

## Our state of election preparedness<sup>1</sup>

It is now confirmed that the much anticipated voter registration exercise will not commence on 1<sup>st</sup> November 2012 as expected. With the enigma surrounding the full delivery of the Biometric Registration kits nobody can say for sure when the registration will start. Promises of mid month commencement appear directed at quelling public anxiety over the late registration.

Voter registration is central to an election. On one hand, an inculpable voter register supplies the raw material necessary for holding a free and fair election. On the other, a flawed registration disenfranchises voters and establishes a foundation for election fraud.

That we have not started the registration exercise a mere five months before the general election is a cause for great concern. The timelines for completing essential steps to delivery of an election are perilously close and the challenge of delivering a register within the remaining period is manifestly alarming. In seeking to extend the permissible period for registration of voters and perhaps to ensure that no eligible voter is locked out, parliament in a recent amendment reduced the period within which the IEBC may register voters before a general election from ninety days to sixty days. The substance of this amendment is that the IEBC must keep the registration process open until sixty days before the general election. Assuming the election date remains on 4<sup>th</sup> March 2013, the registration process must be open until 4<sup>th</sup> January 2013. This apparently innocent amendment has serious negative consequences. The amendment has rendered an already bad situation manifestly grave. Were the IEBC to conclude registration earlier, any citizen may petition the courts for a re-opening of the process.

Trying to establish a new voter register containing possibly twenty million voters till sixty days before a general election poses a massive operational difficulty. Picture this: in ordinary circumstances three key processes follow field Biometric Voter Registration (BVR) data

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collection. First, is computer matching of the unique identities of the voters. Second is voter inspection of the register and third is the certification of the register by the IEBC. Before the completion of these processes the register exists only in draft.

BVR entails a biometric recording of unique voter features for recording. After the distinctive features are documented they are matched against or compared with all other records to clean the data, eliminating possibilities of double registrations. This technique, depending on the capacity of the data base application employed, is not inflexible. It is time specific. For a possible voter quantum of twenty million, the procedure would last at least thirty days. This is the first stage of register preparation. Upon completion of this exercise the register would be available for inspection. Under section 6 (2) of the Elections Act, the IEBC is under obligation to keep the principal register open and available for inspection for a period of at least thirty days. Although the IEBC may choose to condense this period, a lengthy inspection of the register is imperative especially after a fresh, countrywide voter registration. After the period of inspection, the IEBC is required by section 6 (3) of the Act to undertake corrections and compile the amendments to the register thirty days before an election. The IEBC must then publish a notice in the Gazette declaring that such a compilation had been completed. Only after going through these processes can the IEBC certify the register as suitable for use in an election. To ignore any of the statutory timelines will invite a court challenge and a possible reversal of the planning for the election. None of these statutory processes can be disregarded.

### BVR Registration Process

Let us examine a BVR registration process. First, BVR kits are not interconnected. A voter may therefor register more than once and the stand-alone kit will not recognize the irregularity. For this reason BVR data must undergo a matching procedure. Within the sixty-day limit set by the amendment, it is doubtful whether there will be sufficient time to do the matching of identities of all the registered voters. Unless this is done the database will be inaccurate and incomplete and the value of the BVR system will be greatly undermined.

A BVR register which has not undergone a matching process will be as good as the optical mark reader –OMR- that has been so unfairly castigated. There is no doubt that BVR offers maximum technological solutions to human failings. It improves voter identification and eliminates double registration. But that is where the utility of the system ends. BVR has no defense against intentionally committed fraud. On that score it stands on the same platform as the optical mark reader system. Now that it has been heralded as the cure for our election related problems we must make it deliver on its most potent utility; the elimination of double registration. It is therefore critical that matching of identities be done to ensure no voter registers twice. In Ghana where the system has been implemented a matching formula revealed a voter who had registered fifteen times. There were eight thousand multiple registrations on a voter roll of twelve million people. One may say that the percentage of failure is minimal, but it could be higher if the harvesting of data is not undertaken properly.

In many jurisdictions BVR field operations run into several obstacles. Often there are technical challenges related to the working of the equipment. To achieve success the computer, printer and the finger print scanner together with the power generation kit must work at optimum levels. If one fails the whole system is rendered redundant. Deployment logistics must thus include testing of the kits before operation.

It should be foreseen that there will be challenges of accessibility to rural and under developed terrain particularly now that we are approaching the short rain season. On another level, Clerks if not well trained or sufficiently versed with the working of the system may not work as fast as anticipated with the consequence that they may not register as many people as would be desirable. The typing speed of the clerks will determine how many voters are registered in a day. Unless the exercise is accelerated there may be a need to extend the registration period. Yet a hurried registration may reduce the accuracy of the data and impact negatively on the final register. If per chance the IEBC would need bigger capacity to undertake the matching, the easy route would be to export the data and have the biometric comparison

and duplicate identification undertaken elsewhere. But this outsourcing would raise serious concerns on the integrity and accountability of the process, legal responsibility and ownership of the resultant database. In the course of biometric registration for the referendum it was noted that the IEBC would have to contend with certain cultural, religious and social issues. In some regions, women were reluctant to expose their faces for purposes of photography by male clerks. Such delicate sensibilities should be respected and voters handled with respect and decorum befitting their sense of self worth.

BVR is not electronic voting. BVR will not of itself move us into an electronic voting system. Even with the BVR system we still will produce our IDs, ink our fingers and tick the box of our preferred candidate. The voting and counting of the ballots will be manual.

A host of pre election processes presume the completion of the registration activity and existence of a register. Nominations to run for elective office either by political parties or as independent candidates depend on the register. For the IEBC to accept your nomination you must show that you are a registered voter. In other words, nominations for the general elections will not begin until the registration process is complete. If not, which register will the IEBC use to conduct nominations? If registration continues to 4<sup>th</sup> of January 2013 the IEBC must conclude all procedures necessary to prepare the register to enable it use that register for nominations. No doubt this will suspend party nominations with the risk of delaying all other election preparation activities like the printing of ballots. If printing is delayed the bulky six ballot papers will have to be airlifted, further escalating the cost of our elections. There is a real fear that a continuous registration to 4<sup>th</sup> January will push the election date far beyond 4<sup>th</sup> March 2013.

It must be foreseen that there will be serious disputes arising from party nominations. Under the constitution the Commission is charged with the duty of settling these disputes. If the Kajiado and Ndiwa By election nominations are a precedent then the Commission shall be faced with a barrage of disputes too many to handle and too serious to ignore. There certainly will be disputes for five of the six elective offices; Senator, Member of Parliament, Women Representative,

Governor and County Assembly Representative. Has the Commission put in place a system to deal with this eventuality? How should this dispute machinery work? Should it assume a regional base with a national appellate seat? Would a candidate who has not obtained a favorable result resort to court adjudication? These are not idle concerns. With our politics becoming increasingly regional, the temptation to stretch nomination wrangles is all the more attractive because in many counties and constituencies the nomination exercise shall be as good as the general election itself. Once the dominant regional party nominates a candidate, that candidate may consider themselves elected. Further, the right to stand for election is a right protected by the constitution. If a candidate argues that their party has unfairly nominated a candidate against agreed nomination rules such an argument should find an accommodation with the courts. For the areas where there will be disputes, the IEBC will not commence printing of ballot papers until determination of those disputes. No one can tell for sure how long this will take. To ensure a quick resolution of the possible disputes, the Commission and the Judiciary Election Committee need to agree on a timetable of events and final timelines.

Parliament recently finalized a consideration of election regulations made under section 109 of the Elections Act. Regulations import certainty and clarity into election procedures. In ordinary circumstances, regulations may be made at any time in the election period. Indeed regulations, by their very nature are meant to deal with short-term needs. In requiring the IEBC to make regulations four months before an election, the Act unduly ties the hands of the IEBC and disables it from dealing with situations not foreseen earlier. It also opens wide the possibility of the IEBC acting outside the regulations by issuing directives and statements to guide the election process in unexpected occurrences. That the IEBC may have to deal with un-anticipated issues and contexts is not uncommon. When this happens the IEBC will find itself in great difficulty and any directives issued will be open to court challenges by those who think that they are disadvantaged.

In finality, the effect of the amendments to the Elections Act introduced by the July 2012 Statute Law (Miscellaneous Amendments) Act and

the recent Abdikadir and Isaac Ruto sponsored changes have increased the period by which political parties may organize for elections to the detriment of the IEBC. The extended preparation time for political parties has correspondingly reduced the preparation period for the IEBC. The loser is the voter.