



Remarks by Mr. Halakhe D. Waqo, CBS, MCI Arb.

Secretary/Chief Executive Officer

Ethics and Anti-Corruption Commission

on

*Fostering Electoral Integrity and Mitigating Electoral Fraud
during the National Elections Conference, 2017 held on 12th – 14th April
2017 at K.I.C.C. Amphitheatre*

- **All distinguished guests**
- **My fellow panelists**
- **Participants**
- **Ladies and Gentlemen,**

Good Morning,

1. I am delighted to be part of the panelist to discuss this well timed topic on **Fostering Electoral Integrity and mitigating electoral fraud**. As the country prepares for the 2nd General Elections under the Constitution of Kenya, 2010 there is increasing focus not only on the integrity of the process but also on the candidates themselves.

2. EACC was established following the enactment of the Ethics and Anti-Corruption Commission Act, 2011. It is principally mandated to enforce and ensure compliance with the requirements under Chapter Six on leadership and integrity.
3. EACC has been undertaking that Constitutional mandate since it took over from the erstwhile Kenya Anti-Corruption Commission in 2011. The first general election under the 2010 Constitution was held in December 2013; and it is common knowledge that matters of integrity were not given due prominence.
4. However, this is not the case as we approach the 2nd general election to be held under the Constitution, which are now imminent on August 2017. The area of integrity for candidates in

the election has elicited a lot of interest among Kenyans. This Conference serves as an ample opportunity for us Kenyans to look back and reflect on what we have done in ensuring that only those candidates who meet the threshold of integrity shall participate in the election.

Legal/Policy Framework for Vetting

5. The legal and policy framework for integrity verification of candidates in Kenya is found in various laws including:
 - a. the Constitution of Kenya,
 - b. the Leadership and Integrity Act, 2012;
 - c. the Elections Act, 2011;
 - d. Anti-Corruption and Economic Crimes Act, 2003;

- e. Public Officer Ethics Act, 2003;
 - f. Independent Electoral and Boundaries Commission Act, 2011; and
 - g. Political Parties Act, 2011.
6. Article 10 of the Constitution provides for national values and principles which include *good governance, integrity, transparency and accountability*.
7. Chapter 6 of the Constitution addresses itself to the singular issue of leadership and integrity. Article 73 provides a guide on the principles of leadership and integrity which include among other things:
- a. Selection on the basis of personal integrity

b. Competence and suitability; or

c. free and fair elections

8. Candidates who wish to be appointed or elected to State and public offices are required to present to the Commission self-assessment forms providing information upon which the Commission can vet their suitability. With respect to the upcoming general election in August, the Commission has verified integrity requirements for candidates as requested by the IEBC; as follows-

Elective Position	Independent	Nominated By Parties	Total
President	11	9	20
Governor	63	183	246

Senator	82	265	347
County Woman Representative	70	262	332
Member of National Assembly	596	1479	2075
Member of County Assembly	3942	9221	13163
TOTAL			16,183

9. Out of the said list, the EACC has raised concerns on a number of candidates who have integrity issues. However, verification of the issues raised is still in progress, and I will not therefore comment further on the issue.

Main Findings – Violations of Chapter Six Requirements by Candidates

10. Some of the cross cutting violations on Chapter Six requirements by the candidates which have been unearthed after investigations, and which have been communicated to the IEBC include the following-
 - i. Falsification of academic certificates.
 - ii. Candidates charged in court, with some being convicted, for offences on corruption, economic crime and ethical breaches.
 - iii. Dual citizenship.
 - iv. Engaging in public affrays.

11. The main focus of my presentation is to share with you the key challenges which we as a Commission have been faced with in implementation of the requirements under Chapter six of the Constitution.

Challenges in Implementing Leadership and Integrity Requirements under Chapter Six of the Constitution

- i. **Inadequate legal Framework:** Weak legal framework which is insufficient to ensure adequate enforcement of the requirements of the Constitution on leadership and integrity. In particular-
 - a) The LIA does not create offences to address violations of the requirements.

b) Lack of provisions and/or clear guidelines on removal from office or other administrative sanctions against those who violate the requirements.

ii. Court Orders: These are usually in the form of-

a) Inconsistent judicial pronouncements on the required threshold of constitutional and statutory standards of leadership and integrity.

b) Adverse court orders that hamper investigations and prosecution of offenders.

iii. Lengthy legal process for Mutual Legal Assistance which hampers conclusion of investigations into violations of

Chapter Six of the Constitution and the Leadership and Integrity Act;

- iv. Volatile/unstable operational environment** for the Commission over the years, brought about by frequent changes in top management. This is not conducive to a sustained war on corruption and unethical behavior.
- v. Politicization of the fight against corruption**, which exacerbates the public perception of corruption in the country.
- vi. Entrenched unethical culture and tolerance** of unethical behavior in the Country. Kenyans glorify the corrupt and are not keen on reporting corrupt practices to the authorities.

- vii. Large public sector:** there is an expanding need to enforce integrity and ethics matters in a public sector of approx. 700,000 public officers which overwhelms the capacity of agencies that play a role in mainstreaming ethics and integrity. Moreover, the Commission is currently not adequately staffed to fully attend to matters of ethics and integrity throughout the country.
- viii. Reluctance** of public institutions and county governments to mainstream the integrity and anti-corruption agenda
- ix. Lack of a National Ethics and Anti-Corruption Policy.**

- x. Emerging trend where individuals want to raise the bar/threshold of ethics and integrity to that of criminal standards vis-a-vis global trends.
12. In conclusion, as we prepare to choose our leaders in the coming General election, let us promote the spirit of chapter six, which seeks servant and transformational leadership by electing leaders with high standards of integrity and ethics

Thank you and God bless you.

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