

**A CRITICAL ANALYSIS OF THE VARIOUS CAUSES OF ELECTORAL  
OFFENCES AND MALPRACTICES AND THEIR  
CONSEQUENCES IN KENYA.**

**BY**

**GIOCHE SAMWEL MURAYA  
LLB /41666 /91 /DF**

**SUPERVISOR: DR CHIMA MAGNUS**

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## DECLARATION

"I GIOCHE SAMWEL MURAYA declare that this is my original work alone, except where due acknowledgement is made in the text. It does not include any materials from which any other university degree or diploma has been awarded."

Signature GIOCHE SAMWEL MURAYA

GIOCHE SAMWEL MURAYA

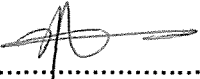
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RESEARCHER

## APPROVAL

"I certify that I have supervised and read this study and that in my opinion, it conforms to acceptable standards of scholarly presentations and is fully adequate in scope and quality as a dissertation in partial fulfillment for the award of degree of Bachelors of laws of Kampala international university,"

Dr. Chima Magnus

Sign.....

Date.....

SUPERVISOR

## **DEDICATION**

I dedicate this piece of work first and foremost to the Almighty GOD for His love and care and enabling me finish my studies in time and in good health despite the many encounters I had to go through in accomplishing these goals. Secondly I dedicate it with lots of love and appreciations to my beloved mum Mrs. Mary Gioche for her love care advice encouragement prayers and financial support to see to it that I finish my studies. Without forgetting my late dad Mr. Wilson Gioche for without him I wouldn't have seen this world I will always remember you dad for your hunger for education to your children. To my brothers and sisters, thank you for all the support you gave and shown to me believe me it was and it will never be in vain.

Lastly to all those who contributed to my success in law school including my friends lectures and my supervisor Dr.Chima thank you and may the almighty God bless you and reward you abundantly.

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## **ABSTRACT**

This study undertook to identify the various causes of electoral malpractices and their consequences in Kenya.

Although the constitution and other major legislations in Kenya provides for the governance of elections and prohibits electoral malpractices, the study carried out proves that the fight against electoral malpractices are far from over. The electorate the three arms of government alike have accelerated electoral malpractices in Kenya. Principles of rule of law have been thrown out of the window. The purpose of this study is to find out what causes electoral malpractices, the various types of electoral malpractice and their consequences in Kenya. Also attention will be drawn to other states that political indiscipline and the consequences there after.

The methods used to carry out this research include *inter-alia*; text books, novels journals internet, reports from commissions of inquiry and newspapers.

According to the findings the main causes of electoral malpractices in Kenya include *inter-alia*; weak electoral laws, breach of the principles of rule of law, corruption and ethnic differences.

Finally, as recommendations to the underlying root causes of weak electoral laws, parliament should legislate accordingly and save the situation. There is need to empower the IEBC fully with all logistic support to facilitate it and conduct all elections without a hitch. It's important to note that the IEBC is a toddler as far as elections are concerned.

## **LIST OF STATUTES**

The Constitution of the Republic of Kenya of 2010

The Elections Act No.24 of 2011

The Political Parties Act No.11 of 2011 Laws of Kenya

The Independent Electoral and Boundaries Commission Act No 9 of 2011 Laws of Kenya

The Penal Code Act Cap 63 Laws of Kenya

Public Order Act Cap 56 laws of Kenya

The Kenya Broadcasting Act Cap 221 Laws of Kenya

### **LIST OF ACRONYMS**

ACP	Assistant Commissioner of Police
AIDS	Acquired Immune Deficiency Syndrome
AP	Administration Police
ASK	Agricultural Society of Kenya
BBC	British Broadcasting Corporation
CIPEV	Commission of Inquiry Into Post Election Violence
CORD	Coalition for Reforms and Democracy
DC	District Commissioner
DO	District Officer
ECK	Electoral Commission of Kenya
FM	Frequency Modulation
GEMA	Gikuyu, Embu, Meru Association
GSU	General Service Unit
ICRC	International Committee of the Red Cross
IDP	Internally Displaced Person
IEBC	Independent electoral and boundaries commission
KADU	Kenya African Democratic Union
KAMATUSA	Kalenjin, Maasai, Turkana and Samburu.
KANU	Kenya African National Union
KBC	Kenya Broadcasting Corporation
MP	Member of Parliament
NARC	National Rainbow Coalition
NGO	Non-Governmental Organisation
ODM	Orange Democratic Movement
PEV	Post Election Violence
PNU	Party of National Unity
PPO	Provincial Police Officer
PSIC	Provincial Security and Intelligence Committee
PSV	Public Service Vehicles

## **CHAPTER ONE**

### **1.0 Introduction.**

The study based on the law relating to elections in Kenya. This chapter presents the background of the study, problem statement, objectives of the study, research questions, scope of the study, significance of the study and chapterization.

### **1.1. Background of the study.**

Election offences and malpractices in Kenya dates far back from 1957 where elections were held for the first time in eight constituencies<sup>1</sup> and Kenyans for the first time chose their own representatives to the LEGICO<sup>2</sup>. This was the beginning of tribal diversities in Kenya where several political parties based on regional and tribal lines were born, the kikuyu and other larger communities dominated KANU's leadership while KADU was led by personalities from the smaller Rift Valley communities<sup>3</sup>

The constitutional foundations of democratic governance in Kenya were first put in place during the Lancaster House constitutional Conferences of 1960-63. These conferences succeeded in substituting British colonial rule with elected African natives as leaders.

In pre-colonial times there was no centralized political system like there are today; communities were organized into small groups known as clans. They had common objectives guided by well established norms and customs; these clans adjudicated and governed its members. The leaders of these clans were called councils of elders composed of elderly men, or on hereditary basis, such as the Mumias of the Wanga kingdom in the luyhia community<sup>4</sup>

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<sup>1</sup> Nairobi, central, western, Nyanza, Eastern, Rift Valley, North Eastern and Coast provinces.

<sup>2</sup> Njenga karume, *Beyond Expectations from Charcoal to Gold*, (2010) 123.

<sup>3</sup> Ibid 124

<sup>4</sup> King Mumias ruled the wanga kingdom from 1880-1949.

## **1.2. Background of the problem.**

Ever since in colonial times Kenya was a *defacto* single partisim system until in 1992 where multi-partysim was introduced.<sup>5</sup>

Prior to 2007 disputed election Kenya had undertaken various general elections in 1992 , 1997, 2002 and unsuccessful constitutional referenda of 2005. Though unsuccessful the electoral commission of Kenya (ECK) as it then was, was declared the most effective electoral body in sub-Saharan Africa .The seating president Hon.Mwai Kibaki had conceded defeat honorably.

After the violence that befell Kenya as from 30<sup>th</sup> December 2007, in 2008 an African union-sponsored panel of emanate personalities led by former united nations secretary general koffi Annan mediated talks between president Hon.Mwai Kibaki and Raila Odinga which saw the birth of the government of national coalition and thereafter peace was restored back to Kenya. Two commissions were appointed. One to examine the election related violence and the other one to examine the 2007 general elections.

The commission were; the Independent Review Commission <sup>6</sup>(IERC) chaired by Judge Johann Kregler, a retired south African judge and the commission of inquiry into post-election violence<sup>7</sup> (CIPEV) chaired by justice Philip Waki.

The IERC famously known as the kregler commission was mandated to present in conformity with its findings and recommendations for the conduct of elections in Kenya, the structure, composition and management of the electoral commission of Kenya and how it conducted the 2007 general elections.

CIPEV also known as the Waki report was tasked to investigate the post election violence in Kenya. The commission was mandated to investigate the events of 1992 and 1997 general elections as well as the events of 2005 referenda. The investigations extended further to the role, prior, during and after the violence, of the Kenyan government and its agencies, individuals and nongovernmental organizations. This

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<sup>5</sup> Art.2A of the 1962 constitution of Kenya was repealed.

<sup>6</sup> The Kenya Gazette Vol.cx –no .23, gazette notice No.1982, Nairobi 14<sup>th</sup> March 2008.

<sup>7</sup> The Kenyan Gazette, vol: cx.no-41; gazette notice no.4473, Nairobi, 23rd May 2008.

included both politicians and the government individually or collectively could have done to avert the violence.

Therefore following the violence of 2007 general elections we can conclude that such electoral offences and or malpractices that led to the violence could not have occurred if Kenya had the necessary legal mechanisms been in place, and if only political players and the electorate as well as the citizens and the habitants at large upheld the principle of the rule of law, the bloodshed experienced would have been averted.

### **1.3. Statement of the problem.**

In the recent past elections in Kenya and other African countries have been hit hard by problems associated with the regional, religion, tribal and transition of political power. Following the 2007 Kenya's general elections close to 2000 innocent Kenyans were mercilessly butchered, over 5000 people were evicted and or displaced (IDPS) countless women and girls were raped and or defiled or even indecently assaulted and property worth millions of shillings were looted and or destroyed.

These acts were perpetrated by Kenyans were known to themselves either being workmates neighbors, relatives and even friends who spoke similar language shared similar history, but who due to their ethnic and regional differences made others their victims. This begs the question why such acts had to occur considering that this was not the first time Kenya went to elections.

In order to get a sober answer there was dire need to examine the contribution of electoral offences and or malpractices and their consequences to the violence experienced in Kenya and the lessons learnt from the violence that befell the country.

### **1.4. General objectives of the study.**

The study generally examined the effectiveness on the legal framework of the law relating to elections and election offences and their consequences' in Kenya.

#### *Specific objectives:*

To examine constitutional and legal framework and identify any weaknesses or inconsistencies in electoral process

- 1) To establish factors that leads to electoral offences and or malpractices.
- 2) To establish the consequences of electoral offences and malpractices in Kenya.
- 3) To establish measures to eradicate offences and malpractices
- 4) To establish reformative areas of electoral system to enhance democratic elections.

#### **1.5. Research Questions.**

- 1) What are the factors that have heightened electoral offences and malpractices in Kenya?
- 2) What are the consequences of electoral offences and malpractices in Kenya?
- 3) Does Kenya's legal framework provide the ways in which to curb electoral offences and malpractices?
- 4) Are there any legal and policy reforms that can be established to promote electoral democracy in Kenya?
- 5) What roles do leaders and politicians play in accelerating electoral offences and malpractices?

#### **1.6. Significance of the Study.**

The study is significant in view of the following;

1. The study will help Kenya to review it electoral laws and therefore take necessary corrective measures there from.
2. The findings will serve as reference materials subject to publication and copyright law.
3. The study is being carried out as a partial fulfillment of the requirement for the award of a bachelor of laws degree of Kampala international university

### 1.7. Existing knowledge gaps

Various literatures which deal with electoral law have dealt with many causes of electoral offences and or malpractices though the concept of consequences has not been dealt with exhaustively. *Kiiza Bessigye v Electoral commission and Yoweri Kaguta Museveni*. Where despite the supreme court finding that the election was marred with various irregularities the court upheld such irregularities as not being substantial.

### 1.8. Review of related literature.

In general electoral offences are committed by acting or omitting to do as required by the Elections Act.<sup>8</sup> Such offences includes offences related to registration of voters and voters cards ,bribing ,undue influence ,use of public resources and an electoral body and or official being partisan. In *William Kabogo Gitau v.George Thuo*<sup>9</sup> Justice Kamau upheld several electoral malpractices raised by the petitioner. The election posters by both the appellant and the respondent did not disclose the names and addresses of the printers as required by law.

Secondly it was proved that the respondent's supporters carried placards containing adverse materials against the petitioner which lead to confrontations and violence amongst supporters.

The electoral commission's officials participated in a PNU<sup>10</sup> primaries where the ECK officials acted as PNU'S party officials. This was held to be against the principles of independence and impartiality Justice Kamau noted "an electoral body is supposed to be conduct elections impartially and that even a smilingly innocent association with any of the contesting parties particularly the party in power would raise questions on its impartiality and neutrality. Failure to sign forms 16 A as it then was, by the returning officer and party agents invalidates such results.

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<sup>8</sup> Act no 24 of 2011.

<sup>9</sup> High court election petition no.10 of 2008.

<sup>10</sup> PNU started as a coalition of several coalition parties, including KANU Narc-kenya, Ford-People, Democratic Party, Shirikisho, and National Alliance Party of Kenya among others.



Previously Kenya had very vague laws that hindered effective justice towards the election petitioners. The courts were either under control of the ruling president or the judges drained away their independence for fear of sanctions by the executive.

*Matiba v Moi & 2 others no.2*<sup>11</sup>. The High Court of Kenya at Nairobi granted the petitioner leave to appeal to the Court of Appeal after making the application 4 months and 22 days after judgement. The leave was granted by a high court judge. However the court of appeal dismissed the appeal on grounds that the High court had no jurisdiction to extend time.

It is vital to note that by then Kenyans laws did not provide for limitation of time in electoral petitions notwithstanding that the law under the Act by then was the election court shall decide all matters that comes before it without undue regard to technicalities<sup>12</sup>.

*Rtd.Col.DR. Kiiza Besigye V Electro Commission and Yoweri Kaguta Museveni*<sup>13</sup>. Where the petitioner alleged the presidential elections held in 2006 was characterized by acts of intimidation, lack of freedom and transparency, unfairness and violence and commission of numerous and illegal practices such as disenfranchisement of voters by deleting their names and vote stuffing, failure to cancel results in polling stations where gross malpractices took place and that the electoral commissions failed to observe electoral laws. Four out of five judges found that that failure to comply with the law did not affect the results in a substantial manner thus the petition was dismissed.

## **1.9. Research methodology**

The researcher employed research study of various secondary data sources such as books, thesis, dissertations, government policies, commission reports, Acts of parliament international treaties, article consulted in various libraries.

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<sup>11</sup> Civil appeal No.179 of 1993

<sup>12</sup> S.23 (1) (d) National Assembly and Presidential Elections Act cap 7 laws of Kenya.

<sup>13</sup> Supreme court, Election petition No.1 of 2006

### **1.9.1. Data collection methods**

The research data comprised of both primary and secondary data sources. The data collection methods that were employed in the collection of relevant data were as follows. A source of primary data interviews were solicited to key respondents with various organizations including (AFRICOG) and other nongovernmental organisations. This work also involved the study of various library materials such as books, journals, academic papers articles case law, and research reports and also electronic data materials as a source of secondary data. The following libraries were of great help; Kampala International University library and university of Nairobi library.

### **1.9.2. Field research**

Interview; the researcher conducted various face to face interviews in Kenya.

### **1.9.3. Time schedule.**

The research was to be conducted within five months.

### **1.10. Chapterisation.**

This research paper consisted of five chapters: The introduction, constitutional and legal framework in Kenya, causes of electoral offences or malpractices, effect of electoral offences and the recommendations.

## **CHAPTER TWO**

### **CONSTITUTIONAL AND LEGAL FRAMEWORK GOVERNING ELECTIONS IN KENYA.**

#### **2.0 Introduction.**

This chapter reviews some theoretical perspectives and observations that various authors and scholars have related to the conduct of elections and state law legislated by parliament. The researcher has also by large and wide analyzed various research and reports by various organizations and commission of inquiry related to elections, electoral offences and their consequences in Kenya.

#### **2.1 Constitutional and Legal frameworks.**

There are various international and regional standards relating to elections and electoral process derived from a number of international instruments which provide for both civil and political rights. They are aimed at enabling electoral democracy in a democratic state.

The universal standards are found in the universal declaration of human rights (UDHR), The international convention of civil and political rights (ICCPR) The International Convention on the Elimination of All forms of Racial Discrimination (ICERD), The Convention on Elimination of All forms of Discrimination Against women (CEDAW) and the convention on the rights of persons with disabilities (CRPWD).

The regional instruments available for Kenya include the African charter on Human and Peoples Rights (ICHPR), The African Union (AU) declaration on the Principles of Governing Democratic Elections in Africa (2000) and the African charter on Democracy; Elections and Governance (2007). Kenya is a signatory to all these treaties except for the African instruments of 2002 and 2007.

The international standard provides for rights of voting and participating in governance article 2 of the UDHR states that;

1) Everyone has a right to take part in government of his country, directly or through chosen representative.

2) The will of the people shall be the basis of the authority of government; this shall be expressed by periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret ballot votes or equivalent free voting procedures.

The ICCPR is more descriptive and states as follows at Article 25;

'Every citizen shall have the right and opportunity without any of the distinctions mentioned in article 2 (this is the principle of not discriminating on basis of sex race religion and political affiliation) and without unreasonable restrictions to;

a) To take part in the conduct of public affairs, directly or through freely chosen representatives.

b) To vote and be elected at genuine periodic elections which shall be universal and equal suffrage and shall be held by secret ballot guaranteeing the expression of the will of the electors.

c) To have access, on general terms of equality, to public service in his country other electoral rights and freedoms in UDHR and ICCPR include the right to freedoms of expressions, to hold opinions, to receive and impart information through media and to freedom of peaceful assembly and association .article 20 of the ICCPR provides for prohibition of "any advocacy of national, racial (include ethnic) or religious hatred that constitutes incitement to discrimination, hostility or violence.

## **2.2 An over view of the constitutional and legal framework of the electoral process in Kenya.**

The major objective of this study is to examine the constitutional and legal framework and identify any weaknesses or inconsistencies in the electoral process in Kenya that leads to electoral malpractices

The Kenyan laws that are relevant in this study are;

### **2.2.1. The constitution of the Republic of Kenya, 2010**

The constitution enriches the protection of various fundamental rights and freedoms in **chapter VI** .A number of rights associated with elections and peaceful elections

includes rights to; form, or participate in forming ,a political party, campaign for political party or cause, to register as a voter and to vote <sup>14</sup>

Chapter vii of the constitution provides for representation of the people and therein creates the independent electoral and boundaries commission (IEBC)<sup>15</sup>

Independent electoral and boundaries commission (IEBC) is regulated by the independence electoral and boundaries commission Act.<sup>16</sup>

The constitution further provides for political and government system in Kenya In **chapter VIII** which provides for the legislature arm of government<sup>17</sup>.Chapter six of the constitution describes the executive arm of government and provides for procedures relating to elections of the president.

### **2.2.2. The independent electoral and boundaries commission (IEBC).<sup>18</sup>**

This is an independent organ mandated with the responsibilities of conducting elections in Kenya, referenda, at county and national level.<sup>19</sup> Further the commission has among other mandates to; register voters, regular revision of voter's roll, delimitation of constituencies and wards and voter education<sup>20</sup>

### **2.2.3. The Elections Act <sup>21</sup>**

This Act deals with various electoral offences and provides for penalties with respect to the electoral process. These offences are:

- a) elections offences in part VI of the Act include ; falsification of information relating to register of voters and voter's card ,multiple registration, voting more than once ,bribery ,undue influence ,use of force or violence during election period, use of public resources and allowing malpractices that breach the secrecy of the vote .These offences

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<sup>14</sup> Article 28 of the constitution of the republic of Kenya

<sup>15</sup> Article 88 of the constitution of the republic of Kenya

<sup>16</sup> IEBC Act no.9 of 2011 laws of Kenya

<sup>17</sup> Article 93 Of the constitution of the republic of Kenya

<sup>18</sup> IEBC Act no.9 of 2011

<sup>19</sup> S.3 Independent Electoral and Boundaries Commission Act No.9 of 2011

<sup>20</sup> S.4 independent electoral and Boundaries commission Act No 9 of 2011

<sup>21</sup> No.24 of 2011

are punishable by a fine not exceeding one million shillings ,imprisonment not exceeding six years or both.<sup>22</sup>

This part of the Act applies both to the voters as well as the electoral officials.

#### **2.2.4. The Public order Act. <sup>23</sup>**

Prior to its amendment as a result of Inter-parties Parliamentary Group (IIPG) negotiations in 1997, the previous Act required that for one to hold a public meeting one should have a license and a permit of authority. However with the amendments the only requirement for one to hold a public meeting is to notify the officer commanding the police station nearest to the venue of campaign. The notice must be given not less than three and not more than 14 days before the meeting. The police can if on reasonable belief that there will be breach of peace decline to grant such authority for a public meeting. However the Act prohibits restrictions of such kind on basis of political beliefs or opinion.

#### **2.2.5. The Penal Code Act <sup>24</sup>**

Various electoral malpractices are also penalized in the penal code .offenders would be prosecuted under any of these laws; threats, violence, theft, assault, carrying of dangerous and offensive weapons in public and bribery.

Under the national assembly and presidential elections act<sup>25</sup> the electoral commission has powers to designate "any of the officers to conduct any prosecution for an offence under this section and the electoral code of conduct and such officers shall for the purpose have all the powers conferred upon a public prosecutor by the criminal procedure code"

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<sup>22</sup> S.67 (1) (n) of Election Offences Act No.24 of 2011.

<sup>23</sup> Cap 56 laws of Kenya.

<sup>24</sup> Cap 63 laws of Kenya.

<sup>25</sup> S.34 (A) penal Code Act Cap 63 laws of Kenya.

### **2.2.6. The Kenya Broadcasting Act<sup>26</sup>**

This is a vital act in relation for it covers the public medium of communication that updates most Kenyans. The act defines 'campaign period' as a period between the initiation of an election under the relevant law and the eve of Election Day.

It then provides that the public media shall during the campaign period maintain a fair balance in allocation of broadcasting hours as between different political view points. In undertaking this responsibility, the corporation is to consult with the electoral commission. The allocation of free airtime is to be registered by the political parties participating in an election.

### **2.2.7. The Political Parties Act.<sup>27</sup>**

The Act provides for registration, regulation and funding of the political parties, and for connected purposes. It also regulates coalitions and mergers of political parties and of relevant it provides for relevant offences which *inter-alia* includes failure to provide particulars or information required to be furnished to the registrar of political parties, makes false statements<sup>28</sup> and various penalties of a fine or imprisonment for a term not less than one million shillings or imprisonment for a term not less than two years or both<sup>29</sup>

## **2.3 Report of the independent review commission (IREC)<sup>30</sup>**

This was a commission mandated to examine the 27<sup>th</sup> December 2007 general elections from various perspectives<sup>31</sup> in conformity to terms of reference <sup>32</sup>IERC presented its

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<sup>26</sup> Cap 221 laws of Kenya.

<sup>27</sup> No.11 of 2011 laws of Kenya.

<sup>28</sup> S.45 *ibid*

<sup>29</sup> S.46 *ibid*

30. Report of the independent review commission on the general elections held in Kenya on 27<sup>th</sup> December 2007, presented to his Excellency Hon. Mwai Kibaki, President of the Republic of Kenya on 17<sup>th</sup> September 2008

<sup>31</sup> The Kenya Gazette, vol. CX-No 23

findings and recommendations ,based on its analysis of the legal framework for the conduct of elections in Kenya<sup>33</sup>the structure composition and management system of the electoral commission of Kenya (ECK)<sup>34</sup>and how it conducted the general elections of 2007.this report examined the integrity of the whole electoral process ranging from, voter registration and nomination of candidates to their political parties through voting, counting transmission and tallying to dispute resolution and post-election procedures ,deals with the role of political parties ,observers, the media, civil society and the public ,the matters of independence ,capacity, transparency and functionality of the electoral commission.

The findings of the commission were that Kenya's constitution of 1962 and other legal framework relating to elections contains a number of weaknesses and inconsistencies that hinders effectiveness of peaceful free and fair elections. This legislation called for urgent review.

It was the commission's recommendation that all political role-players in Kenya should recognize that materiality defective elections accompanied by public violence will remain feature of life in their country absent of a centralized and sustained commitment to electoral integrity by all Kenyans, this recommendation were effected in the 4<sup>th</sup> march 2013 general elections where modern mode of voter identification(BVR) were used although to technical issues some of them failed to meet their purpose prompting cord to move to the supreme court.

## **2.4 Report of the Commission of Inquiry into post-election violence (CIPEV)<sup>35</sup>**

The mandate of this commission of inquiry was to investigate the factors and facts surrounding the violence experienced in Kenya during the period of 2007 and 2008,the conduct of state security agencies in their handling of it, and to make recommendations concerning these and other matters.

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<sup>32</sup> Chapter 2 of the report pg 11-12

<sup>33</sup> Electoral commission of Kenya refers to the now defunct commission that was disbanded by the 10<sup>th</sup> parliament.

<sup>34</sup> Kregler commission *ibid*

<sup>35</sup> Waki report.



It was the commission's findings that violence related to election was not new to Kenya by tracing it back to restoration of multi-party politics in 1991. However, the 2007 and 2008 post election violence was more than Kenya had previously experienced. This time it affected all but two provinces.

The findings were that the violence experienced was more than a mere juxtaposition of citizens –citizen's opportunistic assaults. These were systematic attacks on Kenyans based on their ethnicity and political differences. This free-for-all was made possible by the lawlessness stemming from an apparent collapse of state institutions and security forces. The report recommended concrete measures to improve performances of state security agencies and cooperation within the state security mechanisms, including strengthening joint operational review process; merging the two police agencies; and establishing an independent police complaints authority.<sup>36</sup>

To break the cycle of impunity which is the heart of the post-election violence, the report recommended the creation of a special tribunal with the mandate to prosecute crimes committed as a result of post-election violence. The tribunal will have an international component in the form of presence of non-Kenyan on their senior investigations and prosecution staff.<sup>37</sup>

## **2.5 Strength of the literature.**

No elections can be conducted without some sort of electoral system which is the procedural rules governing transformation of votes to seats in the national assembly, the senate assembly and the county assembly. The literature will apply various legal instruments relating to election management and electoral offences in Kenya.

They all adequately provide for democratic principles of universal suffrage, equal suffrage, free and fair elections, secret votes and peaceful post and pre-election campaigns.

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<sup>36</sup> Rationale for recommendation action regarding the Police, pg 413-444 of the Waki report (CIPEV report), see also chapter 13 of the report, pg 481-484.

<sup>37</sup> Chapter 13 of the report: recommendations that relate to issues of impunity, pg 475-480.

## **2.6 Weakness of the literature.**

Kenyan electoral legislations provide for the basic framework for conducting elections all through its major general, by elections, and referenda. However it has a number of bottlenecks and shortcoming that calls for urgent and radical review to enhance free, fair, peaceful and democratic elections. The review should take cognizance of various factors such as consolidating the electoral provisions scattered among various statutes, enforcement of such laws and promotion of peace amongst the 42 tribes of Kenya. In trying to meet the purpose of the study the researcher will commission an analysis of constitutional and legal framework in Kenya and will seek to find out how adequately this framework meets the standards of the key electoral and democratic principles of universal suffrage ,equal ,suffrage ,free and fair elections, secret ballot, peaceful campaigns and direct suffrage.

## **CHAPTER THREE**

### **VARIOUS CAUSES OF ELECTORAL MALPRACTICES IN KENYA**

#### **3.0. Introduction.**

Electoral malpractices are election-related offences that are either civil or criminal, such as bribery, impersonation and multiple voting to mention but a few. However if one has reasons to believe that election-related crime has been committed , should first raise the matter with the returning officer as well as with the police for investigation. However a report to the police must be made through a police statement and one should be prepared to substantiate his allegation.<sup>38</sup>

In any objective political arrangement all over the world, election through the ballot is recognized as the only credible barometer to determine power equation.<sup>39</sup>

In a statement by former president Umaru Yar Adua<sup>40</sup> while receiving the report of the electoral reform committee said "...our focus on electoral reform is predicted on the belief that elections are the very heart of democracy hence they must not only be fair but they must be seen to be so by people and the rest of the world...."

So what are the problems of conducting free and fair elections in Kenya?

#### **3.1. Absence of genuine and electronically generated voter register.**

This was one of the recommendations made by judge Johanna Kregler in the report of the independent Review Commission (IERC) mandated to inquire into the conduct of Kenyans elections that Kenya should embrace electronic system of registering voters although the Independent Electoral and Boundaries Commission (IEBC) embraced electronic voting system it only managed to embrace Electronic Voter Identification Device (EVID) and the electronic vote transmission system although due to their technical nature they did not meet their purpose compelling the commission to result to manual mode of conducting elections.

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<sup>38</sup> The Royal Borough of Windsor and Maidenhead.

<sup>39</sup> Electoral malpractices in Nigeria, effects and solution by barrister Olaceye Alusunkinmi, chairman, Oyo State Independent Electoral Commission.

<sup>40</sup> Umaru yar Adua was the 13<sup>th</sup> president of Nigeria who died in power on 5<sup>th</sup> may 2010.

The biggest problem confronting Kenya today is the absence of correct and genuine Data. We do not have correct population figure, correct number of male and female population and most importantly Kenya does not have the correct number of people of voting age. In the 4<sup>th</sup> march 2013 general elections various forms of voter registers were used thus bringing into controversy the number of registered voters in Kenya. How then can we have free and fair elections when we do not have the correct number of potential voters? We must have the correct voter's register to eliminate electoral malpractices.

### **3.2. Economic development and corruption.**

The dire economic conditions of majority of Kenyans makes social vices like corruption to thrive and as such the electorates are more susceptible to 'money-bag' politicians. Both the politicians and the voters trade for votes for as little as a packet of maize flour 'unga' or 'sukari kilo' a kilogram of sugar or cash money of as little as KShs. 50 only and illicit brews for the youth. Hence voter bribery and vote buying is so *common* during elections sessions.

*William Kabogo v George Thuo*<sup>41</sup>. Where justice Kamau found inter-alia that the respondent was involved in voter bribery both in monetary form and 'gifts' to voters such as alcohol and other domestic products. In *Rtd.col.Dr.kizza Besigye v Electoral Commission and Yoweri Kaguta Museveni*<sup>42</sup> where court dismissed the petitioners allegation of votes buying and bribery against the second respondent by majority of five to two judges that there were no illegal practices or any other offence, was proved to the satisfaction of the court, to have been committed.

Then one wonders what the meaning of electoral offence is? If these are the precedents to be adopted then electoral offences will never cease.

Poverty has now become the strong factor against chosen credible leaders as well as having free and fair elections.

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<sup>41</sup> (2010) H.C.

<sup>42</sup> Supreme Court of Uganda election petition no .1 of 2006.

### **3.3. Election management and logistic problems.**

One of the greatest challenges to election management in Kenya is the employment and the attitude of Ad-hoc staff to manage elections. Currently in Kenya there are 33,400 polling stations.<sup>43</sup> That requires at least five Ad-hoc staffs during elections. The Ad-hoc staffs are not permanent staffs of the IEBC, this makes them susceptible to electoral malpractices and in most cases they are not available during proceedings at elections tribunal.

Similar to the aforesaid is the logistics of managing elections in the 33,400 polling units in a single day putting in mind that in Kenya there are six elective positions all conducted in a single day.<sup>44</sup> This is an enormous responsibility, because it overstretches the man power, material resources and the security forces. In addition there is the need for knowledgeable, skilled competent people to work at the electoral commission

### **3.4. Judiciary and security.**

The functioning of the judiciary is important in political system. The judiciary is one of the most important institutions of government and the state of judiciary has serious implications for the electoral systems. The Kenyan judiciary is weakened by corruption ,poor funding ,inadequate facilities , large numbers of petitions and poor training of judicial staffs , to name but a few.

The security agents on the other hand are very much corrupt. These agents are supposed to protect the polling stations and ballot boxes to avoid a situation where goons will run away with ballot boxes. However some of these officials are often biased in favor of a candidate or towards the political party of the party in power.

### **3.5. Inadequacies and restrictions of electoral laws.**

Sophisticated laws and sophisticated system are futile electoral reform initiatives in absence of the will to enforce the law. Kenya has enacted various electoral laws but

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<sup>43</sup> [www.iebc.org](http://www.iebc.org)

<sup>44</sup> President, governors, senators, members of parliament women representatives and county representatives.

there are violation and enforcement are the major challengers. For instance the kerlger commission recommended the use of electronic voting system. In advanced enlarge democracies like India and united states of America ,electronic voting system has been used to achieve free and fair elections and combat logistic problems that usually confront countries with huge size and population like Kenya . However Kenya has no mandatory provision in its laws for electronic voting system.

### **3.6. Political parties and internal democracy.**

The fundamental Right Provisions of the constitutions of Kenya which provides for the freedom of association has been extended to mean equally, rights of people to associate, to form and join political parties.<sup>45</sup>Kenya has 28 political parties.<sup>46</sup>This big number of political parties raises the question of party internal democracy. In primaries and party leadership who most members are handicapped by their party leaders raising opposition within the parties. This has led to violence during party primaries due to nepotism and favourism <sup>47</sup>there are extremely undisciplined political parties with candidates who are ignorant of the new laws and are unwilling to change from the old electoral ways to the new ones. <sup>48</sup>

### **3.7. Absence of democratic culture**

Democracy is a vital tool in free and fair elections. "Among the factors militating against true democracy is the entrenchment over the years of a culture of dictatorship following the advent of the military in 1966.... Within this kind of background is it any surprise that we see nothing wrong with employing the most inferior methods to acquire power? The ruthless and relentless rigging of elections is a substitute for brutal association of those from whom we desire to seize power" chief kanu Agabi San<sup>49</sup>

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<sup>45</sup> Art.36 Kenya's constitution of 2010.

<sup>46</sup> [www.registrar of political parties.co.ke](http://www.registrarofpoliticalparties.co.ke).

<sup>47</sup> [www.news 24.com](http://www.news24.com). Kenya Stockholm blog 17<sup>th</sup> January 2013

<sup>48</sup> Waikwa Wanyoike and Sandra Ochuka, 'upholding integrity of the March 4<sup>th</sup> election', *The star*, Nairobi 18<sup>th</sup> January 2013.

<sup>49</sup> San is a Nigerian lawyer and politician who was a National Senator, and was twice Attorney General and minister of justice of the federation during the presidency of Olusegun Obasanjo.

### **3.8. The Use of Political Violence**

Violence was part and parcel of the colonial state, which used it to ensure Control. After independence, President Jomo Kenyatta used both the carrot and the stick to maintain power, with the use of violence mainly concentrated in the hands of the State, rather than outside of it. Opposition parties were subjected to political harassment and those individuals who refused to support the status quo experienced various types of repression and even detention without trial. Rallies, by students and others, were dispersed by the GSU using force. The Government is believed even to have been responsible for the murder of three political figures, Pio Gamma Pinto, Tom Mboya, and J.M. Kariuki, the last two of whom were viewed as threats to the then regime and potential contenders for political power. At the same time, individual members of the opposition were weaned back to the fold through appointments to Government positions, and allocations of land as well as provision of other perks. For a variety of reasons, repression under Kenya's second President, Daniel arap Moi, became more draconian. First he did not start off with the same array of resources (e.g. land, civil service jobs, and a buoyant coffee boom) available to Kenyatta to reward his supporters and the general public. Second, in 1982, he experienced an attempted coup against him. This followed an unsuccessful attempt by parts of the Kiambu Kikuyu elite in 1978 to keep him from becoming the President. For both reasons and perhaps for others, violence, including detentions without trial and the routine torture of perceived and real dissenters, became institutionalized early on under Moi's rule. This in turn generated a groundswell of dissent against his rule by a growing opposition movement, Including politicians, lawyers, students, and others from all parts of the country, as well as members of the Kikuyu from Central Province whose economic power he tried and partially succeeded in decimating. President Moi's actions were designed to destroy the economic base of his opponents and to bolster his own position and that of his supporters, who were mainly drawn from his KAMATUSA allies from the marginal areas. In the period leading up to independence and through to 1964 when KADU was dissolved and its members joined KANU, KADU had campaigned for a federal system of government known by the Swahili name of "majimbo", in part to protect the members

of the smaller tribes from the numerical power of the larger ethnic groups such as the Kikuyu and Luo. To consolidate his base after becoming the President, Moi rewarded his supporters, particularly the Kalenjin, through appointments to political offices and with jobs in the public service and the military. Rightly or wrongly, these individuals given these were viewed by President Moi's opponents as not qualified or competent. As the opposition to Moi's leadership grew over the years, civil society became increasingly vocal and donors increased pressure on him, including through the use of financial sanctions, to democratize. In the end, President Moi very reluctantly agreed to allow multi-party democracy in 1991 and he presided over two multi-party elections during his rule, one in 1992 and another in 1997. Although he agreed to multi-party democracy, President Moi did not accept the idea that through this he might lose the presidency. Thus, it was in this period.

In the 1990s that violence became institutionalized during presidential and Parliamentary elections. In short, violence became a means of securing political power and winning elections. Elections related violence occurred not just in 1992 but also in 1997. In spite of the death and destruction that these methods caused and the reports from NGOs such as the Kenya Human Rights Commission, Human Rights Watch, and two Government Inquiries - the Kiliku Parliamentary Committee and Akiwumi Commission - no one was ever punished for this wanton killing and destruction even though names of perpetrators to be investigated and those "adversely mentioned" were contained in the reports of both Commissions. The Akiwumi Report was not made public until 2002, even though it was published in 1999. This led to a culture of impunity whereby those who maimed and killed for political ends were never brought to justice. This changed Kenya's political landscape with regard to elections, a point noted by Human Rights Watch. Each of these reports implicated politicians as the organizers of the violence and killing for political ends, and noted that the warriors and gangs of youth who took action were both paid and pressed into service. Aside from this youths were sometimes Promised Land and jobs after evicting up country dwellers. Some of the displaced individuals, including youth from Laikipia District, moved to Nairobi and



became members of Mungiki, which up through the 1980s had been largely a cultural cum religious cult in the Kikuyu inhabited parts of the Rift Valley. Later it metamorphosed into a Mafioso style gang that grew and eventually became a shadow government in the slums of Nairobi and in parts of Central Province. Initially, the Mungiki were seen as substituting for a lack of public services in the slums. Later it started bullying individuals and businesses, including matatus and owners of real estate, into making payments for services which it would provide, include connecting electricity, providing pit latrines, and meting out justice. Mungiki and other gangs across the country (e.g. Taliban, Chinkororo, Kamjeshi, Baghdad Boys and many others) grew and multiplied within the context of a political culture that both used and tolerated extra state violence. Up through to the 2007 elections, Mungiki and other political gangs continued to sell their services of violence on a willing buyer willing seller basis. As late as 2007 long after the Government had banned a number of gangs including Mungiki, they continued to operate with their leader Maina Njenga telling his followers to engage in more robberies to compensate for the decrease in revenue from their traditional matatu shakedown operations that had occurred as a result of the crackdown by the Government. As extra state violent gangs began to proliferate and continued to be used by politicians, the political terrain was transformed. Violence trickled down into daily life and the State no longer commanded the monopoly of force it once had in a previous era. As such diffused extra state violence existed all over the country, where it could be called up and tapped at any time, including being used to arbitrate over elections as it has been doing since the early 1990s. Once the Government itself used both its own and extra state violence for partisan political ends, it lost its legitimacy, was not seen as dispassionate, and consequently has been unable either to maintain peace and security or to reform itself.

### **3.9. The Personalization of Presidential Power and the Deliberate Weakening of Public Institutions.**

Power has been personalized around the presidency and this has been increased by changes in the Constitution under each President since independence. Laws are

routinely passed to increase executive authority, and those laws seen as being in the way are often changed or even ignored. By 1991, the Constitution had been amended about 32 times. Among the amendments was the insertion of Section 2A, which made Kenya a de jure one party state until that provision was repealed in 1991. Even following the election of Kibaki in 2002 still rules were ignored within Ministries leading to financial scandals such as Anglo Leasing and others underscoring the once again the fact that the personal power of the President and his close associates trumped the law. Hence, as noted in the Akiwumi Report and in a number of articles on Kenya politics, the checks and balances normally associated with democracies are very weak in Kenya and are deliberately so. Individuals in various parts of Government whether in the civil service, the judiciary, and even in Parliament, understand that, irrespective of the laws, the executive arm of government determines what happens. Hence, the State is not seen as neutral but as the preserve of those in power. The above syndrome has had various consequences. The first is a sense of lawlessness that has led to Government institutions and officials being seen as lacking in integrity and autonomy. One result of this in the 2007 election was the perception by sections of the public that Government institutions, and officials, including the judiciary, were not independent of the presidency, were not impartial and lacked integrity. Hence, they were perceived as not able to conduct the election fairly. That public sector institutions were seen as biased and unlikely to follow the rules increased the tendency to violence among members of the public. Furthermore, as the Akiwumi Report and other sources demonstrated, members of the provincial administration and the police also understood that it was sometimes in the interest of their personal survival to follow what they understood to be the directives or inclinations of either the President or MPs in their areas rather than to uphold the law. This led to some officials not following the law themselves, and sections of the provincial administration and security forces even engaging in acts of violence themselves. The second is the perception on the part of the public that given the power of the President and the political class everything flows not from laws but from the President's power and personal decisions. This also has led the public to believe a person from their own tribe must be in power, both to secure for them

benefits and as a defensive strategy to keep other ethnic groups, should these take over power, from taking jobs, land and entitlements. All of this has led to acquisition of presidential power being seen both by politicians and the public as a zero sum game, in which losing is seen as hugely costly and is not accepted. Hence, there is tendency on the part of a variety of political actors to do anything, including engaging in violence to obtain or retain political power, leading to what one specialist has called a race to the bottom because of a fear of being dominated by other ethnic groups and being subjected to the associated consequences of that. This has created a climate of fear and suspicions which politicians easily exploit and use to mobilize violence.

The attempt to reduce the personal power that had been accumulated by former President Moi initially was the reason opposition forces sought to introduce the post of Prime Minister.

The post election violence therefore is, in part, a consequence of the failure of President Kibaki and his first Government to exert political control over the country or to maintain sufficient legitimacy as would have allowed a civilized contest with him at the polls to be possible. Kibaki's regime failed to unite the country, and allowed feelings of marginalization to fester into what became the post election violence.

### **3.10. Land and Inequality**

Kenya consists of 42 ethnic groups who live in eight provinces. Many areas

Outside the major cities and towns are relatively homogeneous ethnically.

Problems of inequality and marginalization thus are often viewed in ethno

Geographic terms even though the inequalities between individuals of the same ethnic group are sometimes more pronounced than those between different ethnic groups and geographic areas. Studies done elsewhere have not found that the presence of a large number of ethnic groups or inequality per se explains large scale violence even though most of the violence in the Rift Valley occurred mainly in ethnically mixed settlement schemes. Apart from this, citizens everywhere is concerned that resources, including land, and services are distributed equitably and are quick to point out inequities.

Constitutionally, individuals may own land in any place in Kenya and in law no part of the country belongs to an ethnic group.<sup>50</sup> The Ndungu Report noted that throughout the 1980s and 1990s public land was illegally and irregularly allocated "in total disregard of the public interest and in circumstances that fly in the face of the law".<sup>51</sup> "Land grabbing" and the Allocation of public land as political patronage was part of the gross corruption of this period. Those involved in this allocation were senior public servants, but also local land boards, the courts, and a range of officials including members of the provincial administration, politicians, and others. Land allocations were therefore used to reward "politically correct individuals".<sup>52</sup> Given that the recommendations of the Ndungu report were never implemented, this has increased the sense of frustration in attempting to deal with land tenure disputes. The fact that institutions which could have been used to resolve land disputes have not been impartial has encouraged individuals to take matters into their own hands and to use violence to resolve them. Furthermore, as land is an emotive issue, politicians have capitalized on issues surrounding it, including encouraging violence during elections. In discussions of post-election violence, many Kalenjins argue that it is a product of longstanding anger over land distribution following independence. They argue that land was alienated by the colonial government and then unfairly parceled out to Kikuyus and other groups whom they view as outsiders. Many Kalenjins believe that issues relating to land were the reason for both the pre-electoral violence in the 1990s and the post election violence after the December 2007 elections. Others, including the Akiwumi Report dismiss this explanation pointing out that individuals from different groups lived side by side for many years until the advent of multi party democracy when violence was used to kill and displace opposition party voters to keep them from voting. Hence, the Report argues that even though the promise of getting land from those who were displaced was used to entice youth into violence, the desire for political power and not land hunger was the causal factor.

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<sup>50</sup> Art.40 of the 2010 Kenyan constitution.

<sup>51</sup> Republic of Kenya, Report of the commission of inquiry into illegal/irregular Allocation of Public Land (The Ndugu Report), Nairobi: Government printer, June 2004, pg.8.

<sup>52</sup> *Ibid.*

### 3.11. Unemployed Youth

Although Kenya's population growth rate has been reduced and is now reportedly down to 3%, it still has an estimated two million youth who are Unemployed. Furthermore, between 1992 and 1996, the number of street Children increased 300% in just four years<sup>53</sup>. Many of these initially rootless Children who are now adults are the product of displacement by ethnic violence. They have grown up on the streets and are inured to violence, something that is clearly very dangerous. In addition, although many youth speak English, something that has raised their expectations, they have no hope of formal sector employment. The combination of being rootless, having survived amidst violence, plus their need for an identity and a livelihood makes them ready recruits for violent gangs, which exist all over Kenya and are tapped by politicians, particularly but not exclusively during elections. The gangs are devoid of ideology and operate on a willing buyer willing seller basis. Given the hierarchical nature of gangs and the upwardly mobile hopes of their members to become as well off as their leaders, youth can be mobilized for a variety of reasons, not just to meet their daily needs. This, in itself is a very dangerous situation, helping to explain why since the 1990s violent gangs have proliferated all over Kenya.

Additionally, there is also a growing problem of unemployment among youth who are university educated, estimated to be around 40,000 a year, given that only 150,000 formal sector jobs have been created since 2003, raising the specter of whether these individuals will also be ready to engage in violence as well if they are unable to find work<sup>54</sup>

Violent gangs, consisting mainly of unemployed youth have been mobilized into gangs along ethnic lines. Their power, to the point of having become shadow governments in

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<sup>53</sup> Waki report

<sup>54</sup> The numbers come from an expert's discussion in the consultative meetings with the Commission on 26 August 2008. For other discussions of youth see *Who is Guilty: Youth Perspectives on the 2007 Pre-Polls Electoral Violence in Kenya*. Nairobi: The Youth Agenda, n.d.; Peter M. Kagwanja, "'Power to Uhuru': Youth, Identity, and Generational Violence in Kenya's 2002 Elections," *African Affairs*, 105, no. 418, January 2003, pp. 25-49.

many areas, stems from two sources. First as the main aim of Government in the 1990s was to mobilize political support to gain and maintain political power, a good deal of revenue was spent on patronage rather than on maintaining infrastructure and providing social services. This meant that the country started to crumble, visually evident in the decay of roads and the proliferation of uncollected garbage, even in the capital city of Nairobi, which once had been called the "city in the sun". This crumbling as well as a decline in social services and security also paved the way for violent gangs which provided them. This gave unemployed youth work, albeit within gangs, and made the latter extremely powerful. Over time these gangs operated as Mafioso shakedown gangs, with violence and impunity, as they continue to do. Increasingly, citizens began to ask who was in charge of Kenya, gangs or the Government. While one might have expected that the police could have dealt with the increase in violent gangs operating as virtual shadow states in so many parts of the country, the Government has been ineffective in dealing with them for several reasons.

First, many politicians themselves have used these violent gangs to decimate their opponents, to protect themselves from a dictatorial state in the 1990s, and to gain power then and now. This has itself given gangs such as Mungiki, the Taliban, Chinkororo and others a life and the ability to operate without fear of being caught. Second, by the time government was serious about banning the groups, they were large, controlled a number of areas, and the numbers come from an expert's discussion in the consultative meetings.

## **CHAPTER FOUR**

### **CONSEQUENCIES OF ELECTORAL MALPRACTICES IN KENYA**

#### **4.0. Introduction**

##### **Post-election violence**

This is a political, economic, and humanitarian crisis that usually erupts after election mainly when the election is a disputed one and the parties involved results to undemocratic means of settling disputes. This is not a problem in Africa alone in Venezuela where President Nicholas Maduro won against Henrique Capriles who later demanded a recount of the votes. Seven people were reported dead while over 61 were injured.<sup>55</sup>

##### **4.1. Background**

From 1965 to 1990, a monolithic, one-party system of government became entrenched in Kenya, characterized by a 'presidential authoritarianism' and the curtailment of fundamental rights. The repeal of part of the constitution in 1991 and the subsequent reintroduction of multi-party politics, although hailed as a major political landmark, were regrettably not accompanied by other constitutional, legal, and administrative reforms, resulting in a weak legal and institutional framework for elections.

Following the introduction of multi-party elections in 1991, and in the absence of an effective and organized opposition, President Moi (a Kalenjin) won the 1992 and 1997 elections, both marred by violence.<sup>56</sup> However, in 2002, the opposition finally won by uniting around Mwai Kibaki, a former Vice President and Kikuyu. The 2002 government of Mwai Kibaki promised a new constitution that would help to deal with Kenya's many governance problems – an overly powerful presidency with a weak legislature and judiciary, a centralized state, disputes around land, a history of impunity for violence

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<sup>55</sup> Los angles times 15 04 2013. [leo/Ramirez/AFP/GETTY](http://leo/Ramirez/AFP/GETTY).

<sup>56</sup> Elections in Kenya (2007) department for international development UK AID 3.

and corruption, inequalities between ethnic groups, and poverty and unemployment. However, large parts of the population felt that these promises were betrayed. This was the backdrop against which the 2007 elections occurred.

#### **4.2. Eruption of violence**

Post election violence was first experienced in 1992 where over 300,000 persons were displaced in rift valley in the area of Bungoma district where differences arose between the Kalenjins and Luyhia communities.

In December 1997, Kenyans went to the polls to elect members of parliament and the country's president. The elections were conducted in the glare of international publicity, not least because the international community was seriously concerned about whether the elections would be free and fair<sup>57</sup>. Despite evidence of electoral irregularities, political violence and a legal framework which favored the incumbent government, observers of the elections endorsed the resulting victory of President Moi and the Kenya African National Union (KANU) as being an expression of the will of the people. In the wake of the elections, there rapidly followed a waning of international interest in political developments in Kenya. This was despite the fact that within a month of the elections, politically motivated ethnic 'clashes' erupted in Rift Valley Province. The violence left hundreds of people dead or injured, and thousands of others displaced from their homes and living in makeshift shelters. It was clear that this violence was following a pattern similar to that encountered during previous outbreaks of conflict in Kenya between 1991 and 1994 — prior to and after the country's first multi-party elections in 1992 — in which predominantly Kalenjin supporters of KANU attacked members of ostensibly 'pro-opposition' ethnic groups.<sup>58</sup>

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<sup>57</sup> Mwai Kibaki v president Daniel Toroitich arap Moi, Civil Appeal no.172 of 1999.

<sup>58</sup> 'Kenya Post-election political violence' (1998) article 19 *Global Campaign for Free Expression* 8



The Kriegler Commission found that electoral fraud began at the polling station level and was rampant. It determined that the errors made in the various stages of the tallying process were so great and widespread that it is impossible to reconstruct from the formal record who in fact won the presidential contest.

The courts in Kenya, emerging from a long period of authoritarian rule, do not yet play fully the roles of protecting human and minority rights and of enforcing the integrity of the electoral process. Hence they were not trusted during the post-election crisis, contributing to its escalation.

The Kenyan media played a mixed role in the election violence. Many victims recalled with horror, fear, and disgust the negative and inflammatory role of vernacular radio stations in their testimony and statements to the Commission. In particular, they singled out KASS FM as having contributed to a climate of hate, negative ethnicity, and having incited violence in the Rift Valley.<sup>59</sup>

However there were also similar complaints in other parts of the country even though they did not come directly to the attention of the Commission. These included the vernacular music and negative ethnicity allegedly coming from Kikuyu FM stations including Kameme, Inooro, Coro, and others in other different parts of the country. On the whole, Kenya's print media are among the best in Africa. Nonetheless, the major media were biased in favor of the government, especially the government-owned Kenya Broadcasting Corporation KBC. Talk shows on some of the small, vernacular FM stations also became vehicles for hate speech (although others became vehicles for peace).<sup>60</sup>

The pattern of election violence following the 2007 elections occurred in three discernible waves. First, there was spontaneous looting by youths in the slums of Nairobi and Kisumu of government buildings and of the shops and houses of Kikuyu families and Party of National Unity (PNU) supporters after the announcement of the election results. Second, violence organized in part before the election by opposition

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<sup>59</sup> The waki commission 'post election violence in kenya' (2007) 295

<sup>60</sup> Waki commission report 295

and tribal leaders as a response in the event of Kibaki's winning the election. Third, reprisal attacks, organized by government supporters and Kikuyu militias that mainly targeted migrant workers thought to be opposition supporters in parts of the Rift Valley Province, Central Province, and Nairobi slums.<sup>61</sup>

The police also were responsible for much of the violence, either by using excessive force to deal with protesters or choosing not to prevent violence.

Over 1,200 people were killed in the election violence and as many as 350,000 people displaced. The violence disrupted crop production and transport resulted in a sharp economic downturn, an 80% reduction in tourism revenue, and a rise in the price of basic goods. The violence also entrenched social fragmentation between ethnic groups in the areas hardest hit by the violence.

In Kenya, as on the rest of the continent, voting is largely determined by ethnicity, kinship and neighborhood, and political parties are organized along ethnic lines. In the rural areas, where all three tend to coincide, the result is that voting at the polling station level generally will be in favor of one particular candidate, with the decision effectively a collective one, often enforced by violence. Only in the major urban areas is the coincidence of family and neighborhoods broken.

#### **4.3. Internally displaced persons IDPS**

##### **Introduction**

IDPs have been defined as, "*persons or groups of persons who have been forced or obliged to flee or leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized*

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<sup>61</sup> Ibid 300

*violence, violation of human rights or natural or human-made disaster, and who have not crossed an internationally recognized state border*<sup>62</sup>

IDPs are the human face of the problem caused by PEV. The extent to which the problem is or is not addressed will be the barometer by which the government will be judged in addressing problems and effects of PEV. Starting with the eviction of natives from their ancestral land to make way for settlers in colonial Kenya to recent violent evictions accompanying the 1992, 1997 and 2002 election, IDPs have been a constant feature of the country's political landscape. Even before the 2007 General Elections there was already a problem of population displacement as a result of the following factors amongst

Others:

- a) Pre-election violence in Molo district.<sup>63</sup>
- b) Border and land disputes in places like the Sondu which is the confluence of three districts; Nyamira, Nyando and Kericho occupied by the Kisii, Luo and Kipsigis respectively.
- c) Cattle rustling and banditry in the Pokot/Transnzoia, Transnzoia/Marakwet District border.
- d) Natural disasters such as drought in large parts of Northern Kenya that often lead to conflicts over natural resources like water leading to displacement.

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<sup>62</sup> Francis Deng, The Guiding Principles on Internal Displacements; E/CN.4/1998/53/ADD. 1, February 11. New York, NY; United Nations, New York, United Nations

<sup>63</sup> Evidence of Rift Valley PC, Mohammed Noor. To the waki commission .There were skirmishes reported in Kuresoi Division of Molo District in August 2007.

These multiple causes of displacement make it very difficult to come up with accurate statistics concerning causes of displacement, gender, age, social and economic standing. This makes it difficult for both the government to devise comprehensive policies and interventions to deal effectively with IDPs.

According to the government there were 350,000 persons displaced as a result of PEV after the 2007 elections.<sup>64</sup>

Some of these already existing causes of population displacement were exacerbated by the PEV. A particularly disturbing feature of the PEV is that some of the IDPs have suffered successive displacements as a result of previous election related violence. Several witnesses testified to the commission that they had suffered multiple evictions in 1992, 1997, 2002 and 2007. The election related 1992 and 1997 "ethnic" clashes resulted in displacement of thousands of people. According to the Kiliku Report, an estimated 54,000 people were displaced in the 1992 clashes.

The Justice Akiwumi led Commission, which was appointed in 1998 to inquire into the tribal clashes that rocked the country since 1991 did not make any findings as to the number of persons displaced as a result of the clashes either in 1992 or 1997.

The internal displacements following the widespread violence that hit the country after the announcement of the 2007 presidential election results were, however, unprecedented in terms of the number of victims and the widespread nature of the phenomenon. While previous conflicts led to internal displacements concentrated in the multi ethnic regions of Western, Rift Valley and Coast, the 2007 PEV resulted in massive country wide forced displacements, which were urban as well as rural in contrast to the past.

Violent and sudden displacement from a place one considers their home is often the worst form of loss entailing, as it does, a sense of loss of self. Most of the IDPs the Commissioners interacted with had no other home apart from the place they were

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<sup>64</sup> Francis Kimemia, Permanent Secretary in charge of Provincial Administration and Internal Security, Office of the President.

evicted. Displacement meant not only the loss of a home but loss of friendships and other relationships, economic and personal, built over many years, dispersal of relatives, a loss of memories that constituted one's being.

That most of the displacement was violent in nature aggravated the loss. Whatever interventions the Commission purposed to alleviate the suffering of IDPs, it regrettably cannot make up for the mental and psychological trauma associated with displacement the sudden departure and flight by IDPs was necessary to protect lives. In very exceptional but isolated cases IDPs succeeded in salvaging property or other valuable possessions. IDPs were subjected to violence and in extreme cases members of families were split up and even a mother lost her child during flight. One woman testified to the waki commission as follows;

"AB was a 46 year old married woman with 9 children. They were aged 19 years old to 2 ½ years old. She originally lived in Kipkaren and was a businesswoman in Eldoret town while her husband was in the matatu business. In 1992, as a result of the clashes, her house was burnt and she lost all her merchandise and belongings. Despite this, she managed to recover from the ordeal and rebuilt her life once again. In 2002 she was attacked again and unfortunately her right hand and breast were burnt. In 2007, her family was once again attacked. Her husband and older children managed to flee once the violence began on 28th December 2007. She Stayed behind with her six younger children. At night some men broke into her house, raped her and beat her. She was Once again burnt when the raiders poured on her the food she was cooking. The following day, she left her house with her Six children but one got lost in the ordeal. She had to walk up Eldoret town where she was re-united with her three elder Children. She is now residing at the Eldoret Showground IDP Camp. When asked what recommendations she had for the Government, AB said; "We would plead to the government to assist us because right now we have nowhere else to go, we have nothing. I don't have land; I don't have any money to start a business. I cannot support myself in any way. I have no direction, sometimes I wish I could just die but I

remember that I have children and if I die I do not know who I would leave my children with. My children are the one who give me strength, they are the ones who makes me live on this earth. If I were alone right now, I would be dead by now"<sup>65</sup>

In some other cases the departure of individuals stemmed from threats or the anticipation of violence. However, in most cases IDPs were forcefully evicted physically through violence against them and the destruction of their property .Reports indicated that access to basic facilities such as medical/health services, education, social and economic services, was generally more difficult for IDPs and their families than it was in general due to the violence being experienced at the time. A lot of rape victims and those who were HIV+ did not have access to essential medical services. Initially, IDPs had to settle at Police Stations, DOs offices and Administration Police and Chief's camps which, while secure, were ill suited in other ways. A witness described the situation at the Naivasha Police Station on 29th January

2008, in the following terms;

"When we arrived at the police station, what I saw was a sea of people. It was packed with so many people on arrival everybody was calling me, " Sister, we are here, we have been here for the last two days without food, the children are cold, can you get us help"?

There was a cry from all over. You can imagine the crowd and everybody is trying to state their needs. I also decided to also talk to the Deputy OCS and the first thing which I saw was children who were so dehydrated and I learnt that there was no water because the tank which was there was empty. I don't know when water had been brought to the camp. So, the first thing was to try to find out who owned that so that we can mobilize to get water. I was told it belonged to Oserian Flower Farm which is around the lake and I got some contacts to call. Later I got a driver and the police promised me security so that we can b able to get water. So, I asked the parish

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<sup>65</sup> *Ibid* 274

whether they can allow us to draw water from the borehole to bring to the police station because what I saw was so pathetic. So, that is what we did, I got security to escort the truck and then the driver arrived to go and bring us water. I also called the DC that same morning and asked for a meeting with him because I wanted to find out who were the actors on the ground trying to bring humanitarian services and how can we come in and if there was anything we could do to ease the suffering of those people. So, when we met with him he said that the Red Cross was already on the ground. We told him that we were concerned about the women and children and we have a hall in the parish and if we could evacuate the women and children to the Catholic Parish Hall where there is water and sanitation because the situation at the police station was deplorable. At that point there were no toilets and you can imagine with so many people".<sup>66</sup>

At the camp centers, *ad hoc* schools were set up for displaced children but they were hardly equipped to handle students. Most camps had education facilities for young children but the older primary and secondary school children presented a greater challenge.

The Government initiated "*Operation Rudi Nyumbani*" in April 2008 aimed at removing IDPs from camps and where possible resettling them back to their homes. Due to constraints of time and resources, the Commission could not fully make an assessment of the efficacy of this programme but found the following inadequacies;

- (i) The sum of Kshs. 10,000.00 was considered inadequate by the IDPs to meet their need once they left the camps.
- (ii) The so called "integrated" IDPs (i.e. returnees who went to live within the community) felt neglected as the program concentrated mostly on those who were

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<sup>66</sup> Waki *ibid* report Testimony of Peter Kariuki, 276

settled in camps. Particularly in the Rift Valley, is not fully assured and is therefore a hindrance to resettlement

(iii) Security for those who wish to return to their farms and homes, particularly in the Rift Valley, is not fully assured and is therefore a hindrance to resettlement

#### **4.4. Criminal Conduct (by police) including killings and SGBV.**

The police Act provides for the role of the police force in Kenya which includes protecting persons and their wealth. However during the 2007 disputed election police threw their code of conduct to the dogs and hence violations were rampant where police used excessive force

In addition to the instances of excessive force used by the Police, there was credible evidence of criminal behavior. Instances ranged from murder to gang rape and looting. One policeman in Rift Valley was responsible for fatally shooting citizens, said to be at least five and possibly more, during the unrest following the election at the end of 2007.<sup>67</sup>

Similar information was obtained by Commission investigators relating to an Administration Police officer in Nairobi. This officer, who is known to many witnesses, allegedly shot a number of citizens on 30th and 31st December 2007 many of whom were killed. More examples were related to investigators. Of the eight women, five were attacked in their homes, two within their neighborhoods' or local environs and one whilst in flight from the violence. The women were attacked in Nairobi, Eldoret and Kisumu. Officers were variously described as being GSU, Kenya Police and Administration Police Some of the officers expressed tribal/political motivation behind the attacks.

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<sup>67</sup> Ibid 397



There was no attempt by the officers to disguise their identities and their behavior implied a disturbing confidence in their impunity for these serious criminal acts. Perhaps this in part arose from the fact that these officers were not local men, but it nevertheless portrays an alarming attitude on the part of these officers.

Two female witnesses testified to various incidents of being raped by police officers<sup>68</sup>. One, a 21 year old with 4 children, reported being raped by up to 6 police officers at around 10am on 10 February 2008 near the Ondiek Highway. The other, a 32 year old caring for 5 children, reported being raped and sexually assaulted by 2 police officers at about 9pm on 4 January 2008 near USAID estate. Her friend was also raped by 2 other police officers at the same time and was later found dead a kilometer or two from the scene. Reports were also received into the effect that police officers failed to stop looting at the Ukwala Format Branch supermarket and others stated they would only protect the Ukwala Kenshop Branch if they were given KSH 10,000 each<sup>69</sup>.

#### **4.5. Sexual assaults.**

Sexual assault is any involuntary sexual act in which a person is threatened, coerced, or forced to engage against their will, or any sexual touching of a person who has not consented. This includes rape such as forced vaginal, anal or oral penetration inappropriate touching, forced kissing, child sexual abuse or torture of the victim in a sexual manner.<sup>70</sup>

Because of the context in which it took place, the sexual violence experienced took the form of gang and individual rapes, many of which were ethnically driven, as well as horrendous female and male genital mutilation.

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<sup>68</sup> *Ibid* 398

<sup>69</sup> *Ibid* 400

<sup>70</sup> Oxford dictionary *international students edition 7<sup>th</sup> edition*

Women and children's labia and vaginas were cut using sharp objects and bottles were stuffed into them. Men and boys, in turn, had their penises cut off and were traumatically circumcised, in some cases using cut glass.

Furthermore, entire families, including children often are forced to watch their parents, brothers and sisters being sexually violated.

This is a great cause of psychological torture.

Perpetrators of sexual violence were not just ordinary citizens, neighbors, and gang members, but also significant numbers of security forces. These included members of the General Service Unit (GSU) as well as regular and administration police. Many victims let members of the security forces into their houses assuming they would help them. Instead, they found themselves being attacked by those they thought would help them. This entailed a gross betrayal of trust.

Members of the security forces also participated in gang rapes. In addition, they colluded with each other, including having some of their own standing guard outside victims' houses while they raped and mutilated inside victims' dwellings.

Even when victims told perpetrators (whether members of the security forces, gangs or individuals) that they were HIV positive, perpetrators still raped them. This has resulted to in an increase in HIV AIDs in Kenya.

Perpetrators often told victims the sexual violence inflicted upon them was punishment for belonging to a specific ethnic group or purportedly having supported a particular political party.

For a variety of reasons, many victims were not able to access timely medical care, including obtaining the drug PEP, which if taken within 72 hours, prevents HIV AIDS and sexually transmitted infections. The reasons for not obtaining medical care included the following: a breakdown in security and the fear of leaving home, lack of transport, ignorance about PEP and not knowing they would not have to pay and could receive

free medical care, fear of being stigmatized if it were known they had been raped, and an overriding concern to protect, feed, and shelter their children and family members at their own.

This was exemplified by the Commissioner of Police, Hussein Ali's testimony to the Commission, where he stated *"We will determine whether those crimes are fit and whether the people have been arrested and charged"*.

Other than the extraordinary physical and psychological trauma stemming from being a victim of sexual violence, victims also suffered acute injuries, permanent disabilities, contracting incurable diseases like HIV AIDs and hepatitis B, ostracism, abandonment by their husbands and parents, loss of abode and income, as well as extreme feelings of humiliation.

#### **4.6. International Criminal Court Criminal Charges (ICC)**

After the violence that befell Kenya ever experienced in 2007 legal actions were taken to break away from the past and end impunity in Kenya. As a result the waki commission found out that several individuals were involved in the planning and execution of the said violence and hence legal actions had to be taken against them. Though it was expected that the perpetrators be tried locally the government failed to create a special tribunal to that effect. The Waki Report called on the government to establish a special tribunal, staffed by Kenyan and international judges, prosecutors and investigators, with the mandate to prosecute crimes committed during the post-election violence. It stipulated that PNU and ODM should sign an agreement within 60 days of the report's publication to create such a tribunal, and that within an additional 45 days, a statute to establish the tribunal should be adopted within 60 days Upon publication of its report, the Waki Commission delivered its list of alleged perpetrators, together with supporting evidence against them, to the Panel of Eminent African Personalities, led by former United Nations Secretary General Kofi Annan. The panel was to safeguard this evidence pending the establishment of a special tribunal; if a tribunal was not created, the panel was to turn the names and evidence over to the ICC prosecutor.

On July 9, frustrated with Kenya's delaying tactics, Annan handed over a sealed envelope containing Waki's list of suspects to the ICC prosecutor, stating that "Justice delayed is justice denied." Newly-appointed Justice Minister Mutula Kilonzo brought a new draft bill before the cabinet, which would have amended the constitution to create a special tribunal. But on July 30, following a cabinet meeting that discussed options for accountability, the government issued an obfuscating statement that rejected both a special tribunal and a referral to the ICC, saying, *"The cabinet on Thursday rejected a local tribunal and instead settled on Truth, Justice and Reconciliation Commission (TJRC) to deal with post-election violence perpetrators.... 'This does not in any way reduce its desire to punish impunity', stated the President."*

Due to Kenya's failure to establish a local mechanism or to refer the situation to the ICC, on November 26, 2009, ICC prosecutor Luis Moreno Ocampo requested leave from the court to investigate crimes against humanity in Kenya. The court authorized the investigations on March 31, 2010. In December 2010, Moreno Ocampo announced that he would seek summonses against six principal suspects: William Ruto, Henry Kosgey, and Joshua Arap Sang on the ODM side, and Francis Muthaura, Uhuru Kenyatta, and Hussein Ali on the PNU side. "Confirmation of charges" hearings, to determine whether the prosecutor has sufficient evidence for the cases to proceed were held in September and October 2011; decisions in the two cases were expected by January 2012. Currently three out of the six have been acquitted.

#### **4.7. Effect on the economy**

Electoral malpractice can often entail significant costs to the state, costs that take both direct and indirect forms. Direct costs include the drain on state capacity that results from the misuse of state resources (typically by incumbent power-holders) during the electoral process. Many states with 'problem' elections are also those that have weak state capacity, and can therefore ill-afford the additional burden of diverting state resources away from their intended uses at election time. In Kenya it is illegal to use

public resources while campaigning <sup>71</sup> this is intended to reduce states expenditure which is drawn from the consolidated fund.

Indirect costs of malpractice include the socially suboptimal policy choices resulting in allocative inefficiency that are typically generated by officials chosen through poorly run elections; such officials are often under pressure to reward those business or other interests that have enabled their electoral victory by formulating policy specifically designed to meet their needs rather than the needs of society. This is a breeding ground for corruption. Corrupt state institutions lead in turn to poor economic performance, which can have a further negative impact on the quality of democracy. The country will have poor infrastructures poor service deliveries to the people and poor economic growth.

In Kenya where electoral malpractices have been experienced over a couple of times and has resulted to PEV in 2007, Kenya lost about US \$ 80 million a day as business closed and tourists which is a major revenue income in Kenya lost businesses due to post election violence.

It was also reported that by the end of 2008 an estimated one third of the 2,200 members of the Indian community living in Kisumu city and who controlled most of the city's trade had begun repatriating back home to India. The Indian communities are among the biggest investors in Kenya economy and losing them due to post election violence puts Kenya at a position of economical loss.

Further still, Kenya relies so much on agriculture which is the back bone of its economy tea coffee and horticulture products are Kenya's daily major exports. Those persons who were displaced in Naivasha and Kericho were basically casual laborers in such farms. Their displacement led to loss of labour hence loss of revenue to Kenya.

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<sup>71</sup> Elections act

This loss extended further even to neighboring countries which are mostly landlocked e.g. southern-Sudan, Uganda, and Rwanda who depends on the Kenyan coastline for foreign imports and exports. When tensions were high in Kenya no movements were experienced. This led lots of cargo piling in the port of Mombasa and Malindi ports. Lots of businesses stalled both in Kenya and in those countries that depends mostly on Kenya economy.

## CHAPTER FIVE

### 5.0. Introduction

Electoral offences and their consequences are not healthy for a developing nation like Kenya and hence the way forward must be found. This chapter is aimed at giving recommendations to cure electoral malpractices in Kenya and the recommendations are as follows;

### 5.1. Recommendations

#### 5.1.1. The Electoral Environment.

The state and its agencies should ensure that the electoral environment prior, during and after the elections remains majorly peaceful and under control. The conduct of election campaigns should be well secured and in public. Those who violate electoral laws such as campaigning during prohibited hours should as well be brought to book. The state should enact a special law governing electoral campaigns. The law should create a special body to monitor how where and what is said during campaign periods. It is important to note that incitement and hate speeches are made during this period and such people should be brought to book. During the 2010 constitutional referenda one politician Hon. Wilfred Machage and activist Christine Miller who were opposing the new constitution had warned those supporting the constitution against campaigning in certain parts of Kenya<sup>72</sup>. After 4<sup>th</sup> March 2013 general elections one of the coalition that had lost known as CORD instituted a suit at the supreme court of Kenya. However during a meet-the-people tour in Kibera constituency in Nairobi one Hon. Johnston Mutama was heard telling the public that "*Hao wezi tuatawaonyesha cha mtema*

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<sup>72</sup> [www.dailynation.co.ke](http://www.dailynation.co.ke) Daily nation posted by Antony Kariuki 17/june 2010 Kenyan minister suspended over hate speech

*kuni*<sup>73</sup>. Translated to mean that “we will teach those thieves a lesson. Unfortunately the aforementioned inciters were not taken to account. Thus the NCIC commission should be given more powers to curb hate speech.

#### **5.1.2. Fairness in the electoral system.**

Fairness during elections can only be archived if electoral malpractices are not promoted. Kregler commission noted that the future of Kenyans elections relies on electronic voting to curb the major malpractices experienced. Kenya needs to adopt electronic mode of conducting elections to maintain free and fair elections.

#### **5.1.3. Enactment of proper electoral laws.**

Recommendations are that all laws relating to the operational management of elections should be consolidated under one statute. A separate law be enacted to facilitate the establishment of a special Electoral Dispute Resolution Court to handle appeal matters from the initial stages of dispute resolution by the IEBC These would include matters that cannot be resolved by the IEBC, or matters to which the IEBC is not a party, and post-election disputes, including election petitions. The law should entrench a statutory limit to ensure that election petitions are finalized in good time – a limit of six months should be adequate. The current rules and regulations on the procedures of the election petitions should be repealed and replaced with new rules that ensure that petitions are heard in a just and timely manner.

#### **5.1.4. Political Parties**

Political parties are an essential component of Kenya’s electoral system. The Constitution the National Assembly and & a presidential Election Act Cap 7 provides that party sponsorship is a prerequisite in presidential, parliamentary and civic elections. Political parties represented in parliament nominate candidates to the National

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<sup>73</sup> 14<sup>th</sup> march summoned by CIDS and questioned



Assembly in proportion to the seats won at elections. Political parties, therefore, are the major vehicles for political representation. Parties are also dogged by flawed and poor party nomination rules and processes.

The leadership interferes with party electoral processes, especially in nominating candidates for elective positions. Candidates got certificates because of their "good connections" with the party headquarters, party election boards and/or party leaders. During the electoral period, parties consistently lack respect for laws or regulations and the Electoral Code of Conduct is blatantly violated.

Recommendations are that a standing liaison committee be set up comprising the IEBC and political parties as a first step towards the enactment of nomination rules which must be strictly adhered to.

Further that the election date should be pre-set, taking into account all the required timelines for efficient conduct of the elections.

#### **5.1.5. The Media**

The 2007 elections were held amid unprecedented media attention. The print and electronic media sought to outdo each other in election coverage from the campaign stage right through to the transmission of election results. The elections came at a time when the media arena had been fully liberalized. The consequence was the entry of exciting new players, mainly in the form of frequency modulated (FM) radio stations. Many of these went straight into interactive vernacular radio broadcasting complete with call-in facilities. Millions of anxious and excited Kenyans who for years had been only passive listeners to one state-owned radio station could now access a wide choice of radio stations including those that broadcast in their respective home languages. However the media should be controlled in order not to mislead the public.

The MCK should oversee the conduct of media and enforce its Code of Conduct.

The media and elections policy should be developed, to include guidelines for verifying data before going on air, vetting of live broadcasts and screening of paid-for advertisements, responsibility to announce accurate results and training of journalists on the Electoral Code of Conduct, and elections reporting and the manner of reporting on opinion polls

#### **5.1.6. Opinion Polls**

The impact of opinion polls on the outcome of the 2007 and 2013 presidential elections was controversial. While politicians sought to downplay the significance of opinion polls on the outcome of the presidential race, it was obvious that the polls were being taken seriously by political campaign strategists, voters and even the presidential contestants. Every time the various poll results were released, a storm brewed. Opinion polls conducted within the last three months before the 2013 elections confirmed the prediction that the elections would be a hotly contested affair between Mr. Uhuru Kenyatta and Raila. Parliament should pass a law regulating how opinion polls are conducted in Kenya.

#### **5.1.7. Electoral Observation**

A consistent and effective domestic observation programme is one of the key components in measuring electoral performance and enhancement of frameworks, monitoring use of public resources for private benefit, assessing media coverage; checking electoral violence and observing party behavior and voter attitudes.. The international and regional observer groups accredited included the European Union, the Commonwealth International Conference of the Great Lakes Region, the East African Community and the Independent Republican Institute (IRI).

The observers are expected to be impartial. They are also expected to have the financial and logistical capacity to carry out the observation process. This does not, however, mean that domestic observers are necessarily partial or biased. Still, the lack of open information channels on elections often leads to the publication of inaccurate and alarming documents on the subject.

More electoral observers should participate in Kenya's elections.

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