

'I DO NOT KNOW WHO WON THE ELECTIONS': HOW NOT TO CONDUCT ELECTIONS AND KENYA'S DEMOCRATIC REVERSALS

Westen K. Shilaho¹

South African Research Chair (SARCh)

African Diplomacy and Foreign Policy, University of Johannesburg

wshilaho@uj.ac.za

Abstract

The role of election management bodies (EMBs) in consolidation of democracy, peace and stability in Africa cannot be overemphasised. Kenya's electoral bodies have struggled to assert their autonomy from the executive, a prerequisite for credible elections, since the advent of multiparty politics in 1991. The violently disputed presidential elections in 2007 were partly triggered by a partisan and politicised electoral body. The Chairman of the defunct Electoral Commission of Kenya (ECK) controversially declared the incumbent, Mwai Kibaki, winner, igniting unprecedented ethnic violence. In the midst of the crisis, he explosively confessed that he did not know who won the elections. The 2013 elections were meant to restore Kenyans' confidence in elections. However, Raila Odinga, the controversial presidential loser in 2007, once again accused the electoral body, the Independent Electoral and Boundaries Commission (IEBC), of electoral fraud in favour of Uhuru Kenyatta. Consequently, the opposition called for the disbandment of the IEBC. Are electoral bodies per se the cause of perennial disputed elections in Kenya?

Key words: Kenya, elections, violence, reform, incumbency, impunity, ethnicity mismanagement

INTRODUCTION

The article attempts to trace the history of election mismanagement in Kenya. The overarching argument is that the credibility of elections or lack of it cannot be solely attributed to the electoral body. Elections are immersed in a power matrix that dictates "who gets what, when and how" (Laswell 1948). This question relates to resource accumulation and allocation, which can often be controversial and even potentially destabilising in a situation of scarcity and where there exists deep ethnic divisions, such as in Kenya.

The article begins on the premise that it is through credible elections that people can influence how they are governed, through choosing rulers, based on the policies presented. If rulers do not fear losing elections, in the event of renegeing on pledges made during campaigns or trampling on civil liberties, then such a country cannot be described as a democracy. It means that such rulers are hell-bent on retaining power through the use of fair or foul means, instead of on the strength of the extent to which they responded to people's needs and aspirations.

Kenya has an obligation to conduct credible elections that meet international standards as a signatory to instruments that affirm the importance of elections in a democracy. However, Kenya's elections, since the one-party state, were rituals that afford an opportunity to the neopatrimonial ruler to rearrange the patron-client networks and deal with factionalism within the ruling party. They are hardly about competing visions for the country in the interest of the populace. The executive branch of the government has interfered with elections, since elections were supervised by the Office of the President, under the one-party dictatorship, until the era of multiparty politics. It is for this reason that the ECK, formed after Kenya returned to multiparty politics in 1991, and its successor, the Independent Electoral and Boundaries Commission (IEBC), failed to exhibit independence. The damage and loss of life occasioned by the watershed and violently disputed elections in 2007, were supposed to provide lessons and contribute to ushering in a renaissance with regard to election management in Kenya, but that did not happen. The persistence of electoral deficiencies pointed at a greater challenge of democratisation in a polity with weak institutions, predatory politics and in which ethnicity has tarnished the nation's character.

The article argues that it is imperative for Kenyans to avoid institutionalisation of amnesia that contributes to disputed elections owing to a refusal to learn from the lessons of history. Historical injustices, especially related to land, political assassinations, endemic corruption – that bordered on criminalisation of the state, impunity, poverty, social economic inequalities and ethnic inclusivity/exclusivity in the distribution of national resources and appointments in the bureaucracy – are issues that deserve attention. Hence, recommendations contained in the Truth, Justice and Reconciliation Commission Report (TJRC) must be implemented. The TJRC was set up in the wake of the violently disputed 2007 elections as part of the reform process (TJRC 2013). The TJRC report covers Kenya's postcolonial injustices, mentioned above. The non-resolution of these injustices is manifested in the elections when candidates adopt a do or die approach to power and, therefore, it would be imprudent to focus wholly on the electoral management body without recognising that Kenya's disputed elections are symptomatic of deep seated socio-

economic and political challenges. This article is qualitative and relied on journal articles, books, official reports and newspapers.

THE LEGACY OF ELECTION MISMANAGEMENT IN KENYA

Elections are significant in the democratisation process, because they provide citizens with a chance to participate in choosing rulers and, periodically, to renew the rulers' mandate, based on policy choices by competing candidates and political parties. Credible elections, therefore, ensure that citizens exercise their franchise by influencing policy making and implementation. Elections create a link between citizens and policy makers and the threat of losing elections forces policy makers to take the citizens' concerns seriously. This is only the case in a functioning democracy. In an autocracy or pseudo-democracy, election irregularities are rampant and disenfranchisement is the norm. The electorate cannot influence leadership by holding rulers to account and so rulers abuse power, since there are no consequences. For elections to be of relevance to democratisation, they must be based on the cardinal aphorism that today's winners are tomorrow's losers. In the absence of this possibility, there is no incumbency vulnerability. The corollary is that permanent winners and permanent losers are created, since the possibility of the losing party or candidate winning the following elections becomes increasingly more remote. In Kenya, where political power is central to wealth accumulation, the choice to resort to violence, by the losing presidential candidate and other politicians vying for different elective posts and their supporters, has become part of the "rules of the game"; hence, jeopardising political stability.

There are international instruments that ought to undergird elections the world over. Some of these are the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). The African Union (AU) has the Principles Governing Democratic Elections in Africa (2002) and the African Charter on Democracy, Elections and Governance (2007) that recognise the primacy of elections in democratic consolidation, entrenchment of the rule of law, peace and stability. Therefore, Kenya has a legal obligation to enforce these international treaties of which she is party, either as having ratified and domesticated them or by dint of her AU membership. Fundamentally, Kenya is expected to hold credible elections, because they are an indispensable first step in the democratisation process.

Although Kenya has a history of apparently competitive parliamentary elections, those elections were hardly free, fair and credible. They were more like rituals in which the winners and losers were predetermined. The executive, the president to be precise, has had enormous influence on election results, particularly under the tenure

of Daniel arap Moi (1978–2002). Elections enabled the “Big Man” to reorganise patronage networks and settle factional feuds within the ruling party by weeding out of parliament those regarded as disloyal (Berg-Schlosser 1989:125). Members of the provincial administration, an oppressive colonial relic located within the Office of the President, played a role in election rigging across the country, as testified to by the infamous elections in 1988. Those favoured by the powers that be were elected or re-elected, while dissenters ‘lost’, because they refused to toe the line and failed the ‘loyalty test’. The shambolic character of elections, under the one-party dictatorship, was breathtaking.

Elections under President Moi were not supposed to be free and fair. They were not supposed to be the genuine expression of the choice of free men and women as to their governance. That had been decided for them. Elections were a charade, a form of national grand opera where everybody had to express their support for the Man. Stuffing the ballot box was not a sin. On the contrary, it was good to show how enthusiastic the people of a particular district were in their endorsement of the party and its leader (Republic of Kenya 2008a:23).

The legacy of fraudulent elections, under the dictatorial one-party state, has had an enduring and debilitating impact on Kenya’s multiparty elections. Kenya’s 1963 independence Constitution provided for an electoral body, but it lacked independence and, therefore, it was compromised. Then the Office of the Supervisor of Elections, which fell under the office of the Attorney General (AG), conducted elections. The AG is a presidential appointee. The principal roles of the Office of the Supervisor of Elections were to register voters and conduct elections. But it could not discharge these roles effectively, because it was beholden to the Executive and, therefore, did its bidding. Moreover, its officers lacked security of tenure and that made it impossible for them to act impartially. The infamous *mlolongo* (queue voting) elections in Kenya in 1988, showed the pathetic lows that the management of elections descended to (Republic of Kenya 2008a:36). These were shambolic elections in which the electorate queued behind a candidate of their choice or two accredited agents of the candidate, one of whom would carry an enlarged photograph of the candidate. Moi decreed this form of voting at a Jamhuri Day speech in 1986 (President Moi’s Speech on Jamhuri Day, December 12, 1986). The irony was that candidates with short queues were declared winners, while those with long ones, lost (Throup and Hornsby 1998: 42–44). This travesty of democracy was one of the defining moments in the quest for multiparty democracy in the sense that politicians, who controversially lost, joined seasoned dissidents and sections of the clergy to push for legalisation to allow for multiple political parties and an expansion of the

political space. Emboldened by the collapse of the Berlin Wall, they clamoured for expansion of the political space.

Following Kenya's return to multiparty politics in 1991, parliament abolished the Office of the Supervisor of Elections in 1992 and recognised the ECK as the sole body responsible for conducting elections. The ECK's mandate included the managerial/administrative function of the electoral process, such as delimitation of constituencies, voter education, the registration and identification of voters, the reception and recording of candidate nominations and the organisation and conduct of polling and related operations (Republic of Kenya 2008a: 25, 36). The ECK conducted the 1992 founding multiparty elections, in the wake of which the losing opposition presidential candidate accused Moi and the ECK of rigging the elections. The opposition strove to reform the electoral process, so as to professionalise and make it impartial and ensure credible elections subsequently. The idea of the president having the prerogative to appoint commissioners to the electoral body, while at the same time being a contestant in the elections, unsettled opposition politicians. It was a case of conflict of interest and analogous to a player doubling as an umpire.

The call for reform gained pace in the run up to the 1997 elections that bore Inter Parties Parliamentary Group (IPPG) reform package. This was a set of minimum reforms agreed upon between Moi, on one hand, and opposition MPs, on the other, and this was signed on 11 September 1997 (Cowen and Kanyinga 2002: 129; Mitullah 2002: 132). These reforms were a consequence of a clarion call, 'No Reforms, No Elections', championed by civil society and some opposition political parties, who threatened to boycott the 1997 elections, unless the political playing field was even (Mutua 2009: 109). Among the changes suggested in the IPPG reform package, was the formation of an electoral commission, with representation from the opposition parties (Republic of Kenya 2008a: 31). However, there was an omission on the part of opposition politicians, since they did not insist that the IPPG reforms be enshrined in the Constitution. Therefore, implementation of the reforms required goodwill from the president. This was precarious, because mendacity informs political behaviour in Kenya. This omission came back to haunt Kenyans during the 2007 elections.

THE 2007 ELECTIONS: A POWDER KEG

The 2007 Presidential Elections were arguably the most fiercely contested in the history of multiparty politics in Kenya. However, the campaigns were laced by ethnic stereotyping, profiling and innuendoes and pitted opposition leader, Raila Odinga, a Luo, against the incumbent, Mwai Kibaki, a Kikuyu. Ethnic mobilisation by these politicians, accusations of ethnic-based exclusion from the Kikuyu-dominated state

by Odinga and supportive tribes and historical injustices, related to land, rendered the campaigns volatile. The unevenness of the political playing field, illustrated by weak and compromised institutions, specifically the judiciary, and a partisan electoral body, exacerbated the situation. Incumbency, owing to centralisation of power, gave Kibaki an edge over Odinga, despite the latter consistently leading in opinion polls in the lead up to the elections (Throup 2008: 291). Doubts about the credibility of the 2007 elections emerged when Kibaki made unilateral political decisions close to the polls. He appointed 19 out of the 22 Commissioners to the ECK and Judges to the High Court and Court of Appeal days before the elections (Branch and Cheeseman 2008:17; Republic of Kenya 2008a:31). He had the prerogative to make these appointments, but failed to appreciate the importance of trust and inclusivity in Kenya's ethnically divided polity. The wily politician trumped the leader. Although a Machiavellian autocrat, Moi adhered to the IPPG "gentleman's" agreement and included nominees suggested by the opposition in the composition of the ECK. Concerning Kibaki's appointments, the European Union Election Observer Mission Report pointed out that most of the newly appointed Commissioners lacked experience in election management (EU EOM 2008: 5). Of even greater concern was the fact that there was little time for them to familiarise themselves with their responsibilities before the polls. Kibaki breached the spirit of the IPPG by making ECK appointments. Trust dictated that he consult the opposition before making or replacing appointees to the electoral body.

The controversy surrounding replacement of members of the ECK was illustrative of the paucity of commitment to reform across the political spectrum. It was a case of waxing lyrical about reform, while in the opposition, but resisting and even frustrating the same once in power. Kibaki was a signatory to the IPPG agreement while serving as the Official Leader of the Opposition. He typified opportunistic political behaviour that has scuppered reform in many African countries, even after opposition politicians ascended to power, as witnessed in the early 1990s in Zambia and Malawi. Controversially, Kibaki's long-serving lawyer, Kihara Mutu, assumed the role of the ECK Vice-Chairman (Kanyinga, Okello and Akech 2010: 14). Hence, the electoral body was reduced to a pliable and biased body that made it difficult to dispute allegations of vote rigging in Kibaki's favour (Branch and Cheeseman 2008: 25). Thus, when the ECK chairman controversially declared Kibaki the presidential winner, ethnic violence ensued as opposition supporters took to the streets in protest against a 'stolen' election, chanting: "No Raila. No Peace". The police responded highhandedly, by shooting on the protesters. In the course of the crisis, Samuel Kivuitu, the Head of the ECK, sensationally confessed that, 'I do not know whether Kibaki won the elections' and accused certain Kibaki-allied politicians of putting him under pressure to announce the presidential results, before the anomalies in the

election process, raised by the opposition, were thrashed out (*The Telegraph* January 3 2008).

Ultimately, Kibaki's refusal to consult the opposition in the replacement of the ECK Commissioners, testified to Cowen and Laakso's argument that institutional arrangements are the means by which incumbent regimes in Africa try to manipulate the results of elections (Cowen and Laakso 2002: 18). The Independent Review Commission (IREC) accused the ECK of deliberately bungling the 2007 elections, reporting that,

The system of tallying, recording, transcribing, transmitting and announcing results was conceptually defective and poorly executed. The ECK had long since been aware of the need to revise the system, fundamentally, by introducing readily available information and communications technology. Its failure to do so was grossly remiss and contributed to the climate of tension, suspicion and rumour in which the violence erupted (Republic of Kenya 2008a, 9).

THE 2007–2008 ETHNIC VIOLENCE AND COMPREHENSIVE REFORM

The National Dialogue and Reconciliation Committee, that is, the African Union sponsored African Eminent Personalities, led by Kofi Annan, seized the opportunity presented by the post-2007 election crisis to set up a roadmap for engineering Kenya's body politic through constitutional, legal and institutional reform by focusing particularly on the electoral body and the judiciary and addressing longstanding grievances in order to realise reconciliation and healing. The mediation team spelt out the reform process, which included both immediate and long-term reforms. The intention was to try and address challenges that have festered within Kenya's body politic since independence in 1963. The four core components of this programme were encapsulated in what was called "Agendas." Agenda Four was the fulcrum of state building and sustainable political stability. It entailed developing long-term strategies for durable peace such as land, constitutional and institutional reform.²

Kibaki and Odinga signed a power-sharing agreement that resulted in the cessation of violence and the formation of a grand coalition government, with the two as co-principals. The former served as president, while the latter accepted the position as prime minister. There were tensions concerning the division of the exercise of executive power throughout the term of the coalition government, but the fragile stability that was prevailed provided a conducive atmosphere for the formation of several commissions to spearhead reform for democratic consolidation and the promotion of social cohesion in order to secure Kenya's nation state. Chief among

these commissions was the IREC, tasked with inquiring into the General Elections held on 27 December 2007, with a focus on the Presidential Elections. On the strength of recommendations contained in the IREC report, the ECK was disbanded, because it operated under a defective piece of legislation. Besides, a combination of factors, such as the composition of the electoral body and a defective or non-enforceable electoral law, contributed to the controversy surrounding the 2007 elections.² The ECK was bedevilled by other deficiencies, such as a lack of financial independence, and had to contend with a pervasive sense of disregard for the rule of law among various political actors (Republic of Kenya 2008a, 29). So compromised was the ECK that in the run up to the 2007 elections, it was infiltrated by state intelligence elements, who doctored the results in favour of Kibaki (Khadiagala 2010: 77–78). Allegations of meddling by security agencies also featured during the controversial elections in 2013. Odinga accused the military of being party to rigging the elections in favour of Uhuru Kenyatta (*Standard Digital* 19 January 2014). These allegations were consistent with a history of elections mismanagement, as those with vested economic and political interests in the extant regime – drawn from the security sector, the judiciary, civil society, the bureaucracy and religious formations – sought to defend the status quo. Although Odinga accused Kibaki of robbing him of victory, in collusion with the electoral body, the IREC concluded that the whole electoral process was so thoroughly compromised, it was not possible to tell who won the Presidential Election.

The conduct of the 2007 elections was so materially defective that it is impossible, for IREC or anyone else, to establish true or reliable results for the Presidential and Parliamentary Elections. IREC has, however, established by means of statistical analysis of a sample of constituencies that innumerable elementary mistakes in tallying and/or transcribing results as well as patent mistakes of omission, duplication, and confusion were made (Republic of Kenya 2008a: 9).

The IREC recommended reform of the electoral law, to accord authority to the electoral body. The ECK was so powerless that it could not sanction errant candidates who breached the law during elections (Republic of Kenya 2008a: 110–111). Consequently, the IREC called for the electoral law to be tightened, to give the electoral body prosecutorial powers over all electoral offences so as to secure the credibility subsequent elections (Republic of Kenya 2008a: 110–1).

Although reform of the ECK was necessary, focus on the electoral body, as such, would not suffice to ensure credible elections. There were other shortcomings in Kenya's body politic that render elections dubious. Kenya's political parties lack internal democracy. These entities are personality-centred and do not conduct internal elections and, when they do, the elections are stage-managed. These organisations

belong to self-styled ethnic spokesmen, keen on exploiting tribalism for political and economic ends. It is axiomatic that undemocratic political parties contribute to flawed elections and impede the entrenchment of multiparty politics in Kenya. Political parties are the building blocks of multiparty democracy. In weak, sectarian political parties that are driven by tribalism, multipartyism is built on quicksand.

In February 2014, factional fights and ethnic rivalry for control of Odinga's Orange Democratic Movement (ODM) saw party elections, to elect national office bearers, violently disrupted by goons, dubbed "Men in Black", a moniker used to refer to them, because they were suited in black. The ensuing pandemonium resulted in abandonment of the elections. This incident was illustrative of a tradition of chaos that defined party elections since the advent of multiparty politics. Internal party elections tend to be choreographed events in which dubiously selected party delegates congregate to rubber-stamp sharing of posts among ethno-regional political elite. In extreme and comical cases, politicians ferry delegates to Nairobi or whichever other town, book them in a secret location, in effect hold them incommunicado, before transporting them to the voting venue on D-day. The reason behind this extreme behaviour is to keep the so-called delegates out of bounds so that rival politicians do not reach them and, possibly, convince them to switch loyalty through more bribery. Violence, vote rigging, party hopping and issuance of party certificates to losing candidates during primaries are normative behaviour (Wanyama 2010: 76-85; Republic of Kenya 2008a: 56-7; Republic of Kenya 2008b: 62; 74). Kenya's politicians are averse to a systematised way of behaviour and do not hesitate to repeal laws that stand in their way, such as the law that prohibited party hopping (*The Star* October 5 2012). In Kenya's body politic, impunity has been institutionalised (Brown and Sriram 2012; Human Rights Watch 2011).

STATE CAPTURE, RUPTURE AND FLAWED ELECTIONS

Kenya has a history of fraudulent elections, dating to the one-party state, owing to weak laws, but, more fundamentally, also attributable to institutionalised impunity (Republic of Kenya 2008a; Throup and Hornsby 1998). Save for the 2002 elections, elections held since independence in 1963, have been marred by irregularities to varying degrees. There were no presidential elections during the autocratic one-party state, since the Big Man was above elections. Although parliamentary elections were competitive during the era of single-party dictatorship, the incumbent exploited these elections to entrench patronage. The 2002 elections were relatively credible, because of three main reasons. Firstly, the leading presidential candidates were Kikuyu. It therefore did not matter who won the elections between Mwai, Kibaki and Uhuru Kenyatta. The constant was that a resurgence of Kikuyu dominance of the state,

which was halted in 1978 upon Jomo Kenyatta's death, was guaranteed. Secondly, polarisation because of leading presidential candidates canvassing for support along the ethnic faultline was absent. Kibaki had an edge over Kenyatta, because his candidacy received support from a broader ethnic alliance. The large margin of his victory made it hard for Daniel arap Moi to exploit incumbency in favour of Uhuru Kenyatta, his preferred successor. Kibaki had 62 per cent of the vote to Kenyatta's 31 per cent (Electoral Commission of Kenya 2002). Of significance is that both Kibaki and Kenyatta belonged to the *ancien régime*, which removed the urge to engage in rigging since, either way, it was a win-win situation for the Kenyatta-Moi-Kibaki political axis that has dominated Kenya's politics and economy since 1963 to date.

Ethnicity is the conduit and anchor for state capture and subsequent exploitation for personal aggrandisement by a tiny group of political elite in a predominantly rural country defined by scarce resources. Owing to the paucity of economic opportunities outside of the state, contestation for political control is a no holds barred affair that involves violence. Access to political power dictates allocation of state resources at all levels of political representation. To assume political office, is to be thrust into instant wealth. Kenyan politicians are among the most highly paid public representatives in the world in an economy in which most citizens barely live above the poverty line. MPs, for instance, are paid over US\$ 9 300 a month, of which only US\$ 2000 is taxed (BBC News Africa June 21, 2011). Kenya's richest citizens earn 56 times more than the poorest ones and 10 per cent of the population control 42 per cent of the country's wealth. The poorest 10 per cent control a negligible 0.76 per cent of the country's wealth, that gives Kenya the dubious distinction as the tenth most unequal country in the world and fifth in Africa (World Organisation Against Torture-OMCT 2008: 7).

The nexus between ethnicity, power, patronage and economic opportunities accounts for the challenge of perennial fraudulent elections in Kenya. It is also at the core of Kenya's fragility as a state. The quest for power for personal gain, camouflaged as ethnic interest, has bifurcated the country into ethnic enclaves with repercussions for peace, stability and cohesion. Kenya's civil service positions are allocated on the basis of ethnicity. According to the National Cohesion and Integration Commission (NCIC) report, the criterion for appointment to the bureaucracy is tribalism. Since the 2002 elections, when Kibaki came into power, there has been a resurgence of Kikuyu dominance in the bureaucracy. As a result, the bureaucracy is dominated by members of the Kikuyu ethnic group, followed by the Kalenjin, which is disproportionate to their population percentages. The Kikuyu constitutes 17.7 per cent of the population, but have 22.3 per cent of government jobs. The Kalenjin occupies 16.7 per cent of all civil services jobs, which is disproportionate

to their population size of 13.3 per cent (*Daily Nation* April 6 2011). Under Uhuru Kenyatta, a Kikuyu, deputised by William Ruto, a Kalenjin, the culture of ethnic-based political appointments continues, with a bias towards Kikuyu and Kalenjin tribes (*The Standard* January 17, 2014). Apparently the opposition sought to address this challenge through a referendum; they have identified inclusivity and equality, disbandment of the IEBC and insecurity as issues that should be addressed in the referendum question (*Capital News* 2014).

The history of controversial elections is linked to contestation over control of the state and ownership of capital (Mueller 2008). In Kenya's polity, elections hardly provide an opportunity for the citizenry to evaluate presidential candidates. Political activity, enmeshed in visceral tribalism and incumbency, decides the winner. It is within this framework that the history of electoral fraud must be analysed. In Kenya's polity, devoid of accountability, access to power is a shield against prosecution and an opportunity to illicitly amass wealth through government contracts, looting of government revenue, import of contrabands and substandard goods, evasion of tax payment and land grabbing. In Kenya's political parlance, elections provide those excluded from power with the opportunity to access state resources, that is, "our turn to eat". This is a colloquial reference to criminal behaviour by those in charge of the state for primitive wealth accumulation. Reports by commissions of inquiry and civil society have, over the years, unearthed grand corruption and use of violence to retain power by Kenya's successive governments, but the perpetrators of these heinous crimes have not been prosecuted (KHRC 2011; KHRC 1998; HRW 2008; KNCHR 2008; Republic of Kenya 2008b; Republic of Kenya 1992; Republic of Kenya 1999).

In Kenya, as in most African polities, power is intimately linked to patronage and clientelistic politics. The higher the political office and more connected in the power matrix you are, the more lucrative the opportunities for racketeering and rent seeking. The incumbent tends to be suspicious of rival politicians from different "enemy" groups. He therefore surrounds himself with close allies, exclusively affiliated to his ethnic group, informally referred to as the "kitchen cabinet". The informal informs politics, owing to weak and even dysfunctional institutions in Kenya and other sub-Saharan African states. Here the state overlaps with society, making it impossible for a meritocratic and professional bureaucracy to emerge (Chabal and Daloz 1999: 1–2). Owing to the fusion between politics and the economy, Kenya's former presidents and the incumbent and their close allies are the leading land and property owners in the country, with commercial ventures that traverse the entire length and breadth of the economy.

In an exposé, evocatively entitled "Who owns Kenya?", a local newspaper revealed that Kenya's former presidents owned a disproportionate fraction of arable

land in the country, while vast numbers of citizens are consigned to living in squatter camps (*The Standard* October 1 2004). Land, the principal factor of production, enables these local oligarchs to amass enormous wealth which they, in turn, exploit to consolidate power and even scuttle the evolution of democracy. Therefore, it is not in the political and economic interest of the *ancien régime* to reform the state to engender competitive politics, lest they lose to a rival cohort of ethno-regional political elite. Therefore, the urge to rig elections in Kenya's multiparty politics is high, since in this zero-sum political setting, in which the state has been captured and commandeered for "primitive accumulation", electoral victory comes with enormous economic and political benefits for the president and allies, while loss of power spells economic exclusion and relegation to the political wilderness for the "other", outside of the mainstream oligarchy.³ Even with the creation of devolved units called counties, following the implementation of the 2010 Constitution, the presidency remains a highly sought after prize. The drafters of the Constitution had hoped that devolution of power and the 50 per cent +1 vote threshold in presidential elections would disperse power and curb ethnic mobilisation as a means to capture the presidency, pivotal for patronage.

THE 2013 ELECTIONS, THE IEBC AND THE PERSISTENCE OF DISPUTED ELECTIONS

The Interim Independent Electoral Commission (IIEC) replaced the ECK. The IIEC organised a number of credible by-elections, including the watershed 2010 referendum (*Daily Nation* October 8, 2010). However, this did not mark a new era of credibility in the management of the elections in Kenya. It takes more than the inclusion of the word "independent" in the name of an electoral body and the organisation of a successful by-elections to inspire confidence in an electoral management body. It is noteworthy that the ECK conducted the 2002 elections that were adjudged as credible. Moreover, it conducted the 2005 referendum, which the opposition won. But the dynamics of these elections and the plebiscite were different. Stakes were higher in 2007 and ratcheted up in 2013 (Shilaho 2013: 102–103). That is why the performance of the ECK during the 2007 elections was abysmal, if not cataclysmic, and the IEBC seemed not to have learnt a lesson from the 2007 catastrophe. The IIEC paved the way for the permanent IEBC, whose litmus test was the 2013 elections. The IEBC did not inspire confidence across the political divide. In the run up to the 2013 elections, the IEBC made some decisions that cast aspersions on its impartiality.

The IEBC, under the chairmanship of Isaack Hassan, moved the date of elections from August 2012 to March 2013 when Kibaki unilaterally expressed a preference

for that date, in contravention of the Constitution requirement that fixed the date of the elections to “the second Tuesday in August in every fifth year” (Republic of Kenya 2010: 84). Enshrining the date of elections in the Constitution was meant to remove this prerogative from the president, since it gave the incumbent an upper hand, especially during the 1992 and 1997 elections. Hassan, as an individual, does not have any record of participation in the reform process. He served as a commissioner of the defunct Constitution of Kenya Review Commission (CKRC), whose efforts to write a new Constitution were frustrated by Moi and then Kibaki, leading to a highly charged and ethnically divisive referendum in 2005. The former Secretary of the CKRC identified Hassan as among the CKRC commissioners who worked at the behest of Moi to sabotage the realisation of a new Constitution (Lumumba 2008: 131–132). Hence, Hassan did not bring impartiality and gravitas to the electoral body. Like his predecessor, he demeaned himself by the way in which he presided over the 2013 elections. The fact that he had no track record in reform, suggested that his appointment was part of an effort by the *ancien régime* to perpetuate itself in power.

The IEBC’s deference to the executive was reminiscent of the discredited ECK and the Office of the Supervisor of Elections. The IEBC and, specifically, Hassan did nothing to allay the perception that they were compromised and in connivance with the executive to derail the 2013 elections. Instructively, at the time when he changed the date of the elections, there was a pending court case about the constitutionally binding date of the elections. Hassan ignored the ongoing judicial process, which pointed at impunity, which the new constitutional order, in force since 2010, was expected to remedy.

Days before the elections, the IEBC did not know whether to revert to the discredited manual registration of voters or whether they should use an electronic register. The IREC recommended that an electronic system be used to compile a new voter registration system, but there were disputes over the tender process for the acquisition of the biometric voter registration equipment. The challenge, however, was not a question of whether to use a manual voter registration system or an electronic one, but rather a pervasive culture of imperviousness to the rule of law that resulted in fraudulent elections. Preparations for Kenya’s 2013 elections did not inspire confidence that the elections would be free and fair or that it will reflect the will of the electorate. There was an eerie sense of *déjà vu*. A lack of consensus on the “rules of the game” among the political elite and the perceived bias by the ECK almost plunged Kenya into civil war in 2007. In spite of the 2010 Constitution, constitutionalism is lacking across the political landscape. The IEBC struggled to assert “independence” and to free itself from executive influence.

Since elections in Kenya are related to power and the allocation of resources, it would take time for the IEBC and other institutions created under 2010 Constitution, to win Kenyans' trust and confidence and this can only be demonstrated through fidelity to the law. It will take some time before the IEBC musters the ability to resist interference from the incumbent. The Constitution was expected to strengthen the electoral system through an elaborate electoral framework to ensure that elections are truly an opportunity for the citizenry to choose their governors (Republic of Kenya 2010). Before electoral reform, the electoral law was incoherent, since it was made up of several laws without an integrated electoral act (EU EOM 2008: 5). For instance, there was no provision for dispute resolution before the swearing in of the declared Presidential winner (EU EOM 2008: 13–14). Had there been one, Kenya might not have degenerated into violence in 2007, since Odinga and his ODM brigade would have had to exhaust that option before embarking on mass action. In 2013, the Supreme Court served the role of a valve in a pressure cooker, by hearing a presidential petition whose verdict upheld the victory by Kenyatta (Republic of Kenya 2013). Odinga 'respected' the verdict, but contested it in the court of public opinion. He appealed the IEBC declaration, thus, avoiding a confrontation between his supporters and security forces.

THE 2013 ELECTIONS: COSMETIC OR SUBSTANTIVE ELECTORAL REFORM?

The formation of the IEBC inspired hope, because its precursor, the ECK, was beholden to the executive and, thus, lacked the competence, credibility and professionalism required to conduct credible elections, as shown by the disastrous 2007 Presidential Elections (Republic of Kenya 2008a). Other than the controversial decision on the date of the elections, in which the IEBC agreed with Kibaki, there were other illustrations to show that the Executive still exerted influence over the IEBC.

The IEBC accepted Uhuru Kenyatta's nomination papers and cleared him as a presidential candidate, despite the fact that he was facing charges of crimes against humanity at the International Criminal Court (ICC). The IEBC's argument, at the time, was that the High Court was yet to rule on a case that challenged his and his running mate's eligibility to run for president/vice president or to occupy any public office in Kenya. But when the case appeared before the court, the judges, in turn, observed that, given that the IEBC had already accepted Kenyatta's nomination papers, the court could not nullify his candidature (*The Standard* February 15 2013). This ping-pong state of affairs cast doubts on the independence of the IEBC and the judiciary, two institutions of immediate strategic importance to credible

elections. By clearing Kenyatta and his running mate, Ruto, in spite of facing egregious charges at the ICC, the IEBC and the High Court immensely boosted their chances of winning the presidency. It essentially salvaged their political careers. In fact, it became near impossible for the two politicians to lose the March 4, 2013, presidential elections, despite the legal threat posed by the ICC and the legacy of murky elections. Although the notion of “innocent until proven guilty” applied to the two politicians, individuals, facing egregious charges, running and controversially winning the presidency contravened Chapter Six of the Constitution on leadership and integrity, demeaned public office and, basically, legalised impunity (Shilaho 2013).

In keeping with the IREC recommendation, the IEBC publicised the intention to use the biometric voter registration (BVR) system and electronic transmission of presidential results from the polling stations to the tallying centre in Nairobi. It even conducted mock elections in selected constituencies, but did not use the BVR technology at this stage (IEBC 2012). The IREC recommended a shift to an electronic register and the electronic transmission of the results from the polling stations to the constituency, for tallying and simultaneous transmission of the results to the national tallying centre, to secure the credibility of the elections that followed after the disputed 2007 elections (Republic of Kenya 2008a: 138). It was found that the use of a manual register and manual tallying of votes contributed to electoral fraud, as the process made it easier to create ghost voters, impersonate absent voters, inflate and deflate votes and to stuff ballot boxes (Republic of Kenya 2008a: 121–122). It was hoped that the electronic system would curb these irregularities. However, controversy surrounded the procurement of the BVR kits, to such an extent that the IEBC could not set up and test the system. So desperate was the situation that at some point it considered conducting the elections entirely manually, but the government “intervened” and secured the BVR kits. The implication that the government moved in to rescue an unprepared electoral body is misleading, because it is, after all, the responsibility of the government in a democracy to show the political will to ensure that elections are above board by providing the requisite logistical and other resources. As such, this sense of unpreparedness was an indictment on Kibaki and his allies, who were supportive of Uhuru Kenyatta. The incumbent can easily influence the outcome of elections managed through a crisis.

Although the IEBC, through its mismanagement of the preparations for the elections, evoked a sense of *déjà vu*, it required political will by government, in terms of logistical and resource support, and integrity on the part of the staff and commissioners to ensure that it delivers on its mandate. The IEBC’s lack of preparedness exposed a deeply ingrained sense of amnesia in the Kenyan society, courtesy of successive governments that have had no regard for accountability.

Integral to the institutionalisation of amnesia is the role of the media, who uncritically support the government of the day and shies away from asking the “hard questions”. The clergy is also a co-actor, as it has a cosy relationship with those in power and, therefore, endorses all their decisions, no matter how unconstitutional they are, thus, overlooking issues of social justice and state sponsored inequities. The other inadequacy is a pliable, corrupt and politicised judiciary (Commonwealth Judicial Experts Report 2002) that is resistant to reform. The populace also contributes to this amnesia by uncritically supporting and voting for fellow co-ethnic politicians, even when these people lack integrity and belong to an incestuous oligarchy that sacrifices Kenya’s stability to attain their own economic and political ends.

The IEBC registered some voters using the BVR system, an indication that an electronic register would be used by the time the elections take place, but on the day of the elections, the electronic voter identification devices (EVIDs) ‘broke down’, forcing the electoral body to revert to the manual register(s). During the presidential petition Odinga claimed that the IEBC had more than one voter register and it was not clear which one it used in tallying the votes. The electronic transmission of presidential results through the results transmission system (RTS) momentarily ‘worked’, but ‘crashed’ again,⁴ forcing the IEBC to tally presidential votes manually. Reliance on the manual system once again created grounds for a disputed election results, since Odinga and his supporters suspected fraud. They believed that the malfunctioning of the electronic system was deliberate to enable the IEBC to doctor the votes to ensure Kenyatta secured a first round victory and, thus, avoiding a rerun.

In his petition, Odinga did not focus on the significant margin of difference between him and Kenyatta. Kenyatta had 6 173 433 votes (50.07%) of the total votes cast against Odinga’s 5 340 546 (43%) (IEBC 2013). Instead, he concentrated on the number of votes that enabled Kenyatta to obtain the 50 per cent plus one vote threshold that ruled out a rerun. The petition exposed the existence of multiple voter registers, making it impossible to know the exact total number of registered voters during the 2013 elections. The Supreme Court rejected Odinga’s petition that the electronic gadgets be independently inspected to ascertain why they malfunctioned. The IEBC released the final election results almost five months later, but the Chairman and fellow Commissioners refused to take an oath and vouch for the authenticity of the results before parliament’s Justice and Legal Affairs Committee (*The Standard* July 18 2013). Kenya’s media attributed the delay in releasing the final results to an inability to reconcile the presidential votes and those for the other positions vied for. It was reported that there was a difference of over a million votes between the presidential votes and votes for the other elective posts (*The Star* May 23, 2013). Apart from the president, Kenyans also voted for the positions of governor, senator, female representative, MP and Member of County Assembly (MCA).

The IEBC's credibility also took a knock following revelations by a British court that the body received bribes from a British printing company in exchange for lucrative printing contracts in what has been dubbed 'Chickengate'. (It was called "Chickengate" because the kickbacks were wired into dubious accounts with the code name "chicken".) The corruption scandal implicated Ahmed Issack Hassan, the IEBC Chairman, and other senior IEBC officials (*Business Daily* 17 November 2014; *Business Daily* 18 November 2014).

Late procurement of the BVR gadgets and the abrupt shift from the electronic system to the manual one in the course of the transmission and tallying of election results set the stage for a dispute. It was ironic that Kenya, a comparatively tech savvy country and a trailblazer in cellphone banking, could not exploit technology to organise minimally dispute-free elections. In fact, a leading mobile telephone company, Safaricom, was embroiled in allegations of mismanagement of the elections. Safaricom was the provider of devices meant to transmit results from the polling stations to the tallying centre. Safaricom servers were also used in receiving elections data (*Capital News* March 12 2013). The country waited for six days, after voting ended, before the presidential results were announced. The immediate release of the election results would have helped to diffuse tension and allay fears and accusations of election tampering. The IEBC was sucked into the rivalries related to the elections and lost impartiality. A submission by the IEBC chairman, Issack Hassan, during the presidential petition hearing was telling. He accused Odinga of being a bad loser, who serially rejected election results that did not go his way. He cited the elections in 1997, 2007 and 2013 to prop up his claim (Republic of Kenya 2013-IEBC Reply to the petition). This attempt to personalise the presidential petition further demeaned the IEBC. It is on record that Kenya has no history of credible elections and, therefore, disputes are inevitable during elections (Kanyinga, Long and Ndii 2010). For instance, the IREC (Republic of Kenya 2008a, 126) returned a ringing indictment with regard to the mismanagement of the 2007 elections, which inevitably caused disputes that spiralled into violence, stating that:

The conduct of the 2007 elections in Kenya was so materially defective that it has been, and will remain, impossible for IREC to establish true and reliable results for the presidential and parliamentary elections. Therefore, although there is room for honest disagreement as to whether there was rigging of the presidential results announced by the ECK on 30 December 2007, the answer is irrelevant.

During the 2013 elections, voters cast six ballots for their choice of president, MP, senator, governor, MCA and female representative. Until then, the electorate voted for president, MP and councillor during general elections. Therefore, the 2013

elections were rather complex, if the number of ballot boxes was anything to go by. There were concerns that the ballots and ballot boxes looked identical, because it was almost the same colour, thus, posing a challenge to colour blind voters. The high number of spoilt votes was testament to this, but it could also have been illustrative of insufficient civic education and preparation of voters prior to the elections. Before the results transmission system (RST) “collapsed”, the number of spoilt votes was in excess of 300 000, but this increased to 12 221 053 in the report by the IEBC of the official results (IEBC 2013).

In subsequent elections, it would be worthwhile for presidential elections to be held separately, on a different date, to minimise logistical hitches. I hasten to add, however, that the challenges encountered during the 2013 elections stemmed from lack of political will and rampant dishonesty within Kenya’s body politic. They had little or nothing to do with the supposed complexity of the elections. In any case, far more geographically vast and populous countries such as India and Brazil hold credible elections, involving millions of voters. In the case of India, the voting process spans several days. Additional ballot boxes, a manual register and manual tallying of votes in and of themselves do not lead to electoral irregularities. The 2010 Constitution and electronic gadgets do not guarantee credible elections either. What is clear is that the IEBC did not conduct the 2013 elections in a competent manner, because, like the ECK, it broke a cardinal rule about elections: ‘The rule assumes that electioneering must be procedurally certain even as the outcome of that process must remain substantively uncertain’ (*Daily Nation* July 12 2013). In other words, the electoral process should have a sense of predictability in that ‘it should be governed by rules and laws that are not only commonly understood, but also universally applied’ (Republic of Kenya 2008a: 32). The recurrence of challenges that have bedevilled Kenyan elections during the 2013 elections, indicates that the electoral reform was cosmetic, since it lacked enforcers.

CONCLUSION

The article shows that elections are part of the democratisation process and that an electoral management body can only be as good as the type of democracy within which it operates. It would be credulous to expect an electoral body to organise credible elections in a polity such as Kenya’s in which disregard for the rule of law, violence and dictatorial tendencies hold sway within political parties and characterise political behaviour generally. Of greater significance is resistance by Kenyan kleptocrats against reforms that would ensure credible elections and transformative politics, based on accountability. They fear losing their grip on power and the attendant economic gains, since victory or loss during elections dictates

one's economic fortunes. Since Kenya is a non-industrialised country, the state is the only source of wealth; hence, there is fierce contestation for its capture. The maxim is that those who rule, in this predominantly rural country, are wealthy and, because they are wealthy, they rule by creating a plutocracy. Power is integral to access to resources here. Election mismanagement, therefore, should be analysed within a political milieu in which the state is still embedded in the society. This engenders the influence of kinship ties and especially ethnicity in political mobilisation and allocation of state resources. Consequently, patronage, corruption, deployment of violence and impunity have become staples in the body politic, given that the state has been captured by an oligarchy for exploitation that verges on criminalisation of the state.

It was expected that the 2013 elections would be better managed than the elections in 2007, in the light of the fact that judicial and electoral reform were ongoing at the time. However, the elections ended up being no more about change in style, rather than substance. The elections were an extension of the unfinished contest of the 2007 presidential elections and, specifically, the ICC cases against Kenyatta and his deputy for being the suspected masterminds of the violence that ensued while on different sides of the presidential contest. At the time, Kenyatta supported fellow co-ethnic, Kibaki, while Ruto was Odinga's point man among the Kalenjin and the greater Rift Valley region.

Lack of accountability for crimes committed in the aftermath of the 2007 elections had a great influence on the 2013 elections. Thus, the ICC was deeply embedded in the elections and this was manifested through formation of the "alliance of the accused", Kenyatta and Ruto, and reveals a disregard for Chapter Six of the Constitution, which relates to leadership and integrity, by the judiciary, who allowed them to participate in the election. The stakes had never been higher in Kenya's elections. It was for this reason that Kenyatta and Ruto framed their campaign around the ICC issue, thus, reducing the elections to a referendum on the ICC; they accused the court of encroaching on Kenya's sovereignty. They interpreted their victory as a denunciation of the ICC by their supporters.

Kenya's legacy of fraudulent elections can be overcome through a number of measures, foremost is the restructuring of the state to address historical challenges that made it possible for politicians to exploit ethnicity for personal gain and to stop entrenched impunity. Unfortunately, this requires political will and honesty and those in power are incapable of providing this, owing to complicity in most of the issues gnawing at Kenya's social fabric. Kenya stands in need of a leadership committed to the wellbeing of the country, as opposed to predatory ethnic barons for whom elections are a matter of life and death, because power cushions them from prosecution and allows them to profit, through rent-seeking, at the expense of the

rest of Kenyans, who are hopelessly divided along ethnic lines. In the light of the foregoing, that is, absent socioeconomic and political reforms, there can never be an electoral body that would manage credible elections, which will be accepted by all the contesting parties in Kenya. A compromised electoral body is microcosmic of the weaknesses that are bedeviling institutions in Kenya. The institution is key to establishing democratic processes. Although violence did not erupt in 2013, one should not lose sight of the fact that Kenya is a fragile democracy.

NOTES

- 1 Westen K. Shilaho holds a PhD in Politics from the University of the Witwatersrand, Johannesburg. wshilaho@yahoo.com, wshilaho@gmail.com
- 2 See (Khadiagala 2008) for an analysis of the meditation process.
- 3 For an analysis of the interface between tribalism, politics and indigenous ownership of capital in Kenya see Cowen and Kanyinga 2002.
- 4 I use quotation marks because it has not been established why the gadgets crashed

REFERENCES

- BBC News Africa, 21 June 2011. Kenya's MPs ordered to pay higher taxes. <http://www.bbc.co.uk/news/world-africa-13857480> (accessed 11 November 2014).
- Berg-Schlosser, D. 1989. 'Democracy and the one-party state in Kenya' In *Democracy and the One Party-State in Africa*, ed. D. Nabudere and P. Meyers. Association of Political Science/ German Association of Political Science.
- Branch, D. and Cheeseman, N. 2008. Democratisation, sequencing and state failure in Africa: lessons from Kenya. *African Affairs* 1–26.
- Brown, S. and Sriram, C. 2012. The BIG FISH won't fry themselves: criminal accountability for post-election violence in Kenya. *African Affairs*, 111/443: 244–260. Nairobi.
- Business Daily*, 18 November 2014. How UK sleuths unearthed Kenya 'Chickengate' scandal. <http://www.businessdailyafrica.com/How-UK-sleuths-unearthed-Kenya-scandal/-/539546/2527142/-/12a1fcrz/-/index.html> (accessed 2 December 2014).
- Business Daily*, 17 November 2014. UK exposes corruption ring at Kenya poll agency. <http://www.businessdailyafrica.com/UK-court-exposes-bribery-ring-in-Kenya-poll-agency/-/539546/2525946/-/530fouz/-/index.htm> (accessed 2 December 2014).
- CapitalNews*, 24 July 2014. 3 issues top agenda in CORD push for referendum. <http://www.capitalfm.co.ke/news/2014/07/3-issues-top-cord-agenda-in-referendum-push/> (accessed 23 August 2014).
- CapitalNews*, 12 March 2013. CORD sues IEBC Safaricom for data. <http://www.capitalfm.co.ke/news/2013/03/cord-sues-iebc-safaricom-for-data/comment-page-2/> (accessed 22 August 2014).

- Chabal, P. and Daloz, J. 1999. *Africa works disorder as political instrument*. Oxford: James Currey.
- Commonwealth Report 2002. "Report of the Advisory Panel of Eminent Commonwealth Judicial Experts" May 17, Nairobi.
- Cowen, M. and Kanyinga, K. 2002. The 1997 elections in Kenya the politics of communality & locality. In *Multiparty Elections in Africa*, ed. M. Cowen and L. Laakso. Oxford: James Currey.
- Cowen, M. and Laakso, L. Elections & election studies. In *Multiparty Elections in Africa*, edited by M. Cowen and L. Laakso. Oxford: James Currey.
- Daily Nation*, 12 July 2013. IEBC failure to consistently inspire confidence in elections alarming <http://www.nation.co.ke/oped/Opinion/-/440808/1913062/-/j2896ez/-/index.html> (accessed 15 July 2014).
- Daily Nation*, 8 October 2010. IIEC lauded over referendum process.
Available at: <http://www.nation.co.ke/News/politics/IIEC%20lauded%20over%20referendum%20process/-/1064/1028620/-/2u6ge2/-/index.html><http://www.nation.co.ke/News/politics/IIEC%20lauded%20over%20referendum%20process/-/1064/1028620/-/2u6ge2/-/index.html> (accessed 29 October 2014).
- Daily Nation*, 6 April 2011. Shock of Kenya ruled by ethnicity. Available at: <http://www.nation.co.ke/News/politics/-/1064/1139782/-/7qbrhk/-/index.html> (accessed 24 April 2014).
- Electoral Commission of Kenya (ECK). 2002. *Results of 2002 General Elections*. Nairobi: Electoral Commission of Kenya.
- European Union Election Observation Mission (EU EOM). 2008. *Kenya Final Report General Elections 27 December 2007*. Available at: <http://www.scribd.com/doc/3869389/EU-observer-mission-Final-Report-on-the-Kenyan-General-Election-2007> (accessed 3 August 2014).
- Human Rights Watch (HRW) 2008. Ballots to bullets organised political violence and Kenya's crisis of governance. Vol 20 No 1 (A). Available at: <http://www.hrw.org/sites/default/files/reports/kenya0308web.pdf> (accessed 10 April 2014).
- Human Rights Watch. 2011. *'Turning pebbles' evading accountability for post-election violence in Kenya*. Available at: http://www.hrw.org/sites/default/files/reports/kenya1211webwcover_0.pdf (accessed 1 June 2013).
- Independent Electoral and Boundaries Commission (IEBC). 2012. *Hooligan attack and low turnout spoil for mock elections*. Available at: <http://www.iebc.or.ke/index.php/news-archive/39-march-2012/70-hooligan-attack-and-low-turnout-spoil-for-mock-elections> (accessed 14 May 2014).
- Independent Electoral and Boundaries Commission (IEBC). 2013. *Summary of presidential results as declared on 9 April 2013*. Available at: <http://www.iebc.or.ke/index.php/resources/downloads/category/tally-of-presidential-results> (accessed 12 May 2013).
- Kanyinga, K., Long, J. and Ndi, D. 2010. Was it rigged? A forensic analysis of vote returns in Kenya's 2007 elections. In *Tensions and reversals in democratic transitions*, ed. K.

- Kanyinga and D. Okello. Nairobi: Society for International Development and Institute for Development Studies-University of Nairobi.
- Kanyinga, K., Okello, D. and Akech, A. 2010. Contradictions of transition to democracy in fragmented societies: the Kenya 2007 general elections in perspective In *Tensions and reversals in democratic transitions*, ed. K. Kanyinga and D. Okello. Nairobi: Society for International Development and Institute for Development Studies-University of Nairobi.
- Kenya Human Rights Commission (KHRC). 2011. *Lest we forget: the faces of impunity in Kenya*, Nairobi.
- Kenya Human Rights Commission (KHRC) 1998. *Killing the vote state sponsored violence and flawed elections in Kenya*: Nairobi: KHRC.
- Kenya National Commission on Human Rights. (KNCHR) 2008. 'The cry of blood': report of extra-judicial killings and disappearances. Available at: http://www.marsgroupkenya.org/pdfs/2009/03/KNCHR_crimes-against-humanity-extra-judicial-killings-by-kenya-police-exposed.pdf (accessed 9 June 2013).
- Khadiagala, G. 2008. Forty days and nights of peacemaking in Kenya. *Journal of African Elections* (Special Issue), Kenya. 7(2): 4–32.
- Khadiagala, G. 2010. Political movements and coalition politics in Kenya: entrenching ethnicity. *South African Journal of International Affairs*, vol. 17, no. 1. 65–84.
- Laswell, H. 1948. *Psychopathology and politics*. University of Chicago Press: Chicago.
- Lumumba, P. 2008. *Kenya's Quest for a Constitution the Postponed Promise*. The Jomo Kenyatta Foundation: Nairobi.
- Mitullah, W. 2002. Democratisation at grassroots: local government elections in Kisumu municipality, In *Electoral Politics in Kenya*, ed. Chweya, L. Nairobi: Claripress.
- Mutua, M. 2009. *Kenya's quest for democracy: taming the Leviathan*. London: Lynne Rienner Publishing.
- Mueller, S. 2008. The political economy of Kenya's crisis. *Journal of Eastern African Studies* 2(2): 185–210.
- Report of the Advisory Panel of Eminent Commonwealth Judicial Experts. 2002. Available at: <http://www.commonlii.org/ke/other/KECKRC/2002/8.html> (accessed 10 March 2014).
- Republic of Kenya. 2008b. *Commission of Inquiry into Post-Election Violence (CIPEV) or the 'Waki Commission*. Nairobi: Government Printer. Available at: <http://www.dialoguekenya.org/docs/PEV%20Report.pdf> (accessed 10 June 2014).
- Republic of Kenya 2013. In the Supreme Court of Kenya at Nairobi. IEBC Chairman reply to the petition. Available at: <http://www.iebc.or.ke/index.php/resources/downloads/category/response-to-petition> (accessed 14 May 2014).
- Republic of Kenya. 2013: In the Supreme Court of Kenya at Nairobi, Petition No 5 of 2013. Available at: <http://marsgroupkenya.org/pdfs/2013/04/Full%20Judgement-Petition%20No.%205%20of%202013.pdf> (accessed 12 May 2014).

- Republic of Kenya. 2004. *Report of the Commission of Inquiry into the illegal/irregular allocation of land. The Ndung'u Commission*. Nairobi: Government Printer.
- Republic of Kenya. 2008a. *Report of the Independent Review Commission on the general elections held on 27 December or the 'Kriegler Commission*. Nairobi: Government Printer.
- Republic of Kenya. 1999. *Report of the Judicial Commission appointed to inquire into tribal clashes in Kenya*. The Akiwumi Commission. Nairobi: Government printer.
- Republic of Kenya. 1992. *Report of Parliamentary Select Committee to investigate ethnic clashes in western and other parts of Kenya*. The Kiliku Commission. Nairobi: Government Printer.
- Republic of Kenya. 2010. *The Proposed Constitution of Kenya*. Nairobi: Government Printer.
- Shilaho, W. 2013. Old wine in new skins: Kenya's 2013 elections and the triumph of the ancien regime. *Journal of African Elections* (Special Issue). The Evolving Role of Elections in Africa Vol. 2, no 3: 89–119.
- Speech by H.E. the President, Hon, Daniel T. Arap Moi, CGH; MP; on the occasion of the Jamhuri Day on 12 December 1986. In *Kenya presidential speeches 1963–91 Jamhuri Day speeches*. Kenya National Archives, Central Government Library: Nairobi.
- Standard Digital*, 19 January 2014. Military aided 'theft of CORD victory at Bomas, Raila' Odinga claims. Available at: <http://www.standardmedia.co.ke/?articleID=2000102633> (accessed 23 August 2014).
- Standard on Sunday*, 6 February 2011. Sincerity and goodwill by politicians must complement good constitutions.
- The Standard*, 18 July 2013. IEBC officials refuse to take oath before presenting election results. (accessed 11 August 2014).
- The Standard*, 15 February 2013. Courts clears Uhuru, Ruto to vie. Available at: http://www.standardmedia.co.ke/?articleID=2000077378&story_title=Kenya-Court-clears-Uhuru,-Ruto-to-vie (accessed 10 May 2014).
- The Standard*, 17 January 2014. Uhuru Kenyatta, William Ruto strongholds hog half of public jobs. Available at: http://www.standardmedia.co.ke/?articleID=2000102571&story_title=Kenya-uhuru-ruto-strongholds-hog-half-of-public-jobs.
- The Standard*, 1 October 2004. Who Own Kenya? Available at: http://www.marsgroupkenya.org/pdfs/crisis/2008/02/large_landowners_in_Kenya.pdf (accessed 7 July 2014).
- The Star*, 23 May 2013. IEBC wants Political Parties Act amended. Available at: <http://www.the-star.co.ke/news/article-121442/iebc-wants-political-parties-act-amended> (accessed 10 July 2014).
- The Star*, 5 October 2012. MPs amend law to allow party hopping. Available at: <http://www.the-star.co.ke/news/article-88175/mps-amend-law-allow-party-hopping> (accessed 5 May 2014).
- The Telegraph*, 3 January 2008. Kenya's poll chief does not know if Kibaki won. Available at: <http://www.telegraph.co.uk/news/worldnews/1574462/Kenyas-poll-chief-does-not-know-if-Kibaki-won.html> (accessed 23 August 2014).
- Throup, D. 2008. The count. *Journal of Eastern African Studies*, vol 2, no 2: 290–304.

- Throup, D. and Hornsby, C. 1998. *Multiparty politics in Kenya*. Oxford: James Currey.
- Truth Justice and Reconciliation Commission (TJRC). 2013. Available at: http://www.tjrkenya.org/index.php?option=com_content&view=article&id=573&Itemid=238 (accessed 7 June 2014).
- Wanyama, F. 2010. *Voting without institutionalised political parties: primaries, manifestos, and the 2007 general elections in Kenya.* ' In *Tensions and Reversals in Democratic Transitions*, ed. Kanyinga, K. and Okello, D. Nairobi: Society for International Development and Institute for Development Studies-University of Nairobi.
- World Organisation Against Torture (OMTC). 2008. *The lie of the land addressing the economic social and cultural root causes of torture and other forms of violence in Kenya*. Available at: www.omct.org (accessed 5 October 2014).