



- **INDEPENDENCE OF ELECTORAL COMMISSIONERS & COMMISSIONS**
- **CHALLENGES FACED BY MINORITIES AND OTHER DISADVANTAGED GROUPS IN ELECTORAL PROCESSES**

DISCUSSION BY:

Ahmed Issack Hassan, EBS*

**At the
14TH CAMBRIDGE CONFERENCE ON ELECTORAL
DEMOCRACY IN THE COMMONWEALTH
TRINITY COLLEGE
23rd- 24th July 2015**

Advocate of the High Court and current chairman, the Independent Electoral and Boundaries Commission (IEBC), Kenya

Independence of Electoral Commissioners and Commissions

The management of elections is an activity that should solely be guided by the rule of law and not by the whims of the political class. However, more often than not, EMB's the world over, particularly in Africa have been accused of being manipulated by the governments of the day.

In Kenya, the establishment of the Independent Electoral and Boundaries Commission (IEBC) and its mandate is enshrined in **Article 88** of the Constitution of Kenya. Before IEBC, its predecessor, the Interim Independent Electoral Commission (IIEC) was established through an amendment of **Section 41** of the immediate former Constitution of Kenya.

According to the Constitution of Kenya, a person is not eligible for appointment as a member of the Commission if the person-

- Has at any time within the preceding five years held office or stood for elections as a member of parliament or a county assembly, or a governing body of a political party or
- Holds state office.

The recruitment and subsequent appointment of the Commissioners is conducted in an open, transparent and competitive process.

A Selection panel is appointed by the president with the approval of parliament for recruitment of members of the Commission.

The panel comprises of:

- 4 persons, being two men and two women nominated by the President (previously it was two persons nominated by the President and two by the Prime Minister)

- One person nominated by the Judicial Service Commission,
- One person nominated by the Kenya Anti-Corruption Advisory Board and
- One person nominated by the Association of Professional Societies of East Africa

Applicants then apply to the Selection Panel for employment for a 6yr non-renewal term. The panel publishes all the names of the applicants and those shortlisted for the position in two local dailies of nationwide circulation. The public is then given an opportunity to write to the panel on the suitability or otherwise of the shortlisted candidates. After interviews, the panel forwards the names of the successful candidates to the National Assembly for debate and onward forwarding to the president. Should parliament have reason to not approve any of the names forwarded by the Selection panel, they amend the list before it is forwarded to the president to pick the eight commissioners and a chairperson.

The perception that different nominees have the backing of certain political parties is largely drawn from the fact that Kenyan politics is more tribal than it is idealistic.

IEBC draws its funding from the exchequer, yet another perception that it cannot be independent if its funding is by the government.

So is the Commission independent in its operations? The answer to this entirely depends on who the question is directed to.

Challenges faced by Minorities and disadvantaged groups

How has the Commission tackled this?

Article 100 of the Constitution of Kenya, lists the following as marginalized persons:

- (a) Women**
- (b) Persons with disabilities**
- (c) Youth**
- (d) Ethnic and other minorities; and**
- (e) Marginalized communities**

Women- Although women represent 52% of the population in Kenya and a similar percentage in the voters roll, they have remained marginalized in political processes in the country. Several factors account for this state of affairs including but not limited to the following:

- Men dominate the political stage and set the rules of the political game and women lack confidence in vying for political leadership.
- Political life is organized according to male norms and values, which set the standards through which political achievement is judged. These often emphasize aggression and long hours spent outside the family set-up.
- Short changing of women during political party nominations.
- The nature of the electoral system, which may not be favourable to women candidates.
- Inability to utilise women's voting power and numerical strength.
- Ignorance and illiteracy.
- Lack of material and financial resources.
- Lack of capacity to accommodate women's leadership.

- Lack of sustained Government support for women's political empowerment through affirmative action

When the Country adopted and promulgated a new constitution in August 2010, the hopes and aspirations of the Kenyan women were rekindled. The domestication of the various treaties that Kenya had ratified was finally going to see the light of day in the new constitutional dispensation. Of particular interest is the International Covenant on Civil and Political Rights (ICCPR) and the Convention for the Elimination of all forms of Discrimination against Women (CEDAW) among others.

The Constitution now guarantees full and equal right of women to participate in the socio-economic and political affairs of the country. It has also institutionalized the 1/3 rule which requires that all elective and appointive bodies in the country must not have more than 2/3 of one gender. (In effect this is meant to act as an affirmative action to ensure that there are 1/3 women in every elective and appointive body in Kenya). This has not been achieved in every sector but there is a progress in achieving this goal.

The Constitution has set the framework to guarantee that 1/3 of the Members of Parliament (MPs) in the National Assembly, Senate and the Executive are women. It also requires all statutory and Constitutional Commissions to have 1/3 women of the total number and for the chair and vice-chair to be of the opposite sex.

The Judiciary has ensured that 1/3 of the Judges in the Supreme Court, Court of Appeal, High Court and Magistrates Court are women. The National Assembly is yet to achieve the 1/3 rule and the Supreme Court has rendered an advisory opinion that measures should be put in place to ensure that 1/3 of the National Assembly are women (the measures are to be put in place by August 2015).

The Role of the Commission in addressing the marginalization of women in Electoral Processes

As a constitutional Commission, IEBC is obligated to abide by constitutional requirements both in its administrative and electoral operations roles.

The IEBC comprises of 9 Commissioners and a Secretariat. The Chairperson and 8 Commissioners are appointed for a single term of 6 years. Of the 9 commissioners 3 are women and given that the chairperson is a man, the vice-chairperson is a woman.

The Secretariat is headed by a Chief Electoral Officer (CEO), assisted by 8 directors (4 of whom are ladies) and over 50 managers (out of whom 17 are ladies). The Commission also has 17 Regional Election Coordinators (RECs) (5 of whom are ladies) and 290 Constituency Election Coordinators (CECs) (15% being ladies).

During General Elections and the by-elections the Commission employs over 240,000 temporary staff as presiding officers, polling clerks and support staff out of this female staff account for over 30%.

Party Lists -the commission has made it mandatory for political parties to submit their top-up lists in zebra format. This gives women an equal chance of nomination to both the National and county governments.

Special seats- the constitution has provided for specific elective seat for women through the County Woman Member of National Assembly (County Woman representative). This seat is contested for at the County level by women.

(b) Persons with Disability – to ensure the participation of persons with Disability in electoral processes, the Commission ensures their inclusion in the special nomination seats. The commission is in the process of fully operationalizing

Article 100 to ensure inclusion of persons with disability in electoral process. To this end, an Inclusion Policy is already in place. In the last general election, the commission introduced braille voting machines in some polling stations and we hope to spread this across the country.

The Commission is also developing special voter education materials for this special category of voters.

(c) Youth- to address the challenges faced by the commission has mainstreamed development of voter education materials to specifically cater for the youth and encourage them to actively participate in electoral processes.

In the special nomination seats, the Commission ensures that the youth are not short changed.

(d) Ethnic and other minorities- Kenya has communities that have been declared as minorities due to their dismal numbers. Whereas these are the groups of people that do not particularly appeal to the political class, the commission ensures that they have access to polling stations and are fully reached out to during voter education.

(e) Marginalized Communities- these are largely pastoral communities that have from time immemorial been neglected by the government because of their low education levels and lack of representation in decision making bodies. Although literacy levels have since impressively improved among these communities, their lifestyle still requires special attention if they are to participate in electoral process. Due to their nomadic nature, the commission introduced mobile registration centres and polling stations for them.

During voter education, materials are developed in their various languages. They also are highly considered in the nomination positions in both national and local governments.