

NATIONAL ELECTORAL COMMISSION

BRIEFING REMARKS BY THE CHAIRMAN OF THE

NATIONAL ELECTORAL COMMISSION-NEC OF

TANZANIA HONOURABLE (Rtd) JUSTICE OF THE

COURT OF APPEAL DAMIAN Z. LUBUVA

IN A MEETING BETWEEN NEC AND MEMBERS OF THE

INDEPENDENT ELECTORAL COMMISSION OF

LESOTHO 22nd APRIL, 2015

Honorable IEC Lesotho Commissioner,

Honorable NEC Commissioners,

Executive Secretary of ECF-SADC,

Director of Elections,

Acting Director of Elections for IEC Lesotho,

Members of the Secretariat from the two Commissions,

On behalf of the National Electoral Commission of Tanzania, I have a great pleasure and honor to take this opportunity to warmly welcome you to Tanzania and to the National Electoral Commission in particular. It is our greatest honor and pleasure to be with you today and share knowledge and experience in the Conduct of Elections in our country. I have no doubt that some of you are visiting the country for the first time and others may have had the opportunity of visiting Tanzania before. I cordially say, you are most welcome to Tanzania and I hope you will enjoy your stay in Tanzania. Despite your tight schedule I trust you will spare some time to enable you to see some of the interesting places around Dar es salaam.

Distinguished Guests, I am given to understand that your visit is primarily aimed at sharing experiences with Tanzania Political Parties and other Election Stakeholders on Tanzania's experiences in conducting Tripartite Elections that is Presidential, Parliamentary and Councilors Election. It is our expectation that you will be acquainted with NEC's Structure, Powers, Functions and Achievements and

Challenges. Likewise NEC will gain from the experience from the IEC Lesotho, which will enrich and facilitate our day to day functions.

HISTORICAL BACKGROUND:

Tanzania Mainland (formerly known as Tanganyika) obtained its Independence in 1961. The Independence Constitution was modeled on the Westminster model. In 1962, Tanganyika became a Republic and hence the 1962 Republican Constitution. In 1964 Tanganyika and Zanzibar united to form the United Republic of Tanzania when the Constitution for the United Republic of Tanzania was accordingly enacted. From the time of Independence until the Union in 1964, both Tanzania Mainland and Zanzibar had been under Multiparty Political System.

On 5th February, 1965, Multiparty democracy in Tanzania was formally abolished and the United Republic of Tanzania officially became single party state. In 1977, the then Tanganyika National Union (TANU) on the Mainland and the Afro-Shiraz Party (ASP) in Zanzibar merged to form Chama Cha Mapinduzi (CCM) as the sole political party in Tanzania. This political system prevailed until 1st July, 1992 when multiparty democracy was reintroduced, following recommendations of the Nyalali Commission. The Commission recommended notwithstanding the public opinion.

It is common knowledge that in Tanzania, elections have been held ever since the time of the independence of Tanzania Mainland, in 1961. However, it must be pointed out at once that, the structure of the National Electoral Commission has undergone structural and functional changes in three phases. Firstly, from the time of independence until on 8th August, 1990, elections were conducted and supervised by a Commission which was under the Chairmanship of the Speaker of the National

Assembly. It comprised of not less than three but not exceeding five members. The Commission appointed the Secretary to the Commission who, in practice was the Clerk to the National Assembly.

Secondly, from 8th August, 1990, the Commission under the Chairmanship of (Rtd) Justice of Appeal Hon. Lameck Mfalila was established. This was still the time of one Party State Political System. In this regard, the 6th Constitutional Amendment of 1990 and the Elections Amendment Act No. 13 of 1990 were of great significance. Major changes were made to the structure of the Electoral Commission and the manner of dealing with election complaints. Apart from the Chairman, seven other members were appointed including a Judge of the High Court of Zanzibar. Significantly, under this amendment, all election complaints were dealt with by the Election Complaints Panel Comprising of three members from among the members of the Commission. The regular courts had nothing to do with the election complaints. For the 1990 General Election, the Commission in this structure dealt with 46 election

complaints in which its decisions were final. Upon final determination of election complaints by the Panel the Commission was required to submit its report to the Minister responsible for Legal Affairs.

Thirdly, with the re-introduction of the multiparty system in the country, the Commission under the leadership of (Rtd) Justice Mfalila came to an end on 14th January, 1993, when the National Electoral Commission in its present form was established. The late (Rtd) Justice Lewis Makame was appointed a Chairman together with six other Commissioners.

The National Electoral Commission under its current structure was established under the Constitution of the United Republic of Tanzania which was amended in 1977.

Article 74 (1) of the Constitution establishes the National Electoral Commission of Tanzania. The Commission

comprises among others, the Chairman and Vice Chairman who shall be persons who have been or who qualify to be Justices of Appeal or Judge of the High Court or persons who qualify to be advocate and must have held those qualifications for a period of not less than 15 years. They are appointed by the President.

Other Members who are also appointed by the President are specified under the National Elections Act, Cap 343 which also provides for the appointment of other members of the Commission in addition to the Chairman and the Vice Chairman. Section 4 (c) of the Act provides for the appointment of a member appointed from amongst members of the Tanganyika Law Society and Section 4 (1) (d) provides for the appointment of four (4) other members who are persons possessing either adequate experience in the conduct or supervision of Parliamentary elections or other qualifications as the President considers necessary for the effective discharge of the functions of the Commission.

The Commissioners of the National Electoral Commission are appointed for a period of five (5) years renewable. The Director of Elections is the Chief Executive of the Commission and Secretary to the Commission. As a Chief Executive, the Director of Elections is the head of the Commission's Secretariat which is charged with the day to day activities of the Commission. It may be observed in passing that even though the law does not provide expressly, gender balancing is in practice not overlooked.

FUNCTIONS:

The functions of the National Electoral Commission under Article 74 (6) of the Constitution and Section 4 (1) of the National Electoral Act, Cap 343 of the Laws are as follows:-

- (i) To supervise and co-ordinate the Registration of Voters in the Presidential and Parliamentary Elections in the United Republic of Tanzania and Councillors' Elections on Mainland Tanzania.

- (ii) To supervise and co-ordinate the conduct of Presidential and Parliamentary Elections for the United Republic of Tanzania and Councillors' Elections for Mainland Tanzania.

- (iii) To review the boundaries and demarcate the United Republic of Tanzania into various constituencies for the purpose of Parliamentary Elections.

- (iv) To declare qualified women who have fulfilled all the conditions, that they have been elected Members of the Parliament or Councillors for special seats.

- (v) To provide Voter Education throughout the country, and co-ordinate and supervise persons involved in the provision of such Education; and

- (vi) To perform any other functions in accordance with any law enacted by Parliament.

Challenges and Constraints

In carrying out its functions the National Electoral Commission of Tanzania faces various daunting problems ranging from inadequacies in funding, election administration, voter registration, voter education, updating the Permanent National Voters' Register, Infrastructure and communication network, technological facilities, results announcement to low voter turnout. Because of financial constraints faced by the Commission the election process is often affected leading to delay in the delivery of essential electoral materials to respective polling stations.

This in turn leads to delay in commencing of voting exercise in some of the polling stations which creates

complaints from the Voters. Likewise, as a result of the inadequacies in the Result Management Systems in adding up Presidential, Parliamentary and Councillors' results, the consequent delay in announcing election results can be a source of complaint of dissatisfaction from the public and political parties regarding the performance of the Commission.

At times the delay gives rise to otherwise unwarranted speculation and perception that the Electoral Commission is manipulating the election results in favour of one of the contesting political parties. In the last general election in Tanzania in 2010, such a situation was experienced in some Constituencies where the Results Management System worked so slowly. Cumulatively, if such deficiencies and inadequacies are not explained to the public and the political parties satisfactorily, delay in conducting election in some constituencies or announcing election results account for the public loss of confidence in the Commission. Hence, the clamour for the so called Independent Electoral Commission.

The question of Voters Register and updating of the Permanent National Voters Register is an absolutely important stage in the electoral process. As provided in the Electoral law, registration of people who qualify to exercise their democratic right to vote is a central starting point. In order to do this successfully, it is the responsibility of the Commission to carry out the exercise well in advance of the scheduled election.

Likewise, after every general election, the National Permanent Voters' Register (PNVR) has to be updated so as to ensure that the names of people who were entered in the Register but have since died or have moved to other polling districts are to be deleted from the Register or entered in other polling districts. Similarly, young people who attain the age of eighteen (18) and hence qualifying for voting have to be entered in the Voters' Register. According to the National Elections Act, the Commission is supposed to update the Permanent National Voters' Register twice during the period after the last general election and the next General Election.

The major constraint which has often been a source of complaint is the inadequacy of funds for carrying out its functions well in advance country wide. As a result, due to non-availability of funds or its availability at the last minute before the election schedule, the Commission faces a major crisis when it fails to update the Register in time before the next General Election. Such a situation leads to complaint against the Commission that it is denying qualified people their constitutional right to exercise their right to vote. It is gratifying that the matter is seriously being looked into by the government with a view to avail funds on time for the task of updating the Permanent National Voter's Register.

In stating the factual situation relating to the financial position of the Commission, we are not oblivious to the general financial constraint facing the country. Despite this however, important matters such as elections have to be attended. This is for the sake of sustaining democracy and the rule of law in the country. However, in spite of such constraint basic functions of the Commission such as the

elections process have to be carried out. In this regard, it is worthwhile considering the way forward as challenges and constraints are part of life.

For instance, in Tanzania, as the general elections are held after every five (5) years, consideration could be made for the establishment of an election fund. Towards this fund, some amount of money would be voted for in the annual budget every financial year until the time of election. In this way after the five years period the financial burden on the Government would be less for the election in that it would not be necessary to allocate the whole election bill in one lot.

The issue of low voter turnout is yet another matter of serious concern. In the last general election in 2010 in Tanzania, the voter turnout was low compared to the previous elections. Various theories are advanced to explain the situation. However, from the Observers' report on the 2010 General Election and the Commission's Report as well

on same, this matter is seriously being followed with a view to take remedial measures.

Independence of the Commission

An Independent Electoral Management Body such as the National Electoral Commission of Tanzania is central to the democratic electoral process in any country which believes in the rule of law. This is also true of Tanzania where the Electoral Commission of Tanzania conducts and supervises elections relating to the Presidential, Parliamentary and Councillors' elections.

In Tanzania, Articles 3 and 4 of the Constitution provide to the effect that Tanzania is a democratic State in which an elected Parliament is one of the three principal organs of State. It is common knowledge that free and fair election which is a pre-requisite condition for the sustenance of democracy solely depends on the existence of an independent Electoral Management Body.

The independence of an Electoral Management Body is central to the electoral process. With regard to the independence of the National Electoral Commission of Tanzania as an Electoral Management Body, the pertinent question is whether the Commission is independent. Currently, the Commission is facing the challenge of dwindling confidence on the part of Political Parties, Civil Rights activists and other stakeholders. The complaint is that the Commission is not independent, something which is based on a number of grounds. First, it is claimed that the members of the Commission are appointed by the President who is also the Chairman of the ruling Party, namely Chama Cha Mapinduzi (CCM). In this situation, the perception is that being appointees of the President, the Commissioners cannot be independent and impartial in their decision with regard to the other political parties and their candidates as against the ruling party, (CCM) during elections.

There is no denying the fact that all the Commissioners in the National Electoral Commission are appointed by the

President who, at the moment, is the Chairman of the ruling Party. However, since its establishment there is no scintilla of evidence to prove that at any occasion the Commission was directed by the President, any Government or Political leader to conduct the Commission's affairs in any particular direction or in favour of any candidate during election.

In this light, there is no ground let alone good cause or rationale for the claim that the Commission is not independent in discharging its functions. If the Commissioners have the requisite qualifications, impartial and are of impeccable character, it is inconceivable that the Commissioners would be so weak as to yield to pressure aimed at influencing them to decide matters in favour of the appointing authority. At any rate, as already stated, the Government has never pressurized or influenced the Commission in any way in discharging its functions.

Secondly, there is also the question related to the financing of the Commission. It is a well-known fact that the Commission like many other Electoral Management Bodies elsewhere particularly in Africa, does not have its own source of revenue for financing its activities. It is the government which wholly finances the Commission activities. Other Development Partners such as the UNDP and other Organisations support the Commission's activities financially to a limited extent especially during election time. In this light, it is again contended that the Commission's independence in discharging its functions is compromised. This again is another aspect which has to be looked at in context. As already observed, if the commissioners truly live up to the tenets of the Oath of their office by stringently adhering to the applicable laws, rules and regulations governing elections, it is doubtful in my view, that the Commission's independence is curtailed by reason only of it being financed by the Government. Incidentally, financial dependence on government is not a phenomenon peculiar to Tanzania. Most if not all, the Electoral Commissions in Africa such as the SADC countries, whose Electoral Commissions Forum (ECF - SADC) Tanzania is a member.

Thirdly, the independence of the Commission is also questioned on the ground that the Commission does not have its own offices outside the Headquarters in Dar es Salaam. Consequently, it is claimed, during elections, the Commission invokes the provisions of the National Elections Act to employ the services of government employees at the Regional and Local Government level as Regional Election Coordinators and Returning Officers. The Commission appoints these Government Officials for the purpose of conducting and supervising election in the respective Regions, Districts and Municipalities. This is perceived by some election stakeholders, including political parties and civil society activists as an impairment to the autonomy and independence of the Commission.

On this, for the years that the Commission has been in operation, experience has shown that for the general and by-elections held in the country, the majority of the government

officials involved in the election process have, on the main, discharged their functions faithfully, impartially and successfully.

However, as the Commission is conscientiously aware of this perception, plans are under way for the possibility of establishing the Commission's offices in the Regions and Districts outside the Headquarters in Dar es Salaam. This would in turn be of great advantage to the Commission and the Government as well. That is, if the Commission has its offices in the various District Councils, some of the election equipment or material that is otherwise left unattended until the next election would be properly taken care of and that would be a saving of money spent in buying the same equipment every election time. This of course would be an added advantage apart from minimizing the perception touching on the independence and autonomy of the Commission as a result of the Commission's use of government officials and offices.

To recapitulate, from the experience gained during the period the National Electoral Commission of Tanzania has been in operation, I am strongly inclined and convinced that despite the constraints faced, the Commission has, on the whole, carried out its functions relating to the supervision and conduct of elections independently and successfully. At this stage it could also be pointed out that the independence of an Electoral Management Body (EMB) does not depend on one single factor.

Coincidentally, the Proposed Constitutional put in place new process of appointing Commissioners. However, it is to be underscored that until the New Constitution is in place, the Commission has to continue carrying out its functions in its present form in order not to disrupt the electoral cycle for the forthcoming the Referendum and General election in 2015. By way of preparation there are a number of things that have to be attended to by the Commission as from now if the forthcoming elections are to take place as scheduled. For instance, the updating of the Permanent National Voters' Register among others. For the time being the registration of

voters continues, this time the Commission registering voters through a new technological system, Biometric Voter Registration (BVR).

CONCLUSION:

The importance and central role of the National Electoral Commission of Tanzania hardly needs to be overemphasized. This is because its basic core functions are to supervise and conduct elections in the country relating to Presidential, Parliamentary and Councillors Elections. The electoral process being an intrinsic component for the sustenance of democracy in the country, the rule of law is the end result of a successful free and fair election. Like any other country which believes in the rule of law, this is also true of Tanzania in relation to the National Electoral Commission of Tanzania.

Structurally and functionally the Commission's independence is guaranteed under the constitution and other relevant electoral legislations. As a result, the Commission is free from interference from the Executive with regard to the

day to day functions of the Commission in conducting and supervising elections.

As there is no particular mode of an Electoral Management Body which suits the peculiar circumstances of each country, the independence and autonomy of the National Electoral Commission of Tanzania has to be looked at within the peculiar circumstances of Tanzania.

Notwithstanding the current outcry by Political Parties and other civil rights activists that the Commission is not independent, judged fairly, taking into account all the factors as a whole and not singly, considering the functioning of the Commission since its establishment, it could, without any hesitation be concluded that the independence of the Commission is a reality and not a myth.

THANK YOU FOR LISTENING