

## Report

### The Presidential Election Rerun in Kenya, 2017

*Luke M. Obala\**

**16 January 2018**





**Supporters of Kenya's opposition candidate Raila Odinga loot a shop for flammable materials in the early hours in the Kibera slum. [AlJazeera]**

## Introduction

African countries have seen the advent of independence since the 1950s, with numerous coups. Since the Egyptian revolution of 1952 until 1998, the continent had witnessed up to 85 violent or unconstitutional changes of government. It is against this background that African Union with the support of the heads of state developed a charter on democracy and elections in Africa that sought to anchor reliance on constitution-mandated processes, as the only means of changing governments in African countries. The charter has however, been criticized for its failure to address the main triggers for unconstitutional changes of governments in Africa.

The issues that critics had hoped the charter would have addressed include questions of fairness, accountability and transparency in elections. These issues remain sticky in African elections with numerous countries having electoral disputes. This has led to a harsh realization and conclusion by oppositions that elections no longer have meaning in many countries as incumbents routinely rig themselves in. Thus, elections in many African countries became more of ritualistic events often to confirm incumbents except in very rare cases. Many countries in Africa have thus had "elections" but which are mere coronations as the list of disputes reveal. In East Africa Kenya, Uganda, Burundi and Rwanda feature prominently.

Kenya's presidential rerun election was conducted in an environment full of tension and political drama. This followed the annulment of 8 August 2017 presidential elections due

to illegalities and anomalies in the election process with respect to election regulations, laws and the constitution. The court decision shocked both the opposition and the incumbent regime. This was followed by varied reactions by different groups across the political divide. After a short period, the parties were back to the campaigns, but tension remained high with fears and threat of political violence looming high.

Similarly, 8 August 2017 elections were undertaken amidst a cloud full of ethnic tensions and polarization as well as numerous court dramas prior to and after the elections. In the process, several election rules were changed aimed at leveling the playing field. The court battles mimic the struggle for a level political playing field in Kenya that began soon after independence but with limited success. Interestingly, Kenyan leaders and the British government had negotiated a Westminster multiparty system of governance. However, as Khadiagala (2015) highlights soon after independence President Jomo Kenyatta and the ruling party KANU embarked on dismantling the independence constitution and transformed Kenya into a de facto single party state.

Although Kenya has continued to hold elections every 5 years, the elections have remained largely more of ritualistic coronations of the incumbents. Attempts to change this situation have led to serious confrontations with police and untold deaths over the years. The 2017 presidential elections were not able to produce contrary results. As expected the opposition filed a petition challenging the declaration of the incumbent as the winner which the Supreme Court upheld citing irregularities and illegalities in the August 8 2017 elections. This was ordinarily thought would provide the country with an opportunity to undertake quick changes in the electoral process to ensure fair play. What followed were actions that in the opposite directions that created even more fear and confusion among the electorate.

This paper attempts to review the rerun Presidential elections in Kenya following the annulment of the 8 August elections. It further highlights the twists and turns in the campaigns and the confusion that marred the rerun Presidential elections.

### **The challenges of conducting two elections within three months**

The 8 August elections were undertaken after a long and tedious process full of uncertainty and with a cloud of violence hanging over the country. The preparation for the election saw members of the Independent Election and Boundaries Commission resign to pave way for a new team of commissioners less than a year to the August 8 date for the general elections. The commissioners were forced due to their perceived partiality to the ruling party (Jubilee). However, the purge left the secretariat intact. However, the annulment of the elections revealed that the secretariat too had a significant role to play in the election process including possible manipulation of results

or otherwise. Thus reforming the electoral system cannot be complete before touching on the secretariat.

Elections like any project require adequate resources including time to be successfully executed. Indeed, there is the need for preparation, implementation and review. As such to undertake elections successfully requires adequate financial, human capital, and other resources necessary for operations of the implementing agency in the Kenyan case Independent Elections and Boundaries Commission (IEBC). While the August 8th 2017 took relatively long to prepare despite change of guard at the Commissioners level, the secretariat remained intact and so was capability for execution of the project (elections).

As Darnolf and Cyllah (2014) highlight the three periods that constitute the electoral process. The periods (phases) that constitute the election process are important and require the necessary resources to guarantee a free, fair and credible election. The phases starting with pre-election period which entails among others planning, training, information gathering and dissemination, and registration of voters require adequate time for and inclusive and transparent process so that suspicions are eliminated at this stage. The election period follows immediately and entails nominations, campaigns, voting and releasing of results. This phase presupposes adequate planning, training and education of the voters. The last phase Darnolf and Cyllah (2014) contend should entail reform, strategy development and review of the electoral processes and systems.

The rerun elections undoubtedly never met these requirements. The Supreme Court ordered the electoral agency to undertake fresh elections within 60 days as per requirement of the Kenyan Constitution and other electoral laws (Republic of Kenya, 2010). With that given that, it was not anticipated that a fresh election could be called for there and there was no preparation. No one was prepared for it and the reactions of President Uhuru Kenyatta demonstrated it well. His comments on the Supreme Court judges highlighted his level of frustration and outrage. Still many expected the court decision to have triggered quick reforms and a review of the electoral process to ensure that a level playing field, elimination of possibilities of any form of electoral fraud and manipulation. This was never to be.

### **The Court Ruling, Drama and Confusions**

The immediate reactions to the Supreme Court ruling annulling of 8 August 2017 Presidential elections, results were diverse. The shock was however across the board of the political divide and countrywide. However, the reactions differed significantly across the country. In the National Super Alliance (NASA), strongholds there were jubilations and celebrations. The decision was hailed and there was hope that the NASA candidate would carry the day come the rerun elections. NASA was upbeat, they had been proved right by the Supreme Court and this embarrassed the various election observer missions

that had earlier declared the elections free and fair and urged the Opposition to go court against their wish if they were dissatisfied with the election results. NASA had prior to August elections consistently maintained that they would not go court over the matter but changed last minute due to local and international pressure.

Fearing local and global isolation, the opposition NASA went to court. However, as the opposition coalition team of lawyers begun prosecuting the case, the attitude towards the coalition begun to shift positively. Thus by the time the Supreme Court annulled the results the coalition was already back on track and able to engage various groups. Interestingly, Observer groups that had been quick in declaring the election free and fair begun to change their positions and ended up giving excuses for their verdicts.

At IEBC, blame games begun in earnest after an initial reaction that portrayed the team as mature. The Commission's first reaction was positive – indicating a willingness to abide by the court decision and a promise to make changes in the processes necessary for a credible election. However, more drama followed – there were leakages of memos from various electoral Commissioners including the Chairman. The Chairman's memo to the Chief Executive Officer demanded answers to a dozen issues he felt compromised the credibility of the elections. This was followed with the appointment of a project team directly responsible to the Chairman of the commission. This pointed to the contribution of the secretariat to electoral malaise.

The reactions and the memo leakages portrayed the Independent Elections and Boundaries Commission as irreparably partisan. The resignation by Commissioner Ms Akombe and her press statements revealed that the commission was a divided house with a weakened Chairman. Threats of resignation by the Chairman and his admission that they could not guarantee a free and fair rerun election simply added fuel to the fire. In the end, the election went on but without the opposition candidate. He pulled out of the race arguing that the election would not be transparent, free and fair as the Supreme Court had ordered.

The resignation Commissioner Akombe citing interference by the ruling party and lack of impartiality by most of the Commissioners gave the opposition the impetus to demand for the reforms at the electoral commission. An emboldened opposition National Super Alliance (NASA) thus in addition demanded for postponement of the rerun elections to allow for minimal electoral reforms. This was further fueled by the electoral body's Chairman's press conference admitting inability of the body to grantee a free and fair elections without further reforms.

However, both the ruling party (Jubilee) and the Independent Elections and Boundaries Commission were completely opposed and instead worked on an elections schedule. In

the process Jubilee with its new found near super majority in parliament, following the 8th August 2017 elections went ahead and made amendments to the Elections Act ostensibly to seal the loopholes that had led to annulling of the August 8th Presidential election results. The opponent on the other hand saw this as aimed at making it easy for the incumbent to sail through. The key change in the law was to make the Chairman of the commission even weak and give some powers including declaration of a presidential winner to his deputy. The review of the elections law did not sit well with the other players particularly the opposition. The opposition argued that it was like changing the rules of the game midstream. The President thus tacitly left the law unsigned well aware that it would still become law for in such circumstances the law gains its own life and become law after a certain period.

### **Presidential Rerun campaigns and boycott**

The campaigns kicked off immediately the results were nullified with the electoral body deciding on having only the two leading candidates on the ballot that is Hon Raila Odinga and President Uhuru Kenyatta for the rerun election that it scheduled for October 17th only to change the date later after consultations with the Government. This alone angered the position that felt that their competitor was controlling the body. In addition, the decision to have only the two leading candidates in the rerun was again challenged in court by one of the candidates in the 8 August elections. The court decision however came only a day after Hon. Raila Odinga had pulled out from the race citing unwillingness by the electoral body to undertake reform that would level the playing field.

In pulling the opposition candidate had hoped that the action would trigger a postponement of the elections by another 90 days to give the Independent Elections and Boundaries and other stakeholders adequate time to undertake the necessary reforms in the electoral processes. They argued that this would ensure that there is no manipulation of the elections. However, the court decision that came a day later ensured the elections went on as had been planned. There were no reform and the incumbent obtained over 90 per cent of the votes cast.

The call for boycott by the opposition seemed to have been successful given that turnout was uncharacteristically low. In the end, 38 percent of the registered voters participated in the elections, a figure that was also disputed. The opposition on the other hand insisted that only 22 per cent of the registered voters voted and concluded that the vote did not represent the will of the people. Consequently, they vowed not recognize the elected President and called him illegitimate. A situation that remains to date more than two after the rerun Presidential elections (See Daily Nation newspaper).

The journey to the rerun presidential election was rather bumpy with fear of violence during and after elections high. Indeed, days to the elections there were sporadic violence in NASA strongholds of western Kenya, coast, Nairobi and parts of former Eastern province. In the former Nyanza and Western provinces there confrontations with security forces especially the police resulting in several civilian deaths. The declaration of the contested rerun was also met with riots and further killings of civilians by police that are being blamed for being trigger happy and for use of unnecessary force on unarmed civilian (See Daily Nation Newspaper).

### **Independence of the electoral body**

The Independent Election and Boundaries Commission just as the name suggest is for all intent and practical purposes meant to be independent from any interference be it the executive, opposition or foreign powers. It is however, interesting that in the lead up to the rerun they appeared confused and unwittingly seemed to seek directions from the executive and a select group of diplomats. Thus, when the Chairman of the electoral commission indicated that the electoral commission was unable to conduct credible elections within the stipulated time given their level of disorganization – it is one of the diplomats that rebuked him argued that the body was up to the task.

Elections in Kenya like in many African countries seem to be more ritualistic than real. The outcomes appear to be negotiated in advance between the major players except the ordinary citizens. As such, they are fast losing meaning, this coupled with increasing desire of sitting Presidents to increase their terms is even more worrying. In East Africa for instance, democracy seems to have taken a back stand and leaders are quickly changing laws related to their exit and entry into the offices.

---

**\*Luke Obala** is a lecturer at the School of the Built Environment, University of Nairobi.

#### **References:**

- Daily Nation Newspapers (months August to November, 2017)
- Darnold and Cyllah (2012) Preventing Electoral Violence through enhancing Security,, Trust and Integrity, IFES
- East African Standard newspaper (months August to November, 2017)
- Khadiagala, G.M (2015) Gradual Pluralization Fails to Buffer Shocks; in Kuperman, A.J; Constitutions and Conflict Management in Africa, University of Pennsylvania Press, Philadelphia; USA.
- Saungwena, S. (2007) A critical Look at the Charter on Democracy, Elections and Governance in Africa