

Consolidating Electoral Democracy through Enhanced Electoral Management Body: A Case of Kenya, 1992- 2017.

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Abstract

Elections today are almost universally accepted as the legitimate way of establishing governments. The Electoral management bodies are entrusted with the responsibility of conducting free, fair credible elections. For close to three decades now since the return to Multiparty rule in 1992, Kenya has been holding periodic elections that exhibit fragility in form of electoral violence an indication that its electoral democracy is yet to be consolidated. The Independent Electoral and Boundaries Commission (IEBC) finds itself on the receiving end accused of not living up to its task of conducting free and fair elections following the constitution of Kenya. This paper argues that the problem with Kenya's elections is located within the environment in which IEBC operates. The socio-cultural, economic, political, and technological factors constrain the functions of IEBC delaying the consolidation of democracy in Kenya.

Keywords: *Democracy, Consolidation, Elections, Electoral Management Bodies.*

Introduction

Elections are the most visible feature of democracy (Bratton,1998). In Africa, Elections have become important in consolidating democracy (Lindberg, 2006,2009; Bratton, 1998). However, periodic elections are likely to be ineffective on their own if they are not supported by accountable institutions. The manner and process of conducting elections determine whether they are perceived to be free and fair resulting in legitimate electoral outcomes. In Kenya, the return to multiparty rule in 1992 from a *de jure* one-party state is located within the third wave of democratization that swept through the continent in the late 1980s (Huntington, 1991). The democratization wave in Africa followed the disintegration of the Soviet power that ushered in a unipolar moment in the international system. The demise of the Soviet Union led to the decline of the United States of America (US) support for dictators in various parts of the world. Authoritarian regimes in Africa came under pressure to democratize (Muriuki,1995). In Kenya, the pressure to democratize came from external and internal forces leading to political liberalization (Adar, 2000). There was hope that Kenya would achieve democracy hinged on the multiparty rule. However, the kind of elections that followed diminished the hope of attaining democracy through free fair competitive elections. As argued by Nasong'o, the problem was that there was political liberalization without democratization of political institutions and the rules of the game (Nasong'o, 2007, p. 83). Brown,

(2001) locates the problem in the authoritarian tendencies that have persisted since colonial times. Brown opines that after independence, President Jomo Kenyatta centralized power and created a *de facto* one-party state. In 1982, Kenya became a *de jure* one-party state. President Moi entrenched power in the executive and made Kenya African National Union (KANU) the sole party for political competition. Authoritarian tendencies have persisted with incumbent controlling state institutions (Cheeseman, 2010). This makes the electoral competition unfair.

Although elections do not equal democracy, they remain an important pillar of democracy since they give legitimacy to the government that comes to power through political competition and the participation of citizens by choosing their leaders (Lindberg, 2006). Electoral management bodies are entrusted with the responsibility of conducting elections that are expected to meet international standards of competitive free and fair elections. Despite the many elections Kenya has had since the return to multiparty rule in 1992, all elections apart from 2002 have been problematic. The electoral cycles are characterized by tensions, uncertainty, and fear of electoral violence an indication that electoral democracy is yet to consolidate. The worst was in 2007-8 electoral violence that claimed more than 1000 lives and more than 600,000 displaced from their homes (Lynch, 2009).

This paper seeks to analyze the contextual operational environment of IEBC to explain the fragility of electoral democracy in Kenya. Democracy is a contested term. It simply means people's rule. In this paper, electoral democracy refers to electoral elements of competitive elections, civil and political liberties, and an effective electoral administration (Elklit, 1994) While other theories can be used to explain the nature of electoral institutions and Kenya's electoral democracy, this paper adopts constructivist theoretical underpinnings to underscore its arguments. The theory helps to conceptualize the 'people's rule' as a system whereby people determine how they want to be governed by constructing institutions and rules that guide their political competition and participation. According to constructivist theory, the world of politics is socially constructed with fundamental structures of international politics being social rather than material. These structures are a product of historical processes and interactions among actors.

These structures shape actors' identities and interests and not just their behavior (Wendt, 1995, pp. 71-72). Further, DePalma (1990) posits that to democratize is to set rules and create institutions that structure strategic interactions and shape political outcomes. Drawing from these arguments, it can be concluded that the kind of politics in Kenya and the resultant electoral institutions such as IEBC is a product of the interactions of various actors and political experiences of the country since colonial times that continually shape its structures and functions. The institutional framework and the capacity to function are highly influenced by the social, economic, and political environment in which IEBC operates. This paper hence argues that the problem of fragile elections in Kenya that at times become violent and threaten to destabilize the country lies in the unconsolidated nature of electoral democracy located within the sociocultural, economic, and political environment constraining the functions of IEBC.

Consolidation of electoral democracy in this paper will be taken to mean stability and strengthening of the electoral process so that there is no threat of breaking down (Schedler, 1998, pp. 95-96). It

entails designing the rules of the game especially the electoral system aimed at making political competition free and fair. It includes restructuring governance institutions in line with the changing political landscape to make them more accountable and responsive to the electorate (Nasong'o, 2007, p. 84). It also includes the absence of violence during electoral cycles while at the same time progress is made towards improving the quality of elections through the reforms that are undertaken. In the end, the electoral behavior and attitudes are positively modified to the extent that a particular system of institutions becomes “the only game in town” where no one can imagine acting outside democratic institutions (Prezeworski, 1991, p. 26) The democratic transition is no longer dominated by the problem of how to avoid democratic breakdown. However, this research takes note of the fact that there are no perfect elections anywhere in the world rather democracy is work in progress (Pastor, 1999).

Historical background of Independent Electoral and Boundaries Commission (IEBC) and Elections in Kenya.

EMBs emerged in the late 18th century when mass elections were introduced in Europe and North America (Lopez, 2000). Most of the electoral bodies were established within government as ministries of home affairs, ministry of interior, and territorial administration (Pastor, 1999). In Africa, EMBS were created during the colonial era to manage elections. They too were established within the formal government arrangement (Mozaffar, 2002). Upon independence, there were attempts to restructure the EMBs by entrusting the responsibility of election management to a career civil servant who enjoyed the security of tenure. However, EMBs remained within the government. It can be concluded that from the onset this operational framework was intentional. To date, they remain state institutions that conduct public functions. They must therefore remain accountable to both the public and the state. This brings to question the extent of their independence.

In Kenya, although the independence constitution of 1963 created an electoral commission, it was not independent. The commissioners were appointed by the Governor-General to whom they paid allegiance. Following the constitutional amendment of 1966 (The Turn-coat Rule) the office of supervisor of elections which fell under the Attorney General was created to supervise elections (Independent Electoral and Boundaries Commission, 2020) However, it played a subdued role since the provincial administration and particularly the district commissioners and other civil servants became increasingly involved in the management of elections. According to the Independent Review Commission 2007 (IREC) which is popularly known as the Kriegler report, although the supervisor of elections had wide powers to conduct elections and to register voters, the office was not independent. It neither had operational autonomy from the executive nor did its officers enjoy the security of tenure (Independent Review Commission, 2007). When Kenya became a *de jure* one-party state in 1982 democratic freedom of free competition and participation was constrained. Jinadu (1997) observes that the one-party political systems greatly affected the ability of EMBs to promote free fair elections.

After much agitation for political and legal reforms, section 2A of the constitution that had established the single-party rule was repealed paving way for multiparty politics. This provided the opportunity to push for independent EMBs. Parliament abolished the office of the supervisor

of elections and recognized the Electoral Commission of Kenya (ECK) as the sole body for conducting elections. Mozaffar (2002) contends that the push for more independent EMBs intensifies after the first multiparty elections in some African countries. This was the case in 1997 in Kenya when the opposition demanded minimal reforms before elections. Through the interparty parliamentary group (IPPG) agreement, political parties were allowed to recommend names of members to serve in ECK before their appointment by the president (Independent Review Commission, 2007).

Since the return to multiparty in 1992, electoral violence is a defining feature of elections in Kenya. Electoral violence has become a political tool for getting to power by political elites inciting violence or using ethnic militia (Kagwanja, 2009). The 2007 elections were the most traumatic in the post-independent Kenya. Violent protests of presidential results were witnessed in the stronghold of the opposition parties. A National Accord Implementation Committee (NAIC) was established. It recommended electoral reforms. This led to the establishment of the Independent Review Commission (IREC) in 2007 to inquire into all aspects of presidential elections and report back to the president and the African Panel of Eminent Persons who mediated in the post-election violence of 2007-8. The Commission recommended that a constitutional and legal framework be put into place in line with the aspirations of Kenyans. In 2008, parliament amended section 41 of the constitution leading to the disbandment of ECK and the creation of the Interim Independent Electoral Commission (IIEC) and Interim Independent Boundaries Review Commission (IIBRC).

The promulgation of the 2010 constitution resulted in the establishment of IEBC in November 2011 (Independent Electoral and Boundaries Commission, 2017). The constitution created two-tier governments at the national and county levels and provides rules under which the country's elections are held. The first elections under the new constitution were held in 2013.

Contextual Analysis of IEBC Operations in Kenya.

This section analyses IEBC's operational environment to understand the fluid nature of electoral processes in Kenya. Like many other electoral bodies, the IEBC structure and operational framework are shaped by Kenya's political history. Indeed Mozaffar and Schedler (2002, p.13) argue that:

Electoral governance institutions neither emerge nor operate in a vacuum. History and context shape their choice and consequences not inexorably or uniformly, but by defining the structure in which differently endowed actors make their strategic choices. Further, their origin and unfolding trajectories flow out of the power struggles and normative choices that are grounded in the historical configurations of institutional, cultural, and socio-economic factors

This means that the contextual factors at the macro level such as the political system and micro level of political actors shape not only the choice of rules that determine the structure and processes of elections but also the effectiveness of electoral management bodies and political outcomes. James, Garnett, Loeber, & Ham (2019) echo this view by positing that the quality of election delivery affects confidence in the electoral process and democratic consolidation. Using this

dictum, the following section provides an analysis of the interaction between the macro and micro level factors within the environment in which IEBC operates affecting its work.

Political Environment and IEBC Operations.

Although Elections are essentially a domestic affair, the influence of the external actors in Kenya's elections cannot be underestimated. There are many external and domestic actors involved in electoral processes. External actors are comprised of the international community in particular states and international organizations that give electoral assistance in terms of election monitoring, observation, logistical support, and funding (Lührmann, 2016). Election funding is the responsibility of a government that is budgeted for. However, emerging democracies Kenya among them lack sufficient resources for organizing and holding elections. They appeal for electoral assistance from the International Community through international institutions such as the United Nations (UN) (Lührmann, 2019). Electoral assistance is the backbone of international democracy promotion (Lührmann, 2016, p.1). It comes in form of financial, technical, and logistical support (James, et.al., 2019). Between 2015 and 2017, Kenya received 9202 million from the development partners channeled directly to government institutions involved in elections (Independent Electoral and Boundaries Commission, 2017, p. 56).

Donor funding has impacted Kenya's democratic progress in profound ways. It is used as carrots and sticks for democratic progress (Koenig-Archibugi, 1997). In the push for the establishment of multiparty, donor funding was tied to political liberalization. Indeed, the pressure for multiparty politics in the early 1990s was a concerted effort by external and internal forces.

Moi's regime came under pressure from several donor countries to allow for multiparty rule. Collectively, the Paris Group (comprised of major donor states from Europe that had met in Paris in November 1991) decided to suspend new aid to Kenya until corruption was curbed and the political system liberalized (Brown, 2001). This led to the repeal of section 2 (A) of the constitutional amendment that had established the *de jure* one-party state in 1982 paving the way for a multiparty election in 1992. However, these elections were held without restructuring the electoral system. According to Nasong'o (2007), permitting multiparty politics was seen to be good enough by pro-democracy crusaders. Moi's regime was so oppressive that the mere legalization of opposition political parties was perceived as a major act of political liberalization

Unlike other customary practices elsewhere, the president exercised his constitutional right by appointing electoral commissioners without consulting any other institution or persons. The commissioners were appointed for a period of five years (renewable) at times coinciding with elections. This uncertainty is not good for elections. This was partly what created tensions and undermined ECK's credibility as an independent body capable of delivering free and fair elections in 2007 (Independent Review Commission, 2007). In the run-up to the 1997 elections, pressure mounted on the president from political parties and civil society groups for minimum reforms. This resulted in the formation of an Interparty Parliamentary Group (IPPG) that agreed on an alternative arrangement for the nomination of members with the opposition nominating ten out of the twenty-one commissioners (Independent Review Commission, 2007).

The nature of informality in politics in Kenya is evidenced by the IPPG accord that was not entrenched in law. This created uncertainty in the commissioner's terms of service that were not clear. With elections approaching in 2002, it was not certain that their contracts would be renewed. However, president Kibaki renewed them. After 2002, when they concluded their contracts or died, the president replaced them without reference to the IPPG accord. Although it was his constitutional right as the president to do so, it would have been prudent to honor the "gentle man's agreement" in the spirit of IPPG. In the run-up to the 2007 general elections, the discontentment heightened when the president appointed fifteen members to ECK. This caused the initial acrimony (Independent Review Commission, 2007).

The Kriegler report 2007, blames Kenya's electoral problems on the first past-the post (FPTP) electoral system carried over from the colonial times with its potential for distortion, real or imagined. The "winner takes it all" system makes elections a do-or-die affair. The report noted in particular that in 2007 disputed election results that led to unprecedented violence were a consequence of the "originally gerrymandered, outdated, and grossly skewed constituency delimitation pattern. In particular, the circumstances that the ODM, which did not scatter its support in the parliamentary contest, beat the PNU (Party of National Unity) and its motley array of allies constituted proof positive of rigging for many observers unfamiliar with the vagaries of the FPTP system" (Independent Review Commission, 2007, p. 9). It is argued that since independence new constituencies that are ethnic-based were created in favor of KANU. For instance, in the run-up to the 1997 elections, the constituencies were increased from 188 to 210 (Nasong'o, 2007, p. 97). This gave KANU an unfair advantage over the opposition delivering a victory for Moi. The electoral system design during the infant years of multiparty rule disadvantaged the opposition. The provincial administration was very powerful and could harass and intimidate the opposition. Either they were denied permits, their campaign meetings disrupted, or canceled on "security" grounds. Some areas were declared KANU strongholds. Further, access to state-controlled media that had national coverage was denied (Nasong'o, 2007). This made political competition unfair.

The conduct of elections is a political one. Whoever is in charge of the elections is a matter of concern for political parties. IEBC has to be seen to be an impartial arbiter. When their impartiality is doubted, pressure is put on them to resign. In the run-up to the 2017 elections, there were calls for the resignation of the 2013 IEBC commissioners by the opposition and civil society activist groups accusing them of incompetence, corruption, and political bias. Amid increased pressure for resignation, the commissioners finally bowed to pressure on October 5, 2016 (NTV Kenya, October 5, 2016). The change of commissioners in less than a year to elections went against the prior warning and recommendation by Kriegler's report on postelection violence 2007-8 that the commissioners should be in office at least two years before the general elections to familiarize themselves with the electoral environment.

In Kenya and other African countries, the supply of election materials is an affair riddled with competing interests. The tendering process of electoral material is expected to be a transparent one. Delay in the tendering process affects preparations for elections. With less than a month left to the date of the election in 2017, disputes over the printing of ballot papers persisted. Controversy over

a tender award to a Dubai-based firm to print the ballot papers for the August elections in Kenya raged on after the opposition National Super Alliance (NASA) claimed the firm could be used to manipulate the poll outcome by printing extra ballot papers. The dispute deepened when NASA presidential candidate Raila Odinga alleged that the firm; Al Ghurair Printing and Publishing Company Ltd, had links with Jubilee ruling party's leadership. (The East African, Saturday, June 17, 2017) Jubilee party discounted the claims accusing Mr. Odinga of having interests in a South African-based firm that initially applied for the tender. This dispute ended up in court. The Independent and Electoral Boundaries Commission (IEBC) argued that the time left to the election was not sufficient to re-tender the process and this may delay the whole election. The court ruled in favor of IEBC for Al-Ghurair company to commence printing of presidential ballot papers.

In a surprise move, the 2017 presidential elections results were invalidated by the Supreme Court On Sept.1.2017, on the grounds of illegalities and irregularities in the electoral process (Election Observation Group, 2018). IEBC was ordered to conduct fresh presidential elections. NASA coalition questioned the ability of IEBC to conduct credible elections. Fresh demands advocating for electoral reforms through street protests were made by NASA (Cheeseman Nic, Kanyinga, Lynch, Ruteere, & Willis, 2019). NASA made good its threat not to participate in fresh elections until their demands were met by boycotting the repeat elections on October 26, 2017. This left the Jubilee coalition without a major competitor in the repeat election. This political decision aimed at delegitimizing the elections and the subsequent winner.

IEBC Operational Legal Framework.

IEBC has a comprehensive legal framework to guide its work. However, it is likely not to be effective in an environment in which IEBC operates. This casts doubt on the ability of the law to provide a sufficient framework for political competition and participation. The Political Parties Act, 2011 regulates the organization and behavior of political parties. Political parties are central in advancing electoral democracy. Political competition cannot take place without them. They determine who runs for different elective positions by nominating candidates to compete with other parties. The Constitution of Kenya of 2010 (CoK 2010) Art 91 (1) (d) prescribes that political parties should abide by democratic principles of good governance, promote and practice democracy through regular free elections within the party. However, Political parties in Kenya are undemocratic (Adar, Hamdok, & Rukambe, 2008). They are vehicles to power that are abandoned at will (Munene, 2017). They suffer from the politics of "Big Man" (De Smedt, 2009; Cheeseman & Miles, 2015). The "Big Man" own political parties and have a big say on party matters. They decide who runs on the party ticket or gets nominated. Anyone hoping to win any position must foster a good relationship with them.

Further according to the Political Parties Act, 2011 the code of conduct for political parties contained in section 7(2) (e) is violated. Political parties are expected to have a national outlook. However, their ethnic nature falls short of this requirement. According to IEBC, it experiences challenges in enforcing the electoral code of conduct for political parties. Political organization and mobilization along ethnic or religious lines is a threat to the rights of citizens to freely participate in electoral processes. Owing to the nature of the political mobilization, the country is

often left polarized which can be a destabilizing factor (Independent Electoral and Boundaries Commission, 2020). Moreover, political parties do not adhere to the rules of nomination. According to the IEBC Post-Election Evaluation Report of 2017 elections, conflicting lists of nominated candidates are given to IEBC at times making last-minute amendments. Variations are later noted between the lists uploaded by IEBC on the website and those earlier submitted. It is worse when nomination certificates have double allocations or are given to undeserving candidates thereby creating confusion.

The other challenge facing IEBC is the number of elective positions voted for in a single election. The Constitution of Kenya 2010 increased the number of elective positions from three to six. This has increased the workload and complicated the process of preparations and supervision of elections. In the 2017 elections, the counting of votes for six elective positions took a long time. According to IEBC, this caused fatigue among the electoral poll officials a factor that could have contributed to some errors observed in some statutory forms. The same observation is expressed in observer reports. Further, some poll officials failed to sign the statutory forms which provided ground for most petitions in court. These human errors can be avoided by having county leaders elections at different times. (Independent Electoral and Boundaries Commission, 2017).

During the 2017 elections, IEBC experienced a challenge of a last-minute amendment to the Election Act, of 2011. The new law required that all the election results be announced at the polling station and results transmitted electronically to the National Tallying Centre. This posed a challenge requiring the use of technology without proper safeguards for the user and the commission (Independent Electoral Commission, 2017). Kriegler's report on 2007-2008 postelection violence had warned against last-minute amendments. It recommended that electoral laws be amended at least two years before elections. The 2017 August 8th presidential election results were later invalidated by the Supreme Court on Sept. 1 2017 citing many cases o

f illegalities and irregularities in the electoral process. This set a precedent in Kenya by becoming the first African country and the fourth one in the world to ever do this (Kanyinga & Odote, 2019). IEBC was blamed for not verifying all the results that had been electronically transmitted from polling stations before announcing the results as required by the law (Kanyinga & Odote, 2019). On the part of IEBC, it cited the challenge of inadequate time to procure, install, test and commission the technology due to the late enactment of laws by parliament (Independent Electoral and Boundaries Commission, 2017, p. 152).

Following the invalidation of the presidential election results, IEBC had to prepare for fresh elections within sixty days in an environment of political tensions and disputes. The electoral victory of Uhuru Kenyatta opened new court contests. NASA coalition boycotted the fresh elections citing non-compliance to their demands leaving Uhuru Kenyatta to stand against minor candidates. Further, five petitions were filed on constitutional grounds challenging repeat elections and the capacity of IEBC to conduct free fair repeat presidential elections. This posed a huge challenge for IEBC to prepare for elections and at the same time appear in court to respond to the issues raised by election petitioners.

The Political Parties Act, of 2011 contains loopholes that are exploited by political parties. Section 27 (2) (4) prescribes that political parties shall disclose to the Registrar full particulars of all funds or other resources obtained by it from any source. This should be done within ninety days of the end of its financial year. This means that in the case of outlawed sources of funding, it can only be established afterward. In some cases, this may happen after elections. Further, the Election Financing Act, 2013 is yet to be implemented following an amendment by parliament that the law will take effect after the 2017 elections. Even then, there is no guarantee that this will happen. The absence of regulation on election expenditure by political parties and candidates makes elections in Kenya a preserve of the wealthy which is against the democratic principles of free fair elections.

Social-Cultural Environment.

Kenya is comprised of multi-ethnic groups with diverse cultures and religious backgrounds. These factors have huge implications for politics in Kenya. The political elites find it easier to organize and mobilize along these ethnic lines (Cheeseman, Lynch, & Willis, 2014). This factor compromises the quality of elected leaders. Ethnic-based political polarization has in the past led to violent electoral conflict in 2007-2008. Further, women in Kenya constitute the majority of the population. However, the IEBC statistics on the number of registered women voters indicate lower numbers in comparison to men. (see table 2). This means that majority of them do not exercise their sovereign right of electing their leaders. While the 2017 election produced the largest number of women in government, Kenya continues to perform poorly in terms of electing women into leadership positions. In the 2017 elections, the elected women were a mere 9% (see table 1) in both National Assembly and County Assembly. The majority of the women were elected to women's representative positions. Although the number of elected women has increased, it still falls short of the constitutional requirement of a two-thirds gender rule contained in Articles 27(8) and 81(b) of the Constitution of Kenya 2010 that limits the representation of the majority of gender in elective and appointive positions.

Cultural barriers of patriarchy remain huge obstacles to women's participation in electoral processes. The patriarchal nature of politics makes it difficult for women to compete with men for elective and nominated positions. They lack the resources to organize and mobilize political support since the majority of women do not own property. According to Bouka, Berry, & Kamuru (2017), the obstacles to women getting into political position lies in the unchanged nature of the power of political parties, campaign financing, the cultural construction of women's leadership, and the pervasiveness of (often gendered) violence of elections in Kenya. Social norms and gender expectations also influence women's participation in politics. The perception of women as "private" and men as "public" is a barrier to women's election. In most African communities, leadership was a preserve for men while women had supportive roles such as caregiving. Furthermore, during political campaigns, women face challenges of strict public scrutiny, intimidation, and at times name-calling from their competitors and their supporters which is intended to discourage them from running for office. Bouka, et. al. (2017) observe that women must first prove to be trustworthy and good homemakers, unlike the men whose flaws are excused. Sexiest and abusive language such as "prostitutes", "loose women" and "adulterers" is the most common form of violence against women in politics in Kenya. In an attempt to put on a brave face,

women in the process exhibit masculine traits to appear strong and not weak. Moreover, political parties in Kenya are not formed on ideologies. They belong to powerful wealthy political elites who determine who gets nominated to run on the party ticket (Munene, 2012). Women have to work extra hard to please the ‘owners’ of the party to get nominated.

Table 1: Elected and Nominated Men and Women in 2017 Elections

	Elected		Nominated		Total	% Men Elected and Nominated	% Women Elected and Nominated
	Men	Women	Men	Women			
President	1	0	0	0	1	100%	0%
Deputy President	1	0	0	0	1	100%	0%
Senator	44	3	2	18	67	69%	31%
MNA	267	23	7	5	302	91%	9%
CWMNA	0	47	0	0	47	0%	100%
Governor	44	3	0	0	47	94%	6%
Deputy Governor	40	7	-0	0	47	85%	15%
MCA	1334	96	97	650	2177	66%	34%
TOTAL	1731	179	106	673	2689	68%	32%

Source: Independent Electoral and Boundaries Commission (IEBC) Data Report of 2017 Elections.

Table 2: Registered Voters By Gender In 2013 And 2017 Comparison

Year	Gender	Registered voters	Percentage (%)
2013	Female	7,246,307	49%
	Male	7,542,074	51%
2017	Female	9,142,275	46.6%
	Male	10,469,148	53.4%

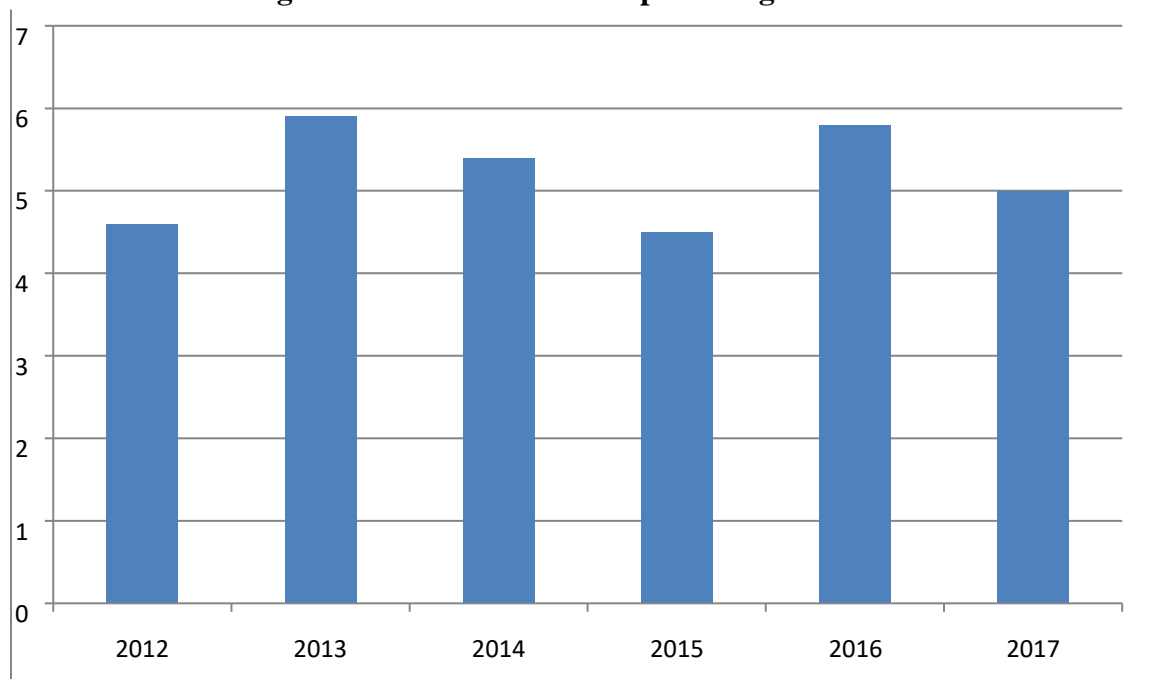
Source: IEBC Post Election Evaluation Report for 2017 August 8, General Election and October 26 Fresh Presidential Election, P.86 Economic Environment.

The ability to prepare and conduct free fair elections requires adequate preparations. This requires not only adequate funds but also a timely release of funds when required. The ability of the government to adequately meet the budget of IEBC is dependent on available government revenue. According to the statistics provided by the Central Bank of Kenya Annual Report and Financial Statement 2016-2017, Kenya's economy has potential for growth. However, it has continued to record slight growth (See chart 1). This means less money for institutions funded by the government such as IEBC. This in turn affects the preparation for elections and consequently the quality of elections. An election is not an event but a process with different activities taking place throughout the electoral cycle. Activities such as voter education and voter registration are continuous processes that require funding. IEBC has to struggle to remain efficient with finite resources. Further, the timely acquisition of election material is dependent on the availability of resources. The process of tendering for election material is delayed by the late disbursement of funds by the government. This delays the whole process of preparations for elections such as voter registration, recruitment, and training of officers to conduct elections. According to the IEBC report, late disbursement of funds is one of the main challenges facing IEBC (Independent Electoral and Boundaries Commission, 2017) Further, Poverty and unemployment are major challenges for political participation among the youth. Voter apathy is on the rise among them (Election Observation Group, 2018) The Unemployed Youth are vulnerable to political mobilization by the elites and politicians to engage in violence. They are easily recruited into militia groups by politicians for selfish gain (Kagwanja, 2004).

Globally, Political campaigns are expensive. Political parties in Kenya lack adequate funding. They rely on party membership and well-wishers for support. The political Parties Act of 2011 was meant to solve this problem but it has not. The formula for sharing the revenue locks out small parties. The Political Parties Act, 2011 section 23 established a Political Parties Fund whereby parties are funded by the government. Section 25 of the Political Parties Act, 2011 outlines how

the funds are distributed. The parties that qualify to be funded should secure at least three percent of the total number of votes in the previous election and not more than two-thirds of its registered office bearers should not be of the same gender. Further, there should be in the governing body representation of special interest groups. This is meant to promote democracy and the participation of different groups. The implication of this is that small parties cannot compete with bigger parties. They lack the capacity to organize and reach a large audience to sell their manifestos. This means the playing field is tilted in favor of the large established parties that get the resources for political organization and mobilization. This can stifle the progress of democracy.

Chart 1: Real GDP growth rates 2012-2017 in percentage



Source: Central Bank of Kenya Annual Report & Financial Statement 2016-2017 p. 8.

Technological Environment.

The use of technology in the electoral process was aimed at improving the quality and efficiency of election management. However, it is now at the center of election disputes since its introduction in election management in the 2013 elections. The adoption of technology in election management was informed by the Krieglger Commission report on Post-Election Violence of 2007-2008 which recommended the use of technology in the electoral processes to provide for efficient, transparent, auditable, and credible results. The use of technology in elections is entrenched in the Constitution of Kenya, 2010. The introduction of Biometric Voter registration Machines (BVR) in the 2013 elections was meant to speed up the process of voter registration and identification. However, technology can also fail as it did in some places making the officers revert to manual registers for identification of the voters. Pastor (1999) warns that the use of technology in elections can create

suspicion and mistrust between the political actors where technical irregularities can be interpreted as politically instigated by the opponents even when it is a genuine technical error. This may have been the case in the 2017 elections. Some areas were out of 3G networks and hence could not transmit the results directly to the National Tallying Centre. It required the Returning Officers (RO) to move to the nearest transmission center to send the results. People found it difficult to trust the explanation given by IEBC for delaying the announcement of election results. People could not comprehend that voice calls require 2G to make phone calls which is different from the 3G network required for results transmission (Independent Electoral and Boundaries Commission, 2017). Further, IEBC succumbed to pressure to announce the results of the 2017 general elections without making it clear that they were provisional. This is despite the fact that the law provides for seven days duration which IEBC could have utilized to verify the results before announcing them (Carter Centre, 2018).

Technology played a key role in 2017 and was the subject of interest in Supreme Court proceedings with allegations of hacking and compromise of the Result transmission server (RTS). According to IEBC Post- Election evaluation Report of 2017, during the 8th August elections, IEBC had granted access to all agents of presidential/ political parties upon their request to view the results from polling stations across the country. The level of interaction with the server was recorded (see table 3). The National Super Alliance coalition (NASA) had the highest number of log-ins. The number of log-ins into the server was at the center of electoral manipulation claims by NASA. This only served to deepen the suspicion and mistrust of election results.

Table 3: Personnel Given Secure Access To Rts And Level Of Interaction During The 2017 General Election

Presidential/ Party agent	Party	Number of Logins
1. John Walubengo	NASA	34
2. Davis Chirchir	JUBILEE PARTY	10
3. Collins Ndindi	INDEPENDENT CANDIDATE	6
4.Japheth Kaluyu Agent	INDEPENDENT CANDIDATE	3
5. Bern Wafuko	UDP	6
6. Bildad Kagai	THIRD WAY ALLIANCE	5

Source: IEBC Post Election Evaluation Report, 2018.p.150.

According to IEBC the Supreme Court order for access rights by political parties’ agents to the Results Transmission Server to verify the presidential results was complied with. However, the challenge was that this took longer than the time given by the court of 48 hours to open the server. IEBC argued that the design of the system required special user accounts with permission rights to allow login and download of the system logs. The process towards this was lengthy; it involved experts from outside the country. The petitioners and parties had no time to interrogate the systems

logs leading to parties relying on their own experts' interpretations deepening the misunderstandings (Independent Electoral and Boundaries Commission, 2017).

Conclusion

IEBC tries against many odds to deliver credible elections in Kenya. However, the environmental challenges discussed herein have constrained its function. This has in turn led to fragile electoral cycles indicating that the electoral democracy is yet to consolidate. Elections in Kenya are carried out in a toxic environment of suspicion, mistrust, and tension. This is negative peace (Galtung, 1996). It is necessary to restructure and reform the electoral environment by carrying out legal reforms by removing the inconsistencies in the electoral laws. Institutional reforms are also needed. As discussed herein, elections in Kenya are high stakes because of the type of electoral system of "winner takes it all". Even with the devolved system of government, the presidential position remains highly coveted. An all-inclusive structure of power to cater for the multi-ethnic realities of the country is necessary. However, the existing western models of the Proportional Representation system (PR) are neither an appropriate option in the context of the multi-ethnic composition of the Kenyans. The choice of an electoral system should be based on careful consideration of Kenya's context in terms of historical and demographic realities. A homegrown structure is highly desirable.

Further, for successful elections, it requires a concerted effort of all stakeholders ranging from the political elite to the government and citizens. The kind of institutions they establish determines the progress of democracy in a country. Their effectiveness depends on the support extended to these institutions. Strengthening electoral management institutions in particular IEBC by empowering it with enough resources will improve its effectiveness and ultimately election management. This will in turn boost the level of confidence and trust among the citizens in elections. Moreover, electoral democracy needs to entrench first in political parties as channels of political competition for free fair elections. Political organization and mobilization along ethnic lines limit political competition and choices of the voters on the ballot thereby stifling democracy. Voters too are expected to exercise their sovereign right by electing leaders of integrity. In case of disputes, all parties should respect the rule of law and use democratic means to resolve their differences. People have a responsibility to build peace for their good and posterity. Embracing a culture of peace in electoral dispute management will be useful in settling political differences. Electoral campaigns can be very emotive but with increased voter education, people can learn that elections are but a political game with winners and losers.

Democracy is about tolerance and respect for other people's choices. Ultimately it is upon Kenyans to "construct" the kind of elections they want. The power is in their hands to create institutions and shape them to meet their needs. Institution strengthening of IEBC will lead to better election management and therefore enhanced electoral democracy of free, fair, credible inclusive elections. This will in turn improve the quality of democracy towards consolidation.

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