



ELECTORAL COMMISSION OF KENYA

AN EVALUATION OF THE ELECTORAL COMMISSION OF KENYA PERFORMANCE IN THE 2002 GENERAL ELECTIONS

**A Report of the Electoral Commission of Kenya (ECK)
Workshop held at the Great Rift Valley Lodge, Naivasha.
May 5th to 8th, 2003**

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List of Acronyms and Abbreviations

AU - African Union

AUSAID - Australian Agency for International Development

CDU - Central Depository Unit

CIDA - Canadian International Development Agency

CJPC - Catholic Justice and Peace Commission

CKRC - Constitution of Kenya Review Commission

CSOs - Civil Society Organizations

CWG - Commonwealth Observer Group

DEC - District Elections Coordination Office

ECEP - Ecumenical Civic Education Programme

ECK - Electoral Commission of Kenya

EU - European Union

IED - Institute for Education in Democracy

IFES - International Federation of Elections Systems

INEC - Independent Electoral Commission

IPPCs - Inter Parties Provincial Committees

KDOP - Kenya Domestic Observation Programme

LIMID - Like Minded Donors

NCKK - National Council of Churches in Kenya

NDI - National Development Institute

SADC - Southern Africa Development Conference

UNDP - United Nations Development Programme

USAID - United States Agency for International Development

Executive Summary

This report is a compilation of issues that emerged from an evaluation workshop convened by and for the ECK Commissioners and staff. The workshop also invited a few friends / partners of the electoral process that the ECK has worked with.

The workshop's main objectives were to:

- Evaluate the performance of the ECK in the 2002 in light of its mandate;
- Formulate a framework of how ECK would work over the next five years;
- Establish an agenda, which would form the basis for ECK consultations with other stakeholders in the electoral process.

The most significant objective was to formulate a **work plan** that would propel the ECK for the next 5 years before the 2007 elections.

This workshop adopted the methodology of Focus Group Discussions. The participants were divided into three syndicate groups. These groups debated various issues using pre-set guidelines. The workshop used a participatory approach in which all the groups participants aired their views. The second day was devoted to presentation of the group reports to the plenary and reviewing them. The plenary ended by mapping out the way forward.

Out of discussions emerged the major chapters of this report. The ECK's role in the revision of boundaries and the voter register; the internal management of whether it stuck to its core functions; and lastly how the ECK interacted with other stakeholders in the electoral process.

It was found that the ECK has come a long way to where it is. It has faced all manner of political, legal and financial challenges. More so, its independence has been interfered with in a number of occasions. There was a felt need that the electoral boundaries should be reviewed in light of indicators such as population density. The **rural** and **urban** constituencies should have a different quota. That is, quotas based on population

size should be differentiated on whether the areas are either urban or rural. This is because these two areas differ on population densities per square kilometer. It is suggested that all town constituencies for instance should be grouped together and then quotas created. This should also be done on all rural constituencies. It was however observed that some constituencies are neither rural nor urban. The way forward is that the constituencies should be divided into Urban and city constituencies, Semi urban constituencies, Rural constituencies, Arid and Semi Arid constituencies.

In terms of ECK structure and how it influences management, it was found out that: There was the gap in the authority structure between the national head office of ECK and the District Election Coordination Office (DEC). This resulted into ineffective chain of command, delegation of duties and responsibilities. It was also revealed that ECK structure continued to display features of over-centralization as opposed to the democratic principle of decentralization. This in itself impacted negatively on efficiency and effectiveness of the field officers in the electoral process who to constantly consult the headquarters on almost everything.

The structure has a missing link in the supervisory role of ECK between the Headquarters and its District Election Coordinators offices. It was revealed that there was lack of proper coordination and decision making structure which led to the poor linkages and inconsistency in the ECK structure. There was also a lack of clarity in terms of authority, positions and responsibilities in the ECK.

ECK has interacted and collaborated with other stakeholders such as the civil society, political parties, media, development partners, government, and so on. For example, interactions with political parties helped reduce suspicion and mistrust among the parties and between the parties and the ECK. The interactions with organizations such as USAID, AUSAID, IED, IFES, LIMIT and NDI among others have been beneficial to the ECK in a number of ways such as computerization of its departments, training of its staff and effective voter education among other benefits. The ECK however observed that its interactions with government departments have not been smooth. Thus, it needs to interact more with them to ensure that its constitutional mandate is fulfilled.

The stakeholders' verdict was that the ECK was exemplary in the performance of its functions despite the enormous problems relating to the voters' register. There is s need to review the register with the collaboration of both the Registrar of Births and Deaths and the Registrar of Persons.

All the successes notwithstanding, there is room for improvement. The areas of internal management and training, research, voters' register and voter education need more emphasis.

INTRODUCTION AND PROCESS

Introduction

This chapter is a presentation of the opening remarks made by the ECK Chairman and Vice Chairman. The Chairman Mr. Samuel Kivuitu, gave a brief the history of the ECK and how it collaborated with other stakeholders in the 2002 General Elections. On the other hand, Gabriel Mukele, (ECK Vice Chair) gave his experiences of observing the recent Nigerian Elections.

The Presiding Commissioner was Amb. Tumwa who introduced the workshop participants. He also stated the **vision** of the workshop, which was to enhance **institutionalization** of the **ECK** for the effective performance of its constitutional mandate.

The Evaluation Workshop of the Electoral Commission of Kenya's performance in the 2002 General Elections was organized and financed by the Commission between the 5th and 8th of May, 2003 at the Great Rift Valley Lodge, Naivasha.

The workshop brought together 49 participants. These comprised of 22 ECK Commissioners, and 8 representatives from some collaborating partners: the Catholic Justice and Peace Commission (CJPC), National Democratic Institute (NDI), Institute for Education in Democracy (IED), United States Agency for International Development (USAID), University of Nairobi, Central Depository Unit (CDU) and the International Federation of Electoral Systems (IFES). Other participants included 9 departmental heads from the ECK Secretariat and 6 ECK support personnel. There were 4 workshop rapporteurs: Barasa K. Nyukuri; Lillian Okoth; Tom Kagwe; and Kagwiria Mbogori.

Process

After the introductory and opening remarks by the Chairman of the Commission, Mr. Samuel M. Kivuitu and the Presiding Commissioner Amb. Jack Tumwa, the participants were divided into three syndicate groups. The Presiding Commissioner, the ECK

Committee on Programmes and the group of workshop facilitators had designed a checklist of issues to guide the group discussions. The three groups were constituted in a way that would tap the various talents, expertise and interests of the participants. The workshop generally took a participatory approach where most of the discussions were held in groups for most of the first day. The second day was devoted to presentation of the group reports, reviewing and mapping out the way forward. Each group appointed its chairperson and was serviced by rapporteurs who recorded the proceedings. After the group deliberations, each group was given time to present its report to the plenary.

There were positive responses to the group presentations about ECK's performance in the 2002 General Elections, plans for improvement and a collaborative approach to the electoral process.

Opening Session

The Presiding Commissioner, Ambassador Jack B. Tumwa opened the workshop. He introduced the ECK Chair Samuel M. Kivuitu, Vice Chair Gabriel K. Mukele and the other participants. The Presiding Commissioner began by stating the **vision** of the workshop, which was to enhance the **institutionalization** of the **ECK** for the effective performance of its constitutional mandate. The specific objectives of the workshop were to:

- Evaluate the performance of the ECK in the 2002 General Elections in light of its mandate;
- Formulate a framework of how ECK would work over the next five years;
- Establish an agenda which would form the basis for ECK consultations with other stakeholders in the electoral process.

The workshop was divided into three working groups, each syndicate group handling a different task so as to meet the above objectives. Using a pre-set checklist of issues to be discussed, the groups worked behind closed doors for a day. The participants

regrouped on the second day in a plenary session so as to discuss their findings. This report is a compilation of the proceedings of the workshop.

To begin with, this report captures the moving speech delivered by the ECK Chairman that set the pace of the workshop in motion, and from which, in a summary the following issues emerged.

Speech by the ECK Chair, Mr. Samuel M. Kivuitu

The speech traced the historical experience of the ECK and how the institution has faced challenges in a bid to seek autonomy from the Government. He began by highlighting that the electoral body has come from far, and was and still is keen to improve. He noted that the Commission has faced numerous political and legal obstacles in its operations. Since its establishment in 1963, the ECK has faced scathing remarks from all directions. Among these critics were the government in power, opposition political parties, international institutions, media houses and the general public at large. However, he pointed out that the ECK has never been given a chance to operate independently and thus, influence has been rife. This has been so because the Kenyan Judiciary abdicated from its responsibility by failing to exert itself as an independent institution that ensured that the rule of law is abided to and the constitution is upheld. In the process, the Executive managed to strangle the institution and hence its powers together with other institutions of the country were effectively muzzled.

It was until recently under the guidance of the late Chair Justice Chesoni that the ECK managed some semblance of independence. But this came with constraints. Justice Chesoni had to devise ways and means of 'constructive engagement' with the Government of the day. It was these collaborative efforts by the late Chesoni that the ECK became relatively independent. Since his appointment, the current ECK Chairman has continued with the 'engagement' to the present day.

This collaboration has been carried further to involve all the stakeholders in the electoral process. These institutions have been: political parties, the media, civil society

organizations (CSOs), the donor community/ development partners, the law enforcement agencies, and other relevant government departments. These efforts towards collaboration have led to successes albeit with room for enhancement, as detailed in the following areas:

ECK AND STAKEHOLDERS IN THE ELECTORAL PROCESS

ECK and Political Parties

Prior 2002, the ECK was viewed with mistrust and suspicions by political parties, where the political parties never thought that ECK was an independent institution that could carry out the elections without undue influence. However, through collaboration with the National Development Institute (NDI), the ECK managed to have increased interaction with the political parties as was evident in the count down to the 2002 General Elections. The Commission made various successful attempts to invite political parties to seminars as institutions and also the top echelon of the political party leaders.

The results of these collaborative efforts have been two-pronged. Firstly, the suspicion that the political parties had towards the ECK has since dissipated. They started viewing the Commission as a constitutional body with positive contribution to the conduct of transparent elections. Furthermore, the erroneous perception by political parties that the ECK would favor or had favored a particular political party in the past was gradually swept under the carpet. Conversely, the suspicion, acrimony and friction that political parties had toward each other also were substantially reduced. The positive effect was that cases of electoral violence that are related to political party rivalry also sharply diminished.

However, there is much more that needs to be done to achieve better goals. For example, how to convince all the registered political parties to attend consultative meetings. The Chairman of ECK observed that out of the then 38 registered political parties, about 27 were attending the liaison committee meetings. This meant that about

25 % were absent from such meetings. It is unfortunate that it was the larger parties that often failed to turn up in such crucial forums. This did not augur well as the objective of the interaction was to ensure that the parties were partners in the entire electoral process.

Civil Society and Media Relations with ECK

CSOs interacted with the ECK on number of issues such as **voter** and **civic** education during the 2002 elections. There was a harmonious working relationship between the Commission and most of the CSOs. For example, religious organizations representing the **Christian, Muslim and Hindu** communities collaborated with the ECK prior to and during election with three other NGOs forming the Kenya Domestic Observation Programme (**KDOP**) for the purpose of observing the 2002 elections.

The Institute for Education in Democracy (**IED**) – a partner in KDOP - was involved in voter and civic education, and so was the Church-Based Ecumenical Civic Education Programme (**ECEP**).

These two collaborative efforts within the civil society and support received from the ECK through the accreditation of observers played a crucial role in influencing the outcome of the 2002 general elections.

Development Partners

The ECK interacted with numerous donor groups and their respective governments in order to hold successful elections. It acknowledged the roles played by these institutions in one of the sections of this report. For example, the Commission in collaboration with **IED** through the support of **UNDP** engaged in the dissemination of voter education. The **NDI** was also instrumental in initiating, and facilitating dialogue forums between ECK and political parties at national and provincial levels. The Inter Parties Provincial

Committees (**IPPCs**) organized by NDI liaised with political parties to ensure smooth and bloodless elections in different parts of the country.

The **LIMID GROUP** assisted in the financing of media campaign that were instrumental in the dissemination of voter knowledge especially on leadership qualities and on holding non-violent and bribery free elections. This doubtlessly influenced the nature of voter turnout at the polling stations on the material day.

ECK and Law Enforcement Agencies

In addition to the provincial administration, the police force was instrumental in the 2002 elections. The ECK held seminars to educate the police force on their roles during the electoral period. This was indeed successful. The ECK established a security committee whereby the police were invited as a stakeholder in the electoral process.

Much more needs to be done to continue involving the police and other security forces in the electoral process. It was noted with concern however that some of the provincial administration staff were cited for bias especially in the marginal areas of the country.

ECK and Government Departments

The ECK has reviewed the voter register in 2000 and 2001. It however noted that the Registrar of Births and Deaths gave the ECK a paltry list of 24,000 names of dead people. This was very far from the actual figure.

The ECK has noted with concern the **voters register**. Given that some were disenfranchised by many anomalies in that register, the ECK would like to undertake a collaborative effort with various government departments to streamline the register. For example, the electoral body is currently consulting with the Registrar of Persons and the Registrar of the Births and Deaths to solve this burning issue of names of dead voters in the register before the next general elections. These efforts will ensure that only eligible

persons are registered and the names of the dead voters are deleted from the voter register.

At the end of it all, the chairman informed the participants that the ECK intends to engage in the **retraining** of its staff. The Australian Government through IED has already shown support in the retraining efforts.

The Chairman argued that it would be erroneous to postulate that the number of Commissioners should be reduced. In actual fact, the Commission should have additional staff in the field if the number of Commissioners must be reduced. It would not be logical for the reduction of Commissioners, unless a permanent field staff that is well equipped with the resources is established.

In his concluding remarks, Mr. Kivuitu singled out the best lesson learnt from these interactions and collaborations. The lesson was that for the first time, the ECK was given the moral and material support as well as encouragement to steer the electoral process knowing very well that it was doing the right thing.

The Nigerian Experience by ECK Vice - Chair, Mr. Gabriel Mukele

The Vice-Chairman was one of the Commonwealth Observers in the Nigerian Elections held in April 2003. Mr. Mukele began his presentation by giving a brief political history of Nigeria. He said this was a country that was characterized by bloodshed, assassinations, coup d' tats and military rule for over three decades. Despite all these negative manifestations, it was noted that the country has an electoral body known as the Independent Electoral Commission (**INEC**) that is charged with the responsibility of conducting elections. However, unlike the Electoral Commission of Kenya, INEC is not a unified body. It was faced with more problems than the ECK during the conduct of the 2002 elections.

Elections were conducted nonetheless. The elections for the House of Representatives were held on 12th of April, 2003 while those of the Governors and the President were held on the 19th of the same month.

In all the stations the commonwealth group visited such places as Ibadan, Kano, Kaduna, Port Harcourt and Enugu, the Vice Chair learnt the following:

- There were no polling stations as such in Nigeria during the recently concluded general elections and what existed would be termed as 'make-shifts' whereby voters came and dropped their ballot papers. The secrecy of ballot was never guaranteed in the Nigerian Voting System.
- There were massive electoral irregularities in South Eastern part of Nigeria. The European Union (EU) had singled out 13 states in the country that had such pitfalls.
- The independence of INEC is not constitutionally guaranteed and the electoral body was always challenged in the courts. He however observed that the Judiciary in Nigeria was more vibrant and made its rulings at a faster pace than its Kenyan counterpart.

GROUP A

REVIEW OF BOUNDARIES AND VOTER REGISTRATION

OBJECTIVES

The objectives of this group were to

- Appraise the current boundaries of Constituencies and electoral areas/wards
- Study the status of the voters registers and analyse the current registration practices
- Seek linkages between registration of voters and other registration processes that promote voter registration
- Strategize for future registration, including continuous voter registration.

Question 1:

How Appropriate Were The Constituencies/Electoral Areas Of 2002 General Election In Terms Of Representation If Examined In The Context Of:-

- a) **Urban**
- b) **Rural**
- c) **Arid and Semi – arid areas**

Answer:

- Delimitation of constituencies was in appropriate not only in 2002 general elections but also during the previous elections.
- Despite the constitutional provision that all constituencies “shall contain as nearly equal numbers of inhabitants as reasonably practicable”, there were wide variations among constituencies and other electoral areas as follows:-

a. Population Disparities

- At election time last year, Kenya had 210 constituencies with a national population of 28,686,607. This translated to about 136,603 people per constituency. But glaring disparities existed as illustrated by Embakasi with 434,884 inhabitants compared to Lamu East with only 16,794.

b. Historical Perspective

- The genesis of population disparities among constituencies dates back to the abolition of the Senate (Upper House of Parliament) in 1964. This led to automatic conversion of Senate seats to parliamentary constituencies, among them Lamu East.
- There is need therefore for ECK to come up with a clear formular for determining the number of inhabitants per constituency. This should lay down guidelines that address the specific circumstances, interests and needs of urban, rural, arid and semi arid constituencies as provided by Section 42 (3) of the Constitution.

c. Peculiar Constituencies

- The group noted particularly that there exist certain peculiar constituencies which are neither urban nor rural and thus require special consideration. Typical examples are Eldoret North, Eldoret East, Eldoret South and Bonchari in Kisii which all have urban and rural sections.

The way forward is for the constituencies to be categorized into:-

- a) Urban and city constituencies
- b) Semi urban constituencies
- c) Rural constituencies.

- d) Arid and Semi Arid constituencies

Overall consideration

- The boundaries of constituencies and electoral areas/wards were not perfect but reasonably appropriate for the elections following the review undertaken by ECK in 2001.

It was noted, however, that in the next boundary review, the Commission should address appeals lodged by civic authorities, local leaders and the public during the 2001 review.

Question 2:

- i) **Do you consider the 8-10 year constitutional rule appropriate for the review of constituency /electoral area boundaries in relation to:-**

- a) **Population**
- b) **Administrative Changes**
- c) **Periodicity /frequency**
- d) **Equity of the vote**

Answer:

- The 8-10 year constitutional rule is almost universal but there are possible exceptions. The group suggested that the constitution be amended to read ECK "may" review constituency boundaries every 8-10 years if and when it deems it necessary.
- The group recognised that population is an important dynamic criterion in the review of Constituencies. However, it must not be considered in isolation of other factors such as education level and technological advancement within a community.

- Administrative changes should also be made in harmony with existing electoral boundaries to avoid overlap of constituencies / civic wards as well as erosion of community interests.

ii) **What Were the Shortcomings of the Law?**

Answer:

a. **Potential for Conflict**

- While the constitution gives ECK responsibility to review the names and boundaries of constituencies and electoral areas, the Minister for Local Government has powers to abolish local authorities.

This situation has great potential for serious conflict as was manifest in the case of Kandara Town Council last year. While ECK was in the process of reviewing electoral boundaries and wards in the area, the local Government Minister abolished the Town Council, just on the eve of the December 27th general elections.

Following this unexpected action, Kandara Town Council was deemed to have reverted back to Maragua County Council. But immediately after the general elections the Minister reinstated Kandara Town Council, confounding both ECK and the local inhabitants.

b) **Minimum/Maximum Number of Constituencies**

- The current constitution empowers Parliament to set the minimum and maximum number of constituencies in Kenya. The group felt, however, this should be ECK responsibility.

- But members hastened to stress that in discharging this mandate, ECK must closely consult with the local communities to address their concerns and interests.

iii) What were the Pitfalls of the December 2002 Voter Register?

a) Missing Names in Electors Registers

- During last year's registration exercise, voters wishing to transfer from one constituency to another were assisted by ECK to make such re-location. In the process, some names were inadvertently omitted from the voters registers. These voters had also failed to inspect registers in their new electoral areas to ascertain that they were properly enrolled in the polling centres of their own choice.
- The problem of missing names in the registers was also attributable to an earlier decision by political parties that only the 2002 voters registers would be valid for use in the general elections. This categorical decision was made at a joint ECK/political parties consultative meeting held at the Old Chambers of Parliament on 24th December 2002.

The parties firmly rejected appeals by ECK chairman that reference registers also be used as back-up to the 2002 voters registers. In his view, this arrangement would provide a safe-guard to ensure that persons legally registered were not barred from voting.

b) Deceased Voters

- Some deceased voters names had not been deleted from the voters registers by election time as no reliable data was obtained from the Registrar of Births and

Deaths. This raised concerns among political parties that the names could be used wrongly by unscrupulous people to vote and thus rig the elections.

- On its part, ECK gave assurance that no dead voter's name was used by anyone to vote as appropriate measures put in place by the commission eliminated possible abuse of this anomaly in the voters registers.

c) Double/Multiple Registrations

- The problem arose primarily due to misconception by some Kenyans that they were required to register afresh for every election as was the practice in past elections. Most of this category of persons then registered for the 2002 elections although they were already in the voters' register from the 1997 elections.
- There were also allegations that others were attracted to double/multiple registration for monetary gains. Such persons were reportedly paid by politicians each time they registered and obtained a voter's card.
- These double/multiple registrations were detected by ECK and the names deleted from the voters registers. On the Election Day, a separate register of deleted names was kept or posted at every polling station to alert those concerned.

ii) What Were the Strategies for Disseminating Information about Voter Registration?

Answer:

- Strategies for information dissemination included training of election officials; distribution and display of posters and bill-boards; advertisements in the print and electronic media as well as the use of churches, mosques, schools, public meetings including provincial administration barazas.

iii) Were These Strategies Effective? If Not What Needs to Be Done

- The strategies were largely effective, except in remote arid and semi arid areas of the country with poor communication and limited literacy levels.

iv) What Can Be Done to make the Voter Registration Exercise More Effective?

- The voter registration exercise should be continuous and ECK should collaborate more with other stakeholders e.g. political parties, religious and other civil society groups for publicity and other purposes.

Question 4

i) Highlight the Problems Encountered in the Collaboration Between ECK And the Registrar of Persons, Registrar of Birth And Death And the Provincial Administration in the Registration Process.

a) ECK Registrar Collaboration

- ECK is mandated to register voters from among Kenyans aged 18 years and above who possess ID cards issued by the Registrar of Persons. However, there is no legal provision for information transfer/exchange between the two bodies to support registration of voters.
- As a consequence, a large section of Kenyans who had attained 18 years could not register as voters due to lack of ID cards. Even when some of these people were already registered for IDs, there was no linkage/network connection to access the registrar's database so as to facilitate their registration as voters.
- This lack of coordination linkage between ECK and the Registrar's office had the effect of disenfranchising many potential voters.

b) Collaboration With Registrar of Births and Deaths

- As part of its voters registration function, ECK is constitutionally mandated to maintain up-to-date voters' roll. This requires, among other things, deletion of deceased persons from the voters registers. But responsibility for compiling names of the deceased lies with the Registrar of Births and Deaths.
- Currently there is no legal framework for transfer/exchange of information between ECK and the Registrar of Births and Deaths. As a result ECK was unable to receive reliable data on deceased persons to allow deletion of their names from the voters registers in time for the 2002 elections.

c) ECK and Provincial Administration

- ECK made successful use of public barazas by chiefs and other administration officials to promote voter education campaigns focusing on registration of voters, peaceful, free and fair elections.
- The administration was however ineffective in providing data on deceased voters to enable ECK delete names of such persons from the voters registers.
- While chiefs and their assistants are responsible for births and deaths registrations at the grassroot level, they offered no useful information to help ECK remove the dead from the registers.

ii) What Specific Areas in the Collaboration Need to be Strengthened And How Can It Be Done?

Answers:

- a. Set up network linkage for effective exchange/transfer of information between ECK, Registrar of Persons and Registrar of Births and Deaths.
- b. Harmonisation of laws and policies to allow for integration of registration services of ECK, Civil Registrar, National Registration Bureau and other related departments.
- c. Development of a Personal Identification Number (PIN) issued to all Kenyans at birth for all forms of registration including those under ECK, Kenya Revenue Authority, NSSF, NHIF etc.
- d. Towards realization of the above, ECK is already in consultations with the Civil Registrar and the Registrar of Persons to work out possible action plan for the way forward.

Question 5:

i) What Were the Quality Control Measures For Effective Voter Registration In Reference To The Following:-

- **Checks and balances to ensure that the voters register was accurate**
- **Addressing double/multiple registration**
- **Minimizing deceased voters from the voters register**

Answer:

- ECK implemented full computerization of the national voters' roll prior to the 1997 general elections.
- In subsequent years (including 2002) annual voter registration has been carried out to up-date the voters registers.

- Voter education programmes incorporating media publicity campaigns were conducted by ECK. The programme covered promotion of voter registration and public awareness against double/multiple registration.

ii) What Limitations Did ECK Face In Dealing With Violations Of The Registration Of Voters?

- People identified as offenders were handed over to the police for appropriate action.
- ECK compiled a register of double/multiple registrations and names of the offenders were removed from the voters register to ensure they could not vote in the 2002 general elections.

iii) What sanctions were put in place to deal with violators of the registration laws, rules and procedures?

- Some candidates were fined by ECK for breaches of the Electoral Code of Conduct while others were handed over to the police for prosecution.
- ECK is seeking enhanced powers for direct prosecution of offenders as part of its submission to the Kenya Constitutional Review Commission.

Question 6:

i) Did ECK Carry Out Satisfactory Publicity About The Registration Exercise?

Answer:

- The group felt that publicity about the registration exercise was not adequate.

ii) If Not What Were The Constraints And What Can Be Done To Improve The Publicity?

Answer:

- Inadequate finance was a major constraint while the publicity campaign started late. It therefore fell short of the desired impact.
- The print and electronic media used had limited impact among the rural communities as these outlets were mainly accessible to literate people and those with TV and radio sets.
- Better penetration of rural areas could have been possible through mobile cinemas which reach a broader spectrum of rural communities.
- Administration barazas as well as social gatherings could have been utilized more effectively for information dissemination at the grassroot level.
- The ECK should come up with a strategy to ensure that publicity of the registration exercise is a permanent activity in view of the new continuous voter registration demands.

Question 7:

i) Is It Possible To Have A Uniform Registration System In The Country That Can Harmonize:-

- registration of persons
- registration of births and deaths
- any other form of registration

Answer:

- The group noted it is possible to establish a uniform registration system harmonizing functions of ECK, Civil Registrar, Registrar of Persons as well as other forms of registration in Kenya.

ii) If So, How Can It Be Effectively Done?

Answer:

- One way of doing this is to identify the body which will be responsible for such a unified registration system and establishing the legal machinery for its operation.
- It has been proposed that the project be entrusted to the National Registration Bureau.

RECOMMENDATIONS FOR THE DRAFT CONSTITUTIONAL SECTION

1) Section 76(6)

States that “The elections shall ensure fair representation of women, the disabled and minorities”

The term “minorities” needs to be clarified so that not just any person(s) can claim to be a minority. There should be clear guidelines as to those who are considered a minority.

2) Section 76 (7)

“Elections are conducted by an independent body free from political interference” The term “Political interference” as used here is shrouded in ambiguity allowing for any other

interference including administrative, financial and even interference in the recruitment exercise.

3) Section 84(2)

Most of the matters listed here are matters which should not be in the constitution but should instead be carried in other regulations or Act of parliament

4) Section 77 1(A)

Should be linked to 84(1B), 86(1) and 86(3) and these should be harmonized and the ECK given the power to determine the number of constituencies and boundaries as in the draft constitution (77) restricts the ECK from determining the numbers. The reason for this proposal is that the ECK at least carries out consultations with the people before deciding on the number ECK does not make decisions arbitrarily.

5) Section 77(A)

The term " Public Election" should be replaced with "Presidential, Parliamentary and Civic Elections" as the one on the current draft does not explain exactly which election are being reered to as it could be for any public group. ECK proposed that it can also handle trade union, cooperative society and political party elections.

6) Section 77(g)

The Provision requiring the registration of voting of citizens outside Kenya did not also take into account other Kenyans who by virtue of their work are on duty on the day of voting, this includes the police, prison officials as well as election officials. It also does not capture the predicaments of army personnel who might not be stationed in the places where they registered as voters.

7) Section 77(b)

States that "Parliament shall enact a law to provide for the nomination of candidates"
The main question here is which candidates are being nominated and what are they being nominated for?

8) Section 77(c)

Parliament shall enact a law to provide for the manner of voting at elections. The main issue raised here is the elections being referred to. Which elections?

9) Section (2) (B)

This part of the draft constitution does not define the type of proportional representation used in this context. There are several types of proportional representation and there needs to be clarity as to the one being referred to.

10) Section 77(2) (c)

States that "the remaining fifty percent be distributed among persons with disability". The definition of who is considered a disable is not mentioned. What would be the criteria for determining those who are 11) disabled?

11) Section 78(1) and 76 (1) are repetitions of each other while 78(2) should be split into two:-

- a. Administrative arrangements which should be included in separate regulations or an Act of Parliament
- b. Citizen right to vote which should be included in the constitution

12) Section 79(2)

The citizen is required to register at one place. Which place would this be because if Nairobi is one place then one can register in various centres which are all located in Nairobi. Instead it should state that the citizen is required to register once.

13) Section 80(2)

The question of whether a citizen qualifies to be registered is to be determined by the high court. This will only lengthen the process as it takes a long time to do the same and the court process is too expensive. 84(10) gives ECK the mandate to settle disputes so 80(2) should also give ECK the above mandate and not the high court.

14) Section 81

Should be deleted completely from the draft constitution

Section (82) should be deleted

The President should not be tied to a maximum number of people he can appoint. The number of commissioners can only be reduced if the ECK has adequate electoral staff at the district level.

15) Section 83(4)

The Chairman of the Commission is required to be a judge. If the same requirement is not extended to the Vice-Chairman then it means that the Vice-Chairman will never be a Chairman as he/she will not be qualified and cannot perform the functions of the Chairman in his absence.

16) Section 83(7) (c)

It is important for the Eck to establish clear guidelines on how commissioners can be removed because this will determine how independent the ECK becomes. The draft

Constitution should borrow from the existing Constitution as regards the independence of the ECK and the removal of the Commissioners.

17) Section 83(6)

The Issue raised is why it is necessary under the present circumstances to appoint Commissioners for only three years. There are also no provisions on whether the Commissioners are eligible for a second term in office.

It is important to establish the qualification for the commissioners so that there are clear guidelines for appointment.

18) Section 83(7)

States that if the Office of the Commissioner becomes vacant

The issue here is the procedure for the removal of the Commissioners

19) Section 84(1) (E)

The concept of supervision is broad so the draft constitution should define the context in which it is used.

This section is unclear as to how the ECK will supervise the political parties. Supervision can only be done if an act of parliament is established.

20) Section 84(G)

States that the ECK is responsible for the settlement of disputes but it does not state the disputes being referred to. The ECK should settle disputes which arise before results are announced and without reference to the courts.

21) Section 84(H)

It is difficult to promote a culture of democracy. This part (culture of democracy) should be deleted.

22) Section 84(L)

ECK finds the term “monitoring of elections” unacceptable as it places the monitors and ECK officials in a conflicting position and yet in the end it’s the ECK officials who are held accountable.

23) Section 84(2)

Does not state which constitution will regulate the work of the ECK

The term “Independent” is value laden and vague a better term should be used. The draft constitution should borrow section 41(9) and 41 of the existing constitution.

24) Section 85

Should be deleted because there is no reason why a different body should be given the responsibility of appointing ECK officials. The ECK officials should be given security of tenure with regard to the work they do.

25) Section 86

The right to determine the number of boundaries should be left to the ECK. The issue of civic wards has been omitted in this section and yet it should be included.

26) Section 86(A)

Consult with “all” parties. The term “all” should be defined as anyone can claim to be an interested party.

Chapter 3:

ECK CORE FUNCTIONS AND MANAGEMENT OF THE ELECTORAL PROCESS

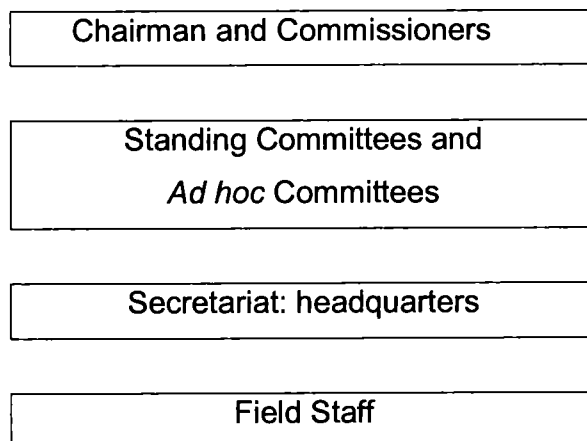
Introduction

This chapter analyzes the structure and management capacity of the ECK vis-à-vis its functions in the 2002 electoral process. It scrutinizes the ECK structure in terms of power and authority, decision making, how the headquarters and districts relate, institutional capacity, human resources capacity, logistics and supplies, finance and election management among other issues. Lastly, the merits and demerits of funding political parties from the Consolidated Fund were discussed.

Structure of the ECK

The Structure of the Electoral Commission of Kenya refers to the establishment and composition of the Commission from the headquarters to the registration centers / polling stations in the field:

The structure could be summarized in the following chart:



ECK Mandate

The Constitution defines the Commission's responsibilities as:

- a) Delimitation of Constituencies and other electoral areas
- b) Review of the number, boundaries and names of constituencies and electoral areas
- c) Registration of voters and the maintenance and revision of the register of voters
- d) Directing and supervising the Presidential, National Assembly and Local Government elections
- e) Promoting free and fair elections
- f) Promoting voter education throughout Kenya and
- g) Such other functions as may be prescribed by law.

The group noted that, ECK structure was largely satisfactory in managing the electoral process in the year 2002. However, there was room for improvement.

Key Areas of Weaknesses in The ECK Structure

- There was lack of flow of authority between ECK head office and the District Election Coordinators' (DECs) Offices.
- ECK structure displayed features of over-centralization.
- While ECK had functional departments at Headquarters, many senior posts within the establishment remained vacant resulting in excessive workload.
- There was general weakness in inter-departmental coordination.

Recommendations

The following proposals were made to strengthen ECK: -

- The Commission needs re-structuring to make it election-oriented and more effective in fulfilling its constitutional mandate.
- There is need to strengthen the capacity of district election coordinators' offices in view of the challenges of continuous voter registration.
- Need to improve work performance by filling vacant posts and strengthening inter-departmental coordination.

Institutional Capacity

The group observed that ECK was facing lack of adequate equipment and office space i.e.

- Most ECK offices, including the headquarters, warehouse and DEC's offices were housed in rented premises. They were generally crowded while expenditure on rent and related utilities was high.
- ECK had no adequate office space and equipment at the constituency level, especially for purpose of continuous voter registration and coordination of the voting process. But the fact that the Commission had offices at each district with some facilities was commendable.
- There were no proper communication facilities at vote counting centers. Availability of such equipment could make the centres effectively serve as relaying points for information on voting and announcement of provisional results.

Recommendations

- ECK should consider acquiring its own offices instead of operating from rented premises.
- Each district should have a vehicle to facilitate the work of election officials.
- There was need for effective communication facilities linking the headquarters with district and constituency levels.
- Each constituency should have an office and at least one telephone and a fax line for effective communication.

Human Resource Capacity and Recruitment of Election Officials

- There were problems of low performance by election staff due to lack of clear election – specific job descriptions
- ECK had inadequate permanent staff for management of the electoral process. It often depended on casual and temporary election staff
- ECK recruitment procedures for temporary election staff were often characterized by nepotism, favourism and mediocrity.
- ECK had no quality control mechanism to ensure that recruitment and training process was conducted in accordance with the laid down procedures.

Recommendations

- There should be strict standards for ECK staff recruitment and clear policies on hiring of temporary elections staff.

- ECK should establish recruitment and selection committees in each district to scrutinize all applications for election jobs such as presiding officers, their deputies and clerks.
- ECK should consider setting up a research and development office. This could help in planning, needs assessment, surveys, projections and analysis of policies made by the Commission in terms of their implications.
- Adequate staff need to be recruited for each of the functional departments of ECK e.g. the Computer Section which seriously lacks senior cadre staff.
- The Commission should continue to undertake independent recruitment of its staff and to determine their salary structure in line with its constitutional authority.
- There is need to put in place effective mechanism for placement of personnel, delegation of authority and responsibilities.

Decision Making And Implementation Procedures

- The group noted that there were both *top-down and bottom-up* approaches in the ECK decision making process.
- It was observed, however, that the decision-making process at ECK did not take into consideration the timing and capacity of the staff to implement them.
- Quite often, too many activities were carried out contemporaneously, leading to congestion at the implementation stage.

Recommendations

The problems related to decision-making could be resolved through the following:

- Designing a detailed plan with short term, middle term and long term objectives and activities, as well as in-built mechanism for monitoring and evaluation.
- Ensuring proper time management in ECK activities (i.e. specific deadlines for various functions),
- Need for more open fora between commissioners and senior ECK management staff to dialogue, negotiate and build consensus on implementation strategies as well as the implications of decisions made.

Election Management (Operations)

The group observed that ECK had a satisfactory election management system. However, there were loopholes which needed to be sealed to make the system more effective and efficient in future:

- Decentralization of the vote counting system to the polling station greatly minimized difficulties associated with transportation of ballots.
- It was observed that ECK management of the 2002 elections was far much better than in 1992 and 1997;
- There was radical reduction in election material mix- up in 2002 compared to 1997;
- Fewer cases were detected where election officials were ineffective in managing the electoral exercise;
- The Communication system between presiding officers, returning officers and ECK headquarters was ineffective due to lack of better facilities.

Recommendations

- It is vital to have adequate planning and programming of ECK activities.
- Need for ECK to sustain contingency as a fallback position in election management;
- There should be an effective tracking system for quality control to avoid mix-up of election materials;
- Need to strengthen communication systems throughout the entire ECK network;
- The Commission should follow-up on the appropriate month for conducting elections in future. The group noted that ECK had recommended the month of August to the Constitution of Kenya Review Commission (CKRC);
- Decentralization of the distribution system for election materials was a great success which should be strengthened further;
- Election officials need training on better planning and systematic checking / verification of election materials prior to the election day;

Finance and Material Resources

The workshop noted that the Commission operated under the Kenya Government Budgetary System along side other ministries and constitutional bodies. Although ECK had its own budget, the bureaucracies involved in application and securing funds from the Treasury were hampering its effectiveness in carrying out its constitutional functions.

There were shortcomings in the following areas:

- Inadequate financial allocation for ECK in the year 2002 considering the financial requirements detailed on its budget.
- Disbursement of funds by Treasury is not timely.
- ECK is not accorded priority in the disbursement of funds;
- Disbursement of funds from ECK to district treasuries is cumbersome and crippling for field operations.
- Due to limited human resource capacity, the Commission is currently unable to set up its own financial system directly with its field offices;
- Donor support came too late to make effective impact on election operations.

Recommendations

- ECK should have long-term strategy in developing and submitting realistic budgets to its development partners,
- The 'red tape' by development partners should be reviewed to speed up their funding of ECK activities,
- Currently the law requires that ECK must disclose to the Government its sources of funds which must be channeled through Treasury. The way forward is for the Commission to gain full financial autonomy. Its budget should be approved by and also be accountable to parliament.
- The other option is for ECK to re-affirm its corporate status which should enable it to sue and be sued, as well as own property of its own for financial sustainability,

- Example of the Ghanaian Electoral Commission was cited as a case where property ownership had enabled the Commission to generate funds for its activities,
- The Commission should also be empowered through legal reform to establish and maintain its own financial system right from the headquarters to the DEC'S offices,
- As a long-term plan taking advantage of Information Technology available today, it should be possible for ECK to establish and control its own financial system throughout the country. This will speed up the process of disbursing funds and accountability for the allocations.

Merits of Sourcing Funds Outside Treasury

- Demonstrates the status of ECK as a corporate body that determines its own destiny.
- Serves as an illustration of financial autonomy
- Treasury allocations are not adequate.

Logistics, Supplies and Procurement

The workshop observed that while this was one of the most critical areas, it was difficult to implement effectively during the 2002 elections. But, there was great improvement during the 2002 elections compared to the polls in 1992 and 1997.

Problems encountered were as follows:

- There were delays in getting tenders on time due to last minute changes in the Election Regulations that were approved by Parliament on the eve of dissolution of the House in October 2002,
- In response to the changes, the Commission had to seek Treasury authority for a shorter tendering notice,
- Approved stock lists were finalized late while supplies and procurement procedures were unconsolidated and poorly coordinated,
- Stock handling suffered delays because only one forklift was available at the procurement and supplies division,
- There was also delay in the procurement of transport vehicles for returning officers. It was difficult to get the right vehicles for different ecological zones countrywide. However, the transportation element in the year 2002 was better than 1997
- The subjection of the ECK procurement plan to the bureaucratic Government tendering system created a lot of delays in the entire process.
- Most of the activities in the logistics, procurement and supplies division were conducted manually leading to inefficiencies, errors and delays.

Recommendations

- ECK should establish its own procurement procedures and regulations, which should be strictly adhered to by all the departments,
- There is need to maintain an approved catalogue (stock list) of all election materials and equipment. This must be regularly reviewed and updated in order to help the procurement / supplies department determine the quality and quantities of materials required,

- There is need to develop a comprehensive ECK procurement plan at the beginning of each financial year, showing departmental requirements and delivery schedules / deadlines,
- The ECK should computerize procurement and supply operations for improved efficiency in this division,
- The staff in the procurement and supplies department require re-training in the various areas of their operation, taking into account the changing demands in this field

Internal and External Communication

- The group observed that although problems were encountered in this area, overall performance was much better that during the 1992 and 1997 general elections,
- As communication is a critical function in the electoral process, further measures must be taken to strengthen this field for effective management of ECK operations,
- Inter-departmental exchange of information was weak while internal networking linkages were limited within ECK.

Recommendations

- Measures to be taken to improve inter-departmental coordination, including information flow and exchange,
- There is need for documentation / archival preservation of vital information of the ECK.

Modern Information and Communication Technology (ICT)

- The group noted that ECK had greatly improved in this area during the 2002 general elections compared to the previous elections.
- Further improvement was still required to take full advantage of this technology.

Recommendations

- There is need to expand the ECK ITC capacity, including urgent training of staff in this field
- ITC should be a priority area in ECK's envisaged Strategic Plan for the next five years.

Expanding ECK's Mandate

The basic objective here was to determine

- i) Whether or not ECK should be granted expanded mandate to cover registration and regulation of political parties which are key players in the electoral process
- ii) Grounds for justification of funding political parties by Treasury.

Recommendation

- The group proposed that as a matter of priority, ECK should step up its dialogue with the government, political parties, the civil society and other stakeholders to reach a consensus on possible expansion of its mandate.
- There is need for a legal framework stipulating

- i) Modalities for Treasury funding of political parties
- ii) Powers and responsibilities of ECK in terms of Registration of political parties, supervision of primary nominations and control of political party expenditures.

Treasury funding of political parties

i) Merits

- It will offer equal opportunities to all registered political parties and their candidates
- May help reduce corruption and election violence
- Can help ECK regulate political party activities
- Will contribute towards enhancing institutional capacity of political parties
- Will help in enforcing disclosure of political party expenditures

ii) Demerits

- It is an expensive undertaking to tax-payers,
- Supervision / control of parties may pre-occupy ECK and take much of valuable time at the expense of its core functions,
- May exclude small / young parties and thus subvert the growth of democracy.

Funding criteria for political parties

Funding should be based on the following criteria:

- A party must be national in character with representation from all the provinces of Kenya,
- Must have a functional secretariat with democratically elected national officials,
- The nature and level of funding should be pegged on the number of votes the party received in the previous general elections,
- The number of seats obtained during parliamentary and civic elections

Disclosure of ECK Budget / Expenditure

- This should be encouraged as an exercise for building and sustaining public trust and confidence.
- Will enhance credibility of the Commission
- Can enable ECK to be a role model of good governance for other public institutions
- Will concretize the independence of ECK.

Chapter 4:

ECK AND STAKEHOLDERS IN THE ELECTORAL PROCESS

Introduction

This Chapter examines the relationship between ECK and stakeholders in the electoral process, namely local and international civil society organizations, development partners and observer groups. It also looks at the various aspects of this cooperation, the results realized and areas of need for improvement.

The report discusses the prospects for continuous voter education and possible control of election expenses by party candidates. It was recognized, however, that for ECK to exercise such control, an enabling legal framework must be put in place.

Collaboration / Interaction

The collaboration and interaction between the ECK and stakeholders in the electoral process was as follows;

Stakeholder	Support/ Role	Outcome/ Results
1. NGOs / CBOs	- Voter Education and training of election officials (DEC's and RO's)	- Voters knew their rights and thus,
IED		- Voters turnout was high.
		- Continuous nation-wide voter education programme is required
IFES	- Communication and Computerization at ECK Headquarters and districts.	- Improved communication between headquarters and DEC's offices

<p>NDI</p>	<ul style="list-style-type: none"> - IPEC fora between ECK and political parties - Established Inter Parties Provincial Committees - Training of staff and party agents 	<ul style="list-style-type: none"> - Effective political education - Created fora for inter-party dialogue and ECK/parties consultation - Helped trust / confidence building
<p>2. Political Parties</p>	<ul style="list-style-type: none"> - Regular ECK consultations with the parties to ensure a peaceful election. 	<ul style="list-style-type: none"> - Violence minimized as political parties reduced acrimony. - Positive engagement among parties - Reduced political parties suspicion of ECK.
<p>3. Media</p>	<ul style="list-style-type: none"> - The interaction helped enlighten the media on fair election coverage - The media appreciated technical/legal framework for ECK operations - ECK held seminars on media accreditation and election coverage - Dissemination of ECK policy and elections results. - KBC was biased towards the then ruling party KANU. 	<ul style="list-style-type: none"> - Set up a better-managed and equipped Press Center. - Liberalization of the airwaves allowed better coverage of the electoral process - Increased public awareness on the elections - Increased public awareness through print / electronic media outlets - Public outcry for KBC's legal framework to be revised to ensure

		<p>impartial coverage.</p> <ul style="list-style-type: none"> - Increased objectivity in media reporting - Media articulated public debate on the elections for informed choice by the voters.
<p>4. Religious Organizations CJPC/NCCK/ Hindu/ Muslim</p>	<ul style="list-style-type: none"> - Acted as moderators between ECK, political parties and the government. - Published Pastoral letters and memoranda on election issues - ECK utilized ECEP frameworks and networks set up by these institutions. 	<ul style="list-style-type: none"> - Religious organizations created awareness on the electoral process through their structures. - Need to utilize these networks for promotion of voter education
<p>5. Local and International Observers KDOP CWG AU Carter Center SADC etc.</p>	<ul style="list-style-type: none"> - Observers helped in building confidence among voters - Designed checklists for observation on different aspects of the electoral process - ECK worked well with the KDOP long- and short-term observers. 	<ul style="list-style-type: none"> - ECK was careful in handling the observers. - There was rapport in the field between observers and ECK officials thus minimizing electoral malpractices. - Need to tap local observers' knowledge for future use

	<ul style="list-style-type: none"> - Subsidized observers accreditation fees. - ECK worked in harmony with all these international observers and granted them accreditation 	<ul style="list-style-type: none"> - ECK working towards improved observation of the electoral process - Need to set up a center for briefing and debriefing observers. - The time limit for accreditation should be reviewed
<p>6. Development Partners</p> <p>UNDP</p> <p>CIDA</p>	<ul style="list-style-type: none"> - Training of elections officials. - Voter education. - Facilitating seminars on electoral violence. - Civic education and ICT support - USAID and LIMID financed adverts on voter education 	<ul style="list-style-type: none"> - Future partners should aid nationwide voter education long in advance of elections - AUSAID supported in training of election officials - These partners should give timely support to avoid last minute rush and delay in starting media campaign. - Helped in reducing inter-party hostility and thus reduced electoral violence
<p>7. Government</p>	<ul style="list-style-type: none"> - There were delays in police deployment - Inadequate funding - Late disbursement by Treasury - Some vehicles availed to ECK were in poor condition 	<ul style="list-style-type: none"> - Need to depoliticize the provincial administration. - Civil Registrar and the Registrar of Persons needed to harmonize their records with ECK to enhance voter registration and deletion of the dead from the registers

	- ECK hired police and military helicopters for transport	
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Sustainability of Continuous Voter Education

- The voter education process began in earnest in 9 districts as a pilot project. This was made possible with funding from the UNDP while the Institute for Education in Democracy (IED) was the implementing agency.
- The exercise was generally successful, but there was need for the process to be expanded to cover the rest of the country.

Role of Political Parties

- To sustain voter education momentum and continuity, political parties have a critical role to play as effective tools in the promotion of this programme
- It is in their vital interest that Kenyans are enlightened, not only to vote for their election candidates but also to ensure that the people make informed choices based on quality leadership and their community needs.

Recommendations

The following were recommended as a means of strengthening the institutional capacity of political parties in the promotion of voter education

- Embrace internal democratization especially in the conduct of party elections and primary nominations, as well as the management of these institutions. This is a cardinal requirement of the Electoral

Code of Conduct to which registered political parties must subscribe.

- Need for better funding to ensure financial stability that will enable political parties to undertake active voter education among other things.
- It was observed that under the on-going Constitutional Review Process, it is proposed that political parties be financed from public funds.
- Voter education be incorporated in the primary schools curriculum and Adult Education Programme (on its proposed resumption)

On its part, ECK could also consider the following actions to enhance voter education:-

- Strengthen existing partnership with the media for greater public education and awareness. It should be possible to explore possibilities for concessionary rates and free offer of space and airtime in the print and electronic media for dissemination of voter education
- Take advantage of the goodwill of development partners following the 2002 general elections to seek assistance for continuous voter education programme
- Consider using the existing network of religious organizations (e.g. ECEP / NCKK) for partnership with the Commission in dissemination of voter education

- Initiate negotiations with the government to source development funding from Treasury to establish field offices for both nation-wide voter education and continuous voter registration programmes.

Limiting Campaign Funds

- Limiting campaign financing is not an entirely new concept as it has engaged many democracies the world over, including the USA. It touches on the fundamental principle of "one person, one vote".
- It is recognized that unchecked contribution of funds by interested groups to political campaigns could unfairly influence election results.
- In the past, rules relating to limiting campaign funding have only been observed in the breach as it was very difficult to police or monitor this practice. There is need, therefore, to set up a legal mechanism for ECK control of campaign funding. This should address the following questions among other things
 - How will the set spending limits be monitored?
 - On issues of accountability, how will accounts be rendered?
 - Should some high expenditure items e.g. TV adverts, be prohibited?
 - What expenditure levels are adequate for a campaign (to guide setting of the limits/ sealings)?
 - Should the limits relate to expenditure, sourcing or both?

List of Acronyms and Abbreviations

AU – African Union

AUSAID – Australian Agency for International Development

CDU – Central Depository Unit

CIDA – Canadian International Development Agency

CJPC – Catholic Justice and Peace Commission

CKRC – Constitution of Kenya Review Commission

CSOs – Civil Society Organizations

CWG – Commonwealth Observer Group

DEC – District Election Coordination Office

ECEP – Ecumenical Civic Education Programme

ECK- Electoral Commission of Kenya

EU – European Union

IED – Institute for Education in Democracy

IFES – International Federation of Elections System

INEC – Independent Electoral Commission

IPPCs – Inter Parties Provincial Committees

KDOP – Kenya Domestic Observation Programme

LIMID - Like Minded Donors

NCCK – National Council of Churches in Kenya

NDI – National Development Institute

SADC – Southern Africa Development Conference

UNDP – United Nations Development Programme

USAID – United State Agency for International Development

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| 9. Bjarte Tora | - | NDI | | |
| 10. Moses Owuor | - | IFES | | |
| 11. Mani Lemayian | - | ECK | | |
| 12. David G. Kiiru | - | ECK | | |
| 13. Kagwiria Mbogori | - | Rapporteur | | |
| 14. Tom Kagwe | - | Rapporteur | | |

ANNEX A:

RECOMMENDATIONS FOR THE DRAFT CONSTITUTION

There is need to do so along side the draft itself. In order to understand the recommendations made by ECK on the Draft Constitution

SECTION 76(6)

States that "The Elections shall ensure fair representation of women, the disabled and minorities". The term "minorities" needs to be clarified so that not just any person(s) can claim to be a minority. There should be clear guidelines as to those who are considered a minority.

SECTION 76(7)

"Elections are conducted by an independent body free from political interference." The term "political interference" as used here is shrouded in ambiguity allowing for any other interference including administrative, financial and even interference in the recruitment exercise.

SECTION 84(2)

Most of the matters listed here are matters, which should not be in the constitution but should instead be carried in other regulations or Act of Parliament

SECTION 77 1(A) should be linked to 84(1B), 86(1) and 86(3) and these should be harmonized and the ECK given the power to determine the number of constituencies and boundaries as in the draft constitution (77) restricts the ECK from determining the numbers. The reason for this proposal is that the ECK at least carries out consultations with the people before deciding on the number. ECK does not make decisions arbitrarily.

SECTION 77 (A)

The term "Public elections" should be replaced with "Presidential, Parliamentary and Civic Elections" as the one in the current draft does not explain exactly which election are being referred to as it could be for any public group. ECK proposed that it can also handle trade union, cooperative society and political party elections.

SECTION 77(g)

The Provision requiring the registration of voting of citizens outside Kenya did not also take into account other Kenyans who by virtue of their work are on duty on the day of voting, this includes the police, prison officials as well as election officials. It also does not capture the predicaments of military personnel who might not be stationed in the places where they registered as voters

SECTION 77(b)

States that "Parliament shall enact a law to provide for the nomination of candidates" The main question here is which candidates are being nominated and what are they being nominated for?

SECTION 77(c)

Parliament shall enact a law to provide for the manner of voting at elections. The main issue raised here is the elections being referred to. Which elections?

SECTION 77(2) (b)

This part of the draft constitution does not define the type of proportional representation used in this context. There are several types of proportional representation and there needs to be clarity as to the one being referred to. The Draft Constitution is not clear as to how the 50% representation of women at public elections can be achieved. It should clearly spell out the system to guide the implementation of this provision.

SECTIONS 77(2)(c)

States that "the remaining fifty percent be distributed among persons with disability". The definition of who is considered a disable is not mentioned. What would be the criteria for determining those who are disabled?

Hardly any item in section (77) should be included in the constitution.

SECTIONS 78(1) and 76 (1) are repetitions of each other while 78(2) should be split into two

- a) Administrative arrangements which should be included in separate regulations or an Act of Parliament
- b) Citizen right to vote, which should be included in the Draft Constitution.

SECTION 79(2)

The citizen is required to register at one place. Which place would this be because if Nairobi is one place then one can register in various centers, which are all located in Nairobi. Instead it should state that the citizen is required to register once.

SECTION 80(2)

The question of whether a citizen qualifies to be registered is to be determined by the high court. This will only lengthen the process as it takes a long time to do the same and the court process is too expensive. 84(1) gives ECK the mandate to settle disputes so 80(2) should also give ECK the above mandate and not the high court

SECTION 81

Should be deleted completely from the draft constitution

(82) Should be deleted

The President should not be tied to a maximum number of people he can appoint. The number of commissioners can only be reduced if the ECK has adequate electoral staff at the district level

SECTION 83(4)

The Chairman of the ECK is required to have qualifications such that one can be a judge. If the same requirement is not extended to the Vice-Chairman then it means that the Vice-Chairman will never be a Chairman as he/she will not be qualified and cannot perform the functions of the Chairman in his absence

SECTION 83(7)(c)

It is important for the ECK to establish clear guidelines on how commissioners can be removed because this will determine how independent the ECK becomes.

The draft Constitution should borrow from the existing Constitution as regards the independence of the ECK and the removal of the Commissioners.

SECTION 83(6)

The issue raised is why it is necessary under the present circumstances to appoint Commissioners for only three years. There are also no provisions on whether the Commissioners are eligible for a second term in office. It is important to establish the qualification for the commissioners so that there are clear guidelines for appointment

SECTION 83(7)

States that if the Office of the Commissioner becomes vacant. The issue here is the procedure for the removal of the Commissioner.

SECTION 84(1)(E)

The concept of supervision is broad so the draft constitution should define the context in which it is used. This section is unclear as to how the ECK will supervise the political parties. Supervision can only be done if an act of parliament is established

SECTION 84(G)

States that the ECK is responsible for the settlement of disputes but it does not state the disputes being referred to. The ECK should settle disputes which arise before results are announced and without reference to the courts.

SECTION 84(H)

It is difficult to promote a culture of democracy. This part (culture of democracy) should be deleted.

SECTION 84(I)

ECK finds the term "monitoring of elections" unacceptable as it places the monitors and ECK officials in a conflicting position and yet in the end it's the ECK officials who are held accountable.

SECTION 84(2)

Does not state which constitution will regulate the work of the ECK. The term "Independent" is value laden and vague a better term should be used. The draft constitution should borrow section 41(9) and 41 of the existing constitution.

SECTION 85

Should be deleted because there is no reason why a different body should be given the responsibility of appointing ECK officials. The ECK officials should be given security of tenure with regard to the work they do.

SECTION 86

The right to determine the number of constituencies should be left to the ECK. The issue of civic wards has been omitted in this section and yet it should be included.

SECTION 86(A)

Consult with “all” parties. The term “all” should be defined as anyone can claim to be an interested party.

ANNEX B

ECK RETREAT FOR COMMISSIONERS TO EVALUATE 2002 GENERAL ELECTIONS 5TH TO 8TH MAY 2003

i) VISION

To attain a high degree of institutionalization and excellency in the management of electoral process.

ii) OVERALL OBJECTIVE

To conduct a two- day evaluation workshop with the view of critically analyzing and assessing the performance of Electoral Commission Of Kenya in the 2002 elections vis-à-vis its constitutional mandate and its management capacity.

iii) OBJECTIVES

- a) To evaluate the performance of the 2002 General Elections in the light of the ECK's Constitutional mandate
- b) Arising from (a) above, the workshop is intended to come out with a "framework" of a work-plan for ECK to cover the next five years i.e. up to 2007 General Elections
- c) Arising from (a) above, to work out agenda for discussions with other stakeholders on the electoral process
- d) In particular, the workshop will focus on the following topics, which have a bearing to Sections 42 & 42(A) of the Kenya Constitution regarding the responsibility of the ECK.

GROUP “A”

- Appraise the current boundaries of constituencies and local authorities
- Study the status of the voters’ registers, analyze the current registration practices seek linkage between registration of voters and other registration processes that promote voter registration and strategies for future registration including continuous voter registration.

GROUP “B”

- Study the activities that the ECK undertakes between general elections which have direct or indirect bearing to successful management and administration of the elections
- Discuss matters that go to promote democracy like the role of political parties, registration, financing organization and operations
- Consider what other activities the ECK can be involved in that enhance its financial strength and such others as can occupy the ECK between the general elections.

GROUP “C”

- Examine the role played by other stake-holders in the electoral process, and seek suggestions on how this can be enhanced in future
- Appraise the current law on campaigns with a view to promoting election campaigns that support and strengthen democratic elections
- Discuss the manner of funding of electoral operation vis a vis the independence and performance of the ECK.

iv) TARGET GROUP

- a) Commissioner
- b) ECK Senior Staff
- c) Collaborators

v) RESOURCE PERSONS

- a) Commissioners
- b) ECK collaborators who have in the past worked closely with the Commission

vi) METHODOLOGY

Since the retreat was organized for the purpose of a "workshop", participants spent the first day in syndicate discussions focusing on given topics. 45 minute breaks were meant for monitoring the progress of individual groups.

The Second day was devoted to presentation and critiquing reports and mapping out strategy for the way forward.

Consequently the programme was as follows:-

Day One (5th May 2003)

4.00 p.m. - Arrival and Registration

Day two (6th May 2003)

8.30a.m. – 9.00a.m - Introductory remarks

9.00a.m. – 9.15a.m. - Nigeria's experience

9.15a.m. – 10.00a.m - Participants break into syndicates

10.00a.m. – 10.30a.m. - TEA BREAK

10.30a.m. – 12.45p.m - Syndicate work

12.45p.m. – 2.00p.m.	-	LUNCH BREAK
2.00p.m. - 3.00pm	-	Participants assemble in a plenary to present progress reports
3.00p.m. - 5.00p.m.	-	Syndicate continue with group discussions

Day Three (7TH May 2003)

8.30a.m. - 10.00a.m.	-	Participants assemble in the plenary for the presentation of reports
10.00a.m. - 10.30a.m.	-	TEA BREAK
10.30a.m. - 12.45p.m.	-	Presentation continue
12.45a.m. - 2.15p.m.	-	LUNCH BREAK
2.15p.m. - 4.30p.m.	-	Joint Re-action by ECK collaborators on:- <ul style="list-style-type: none"> i) Assessment of the 2002 elections ii) Plans for improvement iii) Collaborative approach to the electoral process
4.30p.m. - 5.30p.m.	-	Rapporteurs give summaries of their reports
5.30p.m. - 6.00p.m.	-	Closing Remarks
6.00p.m. - 7.00p.m	-	Cocktail

Day Four (8th May 2003)

Departure after Breakfast

CHECKLIST OF ISSUES TO BE DISCUSSED BY THE WORKING GROUPS

GROUP A: REVIEW OF BOUNDARIES AND VOTER REGISTRATION

Question 1

How appropriate were the constituencies / electoral areas of 2002 in terms of representation if examined in terms of:-

- a) Urban
- b) Rural
- c) Arid and Semi-arid

Question 2

i) Do you consider the 8-10 year constitutional rule appropriate for the review of electoral / constituency boundaries in relation to:-

- a) Population
- b) Administrative Changes
- c) Periodicity
- d) Equity of the vote

ii) What were the shortcomings of the law and process? regarding the review of boundaries?

iii) What should be done to make the process more effective and democratic?

Question 3

i) What were the pitfalls of the December 2002 voter register?

- ii) What were the strategies for disseminating information about voter registration
- iii) Were these strategies effective? If not what needs to be done
- iv) What can be done to make the voter registration exercise effective?

Question 4

- i) Highlight the problems encountered in the collaboration between ECK and the registrar of persons, registrar of birth and death and the provincial administration in the registration process.
- ii) What specific areas in the collaboration need to be strengthened and how can it be done?

Question 5

- i) What were the quality control measures for effective voter registration in reference to the following:-
 - Checks and balances to ensure that the voter registers was accurate
 - Addressing double / multiple registration
 - Minimizing claims and objections
 - Deleting deceased voters from the voter register
- ii) What limitations did ECK face in dealing with violations of the registration of voters?
- iii) What sanctions were put in place to deal with violators of the registration laws, rules and procedures?
- iv) What are the solutions to the above challenges?

Question 6

- i) Did ECK carry out satisfactory publicity about the registration exercise?
- ii) If not what were the constraints and what can be done to improve the publicity?

Question 7

- i) Is it possible to have a uniform registration system in the country that can harmonise:-
- registration of persons
 - registration of births and deaths
 - any other form of registration
- ii) If so, how can it be effectively done?

GROUP B: ECK CORE FUNCTIONS AND MANAGEMENT OF THE ELECTORAL PROCESS

Question 1

- i) Was the ECK structure effective in managing electoral process;
- ii) If not what can be done to make it effective?

Question 2

- i) Did ECK have the appropriate management capacity to carry out its constitutional functions?
- iii) If not what can be done to improve the capacity in the following areas:-
- Institutional capacity (i.e. facilities, equipments e.t.c)
 - Human resource capacity (i.e. in terms of Quality and Quantity)
 - Decision making protocol and implementation procedures
 - Election management (operations)
 - Finance and materials resources
 - Logistics, supplies and procurement
 - Internal & external communication
 - Effectiveness in recruitment of election officials
 - Staff capacity building (i.e. training) and institutional memory / continuity

- Programming and planning
- Monitoring and evaluation
- Reporting and feed back system
- Modern information and communication technology (I.T.)
- Financial autonomy and management procedures
- How can the ECK improve its management capacity vis-a-viz its current structure and resource base?

Question 4

- i) How can the ECK broaden its mandate to cover other elections e.g. supervision of elections for political parties, trade unions, cooperative societies, etc?
- ii) Should ECK be in charge of the registration of political parties and regulation of their activities?

If so how can this be done?
- iii) What are the merits and demerits of funding political parties from the consolidated fund?

What should be the criteria and how should it be done?

Question 5

- i) Should ECK disclose its budget and expenditure to the public? If yes, what is the justification for doing so?
- ii) Consider the merits of ECK sourcing funds for its activities outside the treasury?

GROUP C: ROLE OF OTHER STAKEHOLDERS IN THE ELECTORAL PROCESS

Question 1

How was the collaboration and interaction between ECK and the following stakeholders in the electoral process?

- Non-Governmental organizations and community based organisations
- Political parties
- Media
- Religious Organizations
- Local /International observers
- Development partners
- Government

Question 2

How can the ECK sustain voter education in the whole country between elections?

Question 3

Should there be a limit in terms of campaign funds? If yes how can it be enforced?

Question 4

How efficient were the voting, counting, tallying and announcement of results procedures?

What are the legal and political implications of these procedures?

Question 5

How binding is the Oath of Secrecy?

Question 6

- i) What kind of electoral system do you consider suitable for this country?
- ii) Explain your preference

Question 7

- i) Is it possible for ECK to hold three separate elections (i.e. Local authority, Presidential and Parliamentary)
- ii) Give reasons for your answer?
- iii) If yes, what structures should be put in place to

Question 8

What can be done to democratize the process of:-

- Political party nominations
- Nominations before returning officers
- Nomination of members of parliament and councilors

Question 9

Did the Commission have effective conflict resolution mechanisms? If not, what can be done to improve this area?

