

Peace Post-Election Violence: A Comparative study of 2007 and 2013 General Elections in Kenya

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Abstract: Elections are an integral aspect of democracies around the world. In Africa, elections have been held in various countries but their integrity has largely been questioned. The return of multiparty politics in Kenya brought about unfettered competition leading to sharp divisions among political players. The resultant effect was violence during elections which was propelled by leaders whose conduct during and after elections influenced the citizens. While violence was experienced, it was minimal and sporadic in few areas in Kenya. The hallmark of election violence was in 2007/2008 post-election violence which left 1,500 people dead, countless others injured, and nearly 700,000 people displaced from their homes. The subsequent elections which were held in 2013 were relatively peaceful as compared to the 2007 elections. This paper seeks to examine the most significant variables as a basis to understand the nature of the 2007 elections vis-a-vis the 2013 elections. The variables under study are limited to leadership, institutional reforms, peace initiatives, the International Criminal Court (ICC), security, media and technology in the lead up to both elections.

Keywords: violence; election; ICC; Media.

1. INTRODUCTION

Since the return of multiparty politics, Kenya has repeatedly experienced ethnic tensions and violence around election time. The violence during and around election time is an indicator of underlying socioeconomic and political issues such as land injustices, marginalization and disenfranchisement (The Conversation, 2017). Kenya's political groupings coalesce around individuals and ethnic communities rather than ideology. This means that every electoral cycle, parties have to contend with the nightmare of shifting alliances close to the general election (The Conversation, 2017).

Incidences of clashes and violence have been a prominent feature since the advent of multipartism in Kenya. Sporadic violence was experienced during the 1992 and 1997 polls, however, the magnitude and grandiose nature to which the 2007/2008 post-election violence had escalated to was unprecedented. The end result was about 1,500 deaths, countless others injured, and nearly 700,000 people displaced from their homes (Long). The hotly contested elections were marred by a plethora of election irregularities, institutional failure and political intolerance.

The succeeding 2013 elections were largely peaceful though at least six deaths were reported (Other solutions, 2017). It was the first election held under the new constitution approved in a 2010 referendum vote. They were also the first run by the new Independent Election and Boundaries Commission and saw Kenyans elect into office a President, members of the bicameral parliament and representatives of a devolved county governments.

This paper seeks to examine the significant variables as a basis to understand the nature of the 2007 elections vis-a-vis the 2013 elections. The variables under study are limited to leadership, institutional reforms, peace initiatives, the International Criminal Court (ICC), security, media and technology in the lead up to both elections.

2. LEADERSHIP

The leadership aspect in the Kenyan context is a multi-dimensional cross cutting variable that works either for or against violence. The Kenyan political leaders command a huge following and their influence cannot be ignored. The conduct of leaders before, during and after elections affects the mood of the citizenry. Leaders driven by individual and/or party political interests have a direct role in peace or lack of it thereof.

Despite having disciplinary mechanisms in place, political parties have failed to rein in those instigating chaos. They usually impose fines on offenders instead of taking more drastic measures such as a suspension or expulsion. The fact that most politicians can easily raise the fines has bred a culture of impunity. This has resulted in perennial acts of violence during election cycles.

In 2007, the leaders of the warring factions did not necessarily preach peace. In contrast, in the build up to 2013 elections, most of the Kenyan leaders took an active role in preaching peace and cohesion. Drawing lessons from the turn of events of the previous elections, they encouraged citizens to embrace peace, unity and tolerance regardless of the outcome. The CORD leaders after the announcement of results led by example by not inciting their supporters but instead took their case to the Supreme Court which ruled the election result as correct. The leaders accepted the verdict and conceded defeat. They even went as far as paying a courtesy call to the President to congratulate him for his election into office.

According to The Economist (2016), religious leaders participated in the incitement of ethnic based violence in 2007. Religious leaders and interreligious institutions divided along ethnic lines failed to speak out against ethnic violence (Throup, 2015). In contrast, 2013 saw them organizing peace rallies in a bid to head off a violent outcome. Archbishop Eliud Wabukala's statement further sent the message that Kenyans had learnt their lessons in 2007 particularly addressing a society that was affected and traumatized by the previous elections violence sent a thrilling reminder to Kenyans to exercise self-control. The leaders took a more neutrality stance and took on peacebuilding responsibilities such as spreading peace messaging, interreligious forum, inter-ethnic and interfaith dialogues and civic education (Haider, 2016).

3. CONSTITUTIONAL REFORMS

There was a clamor for change of constitution from early 1990s but the closest Kenya came to changing the constitution was in 2005 when the draft constitution was rejected in a referendum. The principal reason for defeat, in the eyes of its opponents, was that the proposed constitution, much like the one it was meant to replace, ensured the survival of a powerful executive branch (Mwangi, 2008). A new constitution was later passed on 4th August 2010 by an overwhelming majority. It came with a raft of new changes and is considered to be one of the determining factors in 2013's peaceful elections.

It entrenched a system of checks and balances that strive to keep future presidents from exploiting the State for their own personal gain. The new constitution reduced presidential powers and provided for a better separation of powers (Lunn, 2012). The new constitution reformed the electoral system which has now been used as an instrument of inclusion and exclusion in sharing national resources.

Another aspect that the 2010 constitution provided for was a channel for equality and inclusive citizenship by establishing national values and principles of governance that seek to diffuse if not eliminate the ethnic tensions. Through the new constitutional dispensation, Sihanya (2010) notes that the presidency has been subjected to horizontal, vertical and normative checks and balances.

4. INSTITUTIONAL REFORMS

The period post 2008 saw commissions being set up as entrenched in the constitution as part of institutional changes. The commissions were mandated with specific constitutional powers that, under the 1969 Constitution, were vested in the presidency. It is noted that these commissions are different since they have an express provision outlining their independence from other arms of government (Sihanya, The Presidency and Public Authority in Kenya's new Constitutional Order, 2011). The commissions include National Land Commission (NLC), Independent Electoral and Boundaries Commission (IEBC), Judicial Service Commission (JSC), Commission for Revenue Allocation (CRA), Ethics and Anti-Corruption Commissions (EACC), Public Service Commission of Kenya (PSC), Salaries and Remuneration Commission (SRC), Teachers Service Commission (TSC), National Police Service Commission (NPSC), Commission on

Implementation of the Constitution (CIC), Parliamentary Service Commission (PSC), Kenya National Human Rights and Equality Commission (KNHEC), Public Service Commission (PSCK), IIEBC was succeeded by IEBC which became operational after the promulgation of the Constitution in 2010.

The Constitution of Kenya (2010) underscores an administratively, politically empowered and independent judiciary that is to implement, enforce and offer an authoritative interpretation (Sihanya, 2010). Police reforms after the 2007 elections were also prioritized. Generally, their welfare, work environment and pay rise contributed positively to their conduct. The Independent Policing Oversight Authority (IPOA) was created as a measure to increase police accountability. Before, as was the case in 2007, little effort was made in the way of police accountability.

In addition, devolution of Kenya into 47 counties decentralized power that was concentrated in the executive and specifically the presidency. This created proxy levels of competition and hence relatively peaceful elections in 2013.

Despite the electoral reforms witnessed in Kenya and the rise in level of confidence as compared to the period of the now defunct ECK, the preparedness and conduct of IEBC leaves a lot of questions unanswered. After presiding over the 2013 General Elections and the evidenced irregularities that ensued, it is difficult to find IEBC an effective, efficient and credible commission worth a second chance (Sihanya, Constitutional Commissions in Kenya: Experiences, Challenges and Lessons, 2013). Even after the 2005 constitutional referendum, ethnicity proved to be the deciding variable in the vote (Kimenyi & Shughart, 2008)

Kenya's democratic institutions and their framework for human rights enforcement tend to be unable to stem the tide of human rights problems, democratic institutions, such as the police and the judiciary which has been co-opted into the service of repression (International Centre for Transitional Justice, 2010). Despite the enactment of the National Cohesion and Integration Act in December 2008, ministries and parastatals still reflected the ethnic and patrimonial state of public administration (NCIC, 2011).

In a nutshell, the institutional changes were important and played a critical role in the relatively peaceful elections in 2013. (Asingo, 2017)

5. PEACE INITIATIVES

A range of local conflict prevention efforts helped build a broad-based desire to avoid the violent scenario of the 2007 elections. As a follow up, various actors both internal and external explored local options for peace initiatives. Peace from within was advocated for and Local peace initiatives picked up. Many local organizations were involved in peace building activities for instance, the early warning response mechanisms. Memberships to Local Peace Committees (LPCs) in Kenya supported further by NSC are drawn from the local leaders, council of elders, religious leaders, women, and youth and CSOs representatives (Kimokotu, Matanga, & Ododa, 2014).

Institutional failure was attributed to lack of credible restraints on state actors, particularly the executive arm of the government. This in essence allowed for excessive discretion in the absence of effective accountability structures. High levels of patronage are synonymous with societies where there is a strong autocratic state presence. This then creates a great institutional deficit that continues to affect ordinary citizens (Damdinjav, Garcia, Lawson, Margolis, & Nemeth, 2013). Ordinary citizens are the most affected party whenever violence erupts since their livelihood, families and future are shattered.

6. THE ICC AND POLITICAL DEVELOPMENTS

The International Criminal Court (ICC) proceedings over the 2007-2008 post-election violence was one of the factors with the most influence on the 2013 election (Mamdani, 2013). The road to the ICC began immediately after the poll violence following political negotiations that brought the crisis to an end (Lynch & Zgonec-Rozej, 2013). The Commission of Inquiry into Post-Election Violence (CIPEV) also referred to as the Waki Commission which was formed in 2008 came up with recommendations one of which was a special tribunal mandated to overcome chronic impunity through crime prosecution. Chronic impunity was deemed to be at the heart of post-election violence (International Center for Transitional Justice, 2008).

A safety clause was included in CIPEV's report noting that successive governments in Kenya had failed to implement recommendations of various commissions in the past (Lynch & Zgonec-Rozej, 2013). This clause stipulated that in the failure of setting up a local tribunal, consideration will be given by the AU Panel of Eminent African Personalities to forward the names of alleged perpetrators to the special prosecutor of the ICC (Kenya Law, 2008). Kenya became party to the Rome Statute (The International Criminal Court, 1998) in March 2005 thereby agreeing the court may investigate, prosecute and try individuals accused of offences that might constitute genocide, war crimes and crimes against humanity committed in the territory of Kenya, or by Kenyan nationals. After the Kenyan parliament failed to establish a special tribunal and the buzz political slogan, 'don't be vague, let's go to The Hague', emerged. Consequently, names of six individuals, alleged to bear the greatest responsibility for the post-poll chaos were handed over to the prosecutor of the ICC in July 2009. In December 2010 the ICC prosecutor at that time, Luis Moreno-Ocampo, identified six individuals as responsible for crimes against humanity carried out after Kenya's 2007 elections, with the alleged crimes falling into two separate cases. These cases meant, for the first time in Kenya's election history, two leaders, Uhuru Kenyatta and William Ruto would be running for president and deputy, respectively in an election.

7. THE ICC AND THE ELECTION

The ICC's intervention shaped the presidential contest with Uhuru Kenyatta and his running mate and also co-accused, William Ruto pairing up to create a highly politically polarized atmosphere ahead of the 2013 elections. The ICC's engagement in Kenya recalibrated the domestic political field, unifying formerly opposed groups and deepening the rift between Kenya and the civil society (Kendall, 2014). Indeed, Mahmood Mamdani observed that the ICC intervention polarized domestic politics through re-ethicizing communities and criminalizing one side of the conflict. Simply put, new categories of identity were generated, distinguishing between 'friends' and 'enemies' of the international court and in essence, the international community.

The public was awash with the debate more so the role of foreign diplomats, international political commentators, media and international election observers in Kenya's ICC case. The perception of some was that such actors, along with the ICC, represented an illegitimate and uncalled for external interference in Kenya's domestic matters. This played a part in the way international players might be perceived during the 2013 elections and beyond. This contributed to the division of Kenyan voters into two opposing camps characterized by a strong ethnic logic (Lynch & Misa, 2013). Never before had the country elections experienced such a huge external influence. According to Thibon, one of the main reasons for absence of violence in the 2013 elections was the International Criminal Court (ICC) effect following the 2007 elections. The moral pressure from the ICC was still very fresh in people's minds (Thibon, 2014).

Even after the election results, which swayed in favor of the contestants who had charges brought against them in by the court, the discussion on the influence it had continued. The BBC website headlined an article with the question "Did the ICC help Uhuru Kenyatta win the election", questioning whether the indictment was an advantage over his opponent and how he will govern a country while defending himself in court. A genuine concern since under the Rome Statute, state officials are not immune from prosecution for international crimes, even if an accused individual holds an official position such as head of state or elected representative arguing that this does not free them from criminal responsibility (The International Criminal Court, 1998). The result was also a defeat for the country's civil society. The outcome of the election brought with it something Mutua (2013) described as, an existential moment. A period of reflection as there was a sense of disconnect between them and Kenyans' aspirations.

8. THE POLICE

The law enforcement agencies, especially the police played a key role in the 2013 general election to ensure peaceful outcome as compared to 2007 by applying various methods as explained below:

The 2007 elections, pointedly, made the link between elections and violence in the Kenyan context even more direct and urgent. Based on this history, successful preparations and management of elections requires that the electoral commission and other stakeholders put in place strategies to ensure that security, as a key component of elections preparedness (Riker, 2013). However, significantly so, provision of security is the constitutional mandate of the National Police Service. In 2007 the police were not adequately prepared in to tackle violence in case it erupted in the country. They assumed that things will go on as usual and people won't be engaged in violence. In addition, most of the individuals in the forces had political affiliations and thus could not stop any form of violence (Obare, 2013). In the long run, when violence erupted, people took the law in to their own hands to protest a rigged election and killings of their kinsmen.

It is against this background that the security agencies in the 2013 were prepared to avert any violence that may occur. To demonstrate this, the Election Security Arrangement Project (ESAP) was put up with the invaluable assistance of the UNDP. In the past the Commission was unfortunate to belatedly engage the security teams during deployment on the eve of polling day. Thus there was a missing link between election security and election management, and to bridge this gap, the National Police Service, the USALAMA Forum and Safer World established ESAP with great support from UNDP (Odinga, 2013). This resulted in successful collaboration between the Police, Independent Electoral and Boundaries Commission (IEBC), and other stakeholders and delivered positive outcome through peaceful elections and greater partnership between the two agencies.

During the March 2013 General Elections the Kenya Police historically deployed 99,000 officers drawn from the Kenya police, administration police, Kenya Prisons Service, Kenya Wildlife Service, Kenya Forestry Service and National Youth Service to all polling centers to monitor and handle security issues several days before the election date (Odinga, 2013). Propelled by incidents from the post 2007 general elections like when an entire family was burnt to death in the ethnic related violence in Naivasha, the state deployed the General Service Unit (elite paramilitary police squad) officers to the main violence hotspots of the country, and to assist guide their operations, as stated by the Inspector General of Police, David Kimaiyo, Kenya Police came up with the Contingency Action Plan (CAP), outlining the polling centers and hotspots that were prone to election related Violence.

Nothing was left to chance when it came to protecting the National Tallying Centre, where the data from all polling units around the country were being tallied. A police helicopter circled above the venue the Bomas of Kenya - from 4th March 2013. The entire area was guarded by regular and administration police officers and their counterparts from the General Service Unit (Obare, 2013). The areas surrounding Bomas i.e. Langata and Karen were also under surveillance from these units. In order to gain access, one needed to have accreditation from the Independent Electoral and Boundaries Commission (IEBC) or prove through official documents that they were guests of the state, observers, diplomats or political party agents among others. This was followed by a physical search and screening for guns or explosives.

The conduct of the police during the 2013 election period as compared to that in 2007 was above intrinsic. It is worth noting that the police officers who died at the police station in Miritini were carrying out their duty to protect the citizenry. The cowards who tried to disrupt the process and send Kenya back to the precipice were thwarted in their attempts and the elections took place peacefully (Obare, 2013).

9. ROLE OF MEDIA

Media plays a double sided role in conflict; it can either take an active part in conflict resolution or conflict propagation or can play a neutral role (Puddephatt, 2006). For the case of Kenya, media has been an integral part of the day to day lives of the population. Media, more specifically the mobile phone and the internet are powerful tools of viral means of unlimited communication. They make information flow faster and multidimensional.

In 2007, tension escalated as mobile phones and the internet were used to say what the mainstream media was not saying. More than six hundred blogs were created shortly before the 2007 elections with an aim to challenge the mainstream media. While some were used for online campaigns to promote awareness about human rights violations, some promoted hate speeches and spread political propaganda (Dictor's Blog, 2010).

During the 2007 post-election period in Kenya, mobile phones and internet devices were widely used to send pictures of violent post-election attacks. These pictures circulated outside the mainstream media shocking and arousing anger, creating a cycle of violence that soon engulfed almost half the country. Mass SMS tools were the cheapest means for organizing systematic and public campaign of mob violence (Dictor's Blog, 2010).

Syallow points out that media played a great deal in peace making after 2007 violence. These include creation of programming for mass consumption containing educative information on non-violent modes of conflict resolution, production of documentaries about successful conflict resolution efforts, talk show programs exposing the dangers of conflict among others. Kenyan bloggers became a critical part of the information flow in the country, radio broadcasters began to read entries from influential bloggers over the airwaves, this reached 95 per cent of the Kenya population.

Dictor's blog submits that after the 2007 elections, Ushahidi.com was launched as a model using Google Earth showing in detail where the worst of the violence occurred in the country. The same provides a tool for users, via mobile phone or internet browser, to report incidents of violence on the map, add photos, video, and written content that document where and when violence occurs. Mashada.com, for example was cited as the leading Kenyan online was soon redirected to a new site, ihavenotribe.com, which, as the name suggests, was used to spread reconciliation among communities.

Vernacular radio stations became political players themselves by showing clear biased towards the preferred politician within the constituency. Bias turns into hate directed towards the rivalry candidates and their followers (Gustafsson, 2016).

As observed during the conflict, most participants believed that the Kenyan public took any news coming from the electronic media as gospel truth rather than questioning the information. The way in which the electronic media packaged the information was authoritative and convincing.

Peace journalism is defined as a style of reporting that deliberately seeks to de-escalate a conflict through focusing on conflict transformation (Syallow, 2014). Prior to the 2013 elections, several organizations worked to raise awareness of the negative consequences of hate speech and the need of responsible journalism through countering inflammatory speech or remarks while at the same time expressing freedom of expression (Gustafsson, 2016). For instance, more journalists while reporting their stories became more sensitive to their role by evaluating their reporting of the 2013 elections. More so the owners, editors and reporters of broadcasting stations and newspapers were generally careful to avoid inflammatory content such as was witnessed in the 2007 elections. This was achieved through minimizing or doing away with stories that might have caused alarm or inflame Kenyans. Lead broadcasters covering the elections took an upbeat and reassuring tone (Benesch, 2014).

10. THE ELECTORAL COMMISSION

The Independent Electoral and Boundaries Commission (IEBC) has a crucial role in mitigating political violence by conducting free and fair elections. The commission has a legal mandate to conduct primary elections for political parties (The Conversation, 2017). The IEBC announcement of the results on March 9 caught many by surprise. Most observers expected a run off between Odinga and Kenyatta where the latter was declared the winner (Merino, 2014). In 2007, the Electoral Commission of Kenya (ECK) chaired by Samuel Kivuitu had a key role in running the elections and counting the votes. The commission was manipulated into announcing fraudulent presidential results which declared incumbent President Mwai Kibaki the victor of the poll amid great controversy (Aljazeera, 2013).

This announcement was an abuse of the citizen's democratic rights and sparked protest and violence that spread throughout the country. Mass violence in 2013 was not witnessed; interlocutors largely attribute this to contextual factors versus programming. Although tensions around the polls remained consistently high, hate speech was largely curtailed in traditional media; it was rampant on social media presenting plenty of opportunities for violence. Donors believed that strategic political messaging and intensive shuttle diplomacy played an important deterrent function in the lead up to 2013 polls (Cho, Connors, Fatima, & Yalim, 2015).

Cho et al also opine that early mobilization by the donor community, international implementers, local organization, and the Government of Kenya to advance institutional reforms resulted in a solid infrastructure for long-term conflict mitigation. This included a clear roadmap for peace with Agenda 4, a new constitution and enabling legislation that focused on short-term atrocity prevention in 2013.

11. TECHNOLOGY

In 2007 the government had not device agencies to handle any hate speech spread through the social media. The technology available at that time could not deal with those people who spread hate speech through the social media. In 2007 there no biometric kits which could be used to register voters and transmit results. In addition during the Election Day even dead voters cast their ballot, there were incidences where people voted twice or three times which ultimately lead to outbreak of violence. After the disruptions of the 2007 elections, the Kenyan government bumped the technology to a higher and more advanced level in the 2010 Constitutional Referendum and various by-elections to enhance and ensure the credibility of results. The plan was that the 2013 elections would represent a technological apex for voting (Sakinofsky, Beatie, & Macnamara, 2012). The role of technology on the 2013 general election to ensure peaceful outcome as compared to 2007 was demonstrated in the following aspects:

The first application of technology in the 2013 elections aimed to guarantee the integrity of the voter register through the use of a Biometric Voter Registration system that was acquired at a cost of 95 million USD. The voter registration exercise which kicked off over 30 days towards the end of 2012 and managed to successfully register over 14 million voters. This voter register was made available at each polling station in two forms, a biometric Electronic Voter Identification device (EVID or Poll Book) and a printed copy. Both of these methods served the same purpose, to authenticate the identity of each voter before they vote.

The second application of technology was to provide an electronic method of transmitting provisional results (votes counted and verified by party agents at polling stations). This was to assist in facilitating the rapid announcement of the provisional vote count with results being physically delivered to the National Tallying center for the official, final tally. The IEBC received technical assistance from the International Foundation for Electoral Systems (IFES) under a USAID-funded programme.

During the 2013 General elections, the influence of technology and social media also necessitated the introduction of many election-related apps that went a very long way to enhance the electoral process. They included games and SMS-based apps which encouraged a peaceful election process, and crowd-sourced incident reporting sites which also proved important throughout the elections, with developers reaching out to include all segments of society across Kenya. Some of the apps were; The Google Elections Hub, Kenya Election YouTube Channel, Election Kenya Portal, Track All, The IEBC's interactive map and The Election Thief App Game, among others (Ahiabenu, et al., 2015).

12. CONCLUSION

The 2007/2008 post-election violence left Kenya a country in want and hungry for authentic reforms. The people, the public and private institutions suffered irreversible damage. Kenya's reputation as a haven of peace and host to troubled neighboring nations had been severed. The country made a conscious decision to regain her lost glory. Both the private and public sectors encouraged positive reforms in all institutions.

Drawing lessons from the 2007 General elections and the violence that ensued, Kenya made footprints in reforms chief of which was the 2010 constitution. This laid a firm framework for appropriate institutional reforms to take place. As compared to 2007, the media played a significant role in de-escalation of conflict through focus on conflict transformation. The media achieved this by spreading peace messages before and during the 2013 elections.

From what appeared to be a lack of adequate police preparedness in 2007/2008, the situation went out of control. In 2013, an elaborate Election Operation Plan which prioritized Election security was put in place. The EOP encompassed a clear set of strategies that ensured relatively peaceful, credible and fair elections in 2013.

Political and religious leaders were more proactive in preaching peace in 2013 as compared to 2007/2008 where they were sending divisive messages to their supporters. The years between 2007 and 2013 have saw Kenya advance in technology which played a key role for a more credible election process in 2013. After the violence widely experienced in 2007/2008, the hard lessons learnt paved way for major reforms in Kenya which provided a stepping stone to which the relative peace in 2013 elections was pegged on.

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