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Casting the Bad Omen: Preventing Electoral Violence in Kenya by *Joseph Kioi Mbugua*

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Abstract

Electoral violence is a major draw-back to democratization, state stability and development in Africa. Electoral violence has been a defining footprint of elections especially since the second introduction of multi-party politics in Kenya in 1991. This study highlights the historical, socio-economic and political dynamics of this subject. The paper examines attempts to address the challenge of electoral violence in Kenya by various actors and the current state of affairs. Kenya is not out of the woods yet with regard to electoral violence and as the country prepares for the 2017 elections, the necessary political, legal and socio-economic changes have to be put in place in order to prevent recurrence of this major obstacle to national cohesion and integration in the country.

Key Words: **Electoral violence, democracy, elections, institutions, conflict prevention**

Introduction

The end of the Cold War provided political space for change in Africa from authoritarian one-party regimes to multi-party systems due mainly to lack of international support for dictators and increasing economic hardships occasioned by reduced foreign aid and the World Bank's Structural Adjustment Programs

(SAPs) (Bratton and Van de Wall, 1992). This global wind of change provided an opportunity for opposition groups to agitate for pluralism and competitive politics. By the end of 2000, the number of countries holding multi-party elections had quadrupled compared to the Cold War era (Van de Wall, 2002).

Despite this democratic advancement, 80% of the incumbent presidents retained their seats and about two-thirds of the elections were considered not free and fair. As most African leaders had opened political space due to international pressure, they devised ways of manipulating plural elections to hold on to power. Some of these strategies were electoral manipulation, intimidation, fraud and electoral violence (Staffan, 2007). Electoral violence became a viable tool for incumbents and opposition alike to influence electoral outcomes to their advantage.

Since independence in 1963, the history of ethnic-based political violence in Kenya is manifested not only in electoral violence and bad governance but also in the evolution of organized political competition. Like many other African countries, Kenya preferred the one-party system soon after independence ostensibly to unite the different ethnic groups against the most challenging problems of the day such as underdevelopment. Although the country entered independence with two main parties (Kenya African National Union (KANU) and Kenya African Democratic Union (KADU)), KADU was dissolved to join KANU in 1964. Despite agitation for political pluralism from 1966 onwards, the country remained traditionally a one-party state and later enacted a legal provision barring multiparties in 1978, a situation that lasted until 1991 after much domestic and international pressure (KNCHR, 2008).

Since the advent of pluralism in Kenya, the elections of 1992, 1997 and 2007 were engulfed by significant levels of violence. Many political parties emerged to contest the 1992 general elections but they were mostly based on ethnic groups, thereby dividing their votes and enabling the incumbent to win elections in 1992 and 1997 through a narrow majority, amidst allegations of irregularities and electoral violence (Kiliku Report, 1993; Akiwumi Report, 1999). The violence occurred before elections and was mostly located in the then Rift Valley and Western provinces. The violence was said to have been orchestrated by state-sponsored militias (Throup, 2003; HRW, 1993; KHRC, 1998). The existing poor relations among ethnic groups based on perceptions of indigenous versus migrant rights to land, were exploited for political purposes, (Cheeseman, 2009).

The study is organized in three parts. Part one introduces the research aims, the problem and hypothesis. Part two examines the literature on ethnic conflicts, electoral conflicts, conflict management and conceptual framework, while part three analyzes the causes and dynamics of electoral violence in Kenya and explores sustainable conflict management options. Part four provides the conclusions and

recommendations for an electoral violence-free polity. The study adds value to the literature on electoral violence by offering a combination of interlocking factors that are most likely to cause or prevent electoral violence in Kenya.

The Problem

Kenya is still vulnerable to electoral violence since the root causes of the problem have not been adequately addressed. Though the causes and dynamics of the conflict have been fairly studied and understood by policy makers, there are still macro and micro socio-political and economic factors that militate against progressive march towards a democratic, stable and peaceful polity.

Illegitimate and violence-prone elections can plunge the country into instability and uncertainty amidst dwindling prospects of economic growth. Between 1991 and 2001, more than 400,000 people were killed and about 600,000 displaced in political violence (KHRC, 2001). The 2007/8 electoral violence caused immense political and economic loss to the country. More than 1,000 people were killed, 300,000 displaced and the country incurred an economic loss of Ksh. 100 Billion (CIPEV, 2008). Not only was the veneer of a stable country shattered but there was also loss of lives and economic turmoil through destruction of property, displacement and blockage of international transportation and trade routes. Elections are fundamental ingredients of democratic governance by enabling broad participation and according legitimacy to the rulers (Bratton, 2003). Violence undermines both the legitimacy of the electoral process and the government that assumes power. Free and fair elections help countries achieve democratic consolidation and improved economic development. Given the strategic location of the country in the Eastern African commercial, transport and security network, the costs of political violence and instability are high and far-reaching.

Hypothesis

Electoral violence in Kenya will continue to be a major feature in every electoral cycle as long as there is no accountability for past political/electoral violence.

Theoretical Framework

This section discusses three theoretical perspectives that may be used to analyze democracy and election-related political violence. These are relative deprivation, constructivism and institutionalism.

Relative Deprivation

Relative deprivation refers to a group's feeling of exclusion in relation to other social groups. Such feelings become legitimate when the desires of some groups are blocked by society. Relative deprivation specifically refers to the discrepancy between what people think they deserve and what they actually get or think they can get (Gurr, 1970). Group violence will therefore depend on the intensity and

scope of relative deprivation. The occurrence of violence will also be dependent on other factors such as nature of society, culture, legitimacy of leadership, viability of violence as a solution to the problem, and the prevailing economic and political environment (Gurr, 1970). Given the nature of inequality in Kenya, this theory can be used to explain some of the causes of electoral violence.

Constructivism

The theory of constructivism holds that the attributes or values of ethnic groups are not fixed but multiple, fluid and can change based on internal or external factors (Chandra, 2012). Constructivism reinforces the rational choice theory by making a cost-benefit analysis or calculations for best options. Identities are also in flux, shifting and constructed over time. This theory combines some of the arguments of the primordial theory of ethnicity and instrumentalism. The theory contributes to understanding ethnicity and conflict by explaining why groups behave in certain ways and how groups can be manipulated to achieve rational political or economic ends (Young, 2002). The theory combines aspects of fixed descent based on attributes of ethnic groups with non-descent ones (Chandra and Boulet, 2012).

Ethnic groups are mobilized as political instruments to achieve specific goals such as political or economic power (Berman, 1998). Political elites who may enjoy mythical or religiously advantageous positions in their communities are able to draw fanatical following based on perceived pursuit of group interests. This form of mobilization depends on the nature of politics in a particular country, electoral system, strategic significance of an ethnic vote, and historical experiences and grievances, Carment, (1993). Electoral violence can be used to stake claim at the electoral outcome, especially where elections are hotly contested and it is a winner-take-all electoral system (Cleven, 2013b). Though ethnic identity and shared values provide ground for mobilization, ethnic cohesion does not necessarily lead to hatred towards other groups. To the contrary, ethnic group leaders and political parties shift their alliances regularly (especially in Kenya) to where their interests can be served best at a particular time. Ethnic mobilization, however, is not the cause of ethnic or electoral violence but it can provide a powerful base for executing violence, where the latter is perceived as a viable/alternative means of seeking political power.

Institutional Theory

The electoral institutional theory holds that institutions determine the strategies, choices and political behavior in electoral politics (Mozaffar, 2003; Brancati and Snyder, 2011; Norris, 2013). Institutions here refer to the legal regime, separation of powers, impartial and professional security sector, independent judiciary that can arbitrate in electoral disputes and election management bodies that enjoy high levels of integrity and legitimacy (Norris, 2013). The Kenyan political institutional system

can be described as an institutional model that can enhance peaceful elections through transparent and accountable processes or cause insecurity through electoral malpractices. Through the institutional theory, one can examine the structures, values, interests, legitimacy and relationship of political actors. A combination of this and the above two theories may help explain and fairly predict the likelihood of electoral violence in Kenya. Institutions can be well-engineered to prevent a combination of the potent factors that can ignite electoral violence in future elections. This is shown in Figure One below.



Figure 1: Relationship between Electoral Violence, Impunity, Accountability and Peace and Stability

The above diagram indicates positive and negative consequences that result from addressing or neglecting to act against electoral violence. Countries where democracy/rule of law is well entrenched, will not experience electoral violence while in countries where there is impunity and lack of accountability to the citizens, electoral violence will most likely happen.

Literature Review

An analysis of the literature on electoral violence reveals the reasons why it occurs, its nature or manifestations, dynamics and prevention strategies. Electoral violence in Africa increased by 50% from 1990 to 2006, compared to 1945 to 1989 (Hyde and Marinov, 2012). Electoral violence happens in 19-25% of elections in Africa (Bekoe, 2010). Ethnic conflicts are caused by decline in the capacity of mediating institutions such as Electoral Management Bodies (EMBs), weak security sector, non-ideological political parties and lack of credible pre-existing commitments across groups (Bardhan, 1997). Political institutional failures have played a big role in the previous Burundi, Rwanda, Liberia, Sierra Leone, Somalia and Zimbabwe conflicts. The winner-take-all ethnically-based electoral competition increases instability through erosion of inter-communal trust, limitation of inclusion and further alienation of 'losing communities' from government (Bardhan, 1997).

Elections in such contexts may lead to dysfunctional legacies of violence and uncertainty (Collier et al, 2010).

Electoral violence is meant to achieve a desired political outcome (Hoglund, 2009; FES, 2001). Political parties in Africa are not based on ideology or policies but ethnic cleavage (Reilly, 2008; Hoglund, 2009). Electoral violence is perpetuated by a culture of violence and impunity, partly due to weak institutions and hotly contested elections (Hoglund, 2009). Electoral institutions can cause violence if they are not professional, efficient, transparent, impartial or independent (Reilly, 2002; Norris, 2013; Hoglund, 2008). Electoral malpractices such as denial of registration of voters, false vote tallying and reporting, fraud, vote-buying, intimidation, threats, and coercion can also cause violence. Electoral violence is also associated with weak states such as Kenya (McBride et al, 2011) where the state can neither prevent violence nor punish the culprits. Violence is also associated with ethnic grievances and political fractionalization (Reilly, 2002). Some case studies indicate that elections can be a hindrance to peacebuilding and can cause violence (Reilly, 2002; Collier, 2009). Where the rules of the game are not respected by political parties, there is a tendency to use violence to influence outcomes (Machado et al, 2011; Collier and Vicente, 2012). Political parties formed on distinct social markers such as ethnicity or religion can cause conflict (Chandler, 2001; Reilly, 2002).

The prevailing electoral system can be a cause of conflict (Norris, 2013). The first-past-the post system (FPTP) creates winners and losers and does not accord power in proportion to the votes garnered. Given the significance of the state in allocation of resources, a large section of society may feel excluded. Electoral violence mostly occurs in countries that are rated partly free or not free (79%), (Freedom House, 2002). Many countries in Africa fall into this category. This survey also indicated that voter initiated violence occurred in 14% Impunity, electoral malpractices, lack of rule of law – Violence Accountability, Justice, Rule of Law Free and fair elections, democracy, development -Stability/Peace of the cases and state motivated violence also occurred in 14% of the cases. Violence is more prevalent where elections are perceived not to be free and fair. An Afrobarometer study indicated that vote buying is more effective than violence in Nigeria (Bratton, 2008). The culture of impunity has also been identified as a factor determining electoral violence (Bekoe, 2011). Incumbent regimes can use state resources to suppress opposition parties including assassinations (Suberu, 2007). Most studies on electoral violence in Africa are descriptive rather than analytical (Fischer, 2002; Bekoe, 2012). This study attempts to apply global observations of electoral violence patterns to the Kenyan case.

Background to Political/Electoral Violence in Kenya

Kenya was a British colony since 1895 and became independent in 1963 through a bitter struggle. The colonial state raised the significance of land as a contested resource whereby European settlers occupied prime lands largely in the Central and Rift Valley provinces and christened them 'White Highlands' (Kanyinga, 2009). The land was forcefully alienated from the natives and some of them migrated to work on the white-owned farms. Due to internal resistance to colonial rule, ethnic groups were not encouraged to unite and were often placed under different provincial administrators (Leys, 1975; Haugerund, 1995). Formation of national political parties was prohibited and regional associations were encouraged (Kaverenge, 2008). This would reinforce ethnic differences with respect to political violence after independence. KANU was formed in Kiambu in March 1960 while KADU was formed in Ngong in June 1960), (Kaverenge, 2008). During Jomo Kenyatta's reign, KANU was predominantly Kikuyu, Embu, Meru, Luo and Kamba ethnic groups which made up 53% of the population. It was led by Kenyatta, a Kikuyu, who became Prime Minister in 1962 and President in 1964. The KADU opposition minority party was dominated by the Miji Kenda, Kalenjin, Luhya and Maasai and was led by Ronald Ngala (a Miji Kenda) and Daniel Moi (a Tugen Kalenjin).

Kenya experienced ethnic conflicts during the KANU-KADU period (1960-64). Conflict erupted in Ngong in 1961 during a political rally organized by John Keen, then leader of the KADU-affiliated Maasai United Front (MUF). Another conflict occurred in Kericho in 1962 and Narok in 1967 (Akiwumi Report, 1999). These conflicts were fueled by zoning of territory/land based on ethnic identity to the exclusion of others as advocated by KADU's majimbo or devolution-guided federalist ideology. The Kenya state grew progressively weak due to Moi's narrow political support base, calls for liberal democracy in the 1990s and declining economic performance amidst economic conditions imposed by the Bretton Woods institutions (Barkan, 2011). The pattern and dynamic of electoral violence in Kenya is informed by several varied local factors. Violence in Mt. Elgon was informed by local land-based clan conflicts (2005-2007). In Kisumu (2007), it took the face of demonstrating masses against police. In Nairobi slums, it assumed ethnic militia by the name Mungiki (Kikuyu) versus Taliban/Baghdad Boys (Luo) and in the Rift Valley it pitted the Kikuyu versus the Kalenjin with subterranean land and settlement grievances (Boone, 2009; Lonsdale, 2008).

The Kenyan state also progressively lost monopoly over the legitimate use of force through emergence of militias who existed even outside the control of politicians and proliferation of illicit arms. Lack of a credible and independent judiciary or security institutions also informs electoral violence dynamics (Mueller, 2008). As the implementation of devolved governments continues, inter-communal violence

has continued in Moyale, Lamu, Turkana, Samburu, and Narok and might have a bearing on electoral politics (Abdullahi, 2013).

Defining Electoral Violence

Electoral conflict or violence is defined as *'any random or organized act that seeks to determine, delay or otherwise influence an electoral process through threat, verbal intimidation, hate speech, disinformation, physical assault, forced 'protection', blackmail, destruction of property, or assassination'* (Fischer, 2002). Political violence also occurs within and between political parties though political leaders may not have absolute control over the perpetrators (Hoglund, 2010).

Election Security

Election security is *'the process of protecting electoral stakeholders such as voters, candidates, poll workers, media and observers; electoral information such as vote results, registration data, and campaign material; electoral facilities such as polling stations and counting centers; and electoral events such as campaign rallies, against death, damage or disruption'* (Fischer, 2002).

The key participants in electoral security are EMBs, security forces, political parties, media, civil society organizations and judicial officials. Electoral violence can occur during registration when groups are denied registration for various reasons including discrimination, denial of citizenship or for lacking essential identity documents. During campaigns, groups can be denied access to certain areas or their rallies can be disrupted. During balloting, groups can engage in conflict due to allegations of misconduct or deliberate action to disrupt the electoral process (Fischer, 2002).

A Political Economy of Electoral

Violence in Kenya There are a number of political economy factors that may explain electoral violence in Kenya. Historical or communal grievances, relative deprivation, normalization of violence/impunity, lack of elite consensus on the 'rules of the game', level of democratic institutionalization, type of electoral system, ethnic/clan/religious based political parties, demographic pattern, fractionalization and dispersal (CIPEV, 2008; IREC, 2008; ICG, 2008; Kimenyi and Ndung'u, 2005).

Land-based Grievances and Conflicts

Land has been a major source of conflict due to a number of factors: scarcity of arable land since two-thirds of Kenya's land is arid or semi-arid. The population of Kenya has increased from 8.1 million at independence to more than 40 million today (KNBS, 2009). Communities tend to have religious attachment to their ancestral/cultural lands. Politicians use land for patronage during elections. There

have also been irregular/illegal allocations of land, dispossession and grabbing of public and community land (Ndung'u Commission Report, 2004).

Politicization of land and settlements in the Rift Valley including past unresolved land grievances, have often been used as a pretext for ethnic political mobilization and cleansing, mostly pitting the Kalenjin against perceived migrants such as Kikuyu and Kisii and to a lower extent the Maasai against Kikuyu, Kalenjin and Kisii migrants (Oucho, 2008). Settlement of communities outside their areas of origin became a major source of conflict in the Rift Valley and Coast Provinces since the advent of multi-party politics in 1992 (Oucho, 2008). Existing grievances on land are manipulated during electoral competition to form potent fodder for violence. Violence was unleashed to force specific voters to abandon the areas in which they were registered as voters which effectively nullified their votes because according to the electoral rules, people have to vote in the areas in which they were registered (Kiliku Report, 1993; Akiwumi Commission Report, 1999).

Relative Deprivation/poverty, Social and Economic Marginalization

Statistics indicate that Kenya has high levels of inequality and is ranked 103rd out of 169 countries, making it the 66th most unequal country in the world (KNBS, 2013; SID, 2010). Poverty, unemployment, and perceived exclusion from political and economic space make groups vulnerable to manipulation for political gain. They perceive their poor conditions as caused by their neighbors' wellbeing and politicians aggravate such narratives (Lonsdale, 2004). Census in Kenya is politicized due to its significant implications for political power. The high number of youth in the population, a significant proportion of which is marginalized and high rate of unemployment (2 million in 2008), was cited as a catalyst of electoral violence (CIPEV, 2008). More than half of the population is below 19 years old and is open to political manipulation in urban areas (Kenya's urban population is 22% of the total) (Barkan, 2011). There was also political patronage and nepotism in access to lucrative civil service positions (SID, 2010). Inequality in regional development means ethnic inequality and this has informed underlying grievances during elections (SID, 2010; UNDP, 2001). Urban centers also attract poor people in search of jobs and livelihoods and more than 60% end up living in slums (semi-permanent structures) where they can afford. This population, which also bears ethnic identity, is often vulnerable to political violence both as perpetrators and victims.

Ethnic-based Political Mobilization

Kenya has more than 40 ethnic groups with 5 of them (Kikuyu, Luhya, Kalenjin, Luo and Kamba) comprising two thirds of the population (KNBS, 2009). This

means that coalition patterns among these groups determine national electoral outcome especially with the support of smaller constituencies across the country. Political parties based on ethnic fiefdoms are used as legitimate anchors of the struggle for access and control of government power (Barkan, 2011; Stiftung, 2010). Electoral violence at the national level has previously involved the five dominant groups. Ethnic-based political mobilization is the norm in Kenyan politics (Barkan, 2013). Alongside the relative size of the principal ethnic groups, which often build shifting alliances to capture political power, lies glaring economic inequality. From this perspective, some ethnic groups especially the Kikuyu are perceived to be relatively well-off compared to others and this to a large extent informs political mobilization (Barkan, 2011). Due to the colonial legacy, there are coterminous ethnic-cum administrative boundaries in Kenya. Most ethnic groups occupy defined constituencies, districts, provinces and counties (Oucho, 2008). Migration therefore alters the political power balance which may cause grievances among the local residents.

Nascent Democratic System and Institutional Framework

Kenya, like other African countries, engaged in democratization through domestic political pressure and foreign influence to prevent conflict and accelerate development. However, elections have become one of the most divisive political activities leading to civil wars and violence in the recent past (Dercon and Gutierrez Romero, 2012). The imperial constitution that ushered the country's independence granted disproportionate powers to the executive at the expense of individual liberties, the legislature and judiciary. The end of the short-lived multiparty system in 1964 and banning of the Kenya Peoples Union (KPU) in 1969 further shrunk the democratic space during Jomo Kenyatta's era (1963-78). This situation would be retained under Daniel Arap Moi's administration (1978-2002) (Oucho, 2008; Barkan, 2011; Kanyinga, 2009).

The presidency relied on a well-oiled provincial administrative system that could determine electoral outcomes. This system also ushered in economic inequality since it did not have effective checks on distribution of resources such that areas that supported the ruling regime witnessed more development than opposition zones (Oucho, 2008). Political competition to acquire or retain the presidency and/or government is therefore stiff due to perceived loss or gain (Dercon, Stefan and Gutierrez Romero, 2012). Perceived non-independence of electoral commissions, security forces and provincial administration in previous elections was also a cause for concern. Before 2007, the president had power to appoint election commissioners without consulting political parties. In democratic systems, the constitution allocates power and determines how much of it the winners and losers will exercise. The ability to manage ethnic conflicts largely depends on the nature

of the executive, the type of electoral system and the distribution of power between the central government and devolved units (Saideman et al, 2002). Scholars argue that presidential systems are better at addressing ethnic security or fears than parliamentary systems due to checks and balances (Saideman et al, 2002).

Pluralist systems are more prone to ethnic violence than proportional representation. In the former, it is a winner-take-all while in the latter case all parties are guaranteed some level of power (Cohen, 1997; Lijphart, 1994). Conflicts will also be more present in poorer than richer countries where the state plays a significant role in distribution of scarce resources (Lipset, 1991). The more differentiated groups are in terms of physical attributes, socio-cultural values, political behavior, economic status and regional dispersal or concentration, the more the likelihood of conflict (Lipset, 1961; Gurr, 1967; Horowitz, 2002). High stakes and stiff competition may drive parties to resort to unconventional means to win elections especially in pluralist electoral systems.

Impunity

The culture of political or communal violence has existed in pre-colonial, colonial and postcolonial Kenya. The *raison d'être* of this violence was an attempt to force conformity or subservience among renegade groups. Due to the then global political environment, political violence was a viable option since there was not much international moral responsibility demanded of heads of state. Legitimization of political violence through impunity for past crimes, politicization of crimes to undermine rule of law, weak mediating institutions such as EMBs, weak judiciary, partisan security sector, centralization of power on the executive and winner-take-all electoral system can combine to create conducive conditions for electoral violence. Due to a close correlation between political violence and political power in Kenya, there has not been adequate redress of injustice wrought by political/electoral violence.

If the relative cost of engaging in violence is lower than losing an election, the former will be used (Hoglund, 2009). Electoral violence in Kenya during the 1992 and 1997 general elections occurred before the elections and was orchestrated by the state for fear of losing in the new multi-party democratic era (HRW, 1993; KHRC, 1998; Klopp, 2001; Mueller, 2011).

Between 1961 and 2008, few arrests and subsequent judicial processes have been implemented (HRW, 2008; CIPEV, 2008; Akiwumi, 1993; Kiliku, 1999). Victims continue to bear a heavy price for their perceived ethnic political affiliation while political leaders accused of fomenting ethnic strife continue to enjoy political space (KHRC, 2011).

At the political party level, some nominations were marred by violence but which appeared tolerable in the Kenyan political culture. Extrajudicial killing of members

of militias such as Mungiki were tolerated before 2007 by many groups including politicians and the media and only human rights organizations came to their defense (KNCHR, 2007). Around December 2007, there was violence in several locations (killing about 70 people) where politicians were involved. The Electoral Commission of Kenya (ECK) however did not disqualify such candidates from participating in elections (Cheeseman, 2008). This justifies violence not sanctioned by judiciary as a legitimate course of redress.

In total, about 600 people were killed before the 2007 elections, a number that was significantly downplayed by the media and the public, signifying normalization of violence in Kenya's political culture (Cheeseman, 2008). The culture of political violence even within parties is part of accepted behavior among the public in Kenya (Anderson and Lochery, 2008). Members of the political class bend rules and institutions to favour them or act in complete disregard of the law with impunity (Mueller, 2014).

Secondary Causes of Electoral Violence

Weak Class or Ideology-based Political Parties

In Kenya, political parties are more of vehicles for channeling ethnic votes than peddlers of development ideologies. This informs the numerous shifting political party alliances witnessed in Kenya since independence (Kaverenge, 2008). However, there is a general ideological dividing line based on resources and power grievances first defined by the KANU-KADU political divide. KANU stood for strong centralized unitary government and free settlement of citizens beyond their native regions while KADU stood for devolved government principally to protect minorities and land in their home territories (Kanyinga and Boone, 2009; Kaverenge, 2008). In the then cold war global political divide, Jomo Kenyatta's KANU stood for 'baking the cake' (Capitalism) while Jaramogi's Kenya Peoples Union (KPU) stood for 'distributing the cake' (social democracy/egalitarianism). This ideological division can be seen in 2007 through Kibaki's/PNU's conservative motto of 'Kazi iendelee' (work continues - conservative/ status quo policy) against Raila Odinga's/ ODM's 'Kazi ianze sasa' (work begins now social democracy/egalitarianism/radical change paradigm captured in the ODM Manifesto (2013-2017), titled Deepening Reforms for Equity and Social Justice. Lack of well-trenched trans-ethnic ideological or class-based politics therefore raises the significance of ethnic polarization and probability of electoral violence.

Organized Armed Groups and Ethnic-based Militias

Due to legitimization of political violence in Kenya's history, there have emerged several ethnic-based organized armed groups that play a key role in perpetuating electoral violence. Some of these groups include: Mombasa Republican Council

(MRC), Sabaot Land Defence Forces (SLDF), Mungiki, Kalenjin Warriors, Chinkororo, Angola Msumbiji, Jeshi La Mzee, Baghdad Boys and Taliban (Kagwanja, 2003; Cheeseman, 2009; Ngunyi and Katumanga, 2014). Organized armed groups orchestrate violence as a strategy of pre-determining electoral outcomes. Violence is also accelerated by informalization of the state which leads to diffusion of violence beyond state control and establishment of politically-connected militias (Kagwanja, 2003; Cheeseman, 2008).

Informal state-sponsored violence wreaked havoc on the national economy between 1991 and 2000 leading to sharp decline in the tourism industry especially at the coast, and disruption of health and education services in some areas as professionals fled from the violence. There were also reports of gender-based violence and an estimated economic loss of about \$10 billion (Kiliku, 1993; Akiwumi, 1999; KHRC, 2008). The violence created a crisis of legitimacy for government institutions especially in opposition areas. Restoring state legitimacy through political settlement was therefore a crucial role of the new dispensation.

Triggers

There are immediate occurrences that can ignite or trigger electoral violence based on existing political grievances and the prevailing global political environment.

Electoral Malpractices

Electoral malpractices, cancellation of elections, assassination of candidates and availability of organized armed groups are ideal triggers of electoral violence in Kenya. Electoral manipulation may involve vote-buying, intimidation, electoral violence, stuffing ballot boxes, tampering with vote tallies and ballot stealing (Bratton, 2008; ICG, 2008).

Relatively equal numerical strength among coalitions based on ethnic arithmetic may result in marginal differences. Complex electoral administration due to an enlarged national assembly and devolved governments may affect electoral integrity (Barkan, 2013). Perceptions of a weak and biased IEBC constitute a cause of grave concern. Ethnic power dynamics within counties will also influence the occurrence of electoral violence in future.

Biased Opinion Polls

Opinion polls can also play a role by showing that a certain candidate is ahead by a significant majority, which, if disproved by real outcomes at the ballot box, can cause disappointment, outrage, disaffection and violence (Cheeseman, 2008). Where polls are not scientifically carried out or objectively reported, they can cause political instability. Opinion polls can exercise particular influence on the outcome

of elections and can also be quite distorting especially when they are re-produced in newspapers as objective news (McQuail, 2005, quoted in Ndeti et al, 2014).

Misinformation and Propaganda

Politics in a given context may involve misrepresentation of facts, ethnic prejudice, exaggeration or slander. This may be done through the media (especially vernacular radio stations), SMS and social media (KNCHR,2008; ICG, 2012).

Why the 1992 Elections were Violent

Kenya's second electoral violence began after the introduction of multi-parties in 1991 and it was mostly confined to the Rift Valley province. The state-sponsored violence was partly used to fulfill the "prophecy" that pluralism would bring chaos and more importantly influence electoral outcomes. Due to Moi's strong control of the security forces and lack of a post-independence armed resistance against the state, the latter temporarily enjoyed the monopoly of violence, (Ngunyi and Katumanga, 2014).

The violence pitted 'indigenous' – Kalenjin and Maasai against 'non-indigenous' people –Kikuyu, Kisii, Luo and Luhya. By 1993, the violence had led to the death of 1,500 people and displacement of 300,000 (HRW, 1993). Though presented as land or ethnic clashes, the violence was strategically executed by the state to influence the electoral outcome of 1992 (Kiliku Report, 1993; HRW, 1993; NCKK, 1992). A number of measures were used to ensure KANU'S victory: gerrymandering, voter registration irregularities, ballot stuffing, fraud in tallying and vote-buying (Brown, 2001; Maupeu, 2007; Throup and Hornsby, 1998).

Why the 1997 Elections were Violent

Due to fragmentation of the opposition parties (Democratic Party (DP), Ford Asili, Ford Kenya, National Democratic Party (NDP) and previous success of electoral manipulation in 1992, it was still viable to use violence in shaping the outcome of elections. In the 1997 elections, there was violence in Bungoma/Trans Nzoia, Marakwet/Pokot and the Coast province (Akiwumi, 1999). The level of violence in 1997 was lower than in 1992. About 50 people were killed during demonstrations between June and August 1997. Pre-election violence also occurred in KwaleLikoni area in the Coast province. This violence was aimed at non-indigenous 'up-country' people. About 100 people were killed and 200,000 displaced (Maupeu, 2007). Members of the opposition in the Rift Valley were also targeted due to their electoral choices. Though KANU won the elections, they were marred by irregularities.

The 2007 Post-Election Violence

Violence in several areas of the country was triggered by the announcement on 30 December 2007 by the Electoral Commission of Kenya (ECK) that President Mwai Kibaki had won a second term. Though the election was dubbed too close to call, there were allegations of electoral malpractices in the Party of National Unity (PNU) and Orange Democratic Movement (ODM) strongholds (ICG, 2008, CIPEV, 2008). The 2007/8 electoral violence was the worst in Kenya since independence: 1, 133 people were killed and over 600,000 displaced (CIPEV, 2008). The violence pitted supporters of ODM against those of the ruling PNU. The violence also assumed ethnic fault-lines in tandem with Kenya's political mobilization pattern (CIPEV, 2008; ICG, 2008; KNCHR, 2008).

Ethnicity was a key campaign tool in 2007 and the Opposition cast the Kikuyu as beneficiaries of government resources at the expense of other communities (CIPEV, 2008; Barkan, 2011, Abdullahi, 2013). The Majimbo debate elicited strong anti-Kikuyu sentiments which contributed to their being targeted for expulsion from the Rift Valley and Coast provinces (CIPEV, 2008). Due to perceived government control of judiciary, ODM did not seek redress in court and called for mass action to force government to annul elections but this resulted in looting, property destruction and killing (Abdullahi, 2013; ICG, 2008; KNCHR, 2008). Hate speech proliferated due to past impunity.

The Government was unable to protect citizens due to institutional weaknesses. Local and international observers such as the European Union, Commonwealth Secretariat, East African Community and the International Republican Institute noted that while the voting and counting of ballots at polling stations were fair with minor exceptions, the tallying and compiling of the results dramatically undermined the electoral outcome (KEDOF, 2007).

Biased opinion polls may have contributed to the violence through favouring one candidate in a hotly contested election; which, when disproved by real outcomes at the ballot box, could have caused disappointment, outrage and disaffection (Cheeseman, 2008; Ndeti et al, 2014). Electoral violence, which appeared spontaneous, thrived in vulnerable regions where there were grievances on access to land and jobs such as the tea-growing regions of Kericho and Bomet, the Borabu-Sotik border, Thika and Limuru, and in the urban slums. There were accusations of media incitement by KASS FM (Kalenjin), Inooro, Coro and Kameme (Kikuyu) (ICG, 2008; KNCHR, 2008). This post-election violence marked the peak of institutionalization of violence in Kenya since 1991. There was re-activation of rearguard ethnic militias encouraged by past impunity to prosecute the perpetrators of political violence.

Why the 2002 Elections Were Generally Peaceful

In the 2002 elections, due to a combination of political dynamics such as the end of two terms limit for incumbent president Moi, having two top political contenders (Kibaki and Uhuru), from the same ethnic group (Kikuyu), supported by other ethnic groups; Uhuru largely by Kalenjin and Kibaki by Luo among others made the 2002 the most free, fair and peaceful elections since the introduction of multi-parties in 1991. Given the primacy of ethnic political competition, the drivers of ethnic-based electoral violence had been effectively activated though not by design but by the political calculations of the emergent coalition of the main national political players.

President Moi had made a commitment to retire due to a combination of factors: the demands of the constitution, the political climate of the time, a re-energized opposition, vibrant civil society, enlightened and politicized citizenry, assertive media and committed international community. Another salient reason is that the incumbent was not a significantly interested party in the race and he had no personal fear of political persecution under Mwai Kibaki in case Uhuru Kenyatta lost. Kibaki was a man who had served Moi well as the latter's Vice President and whose public demeanour and gentlemanly mien was well established in Kenya's political space (Weekly Review, 1988). This was proved right when Moi was later granted immunity (Throup, 2003). By opting for Uhuru Kenyatta as his preferred successor under Jomo Kenyatta's KANU, Moi had closed his long political career and indelible mark on Kenya's political landscape with remarkable appreciation of his mentor and predecessor, Mzee Jomo Kenyatta (in the spirit of following in his Nyayo or footsteps). With the ghost of past ethnic clashes in the Rift Valley largely obliterated by Kibaki's ascent to power, Moi appeared to legitimize the role of dynastic politics and hoped that his preferred son and Rift Valley political heir, Gideon Moi, would deputize Uhuru and thereby assume the reigns after the end of the latter's term. Though this strategy did not work at the time, its influence on Kenya's politics remains significant to this day.

Were the 2013 Elections Peaceful?

Though the 2013 elections were peaceful at the national level, there were a number of localized conflicts. In 2012, land conflict between the Orma and Pokomo killed more than 100 people (Abdullahi, 2013). Poor police performance in Lamu's intercommunal violence of 2013, where early warning was not heeded to, led to killings and displacement of 34,417 people (Abdullahi, 2013).

The key candidates in the presidential race, Uhuru Kenyatta and Raila Odinga, called for peace and accepted to go to court to challenge electoral outcome rather than engage in mass action. Communities that were most affected as both

perpetrators and victims (Kikuyu and Kalenjin) joined together in one political party alliance (Jubilee) largely because of the ICC cases that indicted candidates from both sides of the 2007 PEV (Lynch, 2014; USIP, 2014). The two personalities, Uhuru Kenyatta of The National Alliance (TNA) and William Ruto (United Republican Party (URP) were both political products of the Moi/KANU tradition and therefore shared a conservative ideological inclination. There was also a politically influenced public willingness to pursue reconciliation between the Kalenjin and Kikuyu rather than opting for retributive justice that may not have brought about long term peace.

The prevailing psychological mood occasioned by the international community's concern about Kenya's 'unforeseen' rapture and the Kenya National Dialogue and Reconciliation (KNDR) Accord reforms, together with fear of the possibility of being arraigned at the ICC, militated against any justification and legitimacy for electoral violence. In 2013, there was more security sector preparedness than in 2007. The Kenya National Intelligence Service identified 27 out of 47 counties vulnerable to electoral violence in 2013, (Abdullahi, 2013). There were 45,000 polling stations each with 2 police officers and other forces such as Kenya Wildlife Service (KWS) and General Service Unit (GSU) were brought in to re-inforce the police in hot spots. The government warned against hate speech and there was troop deployment, peace messaging and an active national cohesion and integration commission and media cooperation on election reporting rules. There were also fairly credible reforms of the Judiciary.

The 2010 constitution introduced reforms such as removing the power to appoint election officials from the Office of the President; decentralizing executive power, devolving government, and establishing an independent IEBC. These, among others, improved minority rights and provided a favorable environment for peaceful elections (USIP, 2014). The election was Kenya's most complex as voters simultaneously cast ballots for six county and national offices i.e. President, Governors, Members of County Assembly (MCA), Members of parliament, Senators, Women representatives. There were intercommunal calls for peace irrespective of the electoral outcomes. County peacebuilding improved through creation of a National Steering Committee (NSC), National Cohesion and Integration Commission (NCIC) District Peace Committees (DPCs) and Peace Forums (in the Rift Valley, Coast and Eastern Provinces).

The work of NCIC sent clear signals against hate speech and impunity, though there were no successful prosecutions. There was more community capacity building and early warning initiatives through the NSC's Conflict Early Warning and Early Response Unit (CEWERU), and reconciliation and mediation were also done by civil society under the PEACENET umbrella supported by UNDP (Abdullahi,

2013). Due to this confluence of factors, peace prevailed but this does not guarantee peace in future elections.

Prospects for Peace in 2017 Elections and Beyond

The New Constitution of Kenya 2010

The promulgation of the new constitution in 2010 was a fundamental achievement for Kenyans after struggling for 20 years to entrench the rule of law. The new constitution is the strongest pillar of reforms and democratic consolidation as it seeks to neutralize the major causes of instability. It has addressed impunity of government organs through creation of accountability mechanisms. It dilutes the influence of the executive, boosts independence of the legislature, restores credibility of the judiciary and devolves more power to the local level. The document has increased the powers of independent commissions, protects civil liberties and spread the centers of power through devolution (Sihanya, 2013; Barkan, 2011). There are 47 devolved governments (one for each of 47 counties) and an independent commission that determines the revenue allocation formula for counties and takes 15% of the national budget (CRA, 2015). This is the Commission for Revenue Allocation (CRA) and is making a significant contribution to reducing inequality. The constitution also restricts the presidency to two terms of five years each. In so doing, the constitution reduces incidences of personalized leadership by upholding the rule of law. The requirement for 50+1 in presidential elections was a significant electoral engineering of the constitution in addressing ethnic politics by raising the bar for election of president. This therefore increased the propensity for ethnic cooperation/alliance and streamlined recruitment into the public service by creating an independent Public Service Commission (PSC).

Most recommendations of the KNDR were incorporated in the constitution especially the structure of the security sector. However, it will take a long time before the fruits of the new system are deeply felt across the country, but currently the structure has changed the way politics is conducted and power exercised in the country. Unlike the 2007 elections, when the Opposition lost the elections, in 2013 they did not take to the streets but the Supreme Court to seek redress, signifying some confidence in the new constitutional order and legal dispensation. The constitution (2010) placed the police under the ministry of the Interior to prevent politicization. Further reforms are still slowly taking place and training was increased to 15 months from the previous 6 months. Some controversial legislation concerning the judiciary and police has also been enacted. Proposed institutional reforms in the areas of security, judiciary, electoral commission and control of hate speech will to a large extent determine the occurrence of violence or lack of it. The prosecution for electoral violence has been slow.

Accountability for Electoral

Violence

A number of attempts to make the perpetrators of electoral violence accountable and to deliver justice to the victims have been made by the government of Kenya and the international community. The success of those initiatives however is debatable. The Kenya National Dialogue and Reconciliation Accord (KNDR) The Kenya National Dialogue and Reconciliation (KNDR) Accord to reconcile PNU and ODM after the 2007/8 electoral violence was facilitated by Kofi Annan (former UN Secretary General) and a panel of other African eminent persons. It was an African Union (AU)-led mediation, supported by the UN, neighbouring countries, civil society and international community. It addressed weak institutions vulnerable to manipulation and impunity for past electoral violence and incitement (ICG, 2012).

This agreement once again set Kenya towards stability and democratic consolidation. A coalition government was formed on February 28, 2008 with Kibaki as President and Raila as Prime Minister. It provided a road-map for broad reforms including writing of a new constitution to address the root causes of the conflict (KNDR, 2008).

According to the Accord, parties agreed to:

1. Take immediate action to stop violence and restore fundamental rights and liberties;
2. Address the humanitarian crisis and promote reconciliation, healing and restoration of calm;
3. Overcome the political crisis; and
4. Address long-term issues and the root causes of conflict, including constitutional, legal and institutional reforms \A number of institutions were established to implement the envisaged reforms. Three commissions were established to address institutional challenges and provide recommendations on how to address them.

These are discussed below.

The Independent Review Committee (IREC) The Independent Review Commission (IREC) also known as the Kriegler Commission was established by the coalition government in 2008. Its mandate was to review the conduct of the 2007 elections with a view to establishing loopholes in the legal, institutional structure of the electoral framework, role of political parties, civil society, media, and observers, and assess the integrity of the elections and recommend reforms to improve future elections (KNDR, 2008).

The committee identified electoral malpractices such as violence orchestrated by marauding gangs and bully boys, hate speech, gender discrimination, and votebuying and selling. There was also failure by the authorities to stop such offenses from happening. IREC recommended appropriate legal and institutional reforms to avoid discrimination and to enhance justice and efficient resolution of disputes. It also found out that electoral boundary limitations did not respect the basic principle of equality of votes (ICG, 2012).

Commission of Inquiry into Postelection Violence (CIPEV)

The Commission of Inquiry into Post-election Violence (CIPEV), also known as the Waki Commission' was established in 2008. The mandate of the commission was to investigate the facts relating to the post-election violence, the actions or omissions of state security agencies and provide recommendations to enable political, legal and institutional reforms that would bring to justice offenders; eradicate impunity and promote national reconciliation. It would then give appropriate recommendations to the Truth, Justice and Reconciliation Commission (TJRC). CIPEV recommended police reforms, prosecution of those who bore the greatest responsibility for the violence either locally or at the International Court of Justice (ICC). CIPEV recommended further investigation and prosecution of suspected perpetrators of electoral violence and handed over names of prime suspects to be prosecuted in a special tribunal, but when that process failed, they handed the list to Kofi Annan in a sealed envelope (Abdullahi, 2013; ICG, 2012; HRW, 2013). This was the first commission to attempt a blow on impunity by providing an external justice option. The Waki Commission became the first to fulfill its mandate creatively without looking over their shoulders for political consequences (ICG, 2012).

The Independent Electoral and Boundaries Commission (IEBC)

The Interim Independent Electoral and Boundaries Commission (IIEC) and Interim Independent Boundaries Review Commission (IIBRC) created by the KNDR Accord were later merged into the Independent Electoral and Boundaries Commission (IEBC). IEBC is a creature of the constitution of Kenya 2010. It is a crucial institution entrusted with the responsibility of managing elections, which, as this paper indicates, may have a bearing on violence, democracy, stability, peace and entrenchment of the rule of law. There have been different views on the performance of IEBC, with the current ruling Jubilee government supporting its continuation while the opposition, the Coalition for Reforms and Democracy (CORD), calling for its dissolution (Daily Nation, 2016).

The management of the 2013 elections, though better than that of the 2007 elections, was also fraught with technical hitches and irregularities (Sihanya, 2013). The Supreme Court's ruling on CORD's presidential election petition did not find such shortcomings significant enough to warrant discrediting the whole electoral process. There have been accusations towards IEBC of corruption and evidence of malpractices in procurement as found by a British Court (Sihanya, 2013). Having an electoral body that enjoys trust among power contenders cannot be gainsaid, therefore, the performance of IEBC towards the next general election will be a significant determinant of occurrence of electoral violence, intercommunal peace, democratization, and entrenchment of the rule of law.

The National Cohesion and Integration Commission (NCIC)

The National Cohesion and Integration Commission (NCIC) was established in 2008 through an act of parliament to *'facilitate and promote equality of opportunity, good relations, harmony and peaceful coexistence between persons of different ethnic and racial backgrounds'* (GoK, 2008). It was tasked with the responsibility of promoting inter-ethnic cohesion through preventing discrimination and hate speech. The commission was composed of high integrity members from different ethnic groups.

NCIC developed guidelines for journalists and media outlets on responsible journalism, conducting awareness training regarding, hate speech, warning that perpetrators would be held accountable, investigating and hearing complaints on hate speech. NCIC also monitored social media such as Facebook, twitter and other internet platforms to stop hate messages. It also sent warnings to politicians and initiated prosecutions which helped to reduce electoral violence in 2013 (Abdullahi, 2013). Though the commission did not successfully prosecute offenders of hate speech, it enjoyed good media coverage to deter politicians from engaging in hate speech before and during the 2013 elections. Its effectiveness has however been questioned for prosecution failures (Sihanya, 2013).

The National Task Force on Police Reforms

The National Task Force on Police Reforms was established in 2009 chaired by Philip Ransley, to review the conduct of the police during the post-election violence. The recommendations of the latter and a provision in the new constitution saw the establishment of: Office of the Inspector General of Police (IGP) independent from the president and appointed through a transparent process; the National Police Service Commission (NPSC), a civilian oversight mechanism; and the Independent Police Oversight Authority (IPOA). The regular and administration police were also merged. There are still ongoing security sector reforms but the

police are yet to advance to effective policing as exemplified by instances of failure to act on intelligence, failure to protect citizens, unjustified use of force and unprofessional conduct (ICG, 2012; KHRC, 2011; Daily Nation, 2016).

Truth Justice and Reconciliation Commission (TJRC)

The TJRC was established in 2008 to investigate social, political and economic crimes including human rights violations committed in Kenya from 1963 to 2008. The commission delivered its report in 2013 but received limited legitimacy among the public due to questions on its leadership credibility (ICG, 2008). It however gave recommendations for investigations, prosecutions and reparations for human rights violations perpetrated in the past. The findings and recommendations are yet to be acted upon. The commission's report informed government policies and strategies on preventing recurrence of electoral violence.

The Judiciary

Corruption was well entrenched in the Kenyan judicial system well before 2008 (CIPEV, 2008). However, there was significant change by 2013. The Task Force on Judicial Reforms was established in 2009 to review proposed reforms and measures to restore public confidence in the judiciary. Its report in 2010 supported the new constitution and Judicial Services Bill and proposed additional measures (Sihanya, 2013).

The Task Force also proposed new rules for vetting judicial appointees, reinforced Court's responsibility to uphold the Bill of Rights, and established a Supreme Court. The Judicial Service Commission has fairly reformed the Judiciary through transparent selection of the Chief Justice and other senior officers through a vetting process. However, there are still pending corruption cases involving members of the Supreme Court, cases of some judges contesting retirement at the age of 70 years and selection of a new Chief Justice that will determine whether the Judiciary will lead the country in upholding the rule of law and hence preventing conflict (Hohn, 2014). By the start of November 2016, a new Chief Justice had been sworn to office. The office of Ombudsman was created in 2011 and by 2013 had received 14,000 complaints. The capacity of courts to adjudicate cases timely has been raised. A new Chief Justice (Dr. Willy Mutunga) was appointed (now retired), more courts have been built, vetting of judges and magistrates has been done but there are still allegations of corruption including at the Supreme Court. JSC decisions have been challenged by judges including in the Supreme Court such as the selfish filing of cases to challenge JSC decisions on retirement of senior judges.

The fast adjudication of presidential cases (within 14 days) enhanced the performance of courts of law in preventing electoral violence. In 2012, the Deputy

Chief Justice was suspended over allegations of misconduct and later the High Court registrar was sacked over corruption allegations (Abdullahi, 2013). The performance of the Judiciary in addressing electoral violence seems to have been hampered by the office of Director of Public Prosecutions (DPP) and the police's low capacity to adduce credible evidence. It has been reported that only 7 post-election violence-related cases have been determined with convictions (HRW, 2011). The Witness Protection Act was adopted in 2010 but has not been effective. In addition, an International Crimes Division was established at the High Court in 2012 but it has not been operational (Hohn, 2014).

Other Government Reforms

Since 2008, a raft of political, judicial and electoral reforms has been implemented. The Political Parties Act (2011) forbids ethnic incitement, and vilification or incitement to cause harm. The Land Policy was translated into the Land Act in 2012, the new constitution created the National Land Commission (NLC) which has handled land disputes in different areas of the country but it is yet to address the immense land grievances (Sihanya, 2014). There have been disagreements between the ministry of Lands and NLC thus making land reforms a slow process. However, implementation of the constitution and legal provisions are ongoing.

The International Criminal Court (ICC)

After Parliament failed to establish a Special Tribunal in 2009, Kofi Annan gave the Waki list to the ICC in July 2009, noting that:

'..The people of Kenya want to see concrete progress on impunity. Without such progress, the reconciliation between ethnic groups and the long-term stability of Kenya is in jeopardy'.

On 15 December 2010, ICC charged 6 Kenyans including senior government leaders, Uhuru Kenyatta and William Ruto, for crimes against humanity for their role in the 2007 PEV (ICG, 2012). ICC prosecutions served to warn senior politicians against engaging in electoral violence in 2013. The process reinforced the need for addressing electoral disputes through courts. The ICC was perceived to be immune to domestic political/judicial manipulation. Thus, international justice was brought to bear on Kenya's fragile democratic experiment (Hohn, 2014; ICG, 2012).

These high-profile cases at the ICC ended with acquittal of those who allegedly bore the greatest responsibility for mass atrocities and without conviction or reparation, the victims were denied justice and impunity for political violence may

have been re-enforced. The recent use of violence during a by-election in Malindi (March, 2016), may be an indicator of renewed political return to violence as a determinant or consequence of electoral outcome.

Implication of the Findings

The ghost of electoral violence has not been cleansed or buried in the country. Though the end of ICC cases may have provided relief from retributive justice for political violence, which enhances inter-communal trust, political cooperation and reconciliation in the short run, breakdown of international justice processes of the last resort further strengthens impunity which has been a trademark of Kenya's political landscape since 1992, and provides space for reemergence of the unfettered ghosts of electoral violence in future elections, in the long run.

Though the judiciary has improved immensely, it cannot be completely immune from local politics and can be used by political elites to fix each other. Given the history of impunity in Africa and the performance of the African Court of Justice in the Gambia, an AU court will equally be vulnerable to political interference. The impunity of political parties and actors continues to water down the country's legal foundations. In 2013, the Kenya parliament voted to withdraw from the Rome Statute and repealed the International Crimes Act meant to allow ICC trial of crimes against humanity, genocide and war crimes committed after 2009. Civil society organizations perceived as supporters of ICC prosecutions have faced growing legal restrictions such as those imposed by the Public Benefits Organizations (PBO) Act 2013, which limit their foreign funding to 15%, with significant effect on their operations (Abdullahi, 2013).

The ongoing political, administrative and economic devolution and address of historical injustices and land-based grievances is crucial to electoral violence prevention in Kenya. In the long term, rising economic inequalities, unemployment among urban dwellers and the ability of devolved governments to stem intercommunal conflicts, may be likely sources or contributors of instability. State failure in Somalia, cross-border insecurity, Al Shabaab threats and climate change-related conflicts will exacerbate conflicts over water and pasture in pastoralist areas (Barkan, 2011).

The democratic consolidation trajectory in Kenya will be informed by expansion of the middle class (professional, civil society, private sector, informal sector), through education, urbanization and international exposure, sharing civic citizenship values that will override ethnic parochialism. The growing middle class made up of professionals, business community, and civil society is among the most vibrant in Eastern Africa and has effectively championed civic nationhood and human rights values since 1977. The international community has shown significant willingness

and diplomatic good offices to support Kenya. United States president Barack Obama's, Pope Francis', and Ban Ki Moon's recent visits to Kenya, as well as Kofi Annan's follow-up on peace consolidation and international cooperation in counter-terrorism offer positive indicators for international commitment towards supporting stability in Kenya (Sabine, 2014). Given the history of impunity mentioned earlier, the sword of international justice should remain out of the sheath if electoral violence is to be completely eradicated in electoral contests.

Conclusion

This study has discussed the salient features of electoral violence in Kenya. The causes of this violence are largely within the orbit described by researchers in other case studies. However, it takes its own contextual dynamics in Kenya and it can be prevented and managed as proposed in the study. The institutions and structures of electoral practice are important variables in determining the emergence or otherwise of electoral violence by influencing choices and strategies at the disposal of political players. Though human security challenges can only be addressed in the long run, there is a wide array of strategies/institutional changes that the domestic and international actors can adapt to influence the course of electoral outcome toward peace. Implementation of the new constitution has run fairly on course albeit with some hiccups. Proper implementation of the constitution will determine the stability trajectory of the country and it may also bridge the fault-lines that have triggered previous violence.

Effective implementation of electoral violence prevention strategies is a long term process. Given the general predisposition of Kenya's main political players to pragmatism, shifting of alliances and high regard for international opinion on their democratic credentials, the road to non-violent elections in Kenya is a feasible journey. The factors that were identified as causes of electoral violence since 1992 have to be adequately addressed for achievement of free and fair elections and sustainable peace.

Recommendations

1. Continue full implementation of the 2010 constitution to enhance respect of human rights, free and fair elections, address grievances, reduce inequality and enhance national cohesion and integration.
2. Fast-track domestic prosecution of election violence-related crimes in domestic courts
3. Strengthen IEBC to earn respect as a neutral umpire for political parties.
4. Support institutional development of political parties to act as building blocks of a democratic culture.

5. International electoral assistance could take the form of strengthening democratic structures within political parties, and at the governmental level, enforcing of electoral law, security sector deterrence and confidence-building measures, supporting voter education to cultivate democratic norms, and maintaining faith in the democratic system.

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