



THE
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Making Sense of Kenya's Contested 2017 Election

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I. Background

Kenya held its second General Election under the 2010 Constitution, and its sixth since the introduction of multiparty politics, on 8 August 2017.¹ Citizens cast their votes for six positions: The Presidency; Governor; Senator; Member of Parliament (MP); Women's Representative; and Member of County Assemblies (MCA).²

Prior to the August eight elections, opinion polls indicated that the presidential election would be closely contested -, the incumbent, Uhuru Kenyatta, was polling at 47%, while the opposition candidate, Raila Odinga, was at 43%, with 5% of the voters remaining undecided.³ The presidency was not the only tight race; Governors' and the MCA seats were equally closely contested.

The two major political coalitions that contested the 2017 elections were: The Jubilee Party, the incumbent coalition headed by Uhuru Kenyatta and William Ruto,⁴ who were both seeking a second term; and the opposition coalition, the National Super Alliance (NASA), led by Raila Odinga, with Kalonzo Musyoka as his running mate.⁵ Smaller political parties, such as the former ruling political party, the Kenya African National Union (KANU), the Third Way Alliance and the Labour Party also fielded presidential candidates⁶; however, their impact at the presidential level was insignificant.

The Independent Electoral and Boundaries Commission (IEBC) commissioners, who oversaw the 2013 general elections, left office owing to political pressure from the opposition⁷. The Commissioners were accused of being involved in various corruption scandals, such as "the Chicken gate scandal,"⁸ thus their impartiality and independence were seriously questioned.⁹ A new team was put in place to oversee the 2017 general elections, which was led by Wafula

¹"IEBC announces election dates," Daily nation, accessed on November 8, 2017.

<http://www.nation.co.ke/news/politics/IEBC-announces-2017-election-date/-/1064/2991496/-/ecxyajz/-/index.html>

²"Electoral seats under the New Constitution," Constitutions of Kenya, accessed on November 8, 2017.

<http://www.ustawi.info.ke/index.php/politics-elections/politics-elections-under-the-new-constitution/electoral-seats>

³"Uhuru Raila in tight race, latest opinion polls show," Nairobi News, accessed on November 8, 2017.

<http://nairobi.news.nation.co.ke/news/uhuru-raila-opinion-poll/>

⁴"Uhuru nominated as Jubilee presidential candidate, promises to cut high costs of living," The Star, accessed on November 11, 2017. <https://www.the-star.co.ke/news/2017/05/06/uhuru-nominated-as-jubilee-presidential-candidate-promises-to-cut-high-costs-of-living>

⁵"Raila Odinga it is! Nasa unveils flagbearer," The Standard, accessed on November 11, 2017.

<https://www.standardmedia.co.ke/article/2001237873/raila-odinga-it-is-nasa-unveils-flag-bearer>

⁶"IEBC clears 8 presidential candidates for August elections," CapitalFM, accessed on November 11, 2017.

<https://www.capitalfm.co.ke/news/2017/05/iebc-clears-8-presidential-candidates-august-elections/>

⁷"IEBC Chairman and Commissioners resign," Daily Nation, accessed on November 11, 2017.

<http://www.nation.co.ke/news/1056-3406560-5j3ynkz/index.html>

⁸Alleged bribery scandal where Smith and Ouzman, a British printing firm gave money to the IEBC officials in exchange of winning the tender to print the election materials.

⁹"Why IEBC Commissioners had to go," The Standard, accessed on November 11, 2017.

<http://www.nation.co.ke/news/1056-3406560-5j3ynkz/index.html>

Chebukhati, who served as the chairman.¹⁰ The team underwent rigorous vetting and scrutiny by Parliament, and were eventually appointed after unanimous approval by the House.¹¹

The new commissioners did little to boost public confidence in safeguarding the integrity of the electoral process. The IEBC remained mired in controversy regarding the procurement of election materials and its appeal against a lower court's ruling confirming the finality of presidential results (which was announced at the constituency level rather than at the national level by the IEBC's Chair). The IEBC was seen to be opposed to transparency due to past discrepancies in vote counts—in both 2007 and 2013—between constituency- and national-level results.

II. Pre-Election Crisis

The murder of Chris Msando, the IEBC commissioner in charge of Information Technology - whose body was found lying two kilometres from the main road in Kikuyu town, off Waiyaki Way,¹² slightly outside the capital Nairobi - also raised serious questions about the credibility of the elections.

In contrast to the presidential race, the outcome of the other elections was concluded within one or two days from the election date. The IEBC is permitted under the Kenyan Constitution to declare the presidential results within seven days from the election date,¹³ and as such, the IEBC took almost four days from the election date to declare the winner of the presidential race. It declared Uhuru Kenyatta as the winner of the presidential elections, having received 8,203,209¹⁴ of the votes cast, while Raila Odinga was announced as the runner-up with 6,762,224 votes. In parliament, the ruling coalition and its affiliated parties had gathered a total number of 194 seats out of the available 349 seats in the National Assembly.¹⁵ In the senate there are 67 Senators- 47 for each county, 16 women nominated for gender balance and four representatives of the youth and the disabled. Twenty-four of the seats are occupied by Jubilee while NASA holds 20 of the seats.¹⁶

¹⁰ "Issack Hassan hands over office to new IEBC Chairperson Wafula Chebukhati," The Standard, accessed on November 11, 2017. <https://www.standardmedia.co.ke/article/2000230672/issack-hassan-hands-over-office-to-new-iebc-chairperson-wafula-chebukati>

¹¹ "House approves 'experienced, qualified' IEBC Commissioners," The Star, accessed on November 11, 2017.

https://www.the-star.co.ke/news/2017/01/18/house-approves-experienced-qualified-iebc-commissioners_c1489264

¹² "Exclusive- this is where Chris Msando's body was found," Nairobi News, accessed on November 11, 2017 <http://nairobinews.nation.co.ke/news/exclusive-chris-msando-body-found-photos/>

¹³ "Article 138 (10)," The Constitution of Kenya, available at <http://www.kenyalaw.org/lex/actview.xql?actid=Const2010>

¹⁴ "Uhuru it is, IEBC declares 'tano tena' for Kenya's president," The Star, accessed on November 11, 2017.

https://www.the-star.co.ke/news/2017/08/11/uhuru-it-is-iebc-declares-tano-tena-for-kenyas-president_c1614756

¹⁵ "How Jubilee will dominate National Assembly," The Star, accessed on November 11, 2017, https://www.the-star.co.ke/news/2017/08/17/infographic-how-jubilee-will-dominate-national-assembly_c1618513

¹⁶ "Jubilee gets Senate majority as independents locked out," Daily Nation, accessed on November 11, 2017. <http://www.nation.co.ke/newsplex/jubilee-senate-independents/2718262-4054846-11ae7qd/index.html>

III. Credibility of the election

Before the IEBC could officially declare Uhuru Kenyatta as the winner of the August 8th elections, NASA alleged that the IEBC servers were hacked, which interfered with the transmission of the election results in favour of president Uhuru. It vehemently contested the validity of the elections and urged its supporters to reject the results. Through press releases, the party intimated that it would not challenge the results of the elections at the Supreme Court, having been down that route before, albeit unsuccessfully. NASA was convinced that the decision of the Supreme Court would not be different from the decision rendered by the court in the 2013 presidential petition that affirmed the validity of the 2013 presidential elections.

Governance and human rights civil society organizations issued press releases in which they also challenged the validity of the August 8 elections. The Africa Centre for Open Governance (AfriCOG) and the Kenya Human Rights Commission (KHRC) raised a number of concerns regarding the credibility of the election results, and vowed to petition the elections results at the Supreme Court.¹⁷ The government, through the NGO Co-ordination Board, clamped down on civil society organizations, AfriCOG and the Kenya Human Rights Commission in particular - the only two bodies that attempted to contest the presidential elections.¹⁸ Through a circular issued to the press, the NGO Co-ordination Board de-registered the Kenya Human Rights Commission for alleged tax violations and operating illegal bank accounts.¹⁹ In a letter to the Directorate of Criminal Investigations, the Board stated that it wanted to shut down offices of AfriCOG for operating without registering under the NGOs Co-ordination Act, 1999,²⁰ even though AfriCOG was registered as a company limited by guarantee under the Companies Act. The High Court however overturned the decisions made by the NGO Board, declaring the decisions to be unconstitutional.

IV. Odinga's Withdrawal

In light of the prevailing circumstances, Raila Odinga announced that he would finally challenge the results of the presidential elections in the Supreme Court, to give electoral justice to Kenyans who had queued for long hours at polling stations. However, he warned the Supreme Court that the petition presented the judges with an opportunity to redeem themselves. NASA finally filed its petition on the last day, suing the IEBC as the First Respondent and Uhuru Kenyatta and William

¹⁷ "Article 140," The Constitution of Kenya, available at <http://www.kenyalaw.org/lex/actview.xql?actid=Const2010>

¹⁸ "NGOs: We were shut over plan to contest poll result in court," Daily Nation, accessed on November 11, 2017, <http://www.nation.co.ke/news/NGOs--We-were-shut-over-plan-to-contest-poll-result-in-court-/1056-4059114-jc5pvc/index.html>

¹⁹ "NGOs board de-registers KHRC," Daily Nation, accessed on November 11, 2017, <http://www.nation.co.ke/news/kenya-Human-Rights-Commission-deregistered-/1056-4057174-10291od/index.html>

²⁰ "Fazul Mohamed's sword now targets AfriCOG," Daily Nation, accessed on November 11, 2017, <http://www.nation.co.ke/news/africa/NGOs-board-shuts-Africa-Centre-for-Open-Governance-AfriCOG/1066-4057960-soyu16/index.html>

Ruto as the Second Respondent, and also deposited one million Kenyan Shillings at the Supreme Court Registry as security for costs of the petition.

By law, the Supreme Court is required to hear and determine the petition within 14 days of filing the petition, and its decision on the petition is final.²¹ If the Supreme Court were to determine the election to be invalid, a fresh election has to be held within sixty days.²²

The Court heard arguments from all parties involved in the petition. NASA raised a number of issues in Court, among them being that the IEBC failed to use the Kenya Integrated Election Management System (KIEMS), a platform integrating voter registration, identification and results transmission; that IEBC did not electronically transmit, in prescribed forms, the election results to tallying centres; that IEBC did not tally and verify results at Bomas of Kenya;²³ that IEBC did not publish polling results online; and that the electronic transmission system was not secure.²⁴ In their defense, IEBC and Jubilee lawyers failed to properly address the discrepancies in the presidential vote tally and other seats. They also could not convince the Court on the inconsistencies and the discrepancies in Forms 34A used to tally the votes at the Polling stations, 34B used to tally the votes at the Constituency level and 34C which is used for the national tally.

V. Presidential Election overturned

The court issued an interim order for “Read and Copy” only access to the servers of the IEBC, and ordered a report on the findings be tabled before the court by the registrar of the Supreme Court. Four of the six judges issued a ruling that nullified the re-election of Uhuru Kenyatta on the 8th of August. The ruling was not only historic, but was equally an unprecedented decision in continental Africa. Needless to say, two of the judges that dissented from the majority were also part of the bench that dismissed Coalition for Reforms and Democracy’s (CORD) petition in 2013. The Court declared the August 8 election results to be invalid, null and void. It found that the IEBC failed, neglected, or refused to adhere to the law when conducting the election.²⁵ The Court then ordered a repeat of the elections within sixty days from the date of the ruling, in line with the provisions of the Constitution.

The ruling however did not clearly state what a fresh election meant. Did fresh elections mean a re-run in which the winner and the first runners up would contest again, or would all the eight presidential candidates be on the ballot once again? The IEBC’s construction of a fresh election

²¹ “Article 140 (2),” The Constitution of Kenya, available at <http://www.kenyalaw.org/lex/actview.xql?actid=Const2010>

²² “Article 140 (3),” The Constitution of Kenya, available at <http://www.kenyalaw.org/lex/actview.xql?actid=Const2010>

²³ Bomas of Kenya is a central tallying centre where all the results from the polling stations are aggregated and finally announced after they are certified by the electoral commission and political parties’ agents.

²⁴ “Top arguments by NASA, IEBC and Jubilee as Supreme Court Pre-trial conference looms,” The Standard, accessed on November 11, 2017, <https://www.standardmedia.co.ke/m/article/2001252607/top-arguments-by-nasa-iebc-and-jubilee-as-supreme-court-pre-trial-conference-looms> ,

²⁵ “Kenya’s Supreme Court annuls presidential poll results,” The East African, accessed on November 11, 2017 <http://www.theeastafrican.co.ke/news/Kenya-top-court-annuls-presidential-poll-results/2558-4079780-hutxvg/index.html>

was the former. They set the date for October 17, 2017 and announced that a fresh election would be held between Uhuru Kenyatta and Raila Odinga.²⁶ This decision aggrieved Dr. Ekuru Aukot of Third Way's Alliance, who moved to the High Court to challenge that decision.²⁷

VI. Reactions to the Annulment

The Supreme Court ruling led to a mixed reaction; while NASA leaders and their supporters celebrated the decision, terming it as historic, Jubilee leaders rebuked the ruling and described it as an affront to the will of the people of Kenya.

Uhuru Kenyatta announced that he respected the decision of the Court even though he disagreed with it. Shortly thereafter, a visibly irate Uhuru went on the campaign trail and called the Justices of the Supreme Court “wakora”,²⁸ loosely translated as thugs. He promised to “fix the judiciary” as soon as they were re-elected. The judiciary also came under attack from politicians allied to the Jubilee party who called for reforms within the institution. Nyeri Town's Member of Parliament had petitioned the Judicial Service Commission to seek the removal of the Chief Justice on the grounds of gross misconduct.²⁹ It was Uhuru's intervention that led to the withdrawal of the petition against the Chief Justice.

The onslaught on the judiciary continued with Jubilee protestors storming the Supreme Court building to express their frustrations with the ruling made by the Court. The Police did not disperse the protestors, a move that was seen as a tacit approval of the protestors' actions. The Chief Justice, along with commissioners of the Judicial Service Commission, later issued a press statement calling on the police to do more to protect the property and the institution of the judiciary.³⁰ He re-affirmed that the judiciary will not be intimidated in the exercise of its constitutional authority, and held that the Supreme Court would annul the results again if repeat elections were not conducted in accordance with the law.³¹

NASA argued that they could not conduct a repeat election with the same electoral body that had bungled the August 8 elections. They highlighted a number of issues that they termed as “irreducible minimums”, which had to be addressed before they could go back to the polls. Key among them was the replacement of some of the IEBC Staff that oversaw the August 8 elections,

²⁶ “Kenians to go back to the ballot October 17,.” Daily Nation, accessed on November 11, 2017.

<http://www.nation.co.ke/news/Fresh-presidential-poll-to-take-place-on-October/1056-4082522-lym799z/index.html>

²⁷ Aukot directed to seek redress in High court over fresh poll,” CapitalFM, accessed on November 11, 2017,

<https://www.capitalfm.co.ke/news/2017/09/aukot-directed-look-redress-high-court-fresh-poll/>

²⁸ Uhuru's Wakora slur angers social media,” NairobiNews, accessed on November 11, 2017.

<http://nairobinews.nation.co.ke/news/uhurus-wakora-slur-angers-social-media/>

²⁹ :Jubilee Mp files petition to kick out Chief Justice Maraga,” NairobiNews, accessed on November 11, 2017.

<http://nairobinews.nation.co.ke/news/mp-petition-chief-justice-maraga/>

³⁰ Maraga accuses the Executive and Parliament of attempting to Control the Judiciary,” The Standard, accessed on November 11, 2017. <https://www.standardmedia.co.ke/article/2001255034/maraga-s-fury-over-political-attacks-and-intimidation>

³¹ “We'll annul polls agains if law is breached,” CJ David Maraga,” Daily Nation, accessed on November 11., 2017 , <http://www.nation.co.ke/news/CJ-David-Maraga-Kenya-election-petition-warning/1056-4105704-6xgbf0/index.html>

such as the IEBC's CEO, Mr. Ezra Chiloba, whom they accused of being compromised. They also said that they wanted a change in the company that printed the ballot papers, as well as a change in the company that provided the KIEMS kit, Sophron OT Morhpo, a company based in France. NASA claimed that both companies had credibility issues and were flagrantly biased in favour of Jubilee.³²

VII. The NASA Protest and Akombe's Resignation

NASA urged its supporters to hold weekly demonstrations in Nairobi until the requested changes were addressed.³³ Weeks prior to the election, the demonstrations and picketing escalated to a nationwide scale on a daily basis.³⁴ NASA leaders joined their supporters in the demonstrations, and called for the removal of certain officials in the IEBC. Police used teargas and water cannons to disperse the crowds. These political demonstrations had an impact on the economy as businesses were closed for fear of looting by the demonstrators.

Meanwhile, leaked memos showed that there were internal wrangles within the IEBC itself,³⁵ with the IEBC chairman demanding answers on some of the failures highlighted by the Supreme Court decision;³⁶ the IEBC was clearly a divided house. The commissioners went on a retreat in Naivasha to iron out their differences,³⁷ and addressed the press during their retreat with the aim of projecting a united front. The election date that was initially set for October 17 was later pushed to October 26 to allow the IEBC to prepare adequately for the fresh elections in light of the full judgment of the Supreme Court.³⁸ However, as the election date approached, Roselyn Akombe, the Commission's Deputy Chair, fled to New York in the United States after she initially left the country for Dubai to ostensibly oversee the printing of the ballot papers for the presidential elections.

Akombe issued a statement detailing the reasons why she had fled to the United States: In her view, she was convinced that the IEBC could not deliver a credible election on the 26th of October, and that she could not be party to "a mockery to electoral integrity."³⁹

³² "NASA list of irreducible minimums for fresh elections," KenyaYote, accessed on November 11, 2017, <http://kenyayote.com/nasa-list-irreducible-minimums-fresh-elections/>

³³ Raila calls for countrywide mass action Monday and Friday to protest against the Uhuru regime," Kenya Today, accessed on November 11, 2017, <https://www.kenya-today.com/news/breaking-raila-calls-countrywide-mass-action-monday-fridays-protest-uhuru-regime>

³⁴ "NASA announces daily demonstrations from next week as anti-IEBC demonstrators gather in Nairobi, Kisumu," Business Daily, accessed on November 11, 2017. <http://www.businessdailyafrica.com/news/Anti-IEBC-protesters-gather/539546-4134846-2900u9z/index.html>

³⁵ "Leaked Chebukati Memo reveal infighting in electoral body," Daily Nation, accessed on November 11, 2017, <http://www.nation.co.ke/news/politics/Leaked-memos-reveal-infighting-IEBC/1064-4103728-tn452yz/index.html>

³⁶ "Leaked memo from Wafula Chebukati to Ezra Chiloba exposes scandal at IEBC," The Standard, accessed on November 11, 2017. <https://www.standardmedia.co.ke/article/2001253901/leaked-memo-from-wafula-chebukati-to-ezra-chiloba-exposes-scandal-at-iebc>

³⁷ "IEBC retreat to cool tempers, plan polls," Daily Nation, accessed on November 11, 2017, <http://www.nation.co.ke/news/Chebukati-calls-IEBC-retreat-to-end-wrangles-/1056-4089298-y10roez/index.html>

³⁸ "IEBC moves repeat presidential poll to October 26," Daily Nation, accessed on November 11, 2017, <http://www.nation.co.ke/news/IEBC-changes-date-for-Kenya-repeat-presidential-poll/1056-4106250-t587rx/index.html>

³⁹ Ibid.

With the NASA irreducible minimums having not been met, Raila Odinga announced his withdrawal from the October 26 presidential elections.⁴⁰ A day after Odinga's announcement, the High Court delivered its judgment in the Ekuro Aukot's case, and ordered the IEBC to include Ekuro Okot in the October 26 elections.⁴¹ However, the IEBC, out of "abundance of caution", gazetted all the other candidates who had appeared in the August 8 presidential election ballot. Owing to their "tyranny of numbers" in the House, Jubilee proposed some amendments to the election laws that appeared to be in their favour. The amendments included custodial sentences of up to 15 years for poll officials who willfully failed to sign the statutory forms, the declaration of the remaining candidate as president elect without any elections being held if a candidate withdrew from the race,⁴² as well as other amendments. These amendments were opposed not only by NASA, but also by religious leaders and civil society organizations who saw the amendments as being in bad faith.

VIII. Boycotts and Resistance

Calls to boycott the elections were issued by NASA leaders who urged their supporters not to turn up to vote for the October 26 elections. Meanwhile, the Jubilee party continued on the campaign trail, and asked voters to turn up and exercise their civic duty to choose a government of their choice. The IEBC, despite the calls to boycott the elections, went ahead and put in place plans for the repeat fresh elections without consulting political parties. A day prior to the elections, the appointment of IEBC's election officials was challenged successfully in the High Court as being illegal.⁴³ However, in a special sitting, the Court of Appeal overturned the decision of the High Court, and ruled that their appointment was not invalid.⁴⁴

The country went to the polls on October 26, albeit with a very low turnout. Only 7.6 Million out of the 19.6 Million⁴⁵ registered voters cast their ballot. Counties in the opposition strongholds disrupted the electoral process by blocking roads through which the election materials were to be transported. This led the IEBC to postpone elections in four counties in Nyanza region. Throughout the election process there were incidents of violence in the opposition territories, with the police using excessive force to disperse protesting youths. The police were accused of using live bullets

⁴⁰ "Raila Withdraws from presidential elections," accessed on November 11, 2017, <http://nairobinews.nation.co.ke/news/raila-withdraws-repeat-presidential-election/>

⁴¹ "Court: Include Aukot in repeat presidential poll," Daily Nation, accessed on November 11, 2017, <http://www.nation.co.ke/news/politics/High-Court-include-Ekuru-Aukot-repeat-poll/1064-4134352-bub0gxz/index.html>

⁴² "How Jubilee's draft law seeks to change election rules," The Standard, accessed on November 11, 2017, <https://www.standardmedia.co.ke/article/2001255891/how-jubilee-s-draft-law-seeks-to-change-election-rules>

⁴³ "High Court: IEBC appointment of Returning Officers was illegally done," The Standard, accessed on November 11, 2017, <https://www.standardmedia.co.ke/article/2001258368/high-court-iebc-appointment-of-returning-officers-was-illegally-done>

⁴⁴ "Court of Appeal suspends High Court ruling that declared the gazzement of Returning Officers and deputies illegal," The Standard, accessed on November 11, 2017, <https://www.standardmedia.co.ke/m/article/2001258422/court-of-appeal-suspends-judge-odunga-s-ruling-on-iebc-officials>

⁴⁵ "IEBC certifies final electoral register of 19.6m voters," Daily Nation, accessed on November 11, 2017, <http://www.nation.co.ke/news/politics/iebc-million-kenyans-are-eligible-to-vote/1064-3990230-eyihlz/index.html>

to contain the protestors. Official reports from Human Rights bodies claim that at least 33 civilians were killed in Nairobi alone by the police following the declaration of Uhuru Kenyatta as the winner of the August 8 elections.⁴⁶ This was vehemently denied by the police.

For an election to be considered valid in Kenya, a candidate must receive more than half of all the votes cast in an election, and at least 25% of the votes cast in each of more than half of the counties.⁴⁷ Further, elections must be held in all the 290 constituencies if two or more candidates are nominated for the presidential elections. However, due to the violence that erupted in the opposition strongholds, IEBC announced that elections could not take place in 25 constituencies.⁴⁸ The Elections Act permits the IEBC to suspend elections in areas where it is impossible to conduct elections, and even cancel the elections in such areas if it is satisfied that voting in those areas will not affect the results of the elections.⁴⁹ Going by the provisions of that law, the IEBC cancelled the elections in 25 constituencies, all in NASA's stronghold.

The IEBC announced the election results of the second presidential election, and declared Uhuru Kenyatta as the winner, once again, having received 7,483,895 votes.⁵⁰ Uhuru had garnered 98.27% of the votes cast, surpassing the constitutional threshold of 50% +1.⁵¹ He had also gathered more than 25% of the votes cast in at least 35 Counties. Having satisfied the requirements of the election laws, the Chairman of the IEBC, as the National Returning Officer for presidential elections, declared Uhuru as the winner of the October 26 elections.

NASA termed the elections a sham, and called it "an opinion poll" to test Jubilee's popularity. They called for fresh elections within 90 days,⁵² and proposed a caretaker government in the interim. Through press statements, NASA called on its supporters to boycott corporate bodies associated with President's Uhuru's regime. They identified big corporations such as Safaricom, Kenya's leading telecommunication service provider, Brookside milk processing company, and Bidco, as among the companies whose products and services were to be boycotted.⁵³ They also

⁴⁶ "Kill those criminals, Security Forces Violations in Kenya's August 2017 General Elections," Human Rights Watch, accessed on November 11, 2017, <https://www.hrw.org/report/2017/10/15/kill-those-criminals/security-forces-violations-kenyas-august-2017-elections>

⁴⁷ "Article 138(4)," The Constitution of Kenya, available at, <http://www.kenyalaw.org/lex/actview.xql?actid=Const2010>

⁴⁸ "25 out 290 constituencies did not participate in the repeat presidential election," The Standard, accessed on November 11, 2017, <https://www.standardmedia.co.ke/article/2001258859/25-out-290-constituencies-did-not-participate-in-the-repeat-presidential-election>

⁴⁹ "Section 55B," Elections Act No. 24 of 2011, available at, <https://www.iebc.or.ke/uploads/resources/kql5cmgeyB.pdf>

⁵⁰ "Chebukati declares Uhuru Kenyatta winner of repeat poll," Daily Nation, accessed on November 11, 2017, <http://www.nation.co.ke/news/politics/Uhuru-winner-of-repeat-poll/1064-4162124-athns6/index.html>

⁵¹ Ibid.

⁵² "Raila Odinga demands new poll in 90 days," Daily Nation, accessed on November 11, 2017, <http://www.nation.co.ke/news/politics/Raila-Odinga-demands-new-election-in-90-days/1064-4161358-y8ul1i/index.html>

⁵³ "Kenya's opposition calls for boycott of Safaricom, Brookside," Business Daily, accessed on November 11, 2017, <http://www.businessdailyafrica.com/economy/Nasa-NRM-boycott-Safaricom-Brookside-Bidco/3946234-4171998-eikksq/index.html>

formed a National Resistance Movement,⁵⁴ an arm of the NASA, whose objective is to spearhead and co-ordinate resistance to the Jubilee government and any of its affiliates. The National Resistance Movement (NRM)'s aim is to cause civil disobedience to the government, and to form a People's Assembly which comprises of the civil society, religious leaders and economic interest groups. According to the NRM, The People's Assembly shall be in existence until a legitimate president is elected.⁵⁵

Uhuru's win has once again been challenged before the Supreme Court, although NASA is not the petitioner in this instance. Instead, the petition has been lodged by Harun Mwau,⁵⁶ a former Member of Parliament, who alleges that the IEBC failed to conduct fresh nominations, as is required by the constitution, in the run up to the October 26 elections. NASA leaders have been implicated in an application filed by an NGO, the Institute of Democratic Governance, which wants NASA leaders to be held responsible for the violence that erupted during the election exercise.⁵⁷

IX. The Fault Lines and the Future

In November 1968, Kenyan poet, Abdulatif Abdalla, wrote a piece, *Kenya: Twendapi?* (Kenya: Where are we heading to?), for which he was detained by the first Kenyatta administration for three years beginning in 1969.

However, decades later, Abdullatif's eternal question, Kenya Twendapi? Still endures, but with an even greater urgency. The issue is not so much as having a precise set of answers to the question, but rather a collective wrestling with its meanings and broader implications. While Kenya's raucous elections and political campaigns are admirable, compared to regional elections, regrettably each successive election only deepens social fissures and thus makes the already tenuous national fabric to almost burst at the seams. For many, especially, the opposition supporters, after few flawed elections, this political process will not produce a fair outcome, and thus, secession is the answer. Many Kenyans invest their hope, fears, and dreams in an election, thus in western and coastal Kenya (which are opposition strongholds), calls for secession are getting ever louder. Fundamentally, these calls are more of a manifestation of the deep underlying sense of marginalization and disenfranchisement, rather than a real call to form a separate country.

This self-induced national fragility after cumulative elections has also left Kenya in dire need for moral leadership. Most institutions that provided leadership in the past are broken, weak and not fit for purpose. Similarly, public institutions suffer from a deep public trust-deficit. Scanning the horizon, there is hardly a single institution- state/formal or non-state/ informal, or even an individual, that is collectively trusted by political parties, ethnic groups, etc., to provide leadership.

⁵⁴ "Liberation struggle on': Raila forms People's Assembly," The Star, accessed on November 11, 2017, https://www.the-star.co.ke/news/2017/10/31/liberation-struggle-on-raila-forms-peoples-assembly_c1662002

⁵⁵ Ibid.

⁵⁶ "Harun Mwau petitions Uhuru's win in repeat presidential poll," Daily Nation, accessed on November 11, 2017, <http://www.nation.co.ke/news/Harun-Mwau-faults-IEBC-over-presidential-rerun/1056-4175546-jncsc5z/index.html>

⁵⁷ Ibid.

Many Kenyans are rightfully proud of the country's 2010 constitution, and it has been described as progressive. The constitution has an elaborate Bill of Rights, provides for the devolution of powers and resources from the center to the counties, as well as solid checks and balances between and among the arms of the government. The constitution has established many robust institutions, and the next frontier of struggle and resistance should be how to give agency to these institutions. This process has to be locally anchored and organically driven.

President Kenyatta's starts his second term against the background of a deeply polarized country. To obtain the necessary legitimacy of the presidency, and entrench his legacy, he should be more of a Healer in Chief, rather than a Commander in Chief.



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The vision of the Zambakari Advisory is to craft and support successful threat identification, conflict transformation, and the conduct of business in an increasingly dynamic environment in the United States, Africa and the Middle East. By leveraging the knowledge and talents of local and international topical experts, the firm delivers incisive, invigorating, and tailored approaches that reflect the particular needs of our clients. Founded in 2015 by Dr. Christopher Zambakari, our mission is to provide consulting and advisory services that strengthen the goals of individuals, businesses, and organizations.

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