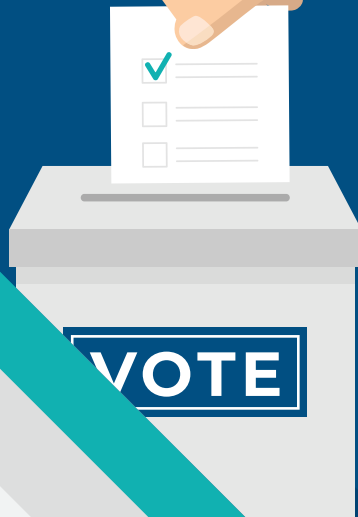


# Rethinking Democracy

ELECTIONS: PAST, PRESENT AND FUTURE



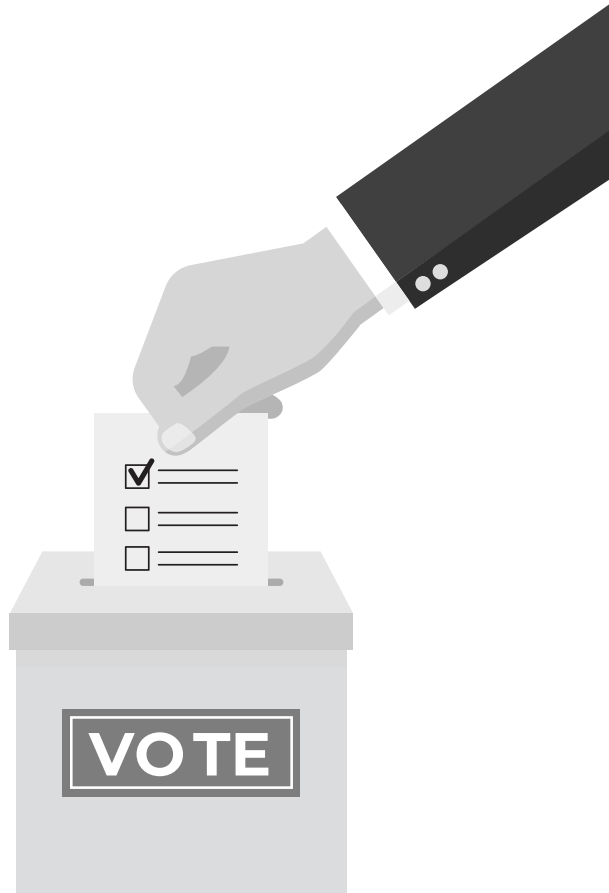
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# Rethinking Democracy

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ELECTIONS: PAST, PRESENT AND FUTURE





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# ACRONYMS

<b>BVR</b>	Biometric Voter Registration
<b>CCM</b>	Chama Cha Mapinduzi
<b>CDF</b>	Constituency Development Fund
<b>CDTF</b>	Community Development Trust Fund,
<b>GoK</b>	Government of Kenya
<b>eVID</b>	Electronic Voter Identification
<b>ExCo</b>	Executive Council
<b>FPE</b>	Free Primary Education
<b>GSM</b>	Global System for Mobile communication
<b>ICRD</b>	International Conference on Rethinking Democracy
<b>IEBC</b>	Independent Electoral and Boundaries Commission
<b>IPPG</b>	Inter-parties Parliamentary Group
<b>IREC</b>	Independent Review Commission
<b>JPSC</b>	Joint Parliamentary Select Committee
<b>KAS</b>	Konrad-Adenauer-Stiftung
<b>KADU</b>	Kenya African Democratic Union
<b>KANU</b>	Kenya African National Union
<b>KCA</b>	Kikuyu Central Association
<b>KPU</b>	Kenya People's Union
<b>KIEMS</b>	Kenya Integrated Election Management System
<b>KICTANET</b>	Kenya ICT Action Network
<b>LATF</b>	Local Authority Transfer Fund
<b>LegCo</b>	Legislative Council
<b>LNCs</b>	Local Native Councils
<b>NDC</b>	National Democratic Congress
<b>NDP</b>	National Democratic Party
<b>MMP</b>	Mixed Member Proportional
<b>MP</b>	Member of Parliament
<b>ODM</b>	Orange Democratic Movement

# ACRONYMS

<b>ODM - K</b>	Orange Democratic Movement - Kenya
<b>PNU</b>	Party of National Union
<b>PELF</b>	Poverty Eradication Loan Fund
<b>PII</b>	Personal Identifiable Information
<b>RELF</b>	Rural Electrification Programme Levy Fund
<b>RAMFL</b>	Road Maintenance Levy Fund
<b>RTS</b>	Results Transmission System
<b>URL</b>	Uniform Resource Locator
<b>VSAT</b>	Very Small Aperture Terminal
<b>YKA</b>	Young Kikuyu Association

# PREFACE

This publication is based on the proceedings of the second International Conference on Rethinking Democracy (ICRD) that was organized by the Konrad-Adenauer-Stiftung (KAS), Kenya office and the Department of Political Science and Public Administration, University of Nairobi that was held in September 2019. The main objective of the conference was to provide a platform for scholars, academicians, policy and lawmakers, the non-state actors and the media to revisit and refine deliberations on the utility of elections. This was done with a critical analysis of its past, present and future experiences nationally, regionally and globally with the overall aim of enhancing democratic consolidation in Kenya.

The specific objectives include the following: To stimulate conversations on how to enhance democracy through the conduct of free and fair elections based on past and present trends, and future scenarios; To share experiences, best practices and insights on electoral and voter management and identify possible alternate solutions; To provide a platform of interrogating the rationale for electoral reform and deliberate on ways through which democratic deepening can be achieved; To present an opportunity for cross country comparative analysis of varying electoral systems and models from different jurisdictions across the world; To set in motion scientific engagement on the subject of election and representation with a view of deepening knowledge on the subject.

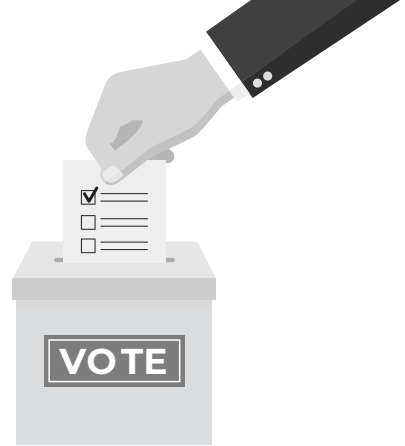
While the actual research was conducted by social scientists, scholars' academic contributions made at the conference have been incorporated into the book according to various thematic areas. These include: Positive and negative aspects of Kenyan elections; Does technology help to strengthen the electoral process? How would Kenya's political system look like in a proportional system? Challenges

# PREFACE

of members of parliament (MPs) in their constituencies; What can we learn from this?

This book presents a comprehensive text on the electoral process of Kenya and the need to promote and consolidate democracy in Kenya. This is the culmination of conversations initiated by Konrad-Adenauer-Stiftung (KAS) that presents a space in which to share experiences, best practices and insights on electoral and voter management and to identify possible solutions for the future.

The compilers and editors of this book wish to thank the Konrad Adenauer Stiftung for their support in the conference and in publication of this book.



## 1.0 INTRODUCTION

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The term democracy was first used, in the fifth century BC (Holden, 1993), and since then scholars and practitioners have been engrossed with perpetual complex debates about its definition. However, from the literature we can confirm that there is no one satisfactory or acceptable definition of democracy. It remains a puzzle, if not a paradox. The definition of democracy remains vague and disputed (Morlino, 2012; Economist Intelligence Unit (EIU), 2010). Scholars have attempted to proffer what they consider a 'minimal' definition of democracy, outlining specific observable topographies as critical for a country to be regarded as a democracy (Morlino 2012). These include universal suffrage, competitive and regular, free and fair elections, more than one serious political party and various and alternative sources of information (Diamond & Morlino, 2005; Morlino, 2012, p. 32). Despite the absence of a clear definition, what is obvious is that democracy 'has become the only game in town and is no longer challenged as such' (Morlino, 2012, p.25). This resonates with the notion of democracy as the rule or government 'of the people, by the people, for the people' (Oyugi & Gitonga, 1987). Indeed, democracy as a political institution, can be defended. Every man possessed of reason is accustomed to weigh evidence and to be guided and determined by its preponderance. When various conclusions are with their evidence presented with equal skill, there is a moral certainty, though some few may be misguided, that the greatest force of evidence, whatever it is, will produce the greatest impression (Mill, 1825, pp.22-3).



## Rethinking Democracy

The Konrad-Adenauer-Stiftung (KAS) is a political foundation which has been in operation in Kenya since 1974. In 2018, after the Kenya General Elections, KAS embarked on a project dubbed *'Rethinking Democracy'*. KAS' priority in Kenya is the promotion and consolidation of democracy. Largely, the objective of the project was both historical and contemporary; to provide a platform for scholars, academicians, policy and law makers, the non-state actors and the media to revisit and refine deliberations on the utility of elections with critical analysis of its past, present and future experiences nationally, regionally and globally with the overall aim of enhancing democratic consolidation in Kenya.

More specifically, KAS intended to stimulate conversations on how to enhance democracy through the conduct of free and fair elections based on past, present trends and future scenarios; share experiences, best practices and insights on electoral and voter management; and identify possible alternate solutions. It also sought to provide a platform of interrogating the rationale for electoral reform and deliberate on ways through which democratic deepening can be achieved; and to present an opportunity for cross country comparative analysis of varying electoral systems and models from different jurisdictions across the world while setting in motion scientific engagement on the subject of election and representation with a view of deepening knowledge on the subject.

Subsequently, in 2019 KAS organised a conference on *'Rethinking Democracy'*. The theme of the conference was Elections. The discussions focused on three key thematic areas: historic developments of elective systems, elections today and solutions for the future. The conference provided an opportunity for experience sharing on best practices and insights on electoral management and experiences from different countries across the world by eminent leaders, young politicians,



scholars, election managers and other stakeholders. The conference was structured to bring in experiences from stable democracies and nascent democracies as well as those that conduct elections in difficult situations in order to stimulate deep conversations on how to enhance democracy through the conduct of free and fair elections. Equally, the conference provided a platform to discuss the key issues around elections, democracy and representation including political parties funding, ethnicity, and indigenous influences of elections, violence, gender and youth, electoral reforms, best practices in electoral management, inclusion and participation amongst other themes. The conference revealed that many new and developing democracies are pioneers in the use of innovative technical solutions as a result this creates a stark contrast to a number of established democracies that increasingly focus on the challenges and risks of new technologies for democracy. The conference evaluated the technological aspect in conducting elections and the costs that result from such technologies.

There was concurrence that the type of model which a nation adopts to manage its elections has a strong impact on the quality of election and depth of democratic consolidation. With comparative analysis of electoral systems producing evidence of global and country level best practices in election management, the conference will provide an appropriate platform for sharing this knowledge and to influence national and regional conversations on elections; how and why this is conducted.

The conference brought together 100 participants identified from various fields and organizations/institutions that were either engaged as stakeholders or/and elections practitioners. Speakers were from the USA, UK, Germany and South Africa. They included politicians, distinguished scholars, authors, election managers,



university students and civil society representatives. The pivotal point for the conference was to deliberate about elections from a global, continental and national levels.

### 1.1 Thematic Introductions

Democracy goes beyond elections to regulate the administrative role of the winning party to represent the interests of the minority as well as those of the losing side. The winner “takes it all” mentality was highlighted as a cancer to democratic processes in the country undermining the true purpose of elections. The media and civil societies did not maintain their autonomy during the election period. When there is no competition, elections lose all legitimacy. The failure of elected representatives to govern in the interest of the electorate and their tendency to drift towards absolutism is a well recognized phenomenon about governments throughout history. This tendency is a great bone of contention between the state and the population and between the rulers and the ruled (Wanyande, Omosa & Ludeki, 2007).

#### 1.1.1 Elections under Kenyatta and Moi: Pros and Cons

This section is based on a session that was facilitated by the Director of Elections from the KANU political party, **Ally Khan** whose political career has had an enduring presence through the different regimes. The main focus was on electoral challenges and how they started immediately after attaining independence, since the different leaders were more consumed by consolidating power rather than balancing it.

A comparison between Kenyatta’s and Moi’s regimes shows that in Kenyatta’s regime there was a higher voter turnout and the elections





were cost-effective. Post-election violence incidences were minimal in this period and women secured parliamentary seats without bias. Elections became more inclusive when the voter age requirement was lowered from 21 years to 18 years. The main cons highlighted in Kenyatta's regime focused on the need to consolidate power that saw the regime harass any opposition and turn Kenya into a single party state. Under Moi's regime, the major milestones attained included regulated campaign spending to stop voter buying, elections were more consistent, more women got elected to parliament, a new electoral body was created under new reforms and most importantly the country went back to a multi-party state. Moi's regime however perpetuated power dominance over opposition with blatant electoral malpractices such as banning nominees from other political parties, judicial manipulation and establishing absolute control over the media.

### 1.1.2 Strengths and Weaknesses of the Recent Electoral Process in Kenya

The presentation by **Zebby Nyakianga** analyses the election laws in Kenya, management of elections, voter education, voter registration, management of nominations, regulation of political campaigns, and transparency of electoral processes, how election disputes are handled and the announcing of results. It is notable that Kenya has an elaborate electoral process that is appealing on paper but riddled with many loopholes that undermine the entire system.

Politics in Kenya is majorly a coalition of numbers rather than a coalition of ideas. This creates the right environment for divisive politics. In an imperfect political system, democratic processes such as elections are a tool to balance out power in a bid to represent the populous and the unpopulous communities. Increased participation



of voters should be guided by the electoral body that would help voters choose quality representation. When any form of electoral technology is used without transparency, then it is overrated.

### 1.1.3 Use of Technology to Secure Elections

The question of whether technology can help to improve trust among Kenyan voters and the role of foreign firms in providing electoral technology remains a mystery in Kenya's politics. Is technology a silver bullet solution that will instantly solve the problematic elections in Kenya? Does the issue have to do with the management, accountability and transparency of the electoral bodies? This session was guided by presentations made by the **Independent Electoral and Boundaries Commission of Kenya (IEBC)** ICT director, **John Walubengo**, Lecturer, Multimedia University of Kenya/ ICT Consultant, **Mark Kaigwa**, Nendo Ltd and **Kenya ICT Action Network (KICTANET)**.

The Independent Electoral and Boundaries Commission's ICT director explained the reason behind election technology challenges in Kenya, the merits of election technology, global use of election technology and suggestions for future elections. The main issue is that of trust and how it has necessitated the complex and costly nature of Kenyan elections. The major concerns remain how to cut down on the overpriced elections, whether to stick to electoral technology or revert to manual systems and IEBC's strategies to regain voter trust. While IEBC believes that the cost of electoral technology would only escalate with time and that the solution is in sustaining the existing systems by making them fully functional, electoral technology is deemed an enabler depending on how it is used. The problem is not the digital or manual systems but rather those managing such systems. Ultimately, it is the institutions, and not technology that will ensure the integrity of the electoral process in Kenya.



Kenya ICT Action Network (KICTANET) provides an analysis of how Kenya's electoral technology works in an integrated manner. While there is a risk posed by manual systems, there are also possible points of failure for electoral technology. Many politicians in the previous elections do not understand the electoral systems hence they make decisions that work against them in the long run. Block chain has been recommended as a secure technology to manage elections in future. The Influence of the internet and social media on Kenyan elections cannot be understated. There is statistical evidence to show the rising number of Kenyans interacting on these platforms and the effects on the rise of fake news, influence on voter decision making and electoral outcomes.

#### **1.1.4** How Would Kenya's Political Landscape Look Like if we Had a Proportional Voting System?

This presentation seeks to compare other elective systems to Proportional Voting to ascertain how it would improve the nature of Kenyan elections. Proportional voting promotes fairness in representations especially for women and minority group; promotes voter participation and helps to minimize political interference. Although it may weaken the link between elected members and their electorate, it is a more complex system that would demand more civic education. It may be a viable substitute in Kenya's electoral process as it is more cost effective and it is not as divisive as other systems.

#### **1.1.5** Elections in Pre- and Immediate Post-colonial Kenya

This discussion is based on a session that was conducted by **Sande Erick**, a political science scholar from the University of Nairobi. The analysis is based on elections at different forms of governance in Kenya and how the notion of democracy has influenced elections in



## Rethinking Democracy

modern day politics. Election malpractices have been identified as a constant factor in the pre- and post-colonial period. The state is at the center of all electoral processes and as such has played a central role in undermining elective systems. In the precolonial period, elections deviated from the defining tenets of democracy and governance systems were heavily controlled to retain power along racial lines. This created a centralized system that maintained a status quo that was hard to challenge with the set elective systems of the period. Immediately after colonial rule in Kenya, the winning political party (KANU) entered into the *de facto* era followed by a *de jure* era, which saw the dominant political party create legislations for a one-party state. This era was characterized by blatant electoral malpractices and abuse of power and even after multiparty efforts, the culture of electoral malpractices continues to thrive as perpetrated by the ruling class.

Among the main concerns raised concerning the current state of elective systems in the country is the fact that unlike in developed countries where the political divide is clear on the lines of ideology or interests such as the conservative party in the UK or the Republican/Democratic party in USA that is also conservative, Kenya lacks such political organization. After becoming a one-party state under the former president Daniel Moi's regime, political organization in Kenya was disoriented by the district party phenomenon, which created political units along ethnic lines. This continues to thrive in modern day politics. The role of civil society in Kenya is also a factor as it has been observed that some quickly lose their purpose and focus on receiving funds or become subservient to the government. Other interest groups in Kenya such as religious organizations are divided from within hence they cannot effectively agitate for the common good of all diverse groups in Kenya.



### 1.1.6 Transition to the Multi-Party System

This discussion is guided by the session facilitated by **Willis Evans Otieno** from the Africa Centre for Open Governance. The speaker started by highlighting the general expectations of the citizens when the country transitioned to a multiparty state. Previously, elections did not allow for political competition or any form of investment in public awareness and sensitization. Security bodies and the electoral commissions were appendages of the ruling class while public resources were privilege to the ruling party. The transition to multi-partism gave rise to political competition but the ruling party continued to exercise dominance over electoral commissions, the media, judiciary and security forces which were used to disorient organization efforts by the opposition. The transition did not change the ethnic divide in politics and the newly adopted technology served to undermine democratic processes.

The transition was said to be affected by:

- a) Election administration which was identified to be guided by institutional and legal frameworks;
- b) Electoral Malpractices as stipulated by the Election Management Act;
- c) Abuse of State Resources which was narrowed down to using state institutions as well as police to advance personal interests; and
- d) Election Violence which characterised by hate speech during campaigns and the conditions that would spark off conflict focused on citizens or electoral bodies and the ripple effect it causes within a state.



### 1.1.7 Conflict Between the need to care for Constituency, to Safeguard Votes and to Work on National Legislation

**Hon. Christopher Omulele**, a member of the National Assembly presented a personal account of his experience, torn between the two political roles of caring for one's constituency to safeguard votes and working on national legislation. Balancing between the two roles has proved to be a challenge, as it requires one to be active in two different localities. For a new member of parliament, the initial years may lack a focus on the legislative process. In the mid years, time is spent learning legislative processes and in the final phase of their term, all resources are spent on consolidating votes with an aim of re-election.

On voter expectations, it is clear that the informed voter does not have much influence as compared to the ignorant voter. Legislators are prone to give incentives in form of tokens and rewards to ignorant voters so as to stay politically relevant. Low re-election turnover is usually due to the exorbitant campaign cost, while most elected individuals often do not involve themselves actively in their constituencies hence they lose the support of their voters.

### 1.1.8 Political Legitimacy & Elections in a Historical Perspective

This discussion is based on a keynote address and presentation by **Prof. Ken Opalo** from Georgetown University who presented an extensive background on the development of electoral systems in Kenya. It is grounded on the idea that political thinking should be based on the reality on the ground in order for democratic processes to be impactful.

Elective systems in Kenya have come a long way since they were first introduced during the colonial era as a power sharing technique.



Kenya's elective systems have continually shaped the political culture of the state. Elections in Kenya are perceived as fresh events every five years rather than being viewed as continuous democratic processes that should get better with time. Kenyans focus more on presidential elections thus disregarding other integral positions, thus interfering with the true purpose of such democratic processes which include, using elections to produce an all rounded and effective administration. Turning elections into popularity contests ensures that they lack legitimacy and as statistics have proved, less than 40% of politicians get re-elected which in turn impedes sustainability of development.

### 1.1.9 Recent Elections in South Africa

**Nicola de Jager's** presentation forms the basis of this session. The focus here is on poor governance as the real threat to democracy in South Africa. The popularity of democracy is on a steady decline in the country due to the rampant nature of corruption and state mismanagement. Unlike popular perception that focuses all blame on the Zuma administration, the foundation for state capture was set long before his regime. South Africa was burdened by a shadow state that was sucking the life out of the main state even before Zuma's reign. This compares to the infamous cartels in Kenya. Democracy might be imperfect but there exists no better alternative.

### 1.1.10 Evolution of Kenya's Electoral System, Voter Registration and Participation: Voter Education

This entail three main sub-categories:

- a) Evolution of Kenya's Electoral System which reviewed Kenya's elections from 1920.
- b) Voter Registration and Participation which reviewed eligibility of Kenyan citizens to participate in voting process and



## Rethinking Democracy

- c) Voter Education which reviewed efforts by electoral commissions to equip the voters, candidates and institutions with necessary information to guide them through the process.

### **1.1.11** What will the future bring for the Kenyan electoral process?

Several recommendations have been made with regards to improving the electoral process in Kenya. These can be summarized as follows: Mentorship for the future generation of leaders is urgently required; IEBC needs a definitive management rather than having acting heads, it also needs to be fully organized in good time rather rushing through on the eve of elections; There is a need to audit all electoral laws in Kenya and to realign them to reflect voter aspirations; In reference to informed and uninformed voters, the middle class has been identified as failing in its role in enhancing democracy; On the issue of passing down political cultures to the new generation, a lack of discourse between the millennial and older generation is seen as a major hindrance to the development of electoral systems in Kenya.

On the question of creating sustainability of good electoral practices, it was agreed that elections in Kenya need to have concrete research mechanisms to assess the successes and failures of previous elections in a bid to improve the outcomes of future elections; In reference to technology, it was noted that the technology used in elections needs to be secured from political interference, as it has previously been an avenue for corruption; Elections need to be turned into continuous democratic processes rather than expensive events every 5 years. Proper voter education and sensitization needs to be done before and after elections to create a progressive voting culture; On leveraging digital trends, taking advantage of social media platforms and their user friendliness for advocacy and to create a campaign





against election malpractices perpetrated by the ruling class is deemed necessary. Social media has been identified as an effective tool to create mass awareness.

The winner takes it all mentality has been identified as the greatest threat to democratic processes in the country. The proposal is to have voters to be educated on issue-based politics to eliminate popularity-based politics; The media and civil societies should be regulated especially during election periods to guarantee their autonomy from political influence; All actors of the electoral process, including the citizens, are to blame for election malpractice. IEBC and the political class sabotage the freedoms of media in covering elections; It is necessary to simplify electoral system education; Spending during the election period should be regulated to avoid excessive spending during elections. There should be a common ground where campaigns can be based on ideals and policies rather than on vote buying power.

### **1.1.12** Do we need Elections?

This discussion is supported by the presentation done by **Prof. Justin Willis** from Durham University who highlights the extravagant nature of Kenyan elections which exceeded that of developed countries by a huge margin. There is a general decline in participation in the elections across the world based on voting statistics, even though elections greatly influence politics both positively and negatively based on how they are managed. Statistical evidence shows that Africans' attitudes have changed over time and have become less tolerant to violent overthrow of government. For an ideal election process to take place, institutions can only work if the people make proper use of them and modify them to represent their unique needs in their societies. The situation in Kenya today is that the nature of nominations from political parties has generally been biased. There are no clear channels



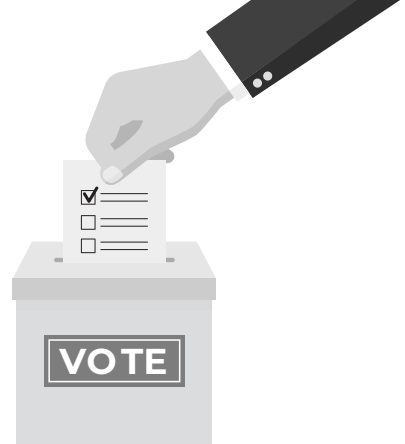
for visionary politicians to progress or grow within political parties, which defeats the purpose of multipartism. There is also a pressing need to regulate the culture of excessive spending during the election period to create a common ground where campaigns can be based on ideals and policies.

### 1.1.13 Elections in Germany

**Volkmar Klein**, a German parliamentarian, explains the structure of federal and state elections, election financing, campaigning and a personal election program that led to his victory. He described a more advanced political culture in Germany whose elections do not rely on sophisticated technology to produce desirable outcomes. Ideas and policies play a central role in voter decision making and it was not expected of him to give handouts to secure votes. The German voter is more concerned about the greater good and will offer support to the politician with whom they share the same values without expecting favours. Hence, sustaining a good political culture is all about perpetuity of democratic practices with the focus on the masses rather than the ruling few.

### Conclusion

Kenya sustains a thriving democracy which supports individual rights and the presence of active civil societies. The energy level for elections has been noted to be significantly high when compared to western countries, while political coverage has also been identified to be more important among Kenyan citizens. Despite the enthusiasm from the voters, the success of elective systems in the country has seemingly been sabotaged by the ruling class hence the increasing dissatisfaction in electoral processes. The solutions for Kenya's elections lay from within, hence the need for a change of tact in order to influence the desired change.



## 2.0 POSITIVE AND NEGATIVE ASPECTS OF KENYA ELECTIONS

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This chapter was guided by the presentations made by:  
**Ally Khan** - Director of Elections, KANU  
**Zebby Nyakiangana** - University of Nairobi  
**Willis Evans Otieno** – Africa Centre for Open Governance

### 2.1 The Question of Representation

Kenya became a British colony in 1920 under a Governor acting for the British Crown. During this time, the indigenous people had intensified protest against European occupation of their prime lands because no compensation had been paid for the land. The first African political protest movement in Kenya against a white-settler-dominated government began in 1921, the East Africa Association (EAA), led by an educated young Kikuyu named Harry Thuku.

Harry Thuku founded Young Kikuyu Association (YKA) in 1921 to 'recover Kikuyu land.' Consequently, other ethnic/region-based political-cultural associations were formed across Kenya. Conflict deepened between the colonial state and the Africans in Kenya due to the denial of African Representation in the newly established central government notably the Executive Council (ExCo), the Legislative



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Council (LegCo) and the public bureaucracy (Berman,1990). The British colonial policy in Kenya restricted the earliest African political associations within the borders of ethnically defined administrative districts. Thus, ethnicity marked the earliest political activism (Orvis, 2001, p.8).

The colonialists subdued YKA in 1925. Its members converted to the Kikuyu Central Association (KCA), whereupon Jomo Kenyatta became KCA general secretary in 1928. He also edited the party newspaper *Muigwithania* (He Who Brings Together) and campaigned for Africans' inclusion in the legislative council. However, the politics of exclusion was constant in the elections of 1927, 1931, 1934, and 1938.

The Second World War started in 1939. The first had lasted from 1914 to 1918. Interestingly, for more than a hundred years, the reality of conflict had been spirited out of sight by the political thinkers of Western Civilisation. The brutalities which in the eighteenth and nineteenth centuries, were confined to dealings between civilised and uncivilised peoples were turned by civilised peoples against one another (Carr,1964). Britain's buoyancy had been strained. In the meantime, the Africans had become more organised and aggressive. James Gichuru and Harry Thuku formed the Kenya African Union (KAU) in 1944. Eliud Mathu, was the first African nominated into the legislative council by the governor to represent the majority Africans in the same year. (National Assembly of Kenya, 2017). The Second World War ended in 1945. The wars had caused brutalities and infringement of human rights. The United Nations (UN) was formed on 24th October 1945 by 51 countries committed to maintaining international peace and security, developing friendly relations among nations and promoting social progress, better living standards and human rights.



Benaiah Ohanga became the second African member to the legislative council in 1946. (National Assembly of Kenya, 2017). Jomo Kenyatta won KAU's presidency in elections in 1947 and with time, became more influential; his charisma described any political party associated with him. Political parties were characterised with strong personalities. However, intense control of membership and operations by the state undermined Local Natives' Councils (LNCs) capacity as vehicles for African representation (Berman, 1990). LegCo was chaired by the colonial governor until 1948 when the first speaker was appointed. No inhabitant of the country other than civil servants had any constitutional right of any kind to share in the making of laws (Slade, 1975).

The UN General Assembly adopted The Universal Declaration of Human Rights on 10th December 1948. Its preamble described it "as a common standard of achievement for all peoples and all nations". Its provisions included: "No one shall be subjected to arbitrary arrest, detention or exile" (Article 9); "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" (Article 5); "Everyone has the right to freedom of peaceful assembly and association. No one may be compelled to belong to an association" (Article 20); "Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. Everyone has the right of equal access to public service in his country. The will of the people shall be the basis of the authority of government; this shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures" (Article 21). Conceivably in response, the number of Africans nominated to Kenya's legislative council was increased to four. Legislation was enacted in 1951 providing for the election of 14 Europeans, six Asians and one Arab



member. In addition, six Africans and one Arab would be nominated. This would result in there being 28 non-government members and 26 government members. The first elections held under this system were held in 1952.

At about the same time, Dedan Kimathi Waciuri started an underground militia group, '*Mau Mau*'. The armed *Mau Mau* employed guerilla tactics to attack the British, their business-related interests, and local allies. Empirically, when compared with other nationalist movements that affected Kenya in the colonial period, the *Mau Mau* movement was the most revolutionary, erudite and most effective nationalist movement ever launched in Kenya against British colonialism in general and land expropriation specifically between 1952 and 1956. It was the most dynamic movement that successfully dismantled the repressive feudal-like colonial policies that had guided Kenya throughout its years of colonial disaster. The movement provided maximum political leverage to the united *Mau Mau* freedom fighters (Wa-Githumo, 1991). The colonialists declared 'a state-of-emergency' in Kenya on 21st October 1952 as a result of the *Mau Mau* rebellion against British colonial rule. Six Kenyan nationalists of different ethnicities, renowned for their struggle for redemption were arrested, tried for fabricated charges, and jailed. These included Jomo Kenyatta, Achieng' Oneko, Bildad Kaggia, Paul Ngei, Kung'u Karumba, and Fred Kubai. Many *Mau Mau* militants were executed or imprisoned without trial. Kenyatta was arrested on charges of having directed the *Mau Mau* movement. Despite government attempts to portray Kenyatta's trial as a criminal case, it received worldwide publicity as a political proceeding. In April 1953, Kenyatta was sentenced to a seven-year imprisonment for "directing the *Mau Mau* terrorist organization." He denied the charge then and afterward, arguing that the Kenya African Union's political activities were not immediately associated with *Mau Mau* violence.



KAU and African political activity were banned in 1953 following the declaration of the Emergency in the previous October. The ban created a vacuum in African political life and once again LNCs assumed constitutional significance; being used as late as 1954 in the Lyttleton Constitution to advise the governor on African representation in the Legislative Council. The mainstream of African political expression however continued outside them; being either underground, or largely incorporated in the activities of the African trade unions in the Nairobi area (Okoth-Ogendo, 1972). The Lyttleton Constitution of 1954 introduced major reforms. A Council of Ministers was created, with six official members from the Civil Service, two nominated members and six unofficial members all appointed by the Governor. The six unofficial members were appointed from elected members, three of which were European, two Asian, and one African. The first African minister was Benaiah Ohanga. (National Assembly of Kenya, 2017).

Dedan Kimathi Waciuri, was arrested by British police in Nyeri District on October 21, 1956. He was sentenced to death and executed on February 18, 1957. These indiscriminate executions, detentions, and political exclusion of opponents were a direct violation of The Universal Declaration of Human Rights to which Britain was a signatory. Such deliberate disregard for the law by the state was ordinary but undemocratic. Nevertheless, colonial rule in Kenya and Africa had become increasingly unarguable. The first election of African representatives to the Legislative Council was held in 1957 and the number of elected Africans increased from six to eight. Previously, representatives were nominated by the colonial government with each region (province) electing one representative. These were: Daniel Moi (Rift Valley), Ronald Ngala (Coast), Oginga Odinga (Central Nyanza), Tom Mboya (Nairobi), Masinde Muliro (North Nyanza), Lawrence Ogunda (South Nyanza), James Muimi (Ukambani),



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and Bernard Mate (Central) (Slade, 1975). It is important to note that no woman was elected nor had any woman been nominated by the colonial government. The male led the politics, political parties, and governance. This unjustified exclusion of women from politics and governance would persist until 2010 when Kenya repealed the independence constitution of 1963.

The last attempt of the administration to delay the establishment of a truly national party came in the extraordinary decision made in 1959 to allow national parties only if they were multi-racial. This ventilated a personality split inside the 14-man African elected Members Organisation with Ronald Ngala, Masinde Muliro and Daniel Arap Moi joining various Asian and European politicians in the Kenya National Party, while Oginga Odinga, Tom Mboya and J. G. Kiano formed the (unregistered) Kenya Independence Movement for Africans only (Sanger & Nottingham, 1964). These prominent politicians started positioning themselves to take over power. Two opposing positions emerged. The first group was led by Jomo Kenyatta, Oginga Odinga and Tom Mboya (Ajulu, 2002). They came from Kikuyu and Luo ethnicities respectively. This group was leading by population, hence victory at the independence elections would be certain. This group would become the Kenyan African National Union (KANU) which advocated for centralism (unitary state) (Orvis, 2001, p.8). KANU stood out as an orthodox nationality party which was supporting Pan-Africanism and socialism and devoted to organising a strong central government and provoking comprehensive change in education, health services, land usage, and industrialisation (Sanger & Nottingham, 1964).

Smaller ethnicities grouped as the Kenya Africa Democratic Union (KADU) led by Daniel Moi, Masinde Muliro and Ronald Ngala. KADU advocated for a federal constitutional set up (*majimboism*) in order





to encompass a seeming dominance by larger ethnic groups (Orvis, 2001, p.8). KADU laid great emphasis on the word 'democratic' in the party's title which stood for a less dynamic programme, arguing that none of these high objectives would be achieved, and only disorder created, unless the fears of the smaller tribes were first laid to rest. (Sanger & Nottingham, 1964). The first Lancaster House Conference was convened in London in the same year 1960. Participants included KANU, KADU, and the British government. Kenya's constitutional framework and independence were negotiated. The first conference was under the chairmanship of Secretary of State for the Colonies, Iain Macleod in January 1960. There was no agreement, and Macleod issued an interim constitution. The conference was reconvened in 1962 and finally in 1963 (Mathew, 2004). The British government lifted the state-of-emergency on January 12, 1960. At least 14,000 individuals, including 12,000 rebels, 1,800 civilians, and 200 government soldiers were killed during the *Mau Mau* rebellion.

The British government reacted to African demands by progressively driving the country toward African majority rule. In 1960, the notion of one man, one vote was conceded. Jomo Kenyatta was elected president of the Kenyan African National Union (KANU) in absentia on May 14, 1960, despite not having completed his sentence. They declined to cooperate with the British while Kenyatta was detained. In a press conference, Kenyatta promised that "Europeans would find a place in the future Kenya provided they took their place as ordinary citizens". KANU was registered on 11<sup>th</sup> June 1960 and KADU on 25<sup>th</sup> June 1960 by the colonial government (GOK, 2014). Political groupings were based on privileges among the various ethnic leaders and did not necessarily mean that they had ensued from a 'unification of the ethnic groups' into an ideology. The political party formations spun from the influential politicians. Their loyal ethnicities almost



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automatically filled the political party membership. Whenever their leaders changed political parties they gave them full support.

Legislative elections were held in British Kenya on February 27, 1961, and KANU won 24 out of 65 elected seats in the Legislative Council. KADU won 13 seats in the Legislative Council. Jomo Kenyatta, president of KANU, was released from prison on August 14, 1961. Legislative elections were held in British Kenya on May 18-26, 1963, and KANU won 72 out of 112 elected seats in the House of Representatives (plus an additional 11 seats filled by the Electoral College). KADU won 32 seats in the House of Representatives (plus one additional seat filled by the Electoral College). Several individuals, including three persons in Elgon-Nyanza and one Meru tribesman in Isiolo were killed in election-related violence.

Kenya formally achieved its independence from Britain on December 12, 1963 (GOK, 2014). Jomo Kenyatta of KANU formed the independence government as prime minister on June 1, 1963. He became Kenya's first president in 1964 when the country attained republican state. Kenyatta was able to reduce the power promised to the regions/*majimbo*s - powers which he firmly believed would militate against the establishment of a national identity. Being a respected nationalist, Kenyatta was expected to unite KANU and KADU into a mass political movement. Initially, he tried unsuccessfully before opting to accept the KANU presidency. To his credit, he preferred operating above party politics. He disliked dominating KANU the way Nyerere controlled his Chama Cha Mapinduzi (CCM) Party in Tanzania (Ogot & Ochieng, 1995, p.66). The Independence constitution sought to remedy the problem of African representation and participation through the provision of majority African self-rule and the periodic election of legislators that included individuals who subsequently



constituted the cabinet through a competitive, multiparty electoral process based on the principle of universal adult suffrage (Ghai & McAuslan, 1970).

The process of political representation was weakened through deliberate changes that the postcolonial KANU government introduced in the constitution, the electoral laws and in practice. The most significant changes included a shift from a multiparty to single-party electoral system and the transfer of supervision of elections from an independent body to the provincial Administration that was tightly controlled and manipulated by the Kenyatta and the Moi regimes during which electoral malpractice percolated (Throup & Hornsby, 1998). Kenya was ruled as a de facto one-party state by KANU.

## **2.2** Elections under Kenyatta

After gaining independence, elections in Kenya were embraced with much sensationalism by the Kenyan voter and since the first election conducted in 1964, voter turn-out has always been staggering. Under Kenyatta's regime, people had so much hope in the dispensation of the sovereign era with the general expectation that the nation would move towards balancing power across all divides.

The 1964 elections marked a high voter turn-out. The only cons associated with this election is the pockets of violence in a few regions and the wide boycott in North Eastern Province. Contrary to people's expectations of the government balancing power across the country, election legislations made in the following years were more inclined to consolidating power to KANU and repressing the opposition. This was the same legacy adopted by Moi's regime and is responsible for party lines organizing along ethnic lines. Nevertheless, KADU dissolved



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itself at the end of 1964, leaving KANU as the sole party until 1966 when its vice president Oginga Odinga resigned and established the Kenya People's Union (KPU).

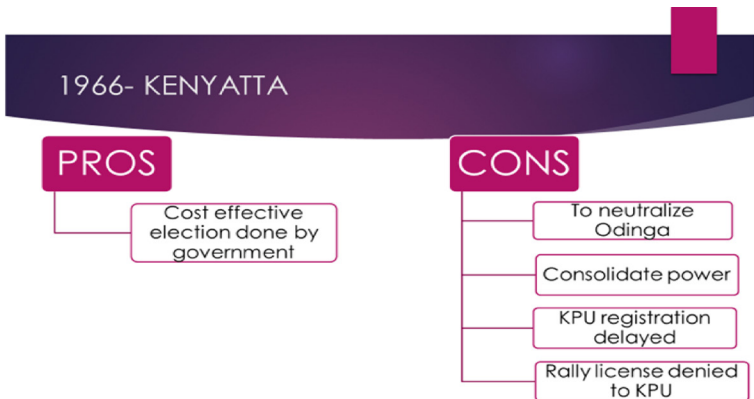
The next elections under Kenyatta's regime were conducted in 1969 and they were free of violence. A total of 15 Ministers and 14 assistant ministers lost the elections but the historic aspect of the exercise is that the first woman, Grace Ogot was elected to parliament. The 1969 elections also took a bad turn for democracy as opposition parties were banned, making Kenya a *de facto* one-party state. This eliminated all competition for the presidential position thus nullifying the core purpose of elections. Kenyatta's regime retained power in the next general elections in 1974 protected by the legislation banning opposition. Some of the pros realized in the 1974 elections were the increase in elected women parliamentarians who now totaled upto four. Grace Onyango, Julia Auma Ojiambo (Busia central) and Philomena Chelagat Mutai (Eldoret North) were elected.

The legal voting age was also changed from 21 years to 18 years. Competition at the parliamentary level allowed change of power with 4 new ministers and assistants winning parliamentary seats. The drawbacks of this election were that Kenya was still a one-party state and the KANU party demonstrated a preference to its life and members who were the only people allowed to vie for political seats. Though Kenyatta died in 1978, by 1975, vice president Daniel Arap Moi was clearly the chosen successor. As Kenyatta's death became inevitable, KANU came to a head in the form of a power struggle over the succession laws. According to the constitution, the vice president would become the acting president immediately upon the president's death and would lead the country for the ninety day period before elections were held. (Casper & Taylor, 1996).



Figure 1: Summary of elections under Jomo Kenyatta:

1963- KENYATTA	
PROS	CONS
Higher voter turnout	Wide boycott in North Eastern Province
The last pre-independence elections	Pockets of violence in some parts of the country



**PROS**

- ▶ Four women elected to parliament
- ▶ 4 more ministers and other assistants lost
- ▶ Voting age was reduced from 21 to 18 years

**CONS**

- ▶ De facto one party state
- ▶ Only life and loyal members of KANU allowed to vie
- ▶ Tight regulations to hinder KPU detainees from KANU life membership



## 1969- KENYATTA

PROS	CONS
Free from violence	KPU banned
First woman elected- Grace Ogot	De facto one party state
15 Ministers and 14 assistant ministers lost elections	No one challenged Kenyatta in elections

**Source:** Ally Khan presentation slides

### 2.3 Elections Under Moi

The transition from the Kenyatta regime to the Moi regime was termed 'constitutional-inherited'. This is because it involved an inheritance of leadership based on constitutional obligation. Inheritance is used here not as a familial approach, but to denote swift and non-violent shift of the locus of power from one person to another without invoking the common verdict of the electorate. The 1978 transition was in essence a change of personalities ignited by the sudden death of the aging founder President, Jomo Kenyatta (Oyugi, Wanyande & Odhiambo-Mbai, 2003). 1978 marked the end of an era for Kenyatta's rule and a start for Moi's regime. As a KANU's favourite, Moi ran unopposed. KANU's domination over political affairs in the country continued to be dominant in the next term and harassment of opposition leaders from the KPU persisted.

However, Kenyans of European and Asian origin were elected into parliament. Philip Leakey, the first post-independence Kenyan of European origin was elected MP for Lang'ata constituency while Krishna Chandler, a Kenyan of Asian origin won the Parkland seats.



The 1983 general elections had more cons than pros as KPU leaders were rounded up and detained. With further efforts to consolidate presidential power, it was mandatory that all vying candidates be cleared by KANU first except candidates who were loyal to the president. Nevertheless, the KANU government's refusal to allow Oginga Odinga and his former KPU colleagues to contest the 1983 and the 1988 elections is a good example of how the voters' right to choose was restricted under the single party regime.

However, these politicians were deemed very highly in their constituencies but were barred from contesting the elections on the pretext that they had been disloyal to the Kenyatta regime. This was so in spite of the fact that Jomo Kenyatta had been replaced in 1978 (Wanyande, 2006). This election marked the lowest voter turnout of 48% indicating that people had started to lose the will to participate in fraud elections. The only good to come out of the 1983 elections is an increase of women participation in politics as 7 women vied, 40% of incumbents were voted out to create a new breed of politicians and the government banned all ethnic-based formations. The same conditions persisted for the 1988 elections. The next elections under Moi's rule marked a huge milestone for democracy as section 2A of the constitution was repealed to turn Kenya into a *de jure* state hence ushering back multiparty system. In the case of the 1992 elections, there was considerable excitement with the return to multiparty elections. The country had just re-established multiparty politics after almost 30 years of one-party authoritarian rule and after a very powerful struggle by pro-democracy forces. Kenyans were thus determined to express their newly won political freedom in a huge turnout at the polls. Besides, Kenyans were also hopeful that the elections would be free and fair, and that their vote would influence the outcome of the election (Wanyande, 2006).



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A total of 9 political parties registered and the first multi-party presidential elections were conducted. The year also marked the formation of a new electoral body but with minimal reforms. The presidential winner had to get a minimum of 25% of all votes cast in at least 5 provinces. Women also increased their vigilance in pursuing political seats with a total of 19 candidates running for positions. 6 out of these were voted in. The ugly side to this particular election is that the government exercised absolute control over the media and the police force was used as a personal tool by Moi's camp to disrupt all organizing endeavours by opposition parties like the bloody case of the *Saba Saba* rally. The state machinery also blocked the nomination of prominent opposition leaders and in the end, the outbreak of violence became inevitable.

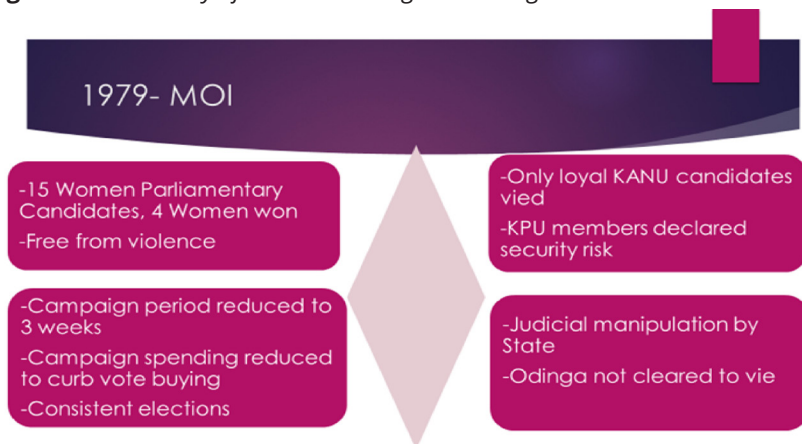
In the case of the 1997 elections, nonetheless, there was a huge voter turnout because the electorate was determined to vote out the KANU regime which they blamed for the deteriorating economy and poor governance. Moreover, the constitutional amendments on the conduct of elections that had been successfully negotiated by the Inter-parties Parliamentary Group (IPPG) in that year assured the electorate that the elections would be free and fair (Wanyande, 2006). In 2002, there was also a high voter turn-out which was attributed to the same factors as in 1992 and 1997. As early as 1992, Kenyans had called for the unity of the opposition as the most useful strategy for removing KANU from power. Notwithstanding, the opposition remained segregated until the 2002 elections. The achievement of opposition unity in the run up to the 2002 elections persuaded the electorate to turn out in large numbers. In addition, it was clear that the incumbent president was excluded from seeking another term by a constitutional amendment in late 1991 which restricted presidential tenure to two five years terms.





Voters were thus determined to influence who would turn out to be their next president. Besides, prior to the 2002 elections, the prominent politicians from a number of major ethnic communities had signed a Memorandum of Understanding (MoU) by which they consented to form a coalition government if they won the elections, and also equally share cabinet positions between the two major political groupings in the coalition, namely the National Alliance Party of Kenya (NAK) and the Liberal Democratic Party (LDP). This is the arrangement that led to the establishment of the National Rainbow Coalition (NARC) which went on to win the 2002 elections. The MoU also stipulated that the President, the Vice President, second and third Deputy Prime Ministers would come from NAK, while the LDP was to get the positions of Vice President, the Prime Minister, the first Deputy Prime Minister and Senior-coordinating Minister. This power-sharing deal, based on ethno-regional representation, generated significant excitement and interest among the electorate as it gave each of the major ethnic groups a chance in any future Kenya government. The high voter turn-out was to ensure that this arrangement yielded results (Wanyande, 2006).

**Figure 2:** A summary of elections during the Moi regime





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## 1983- MOI

### PROS

- ▶ Banned ethnic based formations
- ▶ 7 women candidates, 2 elected (lower compared to 1979)
- ▶ 40% incumbents voted out

### CONS

- ▶ Further consolidation of presidential power
- ▶ Arrest of KPU leaders
- ▶ De jure one party state, prevent Odinga from registering party
- ▶ Candidates to be cleared by KANU to vie
- ▶ Candidates loyal to President cleared to vie
- ▶ Lowest voter turn out post independence-48%

## 1989-MOI

### PROS

- Huge recruitment drive by KANU
- 6 women candidates, 2 elected

### CONS

- Mlolongo voting system
- 70% in queue automatically wins
- Incidences of nomination violence
- Claims of massive rigging
- Most unpopular election

## 1992- MOI

### PROS

- Repealing section 2A-De jure multiparty state
- First multiparty and presidential elections, 9 parties registered
- New electoral commission with reforms, though minimal
- Legitimacy- winner to get 25% in at least 5 out of 8 provinces
- 19 women candidates, 6 won

### CONS

- Police disrupt Saba Saba Rally, people died, violence witnessed
- Opposition candidates prevented from nominations in some constituencies
- KANU controlled KBC, KTN and Kenya times
- Opposition faced official intimidation by state
- Violence in various parts of the country



## 1997-MOI

**PROS**

- ▶ Second multiparty elections
- ▶ IPPG for electoral reform
- ▶ 10 more commissioners appointed from opposition parties
- ▶ Highest number of parties- 25 registered, 22 take part in elections
- ▶ No obtaining license for rallies, only police notification
- ▶ 15 presidential candidates, 2 women (Maathai and Ngilu)
- ▶ 47 women candidates

**CONS**

- ▶ Hostility to opposition candidates, others not landing at airstrips
- ▶ Out of 47, only 2 women won

## 2002- Moi

**PROS**

- ❖ Constitutional reform to bar incumbent from vying
- ❖ Presidential elections with the incumbent not taking part
- ❖ Independent electoral commission
- ❖ Vote count at polling stations
- ❖ Privately radios allowed to announce results
- ❖ Peaceful campaigns
- ❖ First highest number of candidates in parliamentary and civic elections
- ❖ A single party wins 125 parliamentary seat, highest since multiparty
- ❖ 44 women candidates and 9 elected

**CONS?**

**Source:** Ally Khan presentation slides

## 2.4 Elections after the Moi Era

In 2001, there was a coalition between Raila Odinga's National Development Party (NDP) and the KANU government after cooperating for a year or two. At the beginning of 2002, NDP dissolved and became part of 'New KANU.' This arrangement was more between Moi and Raila Odinga the individuals than between their parties. George Saitoti, the country's and KANU's Vice-president, was not privy to the crucial details about the merger. So was KANU Secretary General, cabinet minister Joseph Kamotho. The union between Moi and Raila would



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be short lived. Towards the end of 2002, Moi personally announced that Uhuru Kenyatta (Jomo Kenyatta's son) would be KANU's sole presidential candidate in that year's election. Uhuru was hardly two years old in politics. Moi overlooked Saitoti, his Vice President of about 13 years. He would later say that although Saitoti was his friend, leadership was a different matter.

The aftermath of the 2007 general election was characterized by violence the eviction of people of a certain ethnic backgrounds from areas which opposed either of the two political parties- ODM and PNU. The kikuyu people were displaced from regions supporting ODM, whereas other ethnicities such as the Kalenjin and the Luo were displaced from regions that supported PNU. The opposition disputed the results and claimed victory. Post-election violence ensued, and President Kibaki promptly appointed Kalonzo Musyoka Vice-President to consolidate political support through a coalition arrangement with ODM-Kenya. Although violence had occurred at every election, the 2007/2008 one was of shocking proportions to the international community. Over 1,300 people had been killed, and the destruction of properties had been massive. The international community stepped in and mediated a peace-pact between the two rival parties, Kibaki's Party of National Unity (PNU) and Raila's ODM. Kibaki retained the Presidency and Raila became Prime Minister with some executive powers in a coalition government. As part of the reforms agreed upon, two separate commissions were set up to investigate the disputed elections and the post-election violence. The Independent Review Commission (IREC) of 2008 (Known as Kriegler Report) and the Commission of Inquiry into the Post-Election Violence (CIPEV) also known as the Waki Commission.



## 2.5 Good Aspects to be Preserved

The contemporary conduct of the electoral processes has been fundamental in the efforts to uphold democracy and good governance. When assessing the milestones achieved so far in Kenya's electoral process, the main aspects that reflect its strength and weaknesses are enshrined in electoral laws, management of elections, voter education, voter registration, the nomination criteria for candidates, political parties, registration of proposals and audit of register, management and regulation of campaigns, execution of the actual voting process, management of electoral disputes as well as announcing election results.

## 2.6 Recent Developments in Kenya's Electoral Laws - Electoral reforms

Among the factors that informed the push for constitutional and legal reforms in Kenya through history was the desire to have an electoral system that accords to the fundamentals of democracy (Elisha & Otieno, 2012). This was informed by the recommendations enclosed in the Report of the Independent Review Commission on the General Elections held in Kenya otherwise referred to as the Kriegler Commission report of 2008.

Following the promulgation of the Constitution of Kenya in 2010, electoral reforms through enactment of legislations were an essential requirement in the implementation of the new Constitution. This saw the reorganization of the electoral system through the passing of legislation, including the New Elections Act, the Political Parties Act, the Campaign Finance Law, and the Electoral and Boundaries Act (2011).

Regardless of the reforms that provided a framework for the 2013 general elections, the elections were marred with irregularities,



inconsistencies and errors during multiple phases of the electoral cycle. This prompted for further legal, policy and institutional electoral reforms which were instituted by a Joint Parliamentary Select Committee (JPSC). The JPSC embraced an all-inclusive process that involved receiving memoranda from a cross-section of stakeholders drawn from constitutional commissions, independent offices, political parties, the civil society, professional bodies, religious bodies, county governments, the business community and members of public, which resulted to recent changes on electoral laws to feature: Amendments to the Elections Acts, 2011; Election law (Amendment) Act 2016: effect changes to the political parties Act, IEBC Act, 2011, Registration of persons; Election offence Act, 2016; Elections Law (Amendment) Act 2017; Elections technology regulation, 2017; Election (voter registration Amendment), 2017; Registration of citizens in Kenya prisons and those abroad; Uganda, Tanzania, Burundi, Rwanda and additionally South Africa; Election (voter Education) regulations, 2017; Elections (Party primaries and party lists) regulations, 2017 and Election campaign financing Act, 2013 and the campaign regulation, 2016.

These electoral reforms sought to ensure the elections are conducted in a transparent, accountable and impartial manner as provided for under Article 83 of the Constitution of Kenya 2010 and reinforce the guarantee reinforced by the Independent Electoral and Boundaries Commission (IEBC).

### **2.7** Management of Elections in Kenya

Elections management refers to those processes that are integral to the proper conduct of elections. These invariably include registration, voter education, validation of the nomination of participants in an



election, conduct of polling, counting of votes, and the tabulation of vote count. The proficient management of an electoral process is an important aspect of promoting democracy and confidence in the conduct of elections and their outcomes.

The legal framework on elections management that guided the conduct of the 2013 general elections lacked in the integration of participation of stakeholders in overseeing the election. This resulted to grave election malpractices demonstrated by the IEBC's mismanagement of the election process. In a bid to conduct the 2017 general elections in a transparent, impartial, neutral, efficient, accurate and accountable manner, the IEBC organized several electoral stakeholder meetings and voter education with the aim of gaining public confidence and encouraging peaceful elections. This enabled the full participation of electoral sector stakeholders throughout the cycle. The IEBC was also able to integrate technology use that improved the voter registration, identification exercise as compared to 2013 general elections.

IEBC encouraged monitoring of elections by observers and provided a general election handbook for them which clarified the rights and roles of observers within the electoral legal framework. It further stipulated the code of conduct to be observed by both domestic and international observers, in accordance with international standards of election observation. Monitoring reduces the probability of large-scale manipulation and fraud, thus enhancing the credibility of elections and the acceptance of their outcomes. International observers were invited to oversee the elections to ensure free, democratic conduct of election. The control of national elections may have to be put in the hands of international management authorities before both capacity building and fairness are ensured. An outside presence helps alleviate the distrust of all sides by bringing fairness to the process.



## 2.8 Management of Voter Education

Assessing the effectiveness of how voter education was conducted in the past elections, a review of the voter education curriculum, dissemination of materials, development of voter education policy and deployment of voter educators at the county wards, and constituency are the main scoring factors. A big plus for the 2017 electoral process was incorporating learning resources for special groups, for instance, persons with disabilities.

On 10<sup>th</sup> June 2019, the Commission launched the Annual Voter Education Week (AVEW) across all the 47 counties and 290 constituencies countrywide. The event provided the Commission an opportunity to listen and address concerns from members of the public on all electoral gadgets, tools, policies, activities, processes and procedures. The IEBC chairman urged the entire nation to fully participate in all the planned AVEW activities, encouraging them to “*Karibu tujadiliane*” (come, let us negotiate) with IEBC Staff across the 47 counties and 290 constituencies.

**Figure 3: IEBC launch of Annual Voter Education Week**



**Source:** IEBC News





## 2.9 Management of Voter Registration

The 2013 general elections marked the 1st general elections that saw the IEBC embrace technology in the voter registration process by use of the Biometric Voter Registration System which turned out to have not worked very well. In the 2017 election, IEBC in compliance with the law embraced the Kenya Integrated Electoral Management System (KIEMS) that notably sought to integrate the Biometric Voter Registration (BVR). IEBC did an exemplary job utilizing the biometric voter registration kit and the massive voter registration exercise increased voter registration by 19.6 million from the 2013 register. The voter registration kits were first tested three weeks before the actual process. The electoral body was also keen to verify the authenticity of biometric data after voter registration. IEBC was also successful in curbing coercive registration initiated by illegal groups.

## 2.10 Management of Nomination Exercise

In a bid to curb the challenges faced in the nomination exercises, that is, inconsistencies in the data submitted by political parties, lack of credible membership lists and registers, the IEBC integrated the Candidate Registration Management System that ensures that the primary data on candidates nominated by political parties are entered in a format that makes it easy for IEBC to verify the accuracy of candidates details, compliance and generate ballot paper proofs. This is achieved by cross-matching the voters register and the political party register. This milestone ensured that there was efficient verification and access to the ballot paper sample by respective candidates. In the last general election, the system helped to process the nomination lists from over 12,000 candidates in 1,882 elective positions.



### **2.11** Management of Electoral Campaigns

In 2014, Kenya enacted the Election Campaign Financing Act to provide for the regulation, management, expenditure and accountability of election campaign funds during election and referendum campaigns. This law mandated the IEBC to regulate and administer campaign financing. It is empowered to set and enforce spending limits, monitor and regulate campaign expenses, set contribution limits and verify contribution sources, provide a framework for the reporting of campaign expenses and supervise actors in relation to campaign finances (Election Campaign Financing Act 3(1)). In 2016, the IEBC submitted campaign finance regulations to parliament for approval. These rules, which were intended to enforce Section Six of the Act, required political parties to open expenditure accounts, appoint individuals authorized to manage these accounts and to submit the bank account details to the IEBC. The regulations also established expenditure limits for parties.

The body also organized a campaign harmonization meeting to agree on the campaign schedule and code of conduct which involved the respective returning officers. A schedule for the campaign period was set early to contain political malpractice during campaigns.

### **2.12** Management of Voting Operation: Voting, Counting and Tallying

Despite the claims of unfilled and missing forms, the digital transmission of results was at 92% which marked an improvement from 44.6% in 2013. The voter turnout was also impressive, it was recorded at 78% with about 15 million valid votes cast in contrast with 2013 that stood at 86% with about 12 million votes cast. After the nullification of presidential results by the supreme court, the fresh presidential



election voter turn-out dropped to 38.4%. Some challenges reported for the process included complaints that some party agents could not stand the counting process that had six elective positions due to fatigue caused by the tedious process; IEBC was unable to retain the party agents who left before the counting process came to an end, leading to unsigned statutory forms. Although not proven, there were allegations of rigging in the tallying process, enhanced by the digitalization of the electoral process.

### **2.13** Management of Electoral Disputes and Violence

A great milestone achieved here was the harmonization of the role of the registrar of political parties and commission through a memorandum of understanding on resolving electoral disputes. The commission is to settle nomination issues while the registrar of political parties is to deal with issues arising from party primaries. IEBC also established a dispute resolution committee to resolve party-list nomination issues and registration of candidates in preparation for elections. Consequently, there was relative peace experienced in the August 2017 election. However, the fresh presidential election in October threatened to destabilize the peace with instances of violence experienced in parts of Nyanza. In contrast to the March 2013 elections, the IEBC developed the Elections Operation Plan which improved the entire electoral process.

### **2.14** Aspects that may need Reforms:

#### **2.14.1** Electoral Reforms

The year 2017 saw a number of changes in the electoral legal framework which resulted to the amendments of some electoral laws, as people prepared for the general elections scheduled for 8th August 2017. This immensely interfered with public participation as a



principle of good governance as enshrined under the Constitution of Kenya 2010. Article 118 obligates Parliament to facilitate participation and involvement of the public in legislation. Public participation in these amendments was not sufficient because of the strict timelines considering the elections were fast approaching.

Therefore, there is need to avoid or reduce amendments when polling time is near to ensure that public participation is sufficiently done to incorporate the views of the public and to prevent politicians from manipulating the election environment to their favour.

### **2.14.2** Deployment of Technology

The technology system has proved to be efficient compared to the manual system during the election period. Technology is vital in all the phases of the election cycle right from the compilation of the voters' registration list to the publication of election results. The IEBC has in the recent times faced challenges with use of technology in conducting elections including, data security and privacy threats, system failures, poor network coverage and data manipulations.

Caution needs to be taken in deployment of technology since it can be an avenue for corruption and rigging of elections. Logistical capacity and sufficient expertise for the technology, political independence to utilize it and ability to mitigate risk of manipulations should be taken into consideration. The appropriate use of technology during the election will enhance efficiency by the IEBC and promote transparency.

### **2.14.3** Procurement of KIEMS Kits

During the last election period, the use of the Kenya Integrated Electoral Management System (KIEMS) in the voter registration period was incorporated. However, this process was faced with the



challenge of delayed procurement of the kits occasioned by several malpractices and infringements of the national procurement laws. There is need to develop a framework or amend a provision in the electoral law to ensure timely procurement of KIEMS kits for voter registration, identification and result transmission to allow the IEBC to evaluate the efficiency and accuracy of the kits and establish and maintain public confidence in the electoral process in a timely manner.

#### **2.14.4** Voter Education

The voters' education process during the 2017 elections was marred by inadequate funds to conduct the voter education process, inadequate personnel to carry out the exercise, and inadequate cooperation between the IEBC and civil society in conducting the voter education exercise with accreditation processes barring organization efforts for willing voter educators.

For an effective voter education to be realised there is need to ensure that there is timely conduct of the voter education exercise by ensuring timely provision of funds and employment of adequate personnel to conduct the process.

The space for civil society in the conduct of voter education should be enhanced to complement the voter education exercise as they are well equipped and have the ability and capacity to reach a wide range of people regardless of the geographic area.

#### **2.14.5** Implementation of the Campaign Finance Act 2013

This legislation was enacted to provide for the regulation, management, expenditure and accountability of election campaign funds during election and referendum campaigns. Upon the enactment of the Act, the court suspended its application following an application by the Orange Democratic Movement (ODM) challenging the various



directives made by the IEBC in efforts to implement provisions of the Act like asking political parties and candidates to file their bank account details and names of their campaign committees.

The lack of campaign finance regulations helps maintain the status quo in Kenyan electoral politics. The success of electoral campaigns in Kenya rely heavily on the availability of campaign funds. The dominance of wealthy candidates leaves little chance for new candidates to have a realistic chance of gaining ground. Regulation of campaign finance is essential in fighting the menace of corruption within the ruling party. It has largely been the tendency of the ruling party to misuse the state resources for purposes of financing their campaigns.

Going forward, the passage of campaign finance regulations should take priority, especially since the regulation of money spent during elections is a constitutional provision. The national assembly and the senate should promptly ensure that this Act is implemented by enacting the necessary regulations and guidelines.

### **2.14.6** Establishment of an Electoral Malpractice Court

There is a need to establish special electoral malpractice courts with the status of the High Court to hear and determine disputes relating to election conduct, punish perpetrators of election malpractices and enhance the autonomy of IEBC.

This has been operationalized in other jurisdictions like Sierra Leone where there is an established Electoral Offences Court to decide cases of election offences brought before it. The Election Offences Court has power to hear and decide cases brought before it. All cases in this court are tried by a judge and must be concluded not more than six



months after the formation of the Court. A person dissatisfied with a decision of the Electoral Offences Court may appeal to the Court of Appeal.

### **2.14.7** Violent Electoral Culture

There is need to change the electoral cultural characterized by violence, hate and negative ethnicity that mostly inform voting. Kenya being a multi-ethnic country, its elections are unavoidably marked by ethnic connotations. Since the re-birth of pluralist democratic politics in Kenya in 1991, the country once defined as the beacon of peace in Africa has repeatedly suffered electoral conflict. During the 1992, 1997, 2007, and 2017 general elections, the country experienced electoral violence that led to loss of lives and internal displacement of persons (Mwagiru, 2008). These conflicts are often prompted by an ethnic identity problem. The culture of violence is firmly embedded in societal norms and practices where members of the communities are refined to be combatants to protect their community. Largely, electoral violence is funded by political actors who want to accumulate power through organised criminal militia networks that are 'ordained' by cultural elders (Lafargue & Katumanga, 2008).

## Conclusion

### The Future of Political Party Democracy in Kenya

The 2010 Constitution of Kenya has created new institutions of governance with sufficient checks and balances between the executive, parliament, and the judiciary. Consequently, it has also provided for the Bill of Rights which cannot be changed except by a national referendum (the Constitution of Kenya, 2010, article 255). There is now freedom for individuals to associate politically and otherwise (the Constitution of Kenya, 2010, article 36) as the State is restricted from interfering with political associations. The right to



make political choices, to be a candidate for public office, or to hold a political party office are guaranteed (the Constitution of Kenya, 2010, article 38). A person denied political rights is entitled to fair administrative action and can re-claim the same through judicial review (the Constitution of Kenya, 2010, article 47). Thus, a person cannot be excluded from participating in elections by executive decrees or malicious legislation. Arbitrary arrests and detention of persons is expressly outlawed (the Constitution of Kenya, 2010, article 49). This means that the State cannot eliminate political competition through arrests and detentions.

Every person is entitled to fair hearing in a court of law (the Constitution of Kenya, 2010, article 50). Thus, political opponents can no longer be jailed on the basis of 'tramped up charges.' Neither can they be harassed through searches in their homes or offices. Now every person has a right to privacy (the Constitution of Kenya, 2010, article 31). The Constitution is completely against politics of exclusion. Women, youths, minorities, and marginalized groups can no longer be excluded from holding political and public service offices. This includes persons with disabilities. Their right to participate and be represented in governance and other spheres of life is guaranteed (the Constitution of Kenya, 2010, article 5556).

In principle, at least one third of legislative, executive, and judicial positions must consist of the either gender (the Constitution of Kenya, 2010, article 81(b)). This provision is intended to protect women from male domination over institutions of governance. In the past for example, it has been very difficult for a woman to be nominated as political party's candidate for elections. This is because political party politics have historically been male dominated. However, political party nominations are now no longer the only means of contesting

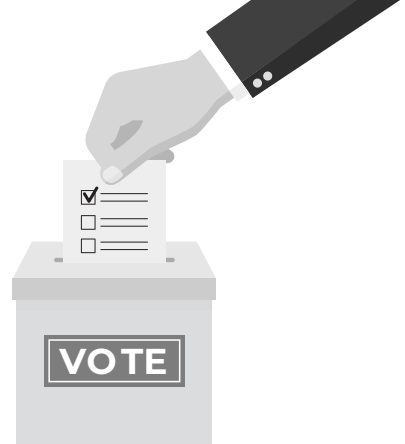




elections. A person can contest as an independent candidate (the Constitution of Kenya, 2010, article 85). This means that a person does not need to belong to a political party whose ideals he does not identify with, merely to be nominated to contest elections. Now women, youth, disabled persons, minorities and other marginalized groups, and independent minded but qualified persons sidelined by political parties can contest elections as independent candidates. This could make the political discourse more inclusive. Political inclusivity is important in consolidating a democratic culture in the country.

The principle of fair representation has been enhanced in the constitution in terms of defining sizes of electoral units (constituencies, wards) and the composition of nominated members of legislative bodies. Before 2010, nomination of members to legislative and civic bodies was done arbitrarily by the presidency mostly to reward political loyalists. Women, youth and disabled persons were rarely chosen. They had little money and (physical confrontations being common) masculinity to contribute to the political party.





## 3.0 DOES TECHNOLOGY HELP TO STRENGTHEN THE ELECTORAL PROCESS?

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This chapter was guided by the presentations made by:

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### 3.1 Introduction

Technology has been adopted in all sectors of life including commerce, education and health, among others. Inevitably, it has also permeated into government operations to enhance government-citizen interaction, impacting positively on the quality of governance. In Kenya, the use of technology in elections is now ingrained in the electoral system so as to provide efficient, transparent, auditable and credible results as recommended by the Kriegler commission after 2007-2008 post-election violence.

Democracy calls for a high level of citizen participation in the electoral process and in the political life of the country. This involves all activities that focus on voter empowerment to monitoring the performance



of the government. Many democracies today are making use of Information and Communication Technology as a tool to enable the citizens to participate in the electoral process. Technology such as database management systems, biometrics voter registration and identification optical scanning, block chains are being used to ensure secure and credible voting systems. Technology used in the electoral system and in the transmission of results has had benefits as well as challenges in its implementation. Kenya has adopted the use of these new and emerging technologies.

This paper looks at the use of technology to secure the elections by the Independent Electoral and Boundaries Commission of Kenya (IEBC) and the influence of social media by citizens in the electoral process, while interrogating the question of how technology influences the elections in Kenya. Among a myriad of issues that IEBC has to deal with to deliver an election that is both acceptable to the people and the political candidates, gaining trust as an independent institution has been the most challenging. This factor is the cornerstone of every election and due to all the shortcomings expressed by the commission in the past, earning the trust of the voter and the politician has become a daunting task. Will the electorate believe the outcome of an election? And will politicians accept the outcome, and be “good losers?” These are some of the queries that have sparked off conflict after announcing the outcomes of elections in Kenya. Advancing electoral technology used in the country at some point seemed like a plausible solution to fix the issue of trust but since its adoption, the commission has always reported a failure of such systems hence reverting to manual systems that are prone to manipulation.

According to the Independent Review Commission (IREC) Report on the General Elections held in Kenya on 27<sup>th</sup> December, 2017 and



the 2008 Kriegler Commission Report, the key recommendations included the following: the call for the electoral body to develop and adopt an integrated and secure electoral management system that would allow computerized data entry and tallying at constituencies, secure simultaneous transmission from the polling station level to the national tallying center and the integration of the results-handling system in a progressive election result announcement system.

### **3.2** Benefits and Advantages of Election Technology

The important considerations to analyze at this point is: Where can technology help to strengthen the electoral process? What are the reasons why technology needs to be adopted? Technology gains an upper hand over manual electoral systems because of their accuracy and efficiency, speed of operation and accessibility that enhances all-rounded inclusion.

#### **3.2.1** Are the Obstacles Experienced with Election Technology Real or Perceived?

It all depends on the general expectations among different interest groups. People's attitudes towards the electronic systems stem from the point of cost of acquisition of such technology which raises a lot of harsh feelings among taxpayers and the level of security on such systems to produce the desired outcomes. This is concerning data security and privacy. The general feeling is that if the commission is going to acquisition high-end electoral equipment, it should have a sustainable path to maintain its pristine performance to future elections.



### 3.2.2 Electoral Technology in use Globally

In the modern day and age, the most reliable electoral technology kits include: voter registration system, voter identification system, party and candidate registration system, observer registration and accreditation systems, district and boundary delimitation systems (Gis), electronic voting and vote-counting systems, result tabulation and transmission systems, results publishing systems, voter information system and e-learning systems. This is on a global scale but in Kenya, the electoral systems in operation include the Bio-metric Voter Registration kit, Electronic Voter Identification kit, and Result Transmission System. The voter registration system was deployed in 2010 and has been in use from 2012-2017. The voter identification systems have been used in 2012 and 2017 general elections and so have the party and candidate registration systems. The observer media registration and accreditation systems have only been recently deployed in 2017 while the result tabulation and transmission systems and the results publishing systems have been used in 2013 and 2017. E-learning systems are currently available for the electoral commission but they have never been deployed for public use.

From the Kenyan experience, technology does not come in to replace concerns on the absence of trust, transparency, and integrity, this must equally be addressed including through aptly setting out the structure of the Electoral Management Board.

### 3.3 Challenges Faced in the Use of Electoral Technology

- Cybersecurity threats which may compromise the integrity of the database
- Network coverage in some regions and poor infrastructure
- Cost of maintenance and running such technology



- Ever-changing nature of technology that may render the current systems obsolete
- The issue of knowledge transfer - short periods and limited budgets for training and capacity building
- Changes in legislation in the lead-up to elections on matters ICTs
- Role of courts especially in poll dispute resolution
- System failures like the case for the 2013 Result Transmission System
- Lack of timely funding and insufficient funds
- The role of third-party players who often act as loopholes for election malpractices

### **3.3.1** Use of Technology in Elections in Kenya

The latest election technology in Kenya is categorized into three electronic components:

- Bio-metric Voter Registration system (BVR)
- Electronic Voter ID (eVID)
- Results Transmission System (RTS)

These individual components work in an integrated manner. To understand the election technology, one will need to know the functional basis of the kits; and the risks involved in using digital systems. The successes and failures of this technology will also inform on possible solutions for future elections.

### **3.3.2** Biometric Voter Registration (BVR)

The BVR system is a digital solution for registering qualified voters using their unique biometric data such as fingerprints, facial recognition or retinal scan. All registered voters are consolidated in a single voter register to eliminate duplication of data from a single voter.

- The BVR kit comprises of a laptop, a fingerprint scanner and



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a camera.

- The kit captures a voter's facial image, fingerprints and civil data or Personal Identifiable Information (PII) – name, gender, identity card/passport number, telephone numbers, etc.
- The registration is done at the registration centre where the individual is expected to vote.
- The BVR was introduced in Kenya just before the 2013 general elections.
- The IEBC transfers the data from the BVR machines to a centralized storage server form which hard copy registers are then printed.

The BVR system ensures that:

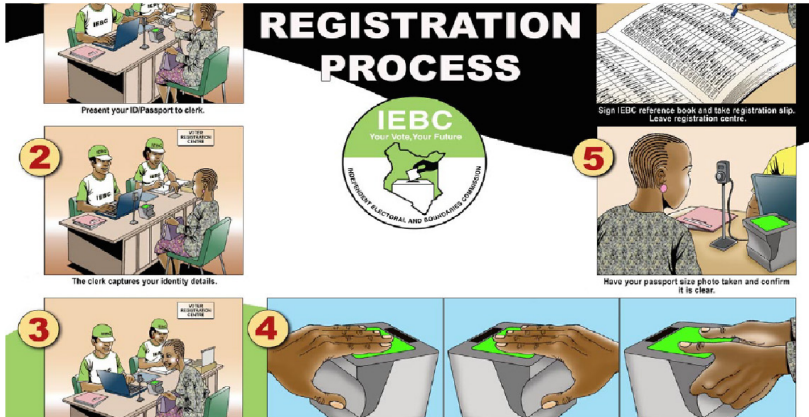
- There are multiple methods of identifying voters, other than just names and IDs. There is also use of fingerprints and facial features.
- A voter's records are quickly and efficiently captured.
- Security and privacy of information is enhanced.
- Integrity and reliability of information is improved such as, elimination of duplicates.





Figure 4: Biometric voter registration

## Biometric Voter Registration



Source: IEBC

### 3.3.3 Electronic Voter ID (eVID)

This is used on the actual polling day and is used to verify voters before casting their votes. It only allows individuals whose data was captured by the BVR. The eVID is a strategic kit at the polling station as it prevents voter impersonation, duplicate voting as well as ballot stuffing. Another point of advantage for the eVID is that it does not require telecommunication network to function.

- This is used at the polling station on the polling day. It can comprise of a laptop with attached finger print reader or the handheld device with in-built fingerprint reader.
- It allows voters who had previously been captured by the BVR to be verified and allowed to vote.
- It eliminates three things:
  1. Voter impersonation
  2. Duplicate voting
  3. Ballot Stuffing



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- In spite of the fact that it does not require telecommunication network to function, other challenges may arise when some of the equipment fail to work which may be caused by running out of battery charge or inadequate training.

**Figure 5:** *Electronic Voter ID*



**Source:** IEBC

### 3.3.4 Results Transmission System (RTS)

RTS is a system of transmitting provisional results electronically to an observation centre. It is exclusively used by the presiding officers to electronically transmit the text results and the necessary forms to an online public portal. The online portal is managed by IEBC and has a display module that can show the public incoming results in real-time. In theory, the operation of this election technology is straight forward which hints that the complexities experienced in Kenyan elections stem from within the electoral managing body whose independence is often in doubt.

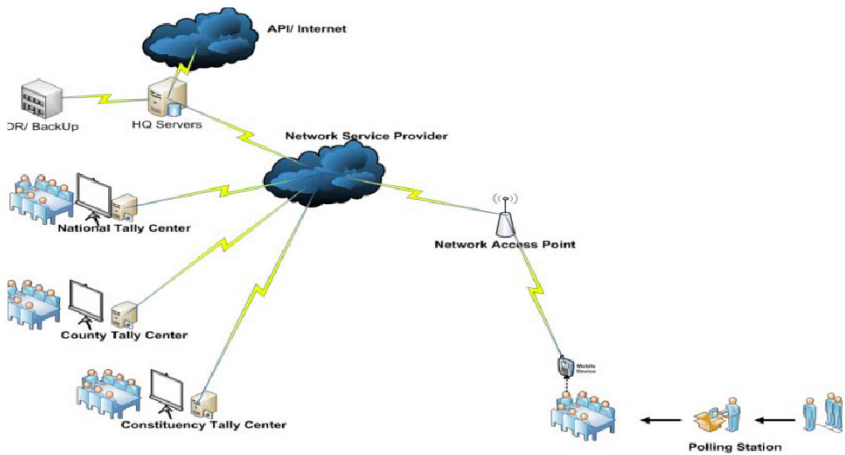
- The RTS allows presiding officers at the polling station to electronically transmit the Text results and the prescribed



- Forms to an online public portal.
- The online portal is to be maintained by the commission (IEBC)
- A display module can be used to show the public incoming results in real-time.
- RTS is used to enhance transparency through electronic transmission of provisional results from the polling stations.
- Display and visualize provisional results at the tally centres.
- Provide access to provisional elections data to media and other stakeholders in real time.

**Figure 6:** Results Transmission System

## Results Transmission System



**Source:** IEBC

### 3.3.5 The Risk of Substituting Digital Election Technology with Manual Systems in Voter Registration

The primary kit for the electronic system is vital in voter registration. Traditionally, the registration exercise has been the greatest loophole



undermining the credibility of the election process. In Kenya, ghost voters and double registration have been an issue of contention for many years creating a lot of dissatisfaction in election outcomes. When voters are registered electronically, data can be reviewed for any inconsistencies before the actual voting date.

- The BVR System is used to electronically register voters.
- The best way to have a single, verifiable register of voters.
- Helps in cross-checking number of total no of voters against no who voted/did not vote/tally per candidate.

### **3.3.6** The Risk of Substituting Digital Election Technology with Manual Systems in Voter Identification

Replacing the Electronic Voter Identification with a manual system will require IEBC polling officials to print out data to mark those who have voted manually. This means that all registered voters who have not voted before the exercise is closed will be used to rig votes for a candidate who is compliant to the terms of a corrupt IEBC official. Manual systems have also been proven to increase cases of duplicate voting as voters' biometric data is not secured by the system.

- Manual printouts will have to be printed and names of those who voted crossed out. For those who do not show up, their names will remain unmarked .
- After polling closes:
  - Polling Clerks/Agents, especially in various strongholds can conspire to 'vote' for the absentee and dead voters (impersonation).
  - Outright duplicate voting can also happen in the manual systems
- The better option is to electronically ID the voter in the system and record as much – that they were NOT biometrically ID'ed.



- eVID is the electronic poll-book that electronically removes such risks since only fingerprint verified voters can cast their votes and it keeps the fingerprint tally that can be compared to total ballots casts.
- Any discrepancies will relate to ghost voters.
- Dead voters, duplicating voting leads to ballot stuffing.
- BVR printouts do not eliminate fraud
- EVID does not need a telecommunication system to work
- The electronic system cures the inherent risks found in the Manual systems

### **3.3.7** The Risk of Substituting Digital Election Technology with Manual Systems in Results Transmission

Manual transmission of voting tabulation occurs in stages: to Constituency, County and eventually National Tallying Centers. Every stage that these results have to go through increases the chances of manipulation in favor of any given candidate. Additionally, the random and simultaneous streaming in of results/forms mitigates against the opportunity to mathematically establish the number of votes one needs to rig in order to cross the magic 50%+1.

- If the RTS fails, the voting tabulation forms are transmitted manually to constituency, county and eventually national tallying centres.
- The risk is that at each stage, an opportunity to manipulate or change the tabulation form occurs.
- Additionally, the random and simultaneous streaming in of results/forms mitigates against the opportunity to mathematically establish the number of votes one needs to rig in order to cross the magic 50%+1.
- A working RTS eliminates these risks.



**3.3.8** Risk of Failure of Electronic Systems and Digital Backups  
BVR can either be disrupted by power or battery failure or technical failure in its software component. Electronic Voter ID can either malfunction as a result of fingerprint reader failure (False positive, False negatives) or power, battery, software failure. The contingencies to put in place include redundant power supply such as extra battery, generator or solar. For software components, proper software testing and running with tech support systems in place should be done before the actual date.

- BVR:
  1. Power failure, Battery failure
  2. Software failure
- eVID:
  1. Power, Battery, Software failure
  2. Finger-print reader fails (False positive, False negatives)
- Redundant power supply should address this (extra battery, generator, solar)
- Proper software testing and running with tech support systems in place

### **3.3.9** Digital Backups to Counter Possible Technological Failures

In the current golden age of technology, sophisticated technology can be used to back up data without incurring exorbitant costs. Such is the case for satellite technology which can back up all data in case there is any disruption to the systems. Another plausible option is to build database redundancy to allow for automatic fail-over mechanisms.



There are various possible points of failure:

- Results Transmission:
  1. Mobile Network Failure (GSM)
  2. Mobile handset failure (power, software, etc)
  3. Server/Dbase failure
- Use of Satellite Technology (VSAT) can be used to overcome failure.
- Build database redundancy to allow for automatic fail-over mechanisms

### **3.3.10** What Promise does the Future Hold for Kenyan Elections in Regards to Technology?

Despite the sophisticated BVR, eVID and RTS, actual voting remains manual. The next step would involve mobile voting or electronic voting at the polling station. A plausible area to venture includes the use of Blockchain Systems (election data deployed on a secured, distributed and shared platform). Each political party would have access to all the data in real-time.

- Despite using BVR, eVID and RTS, actual voting remains manual.
- There is Opportunity for mobile voting or electronic voting at polling stations.
- Opportunity for Blockchain Systems (verifiable election data deployed on a secured, distributed and shared platform).
- Each political party and other stakeholders would run a Node and have access to the election data.

### **3.3.11** What is Block chain?

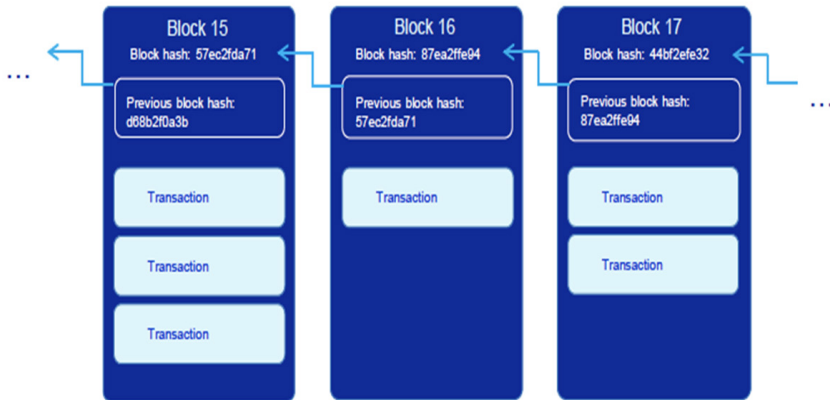
The main thing distinguishing a blockchain from a normal database is that there are specific rules about how to put data into the database (ledger). That is, it cannot conflict with some other data that's already in the ledger (consistent), it's append-only (immutable), and the data



itself is locked to an owner (ownable), it's replicable and available, and finally, each node agrees on what the state of the things in the database are - without a central party (decentralized & disintermediation).

As electoral processes cause a lot of suspicion particularly on the African continent, IEBC is considering how the Technology could increase trust in the election outcomes. This could arguably release IEBC from the pressure of being the custodian of the 'server' since decisions on what goes into the server is machine negotiated.

**Figure 7:** *Blocks of Data Chained Together*



**Source:** IEBC

It has been observed in previous elections in Kenya that the manual processes are highly prone to manipulation that lead to electoral malpractices. An increase in the use of automation and an enactment of the Elections Laws (Amendment Act 2016) can be adopted as strategies aimed at reducing failure. This will involve various processes including Election Technology Committee and staff training, early deployment, verification and testing of technologies.





While current amendments in 2017 clawed back these gains and technically made the electronic aspects of the elections optional if not null and void, it is of necessity that parliament acts to rectify this situation and even make provision for Blockchain possibilities. Otherwise the 2022 election may not be any different from the chaotic 2017 election.

### **3.4** How Social Media Influences Elections in Kenya

Besides the technology currently being used in the electoral process, today, social media also plays a great role. Liberalized access to the internet has had a major implication on political landscapes especially in determining voter decisions and electoral outcomes. Social media is a convenient platform for politicians to sell their policies and conduct extensive campaigns. It is also effective in spreading propaganda and for some political parties, requesting donations for their political endeavours.

Considering how the internet is commonly used in the regional political landscape, Kenya is the verbal capital of East Africa in terms of airing views on social media to influence political change. According to reports from Google and Central Intelligence Agency, over 12 million Kenyans are connected to the internet. For such users, social media is the most accessible source of news especially during the electioneering period. Social media platforms are however not as regulated as other media platforms so it is hard to decipher between fake news and conspiracies. The platform, in terms of demographics and targeting, has given political factions a strategic advantage through targeted ads. Common social media platforms such as Facebook, Twitter and Instagram, among others will focus a candidate's campaign strategy to a given demographic comprised of either youth groups, women, middle aged men, retired population and so on. A well packaged



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political message is liable to targeted advertising using analytics just like any other commercial advertisement. This is the reason most voters will get personalized political messages in their social media feed that seem to address them directly.

By monitoring hundreds of millions of public online updates, the biggest concern for Kenya's internet in the electioneering period is deciphering fake news. There is a criteria for posting well researched and verified news in online platforms. Authoritative platforms will have verifiable background information for whatever they post, for instance, name of the author their qualifications, date of publishing, verifiable sources, a complete website with an "About Us" section and an original URL that does not mimic another site.

Kenya's mainstream media has continually lost credibility among citizens over the years as it is seen to be partisan to some political parties, it is highly dependent on government advertising and has often bent to state intimidation. This has led to the massive shift to social media sites where like-minded individuals have organized into groups to influence each other's political logic. Politicians and their campaign strategists have capitalized on this trend and try to endear themselves to social media users or alternatively use such platforms to taint the image of their competitors with pejorative statements. Social media in Kenya has created a new dilemma as it is easily used to generate conflict. In the infamous 2007 elections, incendiary and hate messages circulated fast via social media which led to a clash of different political camps all over the country. When planning for future elections, there has been a pressing need to regulate the overall use of social media when organizing its users for a political



course. Rumor mongering and use of hate speech is now under the keen eye of Kenyan security agencies who have made a couple of arrests on reckless users.

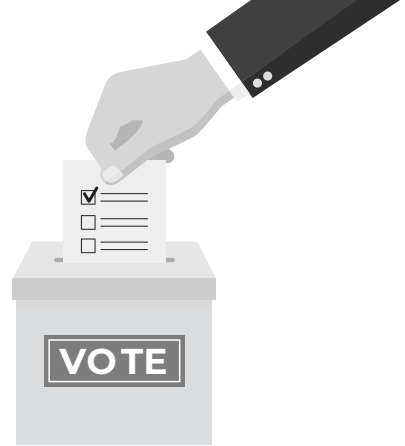
## Conclusion

The future of elections in Kenya

The technical language for Kenyan election technology is definitely jargon to a common voter but such voters rely on the sophistication of such systems to produce outcomes that are rational and reflect the actual sentiments on the ground. The solution, therefore, is not reverting to manual systems as they are more prone to manipulation but rather seeking automation systems that have all contingencies in place. The Elections Laws (Amendment Act 2016) as previously enacted have outlined mechanisms aimed at reducing failure and should, therefore, be adopted.

The nature of electoral legislation made should be responsive and enabling. Such legislation should respond to the purpose for which electoral technology is sought. Greater Voter Education on the importance and functionality of Electoral Technology on voters is essential, as is better security measures for electoral technology before and after elections. Investing in technology that is adaptable to future trends and modifications, preferable blockchain systems should also be considered. Advancing to an online system of voting and openly conducting rigorous pre-election testing and post-election auditing of the vote count may also be an option.





## 4.0 HOW WOULD KENYA'S POLITICAL SYSTEM LOOK LIKE IN A PROPORTIONAL SYSTEM?

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This chapter was inspired by the presentations made by:

**Esther Njoki** - Post Graduate Student, University of Nairobi.

**Dr. Nicola de Jager** - Department of Political Science: Stellenbosch University, South Africa.

### 4.1 A Proportional Representation System

Proportional representation (PR) is a generic term for all the systems of election which seek to relate seats to votes cast by the electorate in accordance with party or candidate preference. The form can be multi-member seats or party lists.

The basic principle underpinning all Proportional Representation electoral system is that a party should receive parliamentary seats in proportion to its share of the total vote.

There are two main types of proportional representation (PR). These include the List Proportional Representation (LPR) and Single Transferrable Vote (STV), (International IDEA, 2005).



**Figure 8:** Illustrative example of the representative body with 10 seats with 100,000 voters in one constituency

PARTY	VOTES		SEATS IN REPRESENTATIVE BODY	
	NUMBER CAST	PERCENTAGE	NUMBER RETURNED	PERCENTAGE
A	70,000	70%	7	70%
B	30,000	30%	3	30%
<b>TOTAL</b>	<b>100,000</b>	<b>100%</b>	<b>10</b>	<b>100%</b>

**Source:** Author's illustration

### 4.1.1 List Proportional Representation Electoral System

The system requires that voters vote for a party rather than a candidate and the parties receive parliamentary seats in proportion to their overall share of the national vote.

Each party desiring to participate in elections draws up its list of candidates up to the number of seats to be filled. The names on the list are arranged in order of preference. This means that if the party wins only five seats, the first five party candidates in the list become the party representatives in parliament. The party machinery draws up the list from among its members. Each party must then design a criterion for choosing candidates and the order in which they will appear in the party list. The emphasis here is on political parties. In most counties using this system, the voters have no say identifying the party candidates to be submitted nor the order in which the candidates appear in the party list. This is done entirely by the relevant party organ.

The voter may not need to know the names of the candidates for whom he/she (the voter) is voting, because the system is completely based on the party and its list of candidates. Therefore, the voter can



only support a party, and in the original form of this system the voter cannot endorse any individual candidates.

Upon entering the voting booth, the voter is presented with a series of parties, for one of which the voter can cast the vote. The nominees of the party may be listed under the name of the party. Once all the ballots are cast, they are totaled, and each party receives the number of quotas in the representative body corresponding to the number of quotas awarded it by the popular vote.

Given that more names are on the party lists than each party will win, the seats won are counted off starting with the first name on the party list and proceeding down the list until all of that party's seats are assigned. Clearly, the further down the list an individual candidate's name lies, the less opportunity the candidate has getting elected, and the higher up on the list the better chance the candidate has and perhaps the more important the candidate is to the party. In any case, the party decides the position to favour a particular individual. Additionally, in the system of proportionality, the voter cannot express any direct feeling toward any candidate. Hence, the voter may sense some form of isolation from the candidates and the election system. This system reflects proportionality in that it translates votes cast into seats won and hence it prevents some of the undermining and unfair results that arise from the plurality/majority system. The system also allows smaller parties to compete. In addition, fewer votes are 'wasted' as more people's preferences are taken into consideration.

#### **4.1.2** Single Transferable Vote (STV) System

The Single Transferable Vote is an electoral system that is designed to achieve proportional representation by minimizing wasted votes and creating a representative assembly that mirrors the voters' choice of



candidate in a multi-member constituency election.

To ensure proportional representation of each voter must have one single vote in an election multiple winners and have a list of candidates in order of preference. This system enables votes to be cast for individual candidates rather than parties or party lists reducing votes being wasted on losers and surplus votes being wasted on sure winners by transferring them to other preferred candidates. STV elections grow more proportional in direct relation to the number of seats to be elected. The more seats to be won, the more the distribution of the seats in an STV election will be proportional.

During the voting process, voter use the preferential ballot where voters rank the candidates according to their preference guided by individual capabilities .Voters' choice is based on ranking candidates rather than on selecting a party, so voters can choose between candidates from the same party or vote for candidates from different parties giving the voters absolute power over who fills the representative seats. This produces proportional results and also offers popular independent candidates a chance to be elected. Voters can rank as many candidates as they according to their preference across party lines. In practice, the ballot would usually be organized in columns so that voters are informed of each candidate's party affiliations or whether they are standing as independents.





**Figure 9:** Illustration of Single Transferable Vote System

<b>Example Dagorreti North Constituency</b> 4 candidates to be elected Rank as few or many candidates as you wish 1 for your first choice, 2 for your second choice and so on.				
PARTY A	PARTY B	PARTY C	PARTY D	
<input type="radio"/> Candidate A Party A	<input type="radio"/> Candidate A Party B	<input type="radio"/> Candidate A Party C	<input type="radio"/> Candidate A Party D	<input type="radio"/> Independent Candidate
<input type="radio"/> Candidate B Party A	<input type="radio"/> Candidate B Party B	<input type="radio"/> Candidate B Party C	<input type="radio"/> Candidate B Party D	
<input type="radio"/> Candidate C Party A		<input type="radio"/> Candidate C Party C		

**Source:** Author’s illustration

In the 1860s Henry Richmond Droop developed a quota (the so-called Droop quota) to determine the number of votes a candidate needed to capture to win election under STV. Candidates don’t need a majority of votes to be elected but a quota of the votes is required for The quota is calculated by dividing the total number of valid votes cast by the number of seats to be filled plus one, and one is then added to the quotient, which is expressed in the following formula:  $Quota = \left( \frac{Total\ Votes}{Total\ Seats + 1} \right)$  (Droop, H.R, 1881).

The candidate that is declared elected is the one who achieves the quota once the preference votes are tallied. If the elected candidate has more votes in excess of the quota, the excess votes are transferred to the voters’ second preference candidate Any surplus votes among subsequently elected candidates is similarly transferred, and so on, if necessary.



Where the new candidate does not achieve the quota or seats are still vacant, the candidate with the fewest votes is eliminated, and all his ballots are transferred to the voters' second preferred candidate. The process is repeated until all seats are filled and a winner is found. This transfer of votes provides proportionality by minimizing wasted votes thus minimizing the number of marginalized or unrepresented voters.

### Advantages of the Single Transferable Vote system

- This system allows the voters to vote between parties and between candidates within parties resulting to the enhancement of the degree of proportionality. This system guarantees that all the parties that participated in the elections are embodied in Parliament in the same proportion in accordance to the votes casted by the people as it does make use of the party lists. Independent candidates get impartial platform to be elected even as party affiliated candidates and not referred to as spoilers of the election results.
- Equitable representation in parliament is enhanced using the STV system in multi-member constituencies as parties present a balanced team of candidates in order to capitalize on the most number of preferences that would go to their candidates. This also promotes the progression of women and ethnic-minority candidates, who are often snubbed in favor of candidates in most influential parties.



- The STV system minimizes the waste of votes by eliminating the least preferred candidate and transferring the votes next preferred candidate. A voter can vote for a stronger or a weaker candidate without wasting the vote in that if their first preferred candidate does not win, then their vote is transferred to their second preferred candidate and if they don't win their vote is transferred to the third preferred candidate and so on.
- In multi-member constituencies there are no special designated seats for candidate. Parties are work hard to ensure that they present a candidate with good leadership values who the most preferred and influential among the people at the grass-root level rather than just a single elected representative, who may not be at all concerned to the people's needs. This ensures that there is a refined link between the constituency and its representative where the electorate views are taken into consideration.

### Disadvantages of the Single Transferable Vote system

- The process of counting the results takes longer under STV occasioned by the recalculations of transferable votes at the tallying centres meaning the results cannot usually be declared on the same day as the vote takes place.
- The system is perceived to be complex in the remote areas due to the degree of literacy levels resulting to people filling in the ballot papers incorrectly. The ballot papers can be confusing in large multi-member constituencies where the ballot papers tend to be relatively large.
- Electoral malpractices such as undue influence and bribery are prone to this system due to the immense competition of candidates in the same party and opposition parties to be



the most preferred candidate thus promoting 'clientelistic' politics.

### 4.1.3 Mixed Electoral System

This is an electoral system that attempts to combine the positive attributes of both plurality/majority (or other) and PR electoral system. The plurality/majoritarian component is usually first-past-the-post voting (FPTP) which entails whoever wins the most votes, wins the election. A distinct trait of mixed systems is the fact that every voter can influence both the plurality/majoritarian and PR aspects of an election.

In Kenya, this system slightly existed under the old constitution after the 1997 Inter-Parties Parliamentary Group (IPPG) reforms, and to some degree, it is provided for in the new constitution. Under Articles 98 (b) of the 2010 Constitution, a semblance of a PR system shall be applied in the election of 16 women county representatives. In addition, under Article 97 (c) of the same, 12 members will be nominated to represent special interest groups. Mixed electoral system can take three different forms. First, the Mixed Member Proportional system (MMP), refers to a system where two types of vote-counting are mixed: plurality/majoritarian system and proportional system to determine representation. Voters get two votes: one to decide the representative for their single-seat constituency, the other for a political party. Seats in the legislature are filled firstly by the winning constituency nominees, and secondly, by party nominees based on the percentage of nationwide or region-wide votes that each party received. The plurality/majoritarian system is used to determine the allocation of legislative seats, while the proportional representation systems is used to offset



the inequalities that may arise from the use of the plurality/majority system. The notion is to maximize on the advantages of each system while reducing the pitfalls of each.

Secondly, mixed electoral system can take the form of a Parallel system. This refers to a system of independent voting and vote counting, where the allocation of legislative seats allocations is not dependent on each other. Under this system, a voter casts separate ballots: one vote indicating his or her party list choice under the PR system and another indicating his or her preferred constituency candidate under a plurality or majoritarian formula. Thirdly, mixed electoral system can take the form of voting and vote counting where the two systems are integrated. Theoretically, one round of ballots is cast for candidates on a plurality/majority basis and then a percentage of the legislative seats are allocated on the basis of a PR formula that reflects the intensity of various political parties in an electoral contest.

The advantage is that while MMP retains the proportionality benefits of Proportional Representation (PR) systems, it also ensures that voters have geographical representation. They also have the luxury of two votes, one for the party and one for their local MP.

#### **4.2** How would the system change?

Kenya's operates under the majoritarian electoral system where a candidate with the majority votes win the seat. This system is characterized by winner takes it politics, with the regime only serving the interests of the winning party neglecting the interests of other parties thus promoting ethnic polarization rather than equitable representation. It also encourages electoral malpractices



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by candidates as the candidates tend to take all efforts within their power to win in the elections.

The majoritarian system in Kenya does not include the smaller parties and independent candidates in the system governance as is in the case of proportional system. Proportional system in Kenya will ensure that all parties are represented in the government. This system guarantees that all the parties and their respective interests and ideologies are represented in government.

In a proportional system parties and independent candidates are at freedom to campaign and share their political ideologies everywhere without due regard to their party's popularity as opposed to our current system where system parties and independent candidates hardly bother to campaign in their opponent's "strongholds".

Take one example in the just concluded by-elections in Kibera Constituency, which is one of the ODM party's strongholds, there would be no violence and divisive politics as witnessed if the electoral system was that of proportional in that citizens would vote for several candidates across the party lines. Proportional system does encourage incitement during the campaigns in that stronger parties need not to incite people to shun from voting for weaker candidates. The stronger candidates need not to worry about the votes tapped by the weaker candidates as long as the candidates that vote for the weaker candidate as their first preferred candidate vote for the stronger candidate as their second or third choice.



### 4.3 Effects on relationship between parties and their MPs between voters and MPs on work in parliament, political work in constituencies.

The proportional system in Kenya will allow and encourage political participation across the country. Sometimes people do not bother to vote having the assertion that their vote will not count or make any difference as their candidate is a weaker candidate and has slim chances of winning. Our current system compels voters not to vote for their preferred candidate instead vote for the candidate that will most likely win the election. Proportional system disregards this need for this strategic voting as the electorate can vote for their preferred candidates with diverse ideologies without feeling that their vote is wasted as every vote in this system counts. For example an ODM supporter in Kibera can vote for a Jubilee or Amani Coalition candidate without feeling that their vote is not wasted or does not have any impact.

Parties in a proportional system strive to promote inclusivity as every party wants to broaden its appeal to voters and ensure that their candidates are the preferred candidates. This encourages them to include women, youth, persons with disabilities and people from minority groups in their party list. Adoption of this system in Kenya will go a long way in ensuring that there's a high percentage of women in the representative seats thus taking a milestone in promoting the two third gender rule. This can be enhanced enacting a law requiring parties to include women, persons with disabilities and person from marginalized group in their party lists.

MPs represent local areas and are directly held responsible to those areas for their continued careers. For example if MPs misbehave, their constituents have the power to dethrone them, and the fear that this



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might happen keep MPs on the straight and narrow. It is reasoned that there is a unique link between an MP and their constituency because the MP is elected under First Past the Post system. However, not every Kenyan knows who their MPs are and even if they do it is not always certain that people agree with their MPs that's why some MPs only manage a term when people disagree with them on major issues. After the election MPs represent their whole constituency, not just the part that voted for them, but this doesn't extend to how they vote in parliament. A democratic voting system will strengthen the link between voters and their representatives. Every vote counts, voters will vote for their first choice and MPs have to fight for every vote. The chance of a voter having a candidate for whom they have voted for get elected is higher, as fewer votes are wasted. In a sense, voting in districts restricts the voters to a specific geography. Proportional voting follows the exact outcome of all the votes.

Article 90 of The Kenyan constitution 2010 states that;

Elections for the seats in Parliament provided for under Articles 97(1) (c) and 98 (1) (b), (c) and (d), and for the members of county assemblies under 177 (1) (b) and (c), shall be on the basis of proportional representation by use of party lists.

(2) The Independent Electoral and Boundaries Commission shall be responsible for the conduct and supervision of elections for seats provided for under clause (1) and shall ensure that--

(a) each political party participating in a general election nominates and submits a list of all the persons who would stand elected if the party were to be entitled to all the seats provided for under clause (1), within the time prescribed by national legislation;

(b) except in the case of the seats provided for under Article 98 (1) (b), each party list comprises the appropriate number of qualified candidates and alternates between male and female candidates in





the priority in which they are listed; and

(c) except in the case of county assembly seats, each party list reflects the regional and ethnic diversity of the people of Kenya.

(3) The seats referred to in clause (1) shall be allocated to political parties in proportion to the total number of seats won by candidates of the political party at the general election (GoK,2010)

Hence before any election, each party should publish a list of its nominees including women ,youth and persons with disabilities. A party is entitled to some seats for specific minorities. It must take those members from their party list in the order in which they were published. Hence if they get a seat for one woman the must take the person who headed the list of women. A person on the list can also stand for election at the constituency level. If voted to a constituency, they would of course be passed over on the list.

Proportional representation has more advantages over plurality-majority voting. It ensures accurate representation of parties in legislatures. It gives voters more choices of parties at the polls, increases voter turnout, and wastes far fewer votes. This form of PR also reduces the creation of manufactured majorities and the opportunity for gerrymandering. (To ensure approximately equal representation, plurality systems are dependent on the drawing of boundaries of their single-member districts, a process vulnerable to political interference).

Proportional representation steers election of smaller parties which in most cases result in coalition governments. This is an advantage, forcing compromise between parties to form a coalition at the centre of the political spectrum, hence leading to continuity and stability. Nonetheless, some studies have found that on average, compared

to countries using plurality systems, governments elected with PR accord more closely with the median voter and the citizens are more content with democracy.



## 5.0 CHALLENGES OF MEMBERS OF PARLIAMENT (MPs) IN THEIR CONSTITUENCIES

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This chapter was guided by the presentations made by:

**Hon. Christopher Omulele** – Member of National Assembly for Luanda.

### 5.1 Introduction

Parliaments are the vital institutions of representative democracies around the world. No matter what their country-specific rules are, their responsibility remains the same: to represent the people and ensure that public policy is informed by the citizens on whose lives they impact. Members of parliament, the Speaker and leadership, political parties and groups, secretaries general, clerks and administration all play a part in shaping its work. They have the responsibility to ensure that elections are free and fair, that parliaments are effective in shaping policies and laws which respond to the needs of citizens and support sustainable and equitable development.

They adopt laws and hold the government to account. Therefore, parliament is the central institution of democracy and constitutes a manifestation of the sovereignty of each nation. Parliaments are complex and unique political institutions. No two parliaments are the same. They differ in form, role and functioning. This is because



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they are shaped by the history and culture of individual countries. However, they all share the same aspiration: to give the society a voice in the management of public affairs.

Members of parliament have a challenge to ensure that citizens have access to information about parliamentary proceedings, legislation, and policy, and are able to engage in continual dialogue with them. This report is the result of presentation by members of parliament and highlights the diversity of parliamentary systems, reflecting countries' different historical and political contexts. The report attempts to provide a review of all the ways in which members of parliaments connect with citizens worldwide and offers a broad assessment of current practices, innovative practices, and some of the main drivers of change expected to affect members of parliaments in the foreseeable future. It offers politicians, experts, and citizens information on what has been effective in different parts of the world, without promoting a specific parliamentary system. Whereas the political context of each country is unique, members of parliaments face common challenges, including how best to consult citizens and keep them informed about parliamentary deliberations.

This chapter provides a historical background of the Kenya's parliament, describes the current parliament, its roles and functions, provides an example of the life of a Kenyan member of parliament, explores the challenges of members of parliament and suggests solutions as a guide on how to perform these functions well, and inspire reform in law-making and oversight through enhanced exchanges with citizens. Representative and effective members of parliaments can help advance inclusive and sustainable human development, and so improve people's lives.



## 5.2 Historical Background of Kenya's Parliament

The authority to make laws in Kenya is mainly conferred in two institutions: Parliament and county assemblies. Parliament makes laws that apply nationally, while county assemblies make laws that apply in the respective county. Kenya has changed from a bicameral parliament with regional assemblies, at independence, to unicameral and back to bicameral with county assemblies as the situation currently obtains.

The following is a short history of the legislature, its establishment and mandate since independence.

### 5.2.1 1963-1967

At independence, Kenya had a two-chamber Parliament and Regional Assemblies.

#### (a) Parliament

Parliament comprised the National Assembly and Her Majesty who was represented by the Governor-General. The National Assembly was a two-chamber parliament consisting of the Senate and the House of Representatives.

Parliament had the power to make laws applying all through the country. Bills, except a money Bill, originated in either House. Once a Bill was passed by the House in which it originated, it was forwarded to the other House for consideration and passage, and then presented to the Governor-General for assent (later the President).

Money Bills originated in the House of Representatives. The Senate only proposed amendments for the House of Representatives to consider. The House of Representatives had no obligation to incorporate amendments suggested by the Senate.



### **(b)** Regional Assemblies

At independence, Kenya was divided into seven regions, plus the Nairobi Area. The seven regions were Coast, Eastern, Central, Rift Valley, Nyanza, Western and North Eastern. Each region, except the Nairobi Area, had a Regional Assembly with power to make laws. Laws for the Nairobi Area were made by the National Assembly.

A Regional Assembly had power to make laws with respect to any matter concerning the region. It also participated in making laws to implement international obligations entered into by Kenya. This was done by the giving of consent by all 'the Presidents' of the Regional Assemblies. Each region had a president, akin to a governor, who participated in the law making process by assenting to Bills passed.

### **5.2.2** 1967-2013

Between December 1964 and 1968, the Constitution was amended severally resulting in the abolition of regions and merging of the Senate and the House of Representatives. Kenya reverted to a unicameral where Parliament which consisted of the President and the National Assembly was the principal law maker. The National Assembly considered and passed Bills, while the President assented to the Bills passed.

The 2010 Constitution establishes two organs: Parliament and County Assemblies, with authority to make laws.

### **(a)** Parliament

Parliament is established under Article 93(1) of the Constitution as a bicameral. It comprises of the Senate and the National Assembly.



### **(i)** The Senate

The Senate is made up of 67 members and the Speaker who is an ex-officio member. The roles of the Senate as set out under Articles 94 and 96 of the Constitution are:

- Representing counties, and protecting the interests of counties and those of county governments;
- Legislating laws concerning county governments;
- Determines allocation of national revenue amongst counties and oversight utilization of revenue allocated to county governments; and
- Oversight of state officers and participate in the impeachment of the President and the Deputy President.

The Senate's legislative role is provided for under Articles 94, 96(2) and 109 of the Constitution. It considers and passes laws which concern counties. Under Article 110 (1) of the Constitution a Bill is said to concern counties if:

- It contains provisions affecting the functions and powers of the county governments;
- It relates to the election of members of a county assembly or a county executive; and
- It is a Bill affecting the finances of county governments.

### **(ii)** The National Assembly

It is made up of 349 members and the Speaker who is an ex-officio member. The roles of the National Assembly as set out under Articles 94 and 95 of the Constitution include representation, legislation, oversight over national revenue and its expenditure, appropriates funds for expenditure by the national government, allocation of revenue, oversight over state organs, approves declaration of war, and removal from office of state officers including the President and



the Deputy President.

The National Assembly's legislative role is provided for under Articles 95 and 109 of the Constitution. It makes laws applying nationally and can consider any Bill, including those concerning County Governments. Three critical issues to note regarding the legislative function of the Senate vis-à-vis that of the National Assembly:

- i. All Bills considered by the Senate must be considered by the National Assembly before they become law;
- ii. All Bills considered by the National Assembly and touching on County Governments must be considered by the Senate before they become law; and
- iii. Bills that do not concern County Governments are only considered by the National Assembly.

### **(b)** The County Assemblies

Chapter Twelve of the constitution establishes devolved governments by creating 47 county governments. A county government consists of a county assembly and the county executive. The roles of county assemblies as provided for under Article 185 of the Constitution and section 8 of the county governments Act, No. 17 of 2012 are representation, legislation, oversight over county Executive committee, approving county development planning, approving of budget and expenditure of the county government, and approving borrowing by the county government.

County assemblies make laws applying to the respective county as provided for under Article 185 of the Constitution and the Fourth Schedule to the Constitution.

The Parliament of Kenya consists of the National Assembly and the Senate.





Chapter eight of the Constitution of Kenya (the Constitution) establishes the Legislature. Article 93 of the Constitution states that “There is established a Parliament of Kenya,” (Parliament) “which shall consist of the National Assembly and the Senate.” The two Houses of Parliament shall perform their respective functions in accordance with the Constitution as stated in Article 93 (2) of the Constitution (Constitution of Kenya, 2010).

### **5.3** Requests for money

Hon. Christopher Omulele, the Kenyan Member of Parliament (MP) for Luanda elaborates on the realities of his life balancing between two different roles: national legislation and safeguarding their voter base. He breaks down the different cycles within an active term of 5 years; the first year is marked by a celebratory mood as the winners bask in their sense of accomplishment. The second and the third year are the discovery phase where members learn the processes to thrive in their position, rules of procedure and chasing development opportunities. In the fourth year, this is when opponents emerge to criticize their work in a bid to snatch away their vote in the upcoming elections. In the fifth year, an MP invests all his time and effort campaigning for re-election. This cycle, as the honourable member expresses, is responsible for the high turnover for members of parliament as it limits their capacity to execute the two roles successfully.

#### **5.3.1** The Role of a Member of Parliament at The National Level

The reality on ground and their work description on paper contradict in most aspects. While some elected members act as temporary speaker of the national assembly, others take the role of majority and minority leaders as well as chairperson of committees. The conflict of



roles is expressed when balancing between the national duties and individual political party interests. There is further conflict between these roles and meeting regional, community and constituency obligations where an MP consolidates their vote. Many MPs in Kenya therefore opt to be neutral when it serves them best and partisan whenever the need arises.

### **5.3.2** The Role of a Member of Parliament as a Party Member

An elected member has to balance between party politics and regional interests. Political parties in Kenya are largely formed within tribal lines hence it is hard to stay relevant in politics guided by good policies alone. Voters will vote for members in the political party their region identifies despite the qualifications of an individual to lead. Some politicians are also forced to disregard their personal morals and ethics for their party politics. The honourable member also reports on a disconnect between meeting personal obligations or commitments and upholding party politics. Most politicians, especially the newly elected, will have their funds stretched out before they meet personal obligations. The ground is always changing for a politician registered to a political party as new alignments arise and as political trends in the country take a whole new appeal. A politician has to be perceptive in their decision to sustain or grow their position in the political party especially if they are to win nominations.

### **5.3.3** The Role of a Member of Parliament at The Constituency Level

Voters demand a *quid pro quo* from their elected representative and hence their presence in the constituency has to be felt. The standard time an elected member should spend in their constituency is 2-3 days in a week. This helps counter all emerging threats from aspiring politicians who would use their absence to their advantage.



A member of parliament also has to create development channels within their region hence they have to be proactive in seeking out development opportunities. Aligning with specific interest groups within their constituency is a must to maintain a preferable public image. This means finding time for active social work and indulging different groups which according to the MP, digs deep into his pocket. Balancing between all these roles is usually problematic to most elected members and that is why most of them manage to hold their seat for only one term.

However, this is not only unique to Kenya. It has been reported that elsewhere in the world, such as the Caribbean among others, citizens also ask their MPs to pay their electricity bills, to help them find a job, to provide funding for a business venture, and a myriad of other services. The type of request put to MPs is influenced by people's level of education. For instance, people with low education might ask for a house; people with high education might ask for the contract to build the houses (IPU, 2012).

In addition, another mutual anticipation is that MPs will act as a development agent for the constituency, bringing infrastructure such as roads, healthcare centres, recreational facilities and other public goods. Such opportunities are complemented by a strong belief that contracts to implement this work should be assigned to local companies.

MPs have numerous responsibilities: to their families, constituents, party, to parliament and sometimes also as a Minister. Public anticipations take up MPs' time, energy and finances. However, MPs suppose that they have a great political interest in reacting positively to appeals. They expect to secure electoral gains by doing so, and



fear electoral penalty if they do not. Notwithstanding, an MP may not be able to deliver on the huge demands as expected by the public. Besides, it has been observed that those in the ruling party have significant access to resources than those in the opposition. The volume of requests is always greater than the capacity that a single MP can deliver (Power & Shoot, 2012).

### **5.4** Reasons for the vicious circle:

#### i) People's impractical assumptions

People see their MPs as persons who can take care of all their problems. It is the general perception of the people that whoever is in power is unquestionably rich and in such a setting, the MPs are expected to give fundamental contributions to persons in need. The people feel moral entitlements to the aid of their MPs and that they have a right to be listened to and assisted when in need. People ask their MPs for payment of bills or school fees, to pay for funerals and weddings, conflict resolution among people, monetary assistance for starting businesses, and securing release of individuals from police custody, to find them jobs, among others (Kitschett & Wilkinson, 2007). These unrealistic expectations are as a result of lack of civic education on the roles of MPs and the use of exaggerated promises by candidates during the campaign period. Meanwhile, members of parliament feel obliged to attend these functions in their constituency to safeguard their votes (Piattoni, 2001). In most cases their opponents use such examples of their lack of participation in the constituency issues to woo the votes in the next term.



ii) MPs' limited access to resources for constituency development

With the increased need and pressure to deliver grassroots development projects, especially those that aim at combating poverty at the constituency level, the MPs tend to have limited resources at their disposal to meet and deliver all the needs of the constituents. This is as a result of the national government overlooking the needs of a constituency especially those in marginalised areas during the allocation of funds in national budgets. In response to this, Constituency Development Fund (CDF) has been the driving tool of infrastructural development, wealth creation and poverty eradication at the constituency level. Kenya has a specific framework and guidelines on the specific projects to be utilised by the CDF.

In many ways CDFs are an obvious response to ironing out regional imbalances through the implementation of grassroots development projects. However, there have been concerns on how these funds are utilised, the financial accountability and the effectiveness of the funds. In most cases the people are not informed of the benefiting programmes and the corresponding funds that are disbursed for the programmes. Millions of monies out of the allocated amount is either accounted for or wasted on poorly done projects (Kinyanjui, Godrick & Muchogu, 2017). The MPs are held accountable on the utilisation of these funds as they are expected by the people to oversee the realisation of the local projects.



### iii) Lack of Socio-Economic developments at the Constituencies.

Some constituencies are characterized by abject poverty as they do not have adequate infrastructure, schools, healthcare as a result of insufficient development funds issued to the constituencies by the national government. The people exclusively hold their MPs accountable for delivery of development projects in the constituencies (Lindberg, 2010). For example, MPs will present these questions of stagnant projects in court with the hope that the issues in their constituencies will be dealt with immediately. For example, in a National Assembly debate an MP queried:

#### ORDINARY QUESTIONS

Hon. Member for Kaiti

Question No.283/2019

#### COMPLETION OF STALLED ROAD PROJECTS

Hon. Joshua Kavinda (Kaiti, WDM-K): Thank you, Hon. Speaker for giving me this opportunity.

I beg to ask the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works.

- i. Whether he is aware that the contractor awarded the works for the construction of KatuaaKee-Nunguni Road has not completed the work since 2015 despite expiry of the 24 months' contract;
- ii. Whether he could explain why the same company was awarded another contract for the construction of the Tawa-Ngoluni-Itangini Road in the same county and constituency, before completing the aforementioned road that has since stalled?
- iii. What measures the Ministry is putting in place to ensure completion of Katuaa-Kee Nunguni Road, and what are the timelines for its completion?

Hon. Speaker: That Question will be responded to before the Departmental Committee on Transport, Public Works and Housing. The next Question is by the Member for Vihiga, Ernest Ogesi Kivai. (National Assembly, Hansard, 20th June 2019)



MPs act as principal agents of constituency development programmes. Grassroot development projects and services are viewed to be fundamental to the concept of parliamentary representation by the MPs and the Constituents. The challenge for the MPs is to respond strategically to public expectations in a way that reinforces their role in finding collective solutions to citizens' concerns (Greg, 2012).

The issue of corruption is also an impediment to socio-economic developments as it fosters public sector incompetence, poverty and undermines public confidence in the conduct of governance. In Kenya, corruption has dominated many sectors of both public and private service at both national and constituency levels.

At the constituency level there are various funds put in place to aid the development of constituencies to include among others, the Constituency Development Fund (CDF), the Poverty Eradication Loan Fund (PELF), the Rural Electrification Programme Levy Fund (REPLF), the Road Maintenance Levy Fund (RAMFL), the Community Development Trust Fund, the Free Primary Education Fund (FPE) and the Local Authority Transfer Fund (LATF). The management of these funds is characterised by various forms of corruption like fraud in the selection of committees; lack of transparency in the use of funds; bribery, tribalism and nepotism in the reward of tenders and lack of proper project monitoring and evaluation mechanisms. Money disbursed for development is wasted through projects that exist on paper but are phantom in reality.

In 2012, the National Taxpayers Association carried out a social audit covering 38 constituencies, which uncovered considerable rot in the management of the Constituency Development Fund (CDF). It found that Ksh363 million meant for the fund in various constituencies could



either have been misappropriated or could not be accounted for. The worst performing constituency was Marakwet East, which used only half of the Ksh31 million allocated to it, followed by Malava, Kibwezi, Naivasha and Kitui Central.

In most cases MPs use constituency funds as a strategy for re-election by coming up with projects that are not supported by state-backed programmes resulting to wastage of funds. For example, construction of health centres which end up non-operational due to lack of medicine and equipment. Lack of public participation in the management of projects fosters corruption inhibiting transparency and accountability on the part of MPs in the implementation of development projects. Kenya is ranked at position 144 out of 180 countries and territories listed in the Corruption Perceptions Index. The country obtained a score of 27 out of 100, a decline from 28 points scored in 2017 (with zero perceived to be highly corrupt, and 100 very clean). In the results released by Transparency International on 29th January 2019, Kenya's neighbours, Uganda and Tanzania ranked 149 /180 and 99/180 respectively.

### i) 'Winner takes all' syndrome

Africa's return to multi-party politics which brought about the proliferation of political parties was applauded by many observers because of the roles political parties play in the democratization process. Polarized party politics create distrust of the political system among the electorate thus threatening democratic governance (McCoy, Rahman & Somer, 2008) In the wake of multi- party system, political parties are seen as more of electoral machines than agents of democracy. After the elections the parties that lost are holed up as the parties that won won't consider them in the governing process irrespective of their brilliant and constructive ideologies resulting to monopolization of power.





The 'winner takes all' syndrome is characterised by relegation and total segregation of people considered to be members of the opposition from the governance process. Undeniably this trickles down to the delivery of services at the constituency level where the MPs tend to give priority to people who contributed to their success to help them maintain the offices. The MPs channel constituency projects to areas populous by their electorate supporters and political allies resulting to inequitable distribution of resources among the communities.

This marginalization of the opposition divide the people along ethnic and political lines, lead to a divisive governance that fails to address the challenges facing the constituency as a whole and renders economic and human resource development stale as the authority in power focuses in rewarding their party affiliates.

Political parties are also increasingly becoming barriers to effective representation rather than facilitators of it. The MPs are obligated to represent the people in parliament but are challenged in balancing between public responsiveness and party cohesion.

## 5.5 Any solutions?

### People's impractical assumptions

This can be cured through consultation techniques where the politicians are advised to sensitize the public on their specific roles to the constituents, parliament and the party. It is important for the leader to inform the people with clarity what they can and cannot do for them. This can be achieved by presenting clear and practical manifestos to the people during the campaign period. The people also ought to be educated about their own responsibilities in the community so as not to expect the leaders to take up their responsibilities.



Awareness need to be raised about the obtainable programmes that aid in solving the problems that they seek from the leaders. To reduce the reliance of people on the leaders for every problem, the MPs in consultation with the government ought to adopt legislative and policy measures to solve the problems by providing service centres where the constituents can visit and be assisted accordingly, develop and promote the local economy by creating skilled and unskilled jobs, improving access to institutions and the existing government programmes.

Lack of Socio-Economic developments at the Constituencies  
The people should be involved directly during identification of projects and selection of the necessary projects to be run in the constituency (Gikonyo, 2008). This gives an opportunity to the people to be involved in making critical development decisions about project prioritization, management and monitoring that meet the local's needs thus preventing the mismanagement to resources by the MPs  
The Parliament's independence from the executive need to be enhanced with regard to the execution of their administrative duties and delivery of services using the CDF and funds from donors.

The allocation of resources should be done in a fair and equitable manner across all sectors and communities irrespective of their political alignments to meet their capacities and needs.

MPs' limited access to resources for constituency development

Mechanisms for regular and timely public participation and accountability should be put in place when handling the constituent's resources. The resources allocated for constituency development



should be used in an equitable and transparent manner (Baskin, 2010). The people should be informed on the project in place and how the respective funds have been used to complete the particular projects. This will enhance the trust of the people to the leaders in handling the CDF.

Proper assessments should be done during identification of projects to identify the relevant needs of the community in order to avoid misappropriation of resources and partisan interests that influence the apportionment of resources.

### ‘Winner takes all’ syndrome

After the election period, leaders across the political divide, from the winning and opposition parties, should converge and facilitate dialogues that will enhance the adoption of a democratic consolidation to ensure that a democratic regime is maintained or enhanced for the benefit of people and ease of governance.

Democratic consolidation is a process where all political actors and stakeholders agree to strictly abide by the principles of democracy to prevent the erosion of democracy or to move toward a high-quality democracy (Schedler, 1997). This is achievable through the progression of a democratic political philosophies where all the political actors, institutions and stakeholders view democracy as the only legitimate means to gain power and the compliance of the democratic principles by the society and institutions in place.

Scholars like Linz & Stepan (1996, p.7) define a consolidated democracy as “a political situation in which a strong majority of public opinion holds the belief that democratic procedures and institutions are the most appropriate way to govern the collective life ... (and wherein) governmental and non-governmental forces alike, throughout

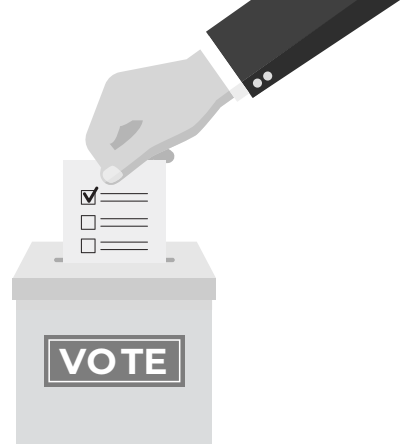


## Rethinking Democracy

the territory of the state ... are subjected to, and habituated to, the resolution of conflict within the specific laws, procedures, and institutions sanctioned by the democratic process.”

For a long time Kenya did not seem to have embraced democratic consolidation despite having a number of democratic transitions over the past decades. Upon the promulgation of the Constitution of Kenya in 2010, the country has made slight progress towards democratic consolidation by providing independence and checks in three arms of government and the adoption of a devolved system of government. However, this attempt of transition does not seem to have translated to the people at the grassroots (Kivuva, 2015).

Leaders across the political divide should focus more in consolidating power and rather than putting all efforts in democratising the state without proper and independent institutions. Policies should be put in place to oblige the politicians to shun away from patronage politics to ensure that there is equitable allocation of resources and delivery of services to all people irrespective of their political affiliations. Equitable allocation and dissemination of resources amongst communities without regard to their political affiliations nurture appropriate environment for the enhancement of democratic consolidation and stability, reduces levels inequality, class polarization and distributional conflicts thus promoting socio-economic developments.



## 6.0 WHAT CAN WE LEARN FROM THIS?

This chapter was inspired by the presentations made by:

**Professor Justin Willis** - Durham University

**Volkmar Klein** - Member of the German Bundestag

### 6.1 Connection Between politics and real life

Holding elections is the first step towards the establishment of an effective political system. Political stability is not immediately brought about by elections without stable institutional relations and agreement on political values, as is suggested by other countries like Liberia. Building a political and administrative infrastructure requires a subtle balance between different concerns for the execution of conditions for democracy (Jeong, 2006).

Elections cannot be the only barometer for measuring the tempo of Democracy. When considering the overall cost of conducting elections, Kenya has one of the most exorbitant budgets in the world. The 2017 general elections had a hulking expenditure of up to US\$ 532 million which translates to US\$27 per registered voter. Comparing this to more developed countries that conducted their elections in the same year, a good example is the United Kingdom which had an expenditure of US\$4 per registered voter which begs the question, does Kenya need to do away with general elections?



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Elections are the true mark of democracy as they give the citizens the power to determine what kind of governance they intend to have in their country. As states progress towards modernization, elections are being hollowed out as autocracies find ways to control their results more so in Africa. This is not a problem that is exclusive to the South countries in the international system, there is an emerging crisis of confidence in the political systems of long-standing democracies. This is illustrated by the declining voter turnout across all major democracies. Elections are a two-way street- since elections sometimes produce bad results, we should adapt other methods for choosing the country's leaders.

Among all the other factors that make elections the most feasible method of determining leaders, the democratic system instils a sense of hope among citizens as it happens in fixed intervals. This means it is only a matter of time before one can oust a politician, they feel they do not be in a position of leadership. With the power of a vote, every citizen is entitled to their voting decision and should not be coerced otherwise.

This is depending on how well or how bad elections are conducted within a state. Elections can either build a state or undermine it. They can either teach citizenship or subvert it depending on the adherence of democratic principles. They have the potential to exercise legitimacy or at the same time illegitimatize the entire process. Elections can also challenge oppression or can be used as a lethal tool by rulers to impose authoritarian rule. Lastly, elections have the power to create accountable systems and institutions or proliferate avenues for corruption.



## 6.2 Voter Responsibilities

Individual rights come with important responsibilities especially to a citizen as they are given the power to determine the future course of their country. It is up to a voter to demonstrate loyalty and selflessness to the state first instead of misusing their loyalty to certain political figures. The state is always important than any given individual. The state must invest in cultivating responsible voters through national exercises but the reality in many African countries is that the political class would rather have an uninformed voting population. This makes the population malleable to divisive politics that align them along ethnic and religious lines. A good illustration of this is are slogans used all over the world during campaigns such as 'NDC have used Voltarians enough!' or 'Igbo will regret if they don't vote for Buhari' Assessing the African situation, it is accurate to state that elections have made governments in the continent less vulnerable to violent overthrows. Elections and other democratic processes have been an enduring process among African nations. Progress over the ages has been attained in small but certain milestones. This makes elections paramount in the governance of African states to avoid retrogressing to instability and anarchy.

"An election is like a child really. A child is a good person to have but it goes with many responsibilities. You have to immunize, keep caring for them, you have to feed him so that they don't get malnourished and what have you, so elections too need constant attention" - *Prof. Justin Willis*

## 6.3 Looking for the working tool

### Elections in Germany Today

Elections in Germany comprise elections to the Bundestag (Germany's federal parliament), the Landtags (a representative assembly-



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parliament) of the various states, and local elections. After every four years in Germany, candidates are elected into the Bundestag which is the legislative body in the country. The parliament is comprised of the Bundestag which is voted in directly by the German citizens and the Bundesrat (legislative body) which represents Lander or the different states. Every German citizen has two votes; one to elect their representative and the other for their political party of choice.

German federal elections are for all members of the Bundestag, which in turn determines who is the Chancellor of Germany. The Bundestag can be dissolved by the president on the approval of the chancellor if the latter has lost a vote of confidence in the Bundestag if the recommendation is made and agreed upon before the Bundestag acts to elect a new Chancellor. This has happened three times: 1972 under Chancellor Willy Brandt, 1983 under Chancellor Helmut Kohl and 2005 under Chancellor Gerhard Schröder. The procedures for these conditions are governed by Articles 67 and 68 of the Basic Law of the Federal Republic of Germany.

The Law on the election procedure is enshrined in the Federal Election Act 1956

Members of the Bundestag (German: Mitglieder des Bundestages) are usually elected every four years by all adult German citizens in a mixed system of constituency voting and party list voting. Members serve four-year terms and there are no term limits. The Bundestag has 598 nominal members, elected for a four-year term. Half, 299 members, are elected in single-member constituencies by first-past-the-post voting, while a further 299 members are allocated from party lists to achieve a proportional distribution in the legislature, conducted according to a form of proportional representation called the Mixed member proportional representation system (MMP). Voters





vote once for a constituency representative, and a second time for a party, and the lists are used to make the party balances match the distribution of second votes.

The constitutional minimum number of seats is 598; with overhang and levelling seats there are currently 709 seats. Furthermore, the Bundestag has a minimum threshold of either 5% of the national party vote or three (directly elected) constituency representatives for a party to gain additional representation through the system of proportional representation. Thus, small minority parties cannot easily enter the Bundestag and prevent the formation of stable majority governments. Germany has a multi-party system with two strong political parties and some other third parties also represented in the Bundestag. Since 1990, five parties (counting the CDU and CSU as one) have been represented in the Bundestag.

### Party List Nomination on State Level

The order of party lists is determined by a secret election. Political parties with over 5% representation in the Bundestag have the can propose their preferred candidates but for parties that do not meet this mark, they have to register with the Federal Returning Officer for their candidature to be validated. There is a timeline for such registration which is 90 days prior to the election date.

### Election Financing

Federal parties are entitled to public funding, but this is usually supplemented by donations. At the constituency level, financing comes from contributions from party members and donations.



How to win the election?

Germany has a more advanced political culture whose elections do not rely on sophisticated technology to produce desirable outcomes. Ideas and policies play a central role in voter decision and the general public do not expect or demand handouts to determine their voting patterns. To develop a winning campaign strategy that will secure a political seat a candidate must have the skill to convince, good arguments, demonstrate competence, maintain close proximity to their constituents, show attributes like reliability and trust but most importantly have the ability to motivate. These aspects let a candidate stand out from the others and win the loyalty of voters.

Every candidate has to comprehend their political program; the core values or the identity of their political party. This gives an insight into what needs to be done in any given constituent and why it is important to get it done. From this comes an action plan for a politician for their term in government. A carefully selected campaign team helps target the right people for a candidate. This is mainly achieved through promotional tools for social networks. Mr Klein, gave tips on how to win elections by simply using the three rules, Convince-Maintain Proximity and Motivate as below;

**Figure 10:** *How to win the election*

### **How to win the election ?**

**Convince**

good arguments, competence

**Maintain Proximity**

reliability and trust

**Motivate**

loyal voters should show up

**Source:** Volkmar Klein-Member of the German Bundestag



He explained that to convince the voters, a good track record is not good enough gratitude is not a political issue, previous success might be a proof of capability to solve future problems. MPs need to be decisive, hence display confidence to carry their vision into effect. To maintain proximity he emphasised that, many people cannot really evaluate political positions, but they have a feeling, whether they can trust you. It is important therefore to maintain proximity with communities and citizens and be authentic and reliable in order to earn their trust. Finally, on motivate, he declared that loyal voters have to show up on election day. He advised that one should not motivate the wrong voters, instead should be passionate and motivate the right ones. He further gave a simple political programme that highlights key features that the voters need to know as shown below;

**Figure 11:** *Political Programme*

## Political Programme

- values / identity of the political party
- what needs to be done?
- why?
- an action plan

slogan of the CDU/CSU party for elections 2017:

*„For a Germany where we can live good and gladly*



**Source:** Volkmar Klein-Member of the German Bundestag



### Conclusion

Kenya has made progress in its efforts to institutionalise democracy and good governance. Elections have played an important role in this process. They have, at least, offered the people with the chance to freely elect their representatives. Thus, from the chapters we can see that since 1992 Kenyans have voted in great numbers with expectation that their votes would make a difference. This was not conceivable in the elections held under the single party regime. The factors that influence voters' behaviour and electoral outcomes are diverse and complex. Gender has also become part of this complexity and is bound to have a greater impact on future elections, especially with the incorporation of affirmative action in the new constitution. However, there are no quick solutions to political reforms. Mixed Member Proportional systems is merited or largely owed to the great success of the German MMP system. Electors have two votes, one for a candidate in a single member district and one for a party on a closed party list. Voters can, and increasingly do 'split their tickets', electing strategically for different parties on the two ballots, with the possible aim of influence impelling coalition formation. The electoral system has enjoyed strong support (Thomas, 2005). Electronic voting could still make it more difficult. People need to trust the system. In Germany for example, electoral complaints are dealt with entirely by the presiding officer.

He or she reveals any electoral violations to the voters, letting them determine the MP's fate. In all cases, the most significant deterrent should be that greater transparency means that the final verdict is the decision imposed by voters at the ballot box. No policy can reassure perfect elections. There is certainly a need for reform of the system, which the masses have been calling for and which government, for obvious reasons, is yet to embrace. It is expected that the drive



for reform will continue and that it will be embraced in its quest to demonstrate that the country truly deserves the tributes it receives.

Although free and fair elections are desirable, no one has come up with a foolproof definition of what they actually entail. Elklit and Svensson (1997), while admitting the difficulty, or impossibility, of establishing precise guidelines, opine nonetheless that some analytical distinctions are possible. For them, the fulfilment of the most common criteria (eg, greater political competition and participation) is a matter of degree. Elklit & Reynolds (2005) believe one of the foremost issues to grapple with in any attempt to measure or establish the freeness and fairness of an election is the location of the boundary when it comes to identifying relevant issues such as questions of access to the public media, delimitation of boundaries, party funding and candidate selection, among others.

The concept of an election alone presupposes the exercise of a voluntary and free choice without compulsion or other forms of influence denigrated by law. Fairness, on the other hand, seems to import the notion of equality of opportunity and the equalisation of the 'battleground', so to speak, in such a way that none of the contestants is unduly advantaged at the expense of others. In addition, it must eschew the possibility of loss of confidence in the electoral system. In other words, the concept of fairness is both subjective and objective. It is subjective in the sense that it depends in part on the degree of confidence of the individual in the system, determined on the basis of his or her personal observations and on the appraisal of the entire exercise.

The question is: are individuals who observe the system and participate in the process as voters satisfied that the result has not



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been manipulated and that it represents a true picture of the people's preferences? The concept is objective in that it depends on the appraisal of a variety of factors which are generally believed to be the basic minimum requirements for a free and fair election, some of which are required by law, others by practices that have evolved over many years. It does not depend on individual preferences as such. The question here is: does the electoral process satisfy the general minimum expected standards for a free and fair election? To this end, it has been somewhat difficult for writers on the subject to coin a definition of a free and fair election, instead they sketch what are believed to be the main elements of this concept.

Political conflict in Kenya has been elite dominated, as stake holders in the Kenyan state the competing elites are willing to contain conflict so as not to threaten stability. What does emerge, though, is that fairness is the sum total of several factors that need to be in place in the period before, during and after elections.

The Building Bridges Initiative prescribes proposed constitutional, legislative and policy recommendations. However, it may not solve all the problems. Perhaps it is an opportunity for the people to reflect on the prosperity of Kenya's future.



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