



Public Policy, Ethics and Governance

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Mitigating violent political confrontations ahead of Kenya's 2022 general elections

As 2022 general elections in Kenya approach, signs of impending violence abound as already witnessed in Msambweni, Matungu, Kabuchai by-elections. Follow our Research Fellow, Public Policy, Ethics and Governance Pillar, Stephen Nduvi, as he briefs on the contributing factors and recommends viable options.

(Dr. K.O. Asembo, Editor-In- Chief)

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Abstract

This paper argues that violent confrontations being witnessed in electoral contests in Kenya are threatening free and fair polls and speedily ushering in the cyclic culture of electoral violence as 2022 general elections approach. Key contributing

factors include low moral capacities of electoral candidates; legislative contradictions; inadequate capacities and strategies of IEBC; campaign finances and poor conviction rates for offenders. Recommendations offered include harmonizing conflicting laws

on misuse of public resources in campaigns; enhancement of capacities of law enforcement agencies to manage electoral violence and boosting the leadership and integrity aptitudes of nominated party candidates to confront electoral issues with dignity.



Photo Credit: Mambo Zuri

Background

The increasing threats to electoral democracy as witnessed in the in Msambweni, Matungu, Kabuchai constituency by-elections have implications on preparations for the 2022 general elections. Maintaining the status quo portends a more ethnically polarized Kenya.

This poses risks to national security. The resultant situation portends a recurrence of electoral violence in both urban and rural areas leading to loss of business opportunities and investors confidence.

Key Issues

The following factors persist in relation to violent political confrontations in electoral contests in Kenya.

Low moral capacity of nominated party candidates to uphold principles of leadership and integrity

Low levels of moral integrity continue to undermine the capacity of nominated candidates to confront electoral issues with dignity. Electoral candidates do ignore with impunity electoral procedural rules and codes of conduct. Their disrespect for the Leadership and Integrity Act of 2012 and Election Offences Act, 2016 emboldens them to employ malpractices including violent confrontations in their political expeditions.

The situation is further convoluted by inadequate preparation of the candidates by Independent Electoral and Boundaries Commission (IEBC) through relevant civic education programs to enhance their understanding of the electoral process and the code of conduct in the management of election campaigns.



Photo Credit: The Guardian

Legislative contradictions in political neutrality and use of public resources in political campaigns

Clause 23(2) of the Leadership and Integrity Act of 2012 allows Cabinet Secretaries and members of county executive committees to further the interests of a political party or candidate in an election. This propagates abuse of office by appointed public officers as they pursue personal political goods. Their ability to employ public resources while in office cannot be prevented. Yet it contributes to misuse, which is detrimental to political neutrality.

However, the Leadership and Integrity Act of 2012, clause 13(1), the Election Offences Act, 2016 clause 14(1), and Public Officer's Ethics Act clause 15(1) and 16(1) prohibits public officers from misuse of public resources or engaging in activities that amount to abuse of office. The legislative contradictions create unfair platform for election campaigns between those in government and in opposition.

In a competitive race, this creates an avenue for political confrontations since misuse of state positions and resources greatly favors government incumbents.

Inadequate capacity and strategies to monitor electoral violence

The use of traditional methods to maintain law and order continues to undermine government efforts to address impunity in election campaigns due to changing dynamics in organizing electoral violence. The traditional approach of using security hardware only aims to radicalize protestors to engage the police in running battles leading to use of excessive force.

Electoral violence is transcending from urban to rural areas as witnessed in the by-elections in coastal, western, and rift valley regions of Kenya. This undermines government capacity to effectively address the issue due to resource constraints.

Similarly, electoral candidates are highly embracing technology and social media platforms, such as, Facebook and Twitter, to plan, mobilize, and execute violence. This gives them advantage over the government security initiatives deployed to contain violence.





Photo Credit: Financial Charts

Management of Campaign Finances

Elections in Kenya are always very competitive and highly charged due to the amount of financial resources invested during the elections cycle, majorly in form of time and money. Huge amounts of money are spent on an election with both government and candidates investing heavily on the electoral process.

Although the Election Campaign Financing Act, 2013, provides for the regulation, management and accountability of election campaign funds, the large amounts of money required for campaigns often leads to corruption and edges out qualified candidates who are unable to raise funds.

Similarly, the legal framework only provides for political party finance regulations without regulating the individual candidates' finances. Political parties also lack effective systems for transparency and accountability on use of campaign finance.

The opaque management of campaign finance creates a latent ground for corruption and rigging out of qualified candidates who cannot bribe their way to party nominations. This gives privileged candidates the agility to manipulate idle youth to engage in violent acts meant to outshine their opponents.

Prolonged campaign seasons

Even though electoral regulations provide strict timelines in relations to campaigns, this is hardly adhered to leading to long campaign periods. Even before IEBC declares official campaign period, a number of potential candidates have already started campaigning ahead of 2022.

It further creates opportunity for disinformation in social media and this heightens uncertainty in an already volatile political environment. Many times use of violence is adopted as a last resort when all campaign options have been exhausted during the prolonged seasons. Countries such as Japan, Brazil, and Australia have embraced regulations such as having a reasonable campaign period to reduce the stakes in an election.

Low conviction rates for electoral offences

Previous elections in Kenya have been characterized by violence during the election cycle. There is little evidence of perpetrators of election violence being barred from participating in future elections.

Most election violence cases in court take long to conclude and sometimes extend past an election cycle. This undermines the upholding of the principles of leadership and integrity as electoral candidates accused of electoral offences are able to participate in future elections and further their divisive politics.

Though some efforts have been made by the relevant entities to prosecute election offenders, the culture of impunity continues to be perpetuated from one election to the other due to challenges in gathering evidence for the election offences and the lengthy timeframes involved in undertaking criminal proceedings.

The situation is further complicated by fact that there is no demand put on the respective judicial institutions to update the public on the progress of criminal proceedings against election offenders.



Photo Credit: AP News

Conclusion

The increasing incidents of electoral violence in Kenya threaten electoral democracy and have the potential to undermine free and fair elections with implications on national security. This calls for more effort in mitigating the cyclic phenomenon as preparations for the 2022 general elections intensify. The need to promote conducive environment for credible elections cannot be overstated.

Recommendations

1. The Kenya Ministry of Interior and Coordination of National Government to enhance the technical capacities of law enforcement agencies to gather information and manage electoral violence.
2. The Kenya IEBC to
 - a) Develop and intensify implementation of programs to enhance the leadership and integrity capacities of nominated party candidates to carry peaceful elections campaigns.
 - b) Engage Kenya Parliament to;
 - i) Harmonize the conflicting clauses in the Leadership and Integrity Act of 2012, the Election Offences Act, 2016, and the Public Officer's Ethics Act on use of public resources during election campaigns.
 - ii) Amend the election laws to provide for strict regulations on campaign financing to enhance equality of opportunity and transparency in election process.
 - iii) Amended Criminal Procedure Code to provide for mandatory public updates by the Judiciary on the status of investigations and prosecution of electoral offences including time strict timelines on prosecution of electoral violence.

Mr Stephen Nduvi is the Centre's Research Fellow for Public Policy, Ethics and Governance. He has previously worked with the Kenya Institute of Public Policy Research and Analysis (KIPPRA) in a number of research projects. He has contributed to various discussions papers, policy briefs and blogs with several think-tanks. His research interests include public policy, political economy, governance and ethics, youth, gender, development and regional integration. Stephen holds a Master's degree in Governance and Regional Integration from the Pan African University-Institute of Governance, Humanities and Social Sciences, Yaoundé-Cameroon. He has a BA degree in Economics and Finance (1st class honors) from Kenyatta University (Kenya). He is also a beneficiary of African Union Commission Full Masters Scholarships for young Africans and an alumni of KIPPRA Young Professionals Programme.



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