

## **Lessons from Kenya on Electoral Reform**

### **Electoral Reform**

Electoral reform is a never ending process which allows for ongoing review of the electoral framework to establish the gaps and possible solutions to challenges faced in electoral processes. Broadly speaking electoral reform refers to changes that are made in electoral systems with the aim of improving electoral processes, for example, through fostering enhanced impartiality, inclusiveness, transparency, integrity or accuracy. Electoral reforms are usually classified into three categories namely legal, administrative, and political.

Political will is often times the missing ingredient to successful electoral reform. This has been the case with Zimbabwe and many other African countries. However an analysis of the recent changes to Kenya's Electoral Act reveals a peculiar phenomenon. Political will to amend the Electoral Act was evident in the high-level participation of members of the Parliamentary Select Committee from across the political aisle. Despite this bipartisan approach, which ensures political inclusivity, the resultant Election Laws Amendment Act 36 of 2016 had gaps that needed to be urgently addressed, according to electoral stakeholders in Kenya. The 2016 electoral amendments largely excluded input from an array of stakeholders, and the Act was not subjected to public hearings.

For instance the amended law was silent on the proposed use of an the Integrated Election Management System which includes the use of one electronic devise for voter registration, verification of voters on polling day as well as results transmission. Another glaring omission was the lack of clarity on mitigation measures or alternatives that would be employed by the Commission should the electronic equipment malfunction.

The new law set 500 people as the threshold for establishing polling stations while the Commission preferred a threshold of 700 people which would better support the setting up of an appropriate number of polling stations.

Further revisions had to be made to the 2016 Electoral Amendment Act, and the Kenyan Senate in its wisdom subjected the 2016 Act to public scrutiny and input via the public hearings. Consequently the Elections Laws Amendment Act 1 of 2017 was passed to make further amendment to the Electoral Law.

The 2017 Amendments clarity is now provided on the checks and balances that may be used to mitigate the rare cases where technology fails or where a voter's biometric features (fingers and facial features) are deformed or cannot be read by machines. An additional lesson for Zimbabwe is the need for the Commission to have a contingency plan in case technology fails at any point in the electoral process. Furthermore the back up plan needs to be clearly understood by the electoral stakeholders so as to strengthen confidence in the electoral process.

The need for an independent audit of the voter register is also clearly spelt out in the amended act. The Commission is directed by the Act to engage a professional reputable firm to conduct an audit of the Register of Voters for the purpose of— (a) verifying the accuracy of the Register; (b) recommending mechanisms of enhancing the accuracy of the Register; and (c) updating the register. This provision for an independent audit of the voters roll could greatly enhance Zimbabwean stakeholders' trust in the integrity of the voters' roll especially if the Commission is prepared to disclose the findings of such audits and to address concerns raised.

### **Prisoners vote**

During the last election cycles the need to extend the right to vote to prisoners has remained a contentious issue. Kenyan Prisoners are estimated to comprise an average of 50,000 persons, who are citizens of the country, are over 18 years of age and therefore have a right to vote.

The High Court of Kenya, in a landmark judgment in 2010, instructed the Government of Kenya and relevant authorities to facilitate registration of prisoners to enable them to vote in the 2010 Referendum. The Commission complied with the 2010 High Court judgment but failed to provide registration and voting facilities for subsequent elections, perhaps because the judgment was limited to the 2010 referendum. As a result of sustained engagement with stakeholders, the Commission announced plans to facilitate the setting up of registration centers in prisons and later polling stations to allow prisoners who are eligible an opportunity to vote for their preferred presidential candidate only.

The Constitution of Zimbabwe under section 67 provides the right to vote to all Zimbabweans citizens who have attained the age of 18. This right is currently not being enjoyed by eligible voters who are incarcerated. In 2015, Zimbabwe's prison population was estimated to be close to 19,000 with over 90% of these being adults. The Zimbabwe Electoral Commission needs to facilitate voting by prisoners and prison staff who may be on duty during elections by setting up voting facilities within prisons.

### **Diaspora**

Estimates of the number of Kenyans living in the diaspora range to as many as 3 million people, however, accurate census data is not available to help establish the actual number and where they are located.

The Kenyan Constitution extends the right to vote to Kenyans in the Diaspora. In addition Kenya's Supreme Court in 2015 directed the electoral Commission to register Kenyans in the diaspora to participate in all the six sets of the 2017 general election. The same court dismissed the Commission's appeal to limit voting to the presidential poll only.

The Commission has made some efforts to ensure the realization of this right including the hosting of a Thematic Working group on Diaspora participation in elections. In 2017 the Commission announced that it will set up registration and voting facilities for use by Kenyans in 4 East African countries as well as South Africa. However, as of 14 February 2017, it was unclear when the registration process for Kenyans in the diaspora would commence. Initially the process was scheduled to be conducted between 1-14 February, at Kenyans Embassies in Rwanda, Burundi, Tanzania, Uganda and South Africa.

Stakeholders that include the Kenya Diaspora Alliance advocated for the Commission to roll out this facility in neutral venues not Embassies, and to do so in the United States of America followed by the United Kingdom, because those are the two countries believed to have the largest number of Kenyans living abroad.

### **Security**

In countries like Kenya that have been adversely affected by terrorism there is need to ensure that adequate security is provided for voters, registration and voting centers as well as the polling officials. However the security personnel need to be properly trained to ensure that they do not infringe on the rights of voters during the discharge of their duties.

During the voter registration exercise Kenya's media was awash with reports of an incident where the terror group Al-shabaab which is alleged to have stolen Biometric Voter Registration kits that were left for safekeeping at Mandera Police station in the North Eastern Province of Kenya. The voter registration exercise was however not adversely affected since the Commission has already collected the registration data that was on the kits. Nevertheless the Kenyan Government needs to ensure that equitable security is provided for the electoral process in order to retain stakeholder confidence and commitment to the upcoming general elections. The turnout for elections maybe adversely affected, especially in the North Eastern Province, if adequate security arrangements are not put in place.

In Zimbabwe like in every other jurisdiction, the need to provide appropriate security for electoral processes cannot be over-emphasized. However, the institutions responsible for the administration and security of an election must fulfil their mandates impartially, and should avoid perceptions that they are favouring a particular political competitor.

## **Access to Electoral Information**

The Kenyan Electoral Commission made commendable efforts to publicize details of electoral processes thus making key electoral information easily accessible to all electoral stakeholders. The Commission used multiple media platforms including a highly interactive website, traditional and social media outlets.

Data which include registration statistics, tender processes, formulae employed by the Commission to distribute Biometric Voter Registration kits and detailed election roadmaps were easily accessible on the Commission's website, Facebook and Twitter accounts. An online portal will also be provided for the public to interact with the entire register once the Commission completes the compiling the register.

Accreditation of observers is free and there is no need for the observers to physically present themselves at the Accreditation Center which facilitates the oversight role of stakeholders in key electoral process.

## **Conclusion**

Electoral reforms need to be implemented timeously. Contributions from electoral stakeholders need to be seriously considered in order to enhance the ability of the amended electoral laws to respond to the unique needs and concerns of stakeholders. Furthermore caution must be exercised during the roll out of new technology to ensure that the most appropriate solutions (hardware and software) can be procured at an optimum cost and manned by qualified operators. Care must be taken to procure equipment which can perform multiple purposes even beyond current electoral cycle.

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