

February 2018

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Recommended Citation

Kimani, Judith (2018) "Election Violence in Kenya," *The Siegel Institute Journal of Applied Ethics*: Vol. 7 : No. 1 , Article 1.

DOI: 10.32727/21.2018.7

Available at: <https://digitalcommons.kennesaw.edu/silecjournal/vol7/iss1/1>

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Election Violence in Kenya

Cover Page Footnote

I would like to thank Dr. Linda M. Johnston Executive Director and Professor at Siegel Institute for Leadership, Ethics, and Character at Kennesaw State University for her help and guidance while writing this article. I would also like to thank my sons, Lawrence and Liam for your patience, support, and encouragement while I was writing this paper.

Election Violence in Kenya

Writing this paper has been an exciting learning process, and some of the events that have occurred since I started on it have not been experienced before. Initially, I thought I would be focusing on past elections in Kenya, especially the 2007 election but the 2017 election has thrown my way opportunities that I could not let just slide. From the annulment of the August 8th presidential election, to the resignation of an official from Kenya's electoral commission to the withdrawal from the re-run election by the main opposition leader in Kenya; this has given me an insight into the electoral process in Kenya and what works, what does not work and what can be improved on. It has also been a time when the actions of Kenyans and their political leaders have shown clearly that tribalism in Kenya is real and is one of the significant issues that the country faces one that has been a substantial cause of conflict in the country, and one that Kenya needs to find ways to end.

Compared to its neighbors, Kenya has been quite a peaceful country, but it has had a considerable amount of conflict that mostly occurs around the election period. The country did experience conflict during its transition from a one-party state to a multi-party state. This was because those in power then were unwilling to allow the transition to happen and those against this kind of a regime were determined to see change happen.

The Kenya of today is marked by increased tension between ethnic groups which is also how the leading political parties are formed. Most Kenyans tend to support the party headed by those within the same ethnic group. Due to this there has been increased tension around the election period. Kenya has experienced election violence several times in the last 20 years. The worst of these was after the 2007 elections that left 1,500 dead, over 3,000 women raped, and 300,000 internally displaced. Despite this kind of violence, Kenya has come a long way to uphold democracy but still has a long way to go as it works on ways to make this democracy better.

Ethical Issues Associated with Election Violence in Kenya

Some of the issues that have prevented Kenya from having fair, free and transparent elections go back to the colonial times and have continued to handicap Kenya's path to real democracy. These evils are tribalism, corruption, ignorance, and neo-colonialism. These atrocities have been used and continue to be used by those who know how to use them to gain the upper hand and, in the process, they leave those with good intentions and the poor without a voice.

The Kenyan politicians have used the above-referenced evils to their advantage. Due to these kinds of practices, the following ethical issues have been rampant in Kenya during the election period and there is a great need for these to be addressed. These moral issues are:

- Corruption that enables the bribing of voters and law enforcement personnel

- Intimidating and silencing of opponents
- Making false promises
- Disuniting people along tribal lines
- Police violence and abuse

There are also other reasons that have sparked post-election violence in Kenya, especially after the 2007 election. These are:

- Unclear election results that are not credible – the 2007 post-election violence started after the announcement the presidential results where Mwai Kibaki was declared the winner over his primary opponent Raila Odinga who claimed there were rampant instances of vote-rigging. There was very little transparency, and this led to tension.
- A system where the winner “takes it all” - Kenya’s politics operates more on personalities instead of ideologies. This means that the winner of an election is viewed as a vehicle for advancement for his party and the ethnic group he represents, and not for the whole country.
- A precedent of violence proving effective - there have been instances where hired gangs have been used by politicians to influence elections results mostly through intimidating opponents or voters. The tenured politicians in Kenya have used violence to swing votes their way especially when they feel the candidate is very likely to win a seat.

Pre-Election Intimidation in Kenya

In July 2017, Human Rights Watch (HRW) reported that there was a need for the Kenyan authorities to investigate allegations of threat and intimidation between community members in Naivasha, a sub-county in Nakuru County, before the August 2017 elections. HRW had interviewed different people, and they found reason to be concerned since a lot of people in Naivasha had described threats and intimidation and that the police had neither conducted any investigations on the threats nor had they prosecuted the culprits or provided any protection to the residents. In this community, those members who were supporting the opposition were being forced to pack their belongings and leaving the area ahead of the elections. Due to these moves, the head of the Catholic Church in Nakuru had expressed his concerns over the rate at which community members were fleeing the area. The HRW advised that at the time of coming to press they had received and documented six incidents of threats against opposition supports and that it was evident that such threats were prevalent. The opposition community members had repeatedly been told to stay away from polling stations if they intended to vote for the opposition party. HRW did not receive any reports that the ruling party supporters had received any threats or were vacating any opposition strongholds (HWR, July 2017).

The Human Rights Watch (HRW) reported that in the 2017 election, pre-election intimidation was also experienced by members of the Kenyan media. The local press had to walk a fine line

and were facing accusations of being biased from the opposition and the government. Before the 2017 election, the HRW spoke to journalists and found out that many of these journalists were self-censoring to avoid getting in trouble with the state. The journalists and editors talked of threats they received before the elections and of the harassment that they receive from the police and other state agents (HWR, July 2017).

The HRW in June 2017 reported on the alleged arrest of the Nation Media Group journalist. He was arrested and held for two days and then released with no charges against him. His employer argued that his arrest may have been triggered by an article that he wrote that described the involvement of some civil servants in the "Friends of Jubilee Foundation," an organization that purports to work on poverty alleviation but was also raising funds for Kenya's ruling party re-election bid. The Kenya Union of Journalists argued that this was an intent by the authorities to discredit this journalist and that the arrest was intended to intimidate and discourage investigative reporting around the elections. In the May HRW report "Not worth the risk," the Kenyan government has been accused of using the police to undermine and violate the rights of journalists increasingly. The report argues that the police are part of the state-orchestrated intimidation of journalists whose main aim is to discourage journalists from publishing stories that extremely criticize the state. The authority continues to use short-term detention and judicial processes to bully and silence journalists. Kenya headed into the 2017 election with a press that did not have freedom and journalists were unwilling to risk their lives or their liberty to tell stories as they were (HRW, June 2017).

Per the Journal of East African Studies, (2014) in the months leading to the 2013 elections in Kenya, the Coastal region leaders repeatedly called for a boycott of the election. This was part of these leader's campaign for secession. In this region, violence erupted in a lot of localized areas, and there was a possibility of this spreading to other areas. This kind of violence is likely to intimidate voters before the elections, and some choose to stay indoors and boycott the election all together to ensure they are safe (Willis & Chome, 2014 p. 115).

In February 2013, Reuters reported that intimidation was prevalent before the March 4th, 2013 election. In the news article, it is said that voter intimidation, expulsion threats and a rise in purchases of machetes were pointing to violence in the general election. There were reports that there had been massive acquisition of pangas (machetes) in some parts of the country meaning that people were arming themselves either for defensive or offensive purposes. The report indicated that there had been threatening leaflets that were circulated that aimed at getting the minorities to leave their homes or businesses and return to their ancestral land. This spread fear amongst the minority groups in an area and some opted to go (Reuters, February 2013).

Political Tribalism in Kenya

Tribalism, and for this case political tribalism, has become a cancer that Kenya has not been able to rid itself off. So, how did tribalism come about and what are the consequences of tribalism in Kenya? Tribalism is the emphasis on high loyalty to groups. It harbor's loyalty to one's tribe with strong negative feelings for those from another tribe (Standard Newspaper, September 2016).

Causes of Political Tribalism in Kenya

First and foremost, I would like to look at the roots of tribalism. The origins of tribalism are said to have started due to colonialism since before then, most of the different tribes did not interact with each other as much. People tended to stay within their regions, those in Western Kenya stayed there, the ones in Central Kenya and just everyone stayed where there were. Urbanization is also a cause of tribalism, and so is the political culture that came with an independent Kenya (Standard Newspaper, September 2016).

The British colonialists mostly used the "divide and rule," and they concentrated on the differences of the people which led to clashes and lack of trust amongst communities. This is what Kenya inherited from the British and these divisions are still present in Kenya today. Kenyans have not been able to rid themselves of these issues from the colonial times since they have mostly concentrated on their differences instead of their similarities and aspects from the different tribes that are likely to help the country progress. During independence, two parties which ran on a similar platform but differed considerably in ethnic and social bases ran for the election in 1961 and 1963. These are the same ethnic cleavages Kenya is still experiencing today (Standard Newspaper, September 2016).

Political tribalism in Kenya has been blamed for the failure of the country to progress. It has been blamed for the rampant corruption that exists in Kenya and lousy leadership at whatever level. This issue started too at independence where Jomo Kenyatta, the prime minister then and the head of KANU, used a "carrot-and-stick approach" towards the opposition at that time. He promised positions and patronage to those in the opposition who were willing to defect to the ruling party but withheld even the distribution of public services like roads, education, and healthcare to areas where the opposition leaders originated. This deprivation eventually led the opposition to merge with the ruling party and from there Kenya became a one-party state with Jomo Kenyatta as the first president. Even from early on, it is evident that political tribalism affected the development of Kenya (Barkan, 1993, p. 86).

Barkan in his text on "Kenya: Lessons from a Flawed Election," argues that political tribalism was there from the very start when Kenya gained its independence from the British. Between 1966 – 1978, Kenya's first president Jomo Kenyatta ruled Kenya but favored the core groups of the original ruling party alliance. The Kikuyus and the Luos were seen to dominate in the civil

service, in parastatals, and in the army; these were mostly the group that comprised the upcoming middle class in the country (Barkan, 1993, p. 87). Those regions that supported the ruling party KANU especially the Kikuyus in the Kenyan highlands were rewarded with state policies that favored them in coffee and tea farming. Anyone who did not challenge the president's leadership was paid with promotions and a promise of long tenure in office (Barkan, 1993, p. 87).

When Daniel Arap Moi came to power after the death of Kenyatta, the same kind of leadership continued only this time; there was a shift. He favored the different tribes and did everything to oppress the Kikuyu's and related groups who had been favored by the first president. These groups were pushed out of their positions in the civil service and parastatals and were replaced by members of "disadvantaged groups" (Barkan, 1993, p. 88). He seems to have undone everything that the first president had done by shifting the advantage to another group of people. Unlike Kenyatta, Kenya's 2nd president was hard on his critics who he labeled as disloyal, and he issued "warnings" to them which quickly became staples of his rhetoric.

This kind of leadership continued until July 7, 1990, when there was a public demand to end the one-party state. Before this, many that had demanded change had either been detained and held with no trial or harassed until they were quiet.

Another reason as to why political tribalism continues in Kenya until this day is because most political parties are formed on ethnic and tribal lines. Stephen Orvis asserts that the Moi regime led to a liberalization that "caused an explosion of unprincipled political tribalism with which groups compete for public resources" (Orvis, 2001, p. 9). He advised that after July 7, 1990, that the opposition was formed along personal and ethnic lines. This did not help reduce political tribalism in the country but exacerbated it. This issue continues to date, where the ruling party and the main opposition party are formed on tribal lines.

Political tribalism in Kenya continues to date because in most elections, just like the political parties are formed on ethnic lines so are the voting patterns. This means that "parties were overwhelmingly dominant in their respective "zones" (Orvis, 2001, p. 9). To this day, no one has succeeded in politically uniting the ethnic or even sub-ethnic groups. Orvis argues that "Liberalization of Kenyan politics has intensified political tribalism" (Orvis, 2001, p. 9).

I feel that language has also heightened the issue of political tribalism in Kenya. Research shows that multilingual individuals present differently in the various languages they speak. This happens a lot in Kenya where most people speak at least three languages. For Kenyan politicians, this ability to shift to another language signifies that they can use language to divide the political realm into two separate fields. One, that of English, and the second, that of Swahili, mother tongues and Sheng (slang). This second one is always more combative and raucous. Politicians in Kenya are known to switch to local languages to create a more private space (Nyabola,

October 2017). When this happens, insults and gossip of the other person flows fast and becomes the thrust of politicking. This linguist dissonance reduces politics to a form of entertainment and influences how voting behavior. This issue of language brings about two questions in my view: it divides one ethnic group from another due to the language, and second, it can impact the rural voter since policies that affect them are discussed in English which they may not understand and thereby could end up voting for a candidate that is not working for their benefit. This will happen because they fail to realize such a candidate's stand. Also, Keeping the English world of legislating separately from that of "real politics" makes it harder for voters to articulate their demands. (Nyabola, October 2017)

Not only do leaders in Kenya use their local language to separate themselves from others but all Kenyans do. I have seen this happen not just within Kenya but even in other countries like in the US where if one meets another Kenyan, they are likely to speak in Swahili instead of in English.

Kenya is an ethnically diverse country, more so when we come to languages. There are over 40 ethnic languages that are spoken in Kenya. Over time in Nairobi, another language emerged in the last 20-25 years, Sheng. This is a language of many hats that incorporates Swahili, English and different ethnic languages in Kenya. It is mostly spoken by the youth and has spread to major towns in Kenya and is also spreading to the rural areas. Sheng has been and is being used in Kenya as a way of showing solidarity between the different ethnic groups (anti – tribalism). It is also used in place of one's mother tongue to avoid dividing people. In 2007 post-election violence, language was used to separate one ethnic group from another. Due to this, most of the Kenyan youth are moving into using Sheng and avoiding using their mother tongue. This is because different Kenyan ethnic languages have been politicized so much and Kenyan youth is moving to using Swahili and Sheng to show strategies of neutrality (Bischoff, Cole, Fountain, & Miyashita, 2013, p. 248).

Consequences of Political Tribalism

Tribalism has reigned in Kenya for so long and time is coming where Kenyan citizens, with their leaders included, must intentionally decide on bringing it to an end. But how can this happen when tribalism and voting on tribal lines have become so pervasive in Kenya? Former US President Barack Obama reminded Kenyans that "Politics solely based on tribe and ethnicity is doomed and can tear a country apart" (Nation Newspaper, 2017 September 16th). A great example of this was the 2007 post-election violence that left many dead and displaced. Obama went further and advised that Kenyans need to shun tribalism and ethnicity but instead focus on nation building using three strong and crucial pillars: "strong and transparent democratic governance, universal economic development, and a strong sense of national identity that rejects conflict for a future of peace and reconciliation" (Nation Newspaper, 2017 September 16th). He sensitized on the need for Kenyans to build their nation in a common bond, united and not allowing anyone to divide them along ethnic-religious and political lines.

Tribalism in Kenya has been a cause of rising corruption, marginalization, disfranchisement of entire communities, and full-blown violence.

How to Combat Tribalism in Kenya

The independent global digital media platform, “Open Democracy” asserts that there is a need for Kenya to consider ways it can reverse the evils that have come forth due to tribalism. In their November 30th, 2011 article on "Focus on Tribalism in Kenya," they gave the following items that Kenyans need to do to reverse tribalism.

1. Kenyans need put an end to ethnic allegiance since this has been the most significant influence and motivator on the ballot (Masakhala, November 30th, 2011).
2. Kenya needs to put in mind the need for negotiated democracy versus forced democracy to maintain stability and reduce violence. A good example is the power-sharing that was done in Zimbabwe in 2008; negotiated democracy has worked in South Africa and Rwanda. Negotiated democracy in Kenya can only be reached by creating more executive positions beyond the president and the deputy president. This would, however, need to call for a referendum to establish (Masakhala, November 30th, 2011).
3. Beside power-sharing, Kenyans need to come up with a precise formula of sharing resources too through constitutional arrangements. This would ensure that there is not a skewed distribution of state resources and in the process, make sure that each tribe or region is fairly treated and represented. It is also necessary to enforce strict laws to regulate discriminatory practices in the provision of public services (Masakhala, November 30th, 2011).
4. Tolerance is apparently a significant requirement if Kenyans are to be united in diversity so that citizens learn to accept and accommodate customs and practices that are different from theirs. Kenyans need to get to a realization that just because one is different does not necessarily mean they are wrong in what they say, do or think. This would also mean that Kenyans should learn to remain respectful of each other's cultures and customs (Masakhala, November 30th, 2011).
5. Meritocracy must be fully embraced in both the civil service as well as the private/corporate sector and only the most qualified people who should be considered for job placements, the hiring process ought to be transparent, interviews were done and only the best candidates considered (Masakhala, November 30th, 2011).
6. I think the premise that Kenyans ought to take as far as language is concerned is that of using language as a way of expressing diversity viz a viz that of using language to divide Kenyans. Article 7 of the Kenyan constitution states English and Swahili as the two co-

languages in Kenya. The same report requires the state to promote and protect the diversity of language of the people of Kenya including promoting and developing and use of indigenous languages, Kenyan Sign Language, Braille and other communication formats and technologies accessible to persons with disabilities. The main thing that Kenyans need to do is not to use their local languages to separate themselves from others but use these languages to show diversity (Masakhala, November 30th, 2011).

Should Kenya succeed in addressing and reversing tribalism, the conflict would also be defused, and eventually, governance should improve, corruption reduced, investment will increase, those in the diaspora will return home and take part in building a better Kenya.

Kenya's Ethnic Make-up

The table below shows the ethical makeup of Kenya. Kenya has more than 42 tribes but as shown below, the tribes following the “ruling and the opposition parties” make a small part of the voters and it is a high time that all the other tribes work on getting involved in the political sphere.

Table 1: Distribution of Ethnic Groups in sample and Population

Ethnic Group Share	Sample percent	National Population
Kikuyu	18.7	20.78
Luhya	15.7	14.38
Luo	12.3	12.38
Kalenjin	8.5	11.46
Kamba	9.3	11.42
Kisii	8.0	6.15
Meru	8.2	5.07
Mijikenda	6.2	4.70
Maasai	2.2	1.76
Turkana	2.1	1.32
Embu	1.1	1.20
Taita	1.9	0.95
Teso	0.2	0.83
Kuria	0.1	0.52
Basuba	0.1	0.50
Samburu	0.1	0.50
Arab	0.2	0.16
Somali	3.1	0.21
Swahili	0.5	0.37
Pokot	1.0	0.37
Bajun	0.20	0.26
Nubi	0.2	-
Borana	0.1	0.31

Data are based on the 1989 Kenya Population Census (Nairobi, Central Bureau of Census)

With the above data, if all the other Kenyan tribes came together and stopped following the ruling party and the main opposition, they can quickly oust them and create collaborative power.

How to Combat Election Violence in Kenya

What can Kenya do to end or terminate this kind of conflict? What can the government of Kenya do to aid in this process? Christopher Mitchell in his paper on "A Willingness to Talk" on p. 1 defines conflict termination as, "a process by which coercive conflict behavior is ended, and some agreement is reached which deals with the issues in dispute and which enables the parties to coexist without overt, physical coercion – at least for the time being" (Mitchell, 1990, P. 1). He goes further and asserts that the disputing parties would have to put aside the issues causing the dispute. He argues that a conflict termination is like a cease-fire or a complete resolution of the conflict. After the 2007 election violence, a coalition government (between the ruling party and Kenya's main opposition party) was formed to terminate or end the conflict in Kenya. Henry Amadi in his text on this coalition government argued that this kind of a government was built with the hope that such a government would promote compromise and reconciliation and, in the process, bring about a consensus on how to address the long-term causes of the 2007 post-election violence. It was also hoped that such a government would enable Kenya to go through political, economic, administrative and social reforms. The coalition government agreed on power-sharing between Mr. Kibaki, who had won the 2007 general elections, and Mr. Raila Odinga, the then head of the opposition. This coalition government only lasted until 2013 (Amadi, 2009, p. 150)

With the continued conflict in Kenya, I think the central question to ask is, "How does Kenya begin the process of terminating or ending this kind of violence?" Another question would be, "Are the Kenyan leaders, whether in the ruling party or in the opposition willing to go through the steps leading to conflict termination?" Christopher Mitchell in his working paper, "Cutting Losses: Reflections on Appropriate Timing" asserts that conflicting parties are more likely to seriously consider the possibility of a negotiated settlement mostly when their leaders move from "a winning mentality to a conciliating mentality." He goes further and states that "Conflicts are held to be ripe for resolution only when the appropriate moment – or, more accurately, the appropriate set of circumstances – arrives" (Mitchell, 1993, p. 1). This only occurs when both conflicting parties confront a costly impasse. On the one hand looking at the current issue in Kenya where the presidential election results were nullified by the Supreme Court and a re-election is set for 10/17/2017 I am left to wonder if this could be the "costly impasse" Mitchell is talking about. On the other hand, I am left to wonder, is this issue a "costly enough impasse" to lead to these leaders' likelihood of conflict termination?

It is hard to articulate if elections in Kenya are really based on ethnic lines but whenever violence occurs around election time, it is hard to deviate from this premise. Most Africa's first-generation leaders including Kenyan leaders argued that the continent of Africa was best suited for a single-party system of governance since multiparty was likely to result in tribalism. Does this mean that the continent has not been ready for democracy? Are there ways that Africa and Kenya included can overcome tribalism? In my view, I think this is what the citizens of Kenya

should be focused. Kenya has for a while now struggled on how to conduct free and fair elections and due to this election violence has been unavoidable. The United States Institute of Peace (USIP) asserts that elections are crucial in sowing seeds of good governance only if the polls and the election process are well managed (USIP Website). Due to this, there has been a good number of organizations like the Carter Center, the National Democratic Institute, are agencies of the US and the UK that have taken a vital role in election monitoring and support (USIP Website).

The USIP goes further to say that the prevention of election violence is neither about organizing free and fair elections, nor about peaceful elections being a guarantee for democratic quality (USIP Website). For example, the 2011 election in Nigeria which showed an improved democratic quality of the polls but were the most violent in the country's history. Different methods can be utilized to prevent election violence regarding the scope and timing. Some of the ways that could be used as defensive techniques are peace messaging, voter education and voter consultations (USIP Website). These are on the premise that shifting the attitude and the behavior of the general electorate could help in mitigating the risk of violence. This for sure is the kind of shift that needs to happen in a country like Kenya where a large percentage of the general electorate does not understand the power of the vote that they hold (USIP Website).

August 8th, 2017 General Elections

Conflict in Kenya seems to be more evident around the election period. The last general elections on 08/08/2017 have not been spared of this phenomenon, but it seems to be worse this time around. Violence did not break out but there was and continues to be a lot of unrest especially after the Kenya Supreme Court nullified the Presidential Election and by constitution ordering the presidential election to be rerun within 60 days from Sept 1st, 2017. The presidential elections were annulled due to illegalities and irregularities. The government and the main opposition seem not to agree as much, and the whole process seems to be dividing Kenyans more than ever along tribal lines. Kenya appears to be in a worse ethnic mobilization worse than it did in 2007 and even in the past elections including the "transition" from a single party to a multi-party country. The tribal division in Kenya seems to be growing deeper, and any continued growth will affect the relationships between the Kenyan people. Political tribalism seems to be what is leading people to the point of picking up sticks or even worse against each other (Nation Newspaper, September 22nd, 2017).

Many and solutions have condemned tribalism in Kenya have been offered, but all these do not seem to have eased it at all. In 2015 during his visit to Kenya, the Pope stated that "Tribalism can only be overcome with an ear, a heart and a hand. If you do not dialogue with each other, if you do not listen to each other, then you are going to have divisions like dust; like a worm that grows in society" (Catholic News Service, 2015). Looking back, there is no evidence that at any one time that in Kenya the government and the opposition has had a dialogue with each other. All

that happens are insults and name-calling that comes with the election campaigns and the months soon after. This is what Kenyans must deal with for the second time this year (Catholic News Service, 2015).

The Carter Center Report on Kenya's 2017 General Election

The Carter Center has been working across the globe to advance democratic elections. It does this since impartial and credible elections play a crucial role in shaping peoples' mindsets on the quality and the legitimacy of an electoral process in any given country. For it to ensure a meaningful and nonpartisan role, The Carter Center must be invited by a country's electoral body to observe the election and must be welcomed by the major political parties.

The Carter Center had been invited by Kenya's Independent Electoral and Boundaries Commission (IEBC) to observe the August 8th, 2017 general election. Since the August 8th general elections in Kenya, The Carter Center which was part of the international observers issued a preliminary statement on 8/10/2017 where they commended the Kenyan people for their remarkable patience and resolve that they demonstrated during the election. The Center was impressed by the display of the democratic process that was exhibited by Kenyans who braved long lines and were calm as they cast their ballot.

The Center reported that despite the voting and the counting processes going on smoothly, the electronic transmission of the results from the polling stations to the constituency centers was unreliable. This resulted in the Independent Electoral and Boundaries Commission (IEBC) to revert to paper copies of the result forms (The Carter Center Website).

Since this report was written, the leader of the Kenyan opposition filed a petition with Kenya's Supreme Court on 8/18/2017 contesting the validity of the presidential election outcome. The Supreme Court delivered its ruling on 9/1/17 and nullified the presidential election outcome and ordered per the Kenyan Constitution another election to be held within 60 days from that date. The Carter Center commended the Kenya Supreme Court for conducting an open and transparent judicial process which not only gave all parties a chance to be heard but ensured consistency with the Constitution and Laws of Kenya. It did, however, urge the IEBC to ensure that their tabulation process was fully implemented to allow for high transparency and accountability. After the October 26th re-run presidential elections, The Carter Center had urged Kenya's political leaders to engage in dialogue to bring together the opposition party and the ruling party and their supporters. The Carter Center emphasizes that "the credibility of an election rests not only on the technical aspects of its conduct but also on respect for fundamental rights and freedoms in a conducive political and security environment. Every democratic exercise comprises numerous institutions and actors throughout the pre-election, election-day, and post-election periods, all of which affect the transparency, inclusiveness, accountability, and competitiveness of the election." The Center argues that the actions of Kenya's political leaders

following the annulment of the August 8th presidential election “served to weaken its democratic and independent institutions, constrain the ability of citizens to participate in the civic affairs of their country, and damaged the nation’s democratic development” (The Carter Center Website).

A Chronology of Events in Kenya’s 2017 Elections

08/08/2017 - Polls open for the 2017 general election. Kenyans vote for a president, parliament, and regional leaders.

08/11/2017 – Independent Electoral and Boundaries Commission (IEBC) Chairman announces the incumbent Uhuru Kenyatta as the winner in the presidential election with a 54% win.

08/18/2017 – The head of opposition Rail Doing filed a petition with the Supreme Court challenging the legitimacy of the election with allegations of vote tampering, fraud, and other irregularities. The Kenya constitution requires the court to review the case within two weeks.

09/01/2017 – The Kenyan Supreme Court annuls the presidential election citing illegalities and irregularities in the recording and transmission of results.

09/20/2017 – Elections are set for 10/17/17

09/21/17 – IEBC moves the election date to 10/26/2017

10/10/2017 – Raila Odinga, the head of the main opposition party, drops out of the re-election race alleging the 10/26/17 election will not be fair and transparent since the IEBC has not taken care of the reforms his party had requested.

10/11/2017 – IEBC advises that Raila Odinga needs to complete the required paperwork to withdraw from the race and warned that the 10/26/17 will still go on. He advises that the letter he sent to the IEBC should suffice.

10/17/2018 – IEBC Senior Commissioner Roselyn Akimbo resigns and flees to the US. She said the commission in its current state could surely not guarantee a credible election. She did not want to be part of flawed elections that would make a mockery of electoral integrity.

10/21/2017 – The IEBC declares that it will count backup paper ballots and will not rush in announcing official results based only on numbers sent from the polling stations.

10/26/2017 – The re-run presidential election is held amidst chaos in opposition strongholds.

10/30/2017 – Uhuru Kenya is declared the winner of the repeat election.

11/06/2017 – A second petition is filed challenging the election of Honorable Uhuru Kenyatta as Kenya's president.

11/20/2017 – The Supreme Court declares the 2nd petition filed was not merited and upheld the October 26th election.

11/28/2017 – Presidential election winner, Uhuru Kenyatta is sworn in as Kenya's president and starts his second term in office.

From the above, we can see that a lot of unprecedented events have occurred and have left Kenyans wondering what is the way forward and what the constitution says about these events. Kenyans and the rest of the world need to understand the myriad of laws, regulations and court decisions that govern the election process in Kenya. The main effect of the central opposition leader's withdrawal from the Oct 26th presidential election is that it may extend the election timetable and, in the process, buy him and the IEBC more time.

For one to best understand what happens next, there is a need to read the various pieces of Kenya's election law that are found in different documents; the 2010 Constitution, the 2013 Supreme Court decision on the presidential election, The Elections Act, Kenya's election regulations on elections and the majority decision in the 2017 election petition.

It came as a shock when the Supreme Court annulled the presidential election, but the Kenyan Constitution provides in such an instance then a fresh election would need to be held within 60 days after the determination (Article 140 of the Constitution of Kenya).

The annulling of the presidential election is not what gets things confusing: what is causing the most confusion is the withdrawal of the opposition leader from the re-run election. There seems to be a clash between what is contained in the constitution and some other subsidiary election laws. The AL Jazeera newspaper gives an example of where this happens:

“For example - the elections regulations, the Constitution prevails. Specifically, Article 138 of the Constitution contains detailed rules on how elections must be conducted and when. It also has a provision that if only one candidate is nominated for the presidency, he or she can be sworn in as president. But, because of the way the Supreme Court interpreted Article 138 in 2013, the June nominations for the 2017 polls are still valid for an October 26 election, which means that Uhuru Kenyatta cannot be automatically announced the winner. He is technically not running uncontested, and a fresh election has to happen. The question for the IEBC is when this new election happens. Secondly, the 2013 Supreme Court decision also held that if one candidate withdraws from a fresh election triggered by an invalidated petition - as is the current case - then the entire clock starts over and all candidates must seek new nominations. The initial 60-day deadline triggered by the September 1 decision is suspended, and the rerun of the election

goes back to the calendar set out in the elections act and the election regulations. This process also opens the door for other candidates who did not contest the August 8 election or who were excluded by conceding the invalidated poll. Basically, under this law, Kenya's election calendar starts from scratch because of Odinga's withdrawal" (AL Jazeera, Oct 11th, 2017).

On the other hand others are arguing that Regulation 52 of the Kenya General Election means that Odinga's withdrawal is invalid since the regulation advises that one has to withdraw their nomination within 3 days of submitting and under the 2013 decision, candidates participate in a rerun election using the nomination certificates they already held and since this time has passed the incumbents party argues that the withdrawal is invalid since it was not done in June when the opposition leader was nominated as the presidential candidate for his party. They insist the October 26th election should go ahead with his name on the ballot even though he does not contest.

The above is however undercut by legal interpretations of the hierarchy of laws. It is argued that the election regulations are statutes and if at any one point there is a clash between a statute and a Supreme Court decision more so in the interpretation of the Constitution, then the Supreme Court decision hold. With the argument, here on what new nomination mean, the IEBC should go by what the Constitution, and the 2013 decision and the existing Supreme Court jurisprudence and not the regulations. The Al Jazeera states that "the 2013 Supreme Court decision states that if a candidate withdraws from a fresh election after an invalidated election, then all parties return to the process of nomination" (AL Jazeera, Oct 11th, 2017).

In my view, it seems like Kenya is at an impasse and no one can tell if the October 26th election should go on and if it goes on will it be fair and transparent. With the notion that Raila's withdrawal cancels the October 26th elections and, in the process, triggering the need for fresh nominations for the presidential elections will this give the IEBC time to prepare and allow others to join in the race? Will the IEBC be able to meet the reform demands by the main opposition leader which he terms as the "irreducible minimums" as a precondition for participating in the election? This gets tough because, Uhuru Kenyatta remains the incumbent and under Article 134 of the Constitution, he cannot approve the appointment of new members of statutory commissions like the IEBC.

This does not imply that the incumbent gets sworn in as the president since the annulment of the August 8th election means the election did not happen. The only thing I can say is that "Kenya's election law is too complicated." With just a week to go to the October 26th election, Kenyans should be having some confidence on whether that election will meet all the required guidelines and that it will be fair and transparent.

Conclusion

From the above discussion, it is evident that tribalism can be associated with both election violence in Kenya and voter behavior. This is as discussed earlier due to political parties being formed based on tribal lines. Therefore, Kenyans tend to vote in the same manner.

For Kenya to rid itself from tribalism and all it entails, it is essential that it puts in place measures that will prevent conflict from "igniting, escalating and relapsing, which could include institutions and mechanisms of negotiations, mediation, forgiveness, and reconciliation (Murithi, 2009, p. 4). Future research needs to consider notions of "positive peace, which means peace that promotes reconciliation and coexistence based on human rights and social, economic and political justice" (Murithi, 2009, p. 4-5). By going the definite route, it ensures that there is an ethical commitment to promoting a genuine peacebuilding process.

Kenyans need to realize that there is a tactical morality implied in peacebuilding in the country. Murithi argues that this is because belligerent parties to a conflict may look at the peace process as an opportunity to regroup and reconstitute their forces to continue with their violent behavior. Murithi goes further and says that any secondary parties to any of the conflict going on in Kenya would need to adopt an ethical stand in trying to help resolve this conflict, and external actors would have to avoid unethical behavior in peacebuilding settings since this can impede the efforts to bring order and stability (Murithi, 2009, p. 9). Negotiators and mediators Murithi further assert would need to adopt an ethical stance towards the parties they have been called to assist, and Kenyans need not forget the role of forgiveness and reconciliation in the peacebuilding process. Kenya needs to look at how it can morally repair the emotional and mental harm that has occurred on its soil amongst different ethnic groups

Kenya needs to keep the words of Barack Obama during his visit to the country in July 2015 as a reminder of the dangerous path it is taking by embracing politics of playing tribes against each other. Political leaders need to avoid spewing ethnic hatred whenever they have a microphone to address the people of Kenya. By doing so, such actors are doing the country a much disservice. There is also a need for Uhuru Kenyatta and Raila Odinga to realize that whatever political legacy they leave will be part of Kenyan history and they will either receive praise or vile from it (Nation Newspaper, 2017 September 16th).

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