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KENYA NATIONAL ASSEMBLY

TENTH PARLIAMENT – FOURTH SESSION (2010)

THE DEPARTMENTAL COMMITTEE

ON

ENERGY, COMMUNICATIONS AND INFORMATION

REPORT ON
INTERIM INDEPENDENT ELECTORAL COMMISSION (IIEC) OF KENYA'S STUDY
TOUR OF THE STATE OF NEBRASKA, USA, ON BEST PRACTICES IN ELECTION
MANAGEMENT

Clerk's Chambers
Parliament Buildings
NAIROBI

July, 2010

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1. 0 PREFACE

Mr. Speaker, Sir,

1. The Committee on Energy, Communications and Information was constituted on June 17th 2009 and its membership is as follows:-

- | | |
|--|----------------------|
| 1. The Hon. (Eng.) James Rege, M.P. | Chairman |
| 2. The Hon. Maina Kamau, M.P | Vice Chairman |
| 3. The Hon. Danson Mwazo Mwakulegwa, M.P | |
| 4. The Hon. Mohamed Hussein Ali, M.P | |
| 5. The Hon. (Eng.) Nicholas Gumbo, M.P | |
| 6. The Hon. Edwin O. Yinda, M.P | |
| 7. The Hon. Emilio Kathuri, M.P | |
| 8. The Hon. Ekwee Ethuro ,M.P | |
| 9. The Hon. (Prof.) Phillip Kaloki, M.P | |
| 10. The Hon. Cyprian Omolo, M.P | |

Mandate of the Committee

2. The Committee is mandated to consider:-

- Development, production, maintenance and regulation of Energy.
- Communication.
- Information.
- Broadcasting, and
- Information Communications Technology (ICT) development.

3. The Committee executes its mandate in accordance with the provisions of Standing Order 198 (3), which is -

- a) to investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and Departments;
- b) to Study the programme and policy objectives on Ministries and Departments and the effectiveness of the implementation;
- c) to Study and review all legislation referred to it;
- d) to study, assess and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;

- e) to investigate and enquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House or a Minister; and
- f) To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

4. Further, Standing Order No. 152 provide that:-

- (1) Upon being laid before the National Assembly, the Annual Estimates shall stand committed to the respective Departmental Committees according to their mandates.
- (2) Each Departmental Committee shall consider, discuss and review the Estimates committed to it under this standing order and submit its report thereon to the House within twenty one days after they were first laid before the House.

Ministries assigned

5. In executing its oversight mandate the Committee oversees the following Ministries:-
- i) Ministry of Energy
 - ii) Ministry of Information and Communications.

2.0 EXECUTIVE SUMMARY.

6. The ensuing report enumerates the findings of a recent study tour to the State of Nebraska by members of the Interim Independent Electoral Commission, the Departmental Committee on Energy, Communication and Information and representatives from Kenyan civil society. The purpose of the tour was to educate members of the IIEC and the National Assembly, on best practices in the use of Information and Communication Technologies to infuse integrity and improve our county's election management.
7. Chapter 3 of the report provides the background behind the push for electoral reform in light of the 2007 General Elections, which constituted a missed opportunity for democratic consolidation. Further, the chapter highlights the recommendations of the Kriegler Report which impugned the management and supervision of the last election

by the Electoral Commission of Kenya; eventually precipitating that body's disbandment through a constitutional amendment by this House.

8. Chapter 4 represents the core of the report illustrating how the State of Nebraska manages its complex electoral system. Notwithstanding the very different legal jurisdictions between Kenya and the United States of America, Nebraska's election management offers numerous lessons on best practices, some of which can be replicated in Kenya with minimal modifications to our electoral law. The chapter highlights the very stringent measures deployed by the Election Commissioners in Nebraska before a provisional result is declared official. The key lesson learnt is that for Kenyan citizens to accept future elections results, it is imperative that the election management be beyond reproach.
9. Chapter 5 is a summary of the key recommendations by our Committee towards improving the integrity of Kenya's election management. We have proposed immediate and longer term measures which in our view, would help to improve the transparency of Kenya's election management. Among the key recommendations the Committee has made are the automation of the various polling day forms for tabulation and transmission of results i.e. form 16A for presidential and parliamentary results; form 16 which captures the figures for presidential candidates; form 17A which captures the figures for parliamentary candidates and forms 8 & 9 which capture the results for the civic election. In addition, we have strongly recommended that the IIEC triple checks all results through transmission by way of telephone, GPRS [General Packets Radio Service] and physical transmission of the polling day forms; only declaring a result official once all three modes of transmission are in agreement.
10. In conclusion, chapter 6 calls on the Government of the Republic of Kenya to take its duties in meeting the obligations of the IIEC seriously. In the Committee's view, requests from the IIEC for financial support and /or bilateral assistance from third party donors should be acted upon promptly so that the IIEC can accomplish the onerous mandate which this House has bestowed upon it.

Mr. Speaker Sir,

11. On behalf of the Departmental Committee on Energy, Communication and Information and pursuant to the provisions of Standing Order No. 162, it is my pleasure and duty to present to the House, the Committee's Report on the Interim Independent Electoral Commission's (IIEC) study tour of the State of Nebraska on best practices of Election Management: February 15th- 20th 2010.

Thank You.

Signed

Chairman
Hon. (Eng.) James Rege, MP

Date:

3.0 BACKGROUND

12. The aftermath of the disputed 2007 Presidential elections in Kenya precipitated Kenya's most serious political crisis to date. While violence as a means to obtain political power has been a feature of Kenyan elections since 1992, the scope and intensity of the most recent outburst was something few had anticipated. Obviously, if the election management process, especially the tallying and transmission of votes had not been marred by allegations of fraud, the country could have perhaps avoided the 2007 post election episode which left behind bereaved, hungry and homeless people, forced from their homes in ill conceived attempts at ethnic cleansing and tribal balkanization in Kenya.

13. The Kenyan National Dialogue and Reconciliation Agreement in 2008 established the Independent Review Commission [IREC] on the General Elections held in Kenya in 2007 (the Kriegler Commission). The Commission conducted its inquiry by visiting many parts of the country, interviewing citizens with pertinent information and collecting information from many other people who had relevant information on what went wrong with the 2007 General Elections¹. The Commission recommended among other things "review of the Electoral Commission's administrative procedures with a view to introducing as much certainty as possible in key operational areas so as to ensure uniformity of performance throughout the electoral process from polling station level up to the various teams at the national tallying center"². In addition, concerning counting, tallying and announcement of results, IREC recommended

- Integration of the various descriptions of the entire counting and tallying procedure into one document only which will then be the principal description and must be adhered to
- Without delay, development of an integrated and secure tallying and data transmission system
- Access of the media to this new system

¹ Kenya National Dialogue and Reconciliation Committee, Agreement on the Establishment of the Independent Review Commission on the General Elections held in Kenya in 2007, March 4, 2008, available at www.dialoguekenya.org

² See page 154 of IREC's Report under recommendations concerning the ECK's operational procedures