The Kenya Electoral System

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Introduction

- Kenya has a new electoral system
- Provided in the Constitution of Kenya, 2010
- A new Elections Bill, 2011 is being drafted to give full effect to the provisions of the Constitution on the Electoral System and Elections
The new electoral system was a direct result of the post election violence in 2007.

The 2007 violence was itself a direct result of the conduct and management of 2007 elections.

Lesson from Kenya and elsewhere in Africa suggest a strong link between stability, the electoral system and management of elections.
Characteristics of the Pre–2010 Electoral System

- The first past–the post system
- Win by a simple majority, so that losers combined usually had more votes than the winning candidate
- Very few women elected
- Nomination of 12 MPs by the President
Delimitation of Boundaries

- Constitutional emphasize on population as the main criteria
- In practice, serious gerrymandering and population inequality
- Example, 2007:
  - Embakasi Constituency – 219,994
  - Ijara Constituency – 11,108
The winning party usually had fewer votes but more constituencies

The Electoral Management Body

- Appointed exclusively by the President
- Appointment of questionable chairmen
- Theoretical constitutional independence
- In practice, lack of public confidence
Management of Elections

- Use of Public Officers
- Use of Public Resources
- Unequal access to public media
- Use of public assembly and public order law
- Election date determined by President
Corruption and Violence

- No limit on campaign spending
- Mega corruption scandals tied to election financing.
- Non enforcement of the Election Offences Act
- Use of violence as a campaign tool
Resolution of Electoral Disputes
- Questionable decisions in Election petitions
- Slow determination of Petitions
- Lack of faith in electoral dispute resolution mechanisms.

- The Independent Review Commission on the General Elections, 2007 (Kriegler Commission)
Appointed on 13\textsuperscript{th} March 2008

**Mandate**— to examine:

- The weaknesses of the constitutional and legal framework on elections
- The structure, composition, independence, capacity and functioning of the ECK
- The electoral environment and the role of political parties, civil society, the media and observers
The organization and conduct of the 2007 elections
The integrity of the vote tallying and counting
To recommend the necessary electoral reforms

Findings of the Commission
Report submitted on 17\textsuperscript{th} September 2008:

- The first past the post electoral system posed serious challenges and distortions in Kenya
- Disparity in voting populations violated the equality principle of democracy
- The ECK was appointed in a defective manner, leading to lack of independence
- The ECK bore the primary responsibility for the flawed 2007 elections
• The electoral dispute resolution mechanism was defective
• There was urgent need to review the constitutional and legal framework on elections
Principles of the new Electoral System

- Art 81 –
  - Freedom of citizens to exercise their political rights
  - Not more than 2/3 of the members of elective public bodies shall be of the same gender
  - Fair representation of persons with disabilities
- Universal suffrage based on the aspiration for fair and equal vote and
- Free and fair elections, which are:
  - by secret ballot
  - free from violence, intimidation, improper influence and corruption;
  - conducted by an independent body;
  - transparent
administered in an impartial, neutral, efficient, accurate and accountable manner.

The Electoral System

- The Electoral System remains primarily the First-past-the-Post system.
- However proportional representation has also been introduced
- There is a devolved system with the 47 Counties.
Each County has an elected Executive and County Assembly

The Parliament is made up of the National Assembly and a Senate

The National Assembly is made up of:

- 290 members each elected by the registered voters of single member constituencies
- 47 women, each elected by the registered voters of the counties, each county constituting a single member constituency
- 12 members nominated by parliamentary political parties by use of party lists according to their proportion of members of the National Assembly to represent special interests (youth, pwd, workers)
- The Senate is made up of 47 members each elected by the registered voters of the counties, each county constitution a single member constituency
16 women nominated by political parties by use of party lists according to their proportion of members of the Senate

2 members (man and woman) representing the youth elected on the basis of proportional representation by use of party lists

2 members (man and woman) representing pwd elected on the basis of proportional representation by use of party lists
The County Assemblies consist of:

- Members elected by the registered voters of the wards, each ward constituting a single member constituency
- The number of special seats members necessary to ensure that no more than 2/3 of the assembly are of the same gender, nominated by political parties on the basis of proportional representation by use of party lists.
The number of members of marginalised groups including pwd and youth as set by legislation and nominated by political parties on the basis of proportional representation by use of party lists

The IEBC

- Members are competitively recruited
- Professional qualifications set out
- High moral character and integrity
- Vetting by Parliament
- Security of tenure guaranteed
- Constitutional requirement the IEBC is not subject to direction or control

**Delimitation of Boundaries**

- Introduction of “population quota” in delimitation of boundaries
- Population quota means the number obtained by dividing the population by the number of constituencies.

- Art 89(5) – “The boundaries of each constituency shall be such that the number of inhabitants in the constituency is as near as possible, equal to the population quota…”
Art 89(6)– “The number of inhabitants of a constituency or ward may be greater or lesser than the population quota by a margin on not more than:

◦ (a) 40% for cities and sparsely populated areas
◦ (b) 30% for other areas

The constitution also requires periodic review of constituency boundaries (8–12 years)
The date for the elections is now set by the Constitution. Art 101(1) requires elections to be held on the second Tuesday of August every 5\textsuperscript{th} year.

**Political Parties**

- Art 91 provides for formation of political parties and the principles to be observed.
- Provision is also made for state funding of political parties through the Political Parties Fund

**Independent Candidates**

- For the first time Art. 85 of the Constitution allows independent candidates
Resolution of Electoral Disputes

- Jurisdiction to hear and determine disputes on the election of the president is vested in a newly created Supreme Court.
- The other electoral disputes are to be determined by the High Court with an appeal to the Court of Appeal.
- The entire judiciary has been reconstituted and a transparent and public appointment procedure introduced.
For judges and magistrates in office before the promulgation of the new constitution, there is a requirement for vetting by an independent body to determine suitability to continue serving.

Implementation

We are presently preparing new legislation to fully operationalize the new constitution. Among the legislation relevant to elections include:
The Elections Bill, 2011

- Registration of voters
- Conduct and management of elections
- Voting by citizens outside Kenya
- Resolution of election disputes

The IEBC, Bill 2011

- Constituting the EMB
The Political Parties Bill, 2011

- Qualification for registration
- Grounds for de-registration
- Party-hopping
- Funding of political parties
- Resolution of disputes

Campaign Financing Bill, 2011

- Regulation of campaign financing both by political parties and candidates