in practice, commissioners' criteria and qualifications do not necessarily require its members to possess a combination of elections-oriented professional skills, competencies, and experience. This can sometimes bring

to question the members' competencies and credibility. The selection process is deemed to be political because the interview panel is often selected through political horse-trading. The qualifications for the interviewers do not necessarily require electoral competencies, skills, and experience. This, in turn, means that the interview's quality and the grading process may be questionable.

It is a fundamental principle of election management that the selection of EMB members should instill competence and inclusiveness. Commissioners are expected to combine professional skills with experience to enable them to execute their functions and mandate with competence and credibility. The law provides that the selection of IEBC Commissioners and appointment of its staff should ensure diversity and inclusiveness in terms of gender, ethnicity, disability and other, socio-demographic characteristics, and yet these are not always the considerations when appointments are made. However, the Commission, as currently constituted, does not conform to the criteria stated above. The current membership of IEBC is the bare minimum of three, comprising of a chairman and two male members and a male secretary who has been in an acting capacity for a very long time. This means that IEBC does not have a substantive Vice-Chairperson (who should be a woman, according to the constitution Article 250(11), which states that the Chairman and the Vice-Chairperson shall not be of the same gender), nor does it have a substantive secretary. IEBC is currently managed



by four (4) men, which undermines the constitutional provisions of ensuring diversity and inclusiveness in terms of gender, ethnicity, disability and other, socio-demographic characteristics.

IEBC is expected to build and sustain trust and confidence with voters, political actors and stakeholders in elections. This is important to ensure that they not only accept the outcomes of elections but are genuinely and fully engaged throughout the electoral process. This helps to enhance the electoral integrity and credibility of the electoral process. The composition of IEBC and the gaps in both the Commission and the secretariat undermine its capacity to efficiently deliver on its mandate. In addition, because of the negative political utterances directed against the members of the IEBC and the perpetual threats to disband it each time politicians are unhappy with it, IEBC seems to have lost considerable trust and confidence of the voters and stakeholders. Some political players believe that they cannot win an election if they do not have "their people" in the IEBC. The fact that there are so many vacancies in the Commission's membership and the secretariat makes its establishment weak and in limbo. In addition, it is unclear whether once constituted, the next selection panel will interview members to fill only the vacant slots or appoint new commissioners for all the positions anew. This leads to low morale and apathy because of a lack of security for the remaining members.

It is important and beneficial to have all commissioners and senior management staff in office at least two years

before a general election or a referendum, as not doing so is courting a disaster. There are many examples of why interfering with the establishment of an EMB results in serious problems and a history of disbanding an EMB after every election does not inspire confidence and trust. In addition, appointing political cronies and unqualified persons not only undermines the credibility of an EMB but sabotages its operations making it ineffective and inefficient. This is worrisome as the political elite are yet to acknowledge that an independent and efficient EMB is more effective and beneficial than one filled with loyalists and supporters.



Way Forward

The Commission is supposed to have not less than three (3) and not more than nine (9) commissioners, a commission secretary, two (2) deputy commission secretaries, nine (9) directors, twenty-four (24) managers, forty-seven (47) county election managers and two hundred and ninety (290) constituency election coordinators. The current number is a far cry from its full establishment. Whatever the situation, a fully established IEBC with all its members and a full secretariat headed by a substantive secretary is not just a necessity to ensure integrity and credibility in the electoral process. It is also an emergency requirement if we are to avoid a political and democratic catastrophe.

