

Kenya 2017 election disputes

The Supreme Court's independence key to avoiding chaos



 Kenya's 2017 election has come and gone. Results announced by the Independent Electoral and Boundary Commission (IEBC) put the incumbent and JUBILEE party candidate Uhuru Kenyatta ahead, with 54.27% of the vote cast, while his main rival Raila Odinga of the National Super Alliance (NASA) garnered 44.74%¹. The election was deemed "free and fair" by international observers, including former US Secretary of State John Kerry, but Raila Odinga disputed the official results, leading to protests in which at least 24 people were killed in opposition strongholds, according to the Kenya National Commission for Human Rights².

After some moments of hesitation, Odinga filed a petition in the Supreme Court on 18 August, challenging the IEBC results, while calling for civil disobedience.

This document attempts to analyze some aspects of the just-ended election, as they relate to NASA's claims of vote-rigging, the use by the government-elect of the security apparatus to stifle opposition to the IEBC results, and how crucial the decision of the Supreme Court could be in diffusing tensions.

A high-profile assassination, the IEBC delays in submitting crucial documents: are NASA's concerns justified?

Kenya is not new to controversy surrounding presidential election results. In fact, Odinga unsuccessfully petitioned the Supreme Court in the wake of his defeat to President Kenyatta in the 2013 election.

But questions should be asked about some of the circumstances surrounding this year's election.

The International observers' opinion that the election was "free and fair" was probably based on their observation of the voting process, and therefore less likely to have considered the question of whether "the electronic vote counting process was not manipulated in favor of one candidate or another".

¹ Standard Media, "Uhuru Kenyatta got 8.2 million votes against Raila's 6.7 million", Available at <https://www.standardmedia.co.ke/article/2001251033/uhuru-kenyatta-got-8-2-million-votes-against-raila-s-6-7-million> (Accessed on 17/8/2017).

² CNN, "24 killed in post-election violence in Kenya, rights group says" Available online at <http://edition.cnn.com/2017/08/12/africa/kenya-elections-protests/index.html> (Accessed on 18/8/2017).

Ten days before the election, IEBC Information and Communication Technology (ICT) Manager Christ Musando was found murdered, following his disappearance on 28 July. Musando's body showed signs of torture³, raising suspicions that his killers may have tried to extract some information from him.

Police have reportedly arrested two suspects in connection to Musando's killing, though they have yet to solve the mystery surrounding the slain IEBC-ICT manager's death. But Musando's central role in ensuring the safety of the IEBC's technology platform (the Kenya Integrated Election Management System — KIEMS) raises suspicions of a politically-motivated killing. His death may have been orchestrated by some powerful individuals, whose goal was to access the KIEMS platform and manipulate election results.

In fact, the IEBC admitted on 10 August, that there was an attempt to hack its results transmission system, though such an attempt was unsuccessful.⁴

The NASA coalition maintains that the results announced by the IEBC were manipulated electronically at the commission's headquarters. NASA is also basing its vote rigging claims on the IEBC's delay in publishing some of the 34 A and 34 B forms — generated at polling stations — which would validate the results generated through the electronic counting system.

Whether NASA will be able to back its claims with robust evidence is for the supreme court to determine, but its claims cannot be hastily dismissed as baseless, given the issues raised above.

State-sponsored violence, harassment of journalists and rights groups: is the playing field levelled?

Violence erupted in some parts of the country following Odinga's rejection of the IEBC results. The most affected areas included the opposition stronghold of Kisumu, some areas in Migori and Homa Bay counties as well as some neighborhoods of the capital Nairobi, including Kibera and Mathare.

Many agreed that Odinga's earlier decision not to take his grievances to the Supreme Court, was dangerous, as it raised the prospects of violence across the country. His decision to finally pursue legal recourse has clearly diffused the tension which was already building up in some parts of the country. Yet the current sense of "normalcy" may only be temporary.

The Supreme Court justices are expected to base their judgement on sound evidence, if they are to maintain their independence. Yet, on such an important matter, it remains to be seen whether the court will be allowed to operate free from intimidation and political interference.

The security forces have already shown a determination to stifle dissent, by deploying in large numbers in opposition strongholds, at times using live ammunition and going to-to-door beating and arresting protesters. A testimony by a Kisumu mother, whose six-month-old baby died of head injuries she received through beatings by the police⁵, may corroborate the afore-mentioned accusations.

Meanwhile, the International Federation of Journalists (IFJ) accused the police of harassing and intimidating journalists, in attempts to bar them from covering the afore-mentioned violence⁶.

³ The Star, "Chris Musando tortured before murder: Cousin asks tough questions", Available online at http://www.the-star.co.ke/news/2017/07/31/chris-musando-tortured-before-murder-cousin-asks-tough-questions_c1607857 (Accessed on 18/8/2017).

⁴ "IEBC: There was attempt to hack system, it failed", Available online <http://www.nation.co.ke/news/Kenya-Election-Hacking-IEBC-1056-4051976-dv9uvyz/index.html> (Accessed on 18/8/2017).

⁵ Standard Media, "Kisumu's Baby Pendo who was hit by police officers loses fight for life after five days in coma", Available online at <https://www.standardmedia.co.ke/article/2001251483/kisumu-s-baby-pendo-who-was-hit-by-police-officers-loses-fight-for-life-after-five-days-in-coma> (Accessed on 21/8/2017).

⁶ IFJ, "Kenya: journalists assaulted and harassed during election", Available online at <http://www.ifj.org/nc/en/news-single-view/backpid/1/category/campaigns-1/article/kenya-journalists-assaulted-and-harassed-during-election/> (Accessed on 21/8/2017).

But more worrying is the fact that the state seems to have condoned police violence, with acting Interior Minister Fred Mutiangi going as far as dismissing all protesters as “criminals who ought to be arrested”.⁷

Moreover, the police raided the offices of two NGOs — the Pro-democracy organization Africa Centre for Open Governance (AfriCOG) and the Kenya Human Rights Commission (KHRC) — which were critical of the IEBC, with the government subsequently threatening to shut them down⁸.

Though the government cited administrative and tax issues to justify its actions against the two NGOs, the timing of the event rises suspicions that the state may be attempting to rally the security apparatus behind its cause, to silence any groups challenging the outcome of the election.

Conclusion: the Supreme Court’s independence is needed to save the country from the brink

Disproportionate use of force by the police to repress protests and harassment of journalists and rights groups, may be a sign that the government-elect is using state institutions to maintain the situation in its favor.

Odinga’s decision to take his grievances to the Supreme Court helped to temporarily diffuse post-election violence. But Kenya’s fate lies in the hands of its highest court. In a society where tribe/ethnicity — more than anything — drives political affiliation, the stakes are too high, given historic feelings of economic and political marginalization by members of some tribal groups.

Yet, during similar setbacks in 2013, Kenya showed that it cannot be defined by the 2007 post-poll violence. It is therefore incumbent on the Justice Maraga-led court not to give in to interference from any stakeholders, and handle the case before it with independence, lest the country plunges into violence of the 2007 proportion.



Anti-riot police dispersing protesters in Mathare, Nairobi on 12 August 2017 (Photo: Reuters)

⁷ Los Angeles Times, “24 killed in Kenyan election violence, many after police open fire on opposition protesters, rights group says”, Available online at <http://www.latimes.com/world/africa/la-fg-kenya-election-killing-20170812-story.html> (Accessed on 21/8/2017).

⁸ Africa News, “Kenyan government threatens to close down two rights organisations” Available online at <http://www.africanews.com/2017/08/15/kenya-government-threatens-to-close-down-two-rights-organisations/> (Accessed on 21/8/2017).