

Kenya: A tradition of stolen elections - Electoral theft and and post-election violence

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A few days after the elections held in Kenya on 8 August, the Independent Electoral and Boundaries Commission (IEBC) announced that the incumbent president, Uhuru Kenyatta, son of Jomo Kenyatta, first president of Kenya, had won by a margin of 9% against his main challenger, Raila Odinga, son of Oginga Odinga, former vice-president and nationalist opponent of Jomo.

The results were challenged by Odinga in Kenya's Supreme Court and, on August 18, the Supreme Court announced its decision by a majority of 4-2 that the elections were null and void. The international media and many across the world were aghast! Why were they surprised? Is it because across the continent the judiciary is not expected to demonstrate independence, nor to have the courage to make decisions that are against the incumbent despot? There is little doubt that the announcement of the decision took great courage.

But the fact is that there has been a tradition of stolen elections over the last ten years in Kenya, a tradition that has made the thieves increasingly complacent about the ease with which this can be done and how its consequences managed.

Complacent fraud

Just prior to the elections, the body of Chris Masando, the head IT specialist at the IEBC, was found mutilated. John Kerry, the former US Secretary of State, called on the police to investigate this killing, but many believe that the police were themselves deeply implicated in Masando's murder.

The final report of the majority judges was published on 21 September, and it comprises a damning catalogue of incompetence and ineptness on the part of the IEBC and Kenyatta's entourage in the way that they organised the attempted theft. They also disregarded orders of the court to provide access to computers and documentation that they claimed proved that there was no fraud involved. There was evidence of wide-scale tampering, missing returns, replacement of returning officers, intimidation of local government officials and the press, who were told not to report on the results.

So confident was the incumbent regime and the IEBC that they would get away with the theft, that they made little effort to hide what they had done. The IEBC announced the results of the elections even before all the results had been counted - just one example of their arrogance.

Faced with such devastating evidence, combined with what appears to have been poor representation on the part of the respondents, it should not be surprising that the majority of the Supreme Court judges decided to uphold the complaint made by Odinga.

Tradition of electoral theft...

But to fully understand the consequences of this decision, we need to understand how the tradition of electoral theft has developed in Kenya. The tradition harks back to the times of the former President Daniel Arap Moi, but here I will focus only on the elections over the past decade.

In December 2007, as the results of the presidential elections started to come in, by all accounts it appeared to be a close run between the then president, Mwai Kibaki, and Raila Odinga. Indeed, as many of us watched the results, the exit polls suggested that Odinga looked set to win a majority. Suddenly, even before all the results came through from the polling stations, the police and security forces surrounded the Kenyatta International Conference Centre, the central election coordination point, and expelled all observers and members of the media. The websites, including those of the media that were providing regular updates on the election results, suddenly stopped reporting. There was alarm across the country about what was going on. And then, late into the night, a private swearing-in ceremony was carried out at the president's residence, State House, in which Mwai Kibaki was sworn in as the president by compliant members of the judiciary, even before the final results were counted. This was effectively a civilian coup d'état.

The reaction of the public was understandable. There was outrage and anger at the stolen election which had been until then, one of the most peaceful. People took to the streets to express their anger in spontaneous demonstrations. Inevitably in such cases there were attacks against symbols of power and wealth by some of the protestors.

...and post-election violence

The response of the state was to release the Government Service Unit (GSU), a para-military force answerable exclusively to the president, as well as the police, who went on a rampage, killing, raping and maiming civilians on the streets and shack-dwellers in the many slums around the city. Many of these attacks were recorded (see for example "Burden of Peace" [\[1\]](#)) and complaints were made, but with no result. In a country where statutory bodies and human rights NGOs have confirmed that it has become the norm for the police to carry out extrajudicial killings with impunity, people are outraged, but not surprised.

Another wave of violence was released against citizens, especially against those who were known to have voted against Kibaki, or who were supporters of Odinga. Also targeted were those who occupied territory in the Rift Valley, which the ruling Mount Kenya elite had long craved. This wave came from armed militia who had been well prepared and instructed prior to the elections. The most horrendous series of killings, burnings, rapes, slaughter and carnage resulted eventually in at least 1,000 deaths and more than half a million people condemned to being permanent internally displaced people, with no right of return to their homes. It is said that supporters of Odinga were also engaged in militias, but clear evidence to that effect has been difficult to find. Local and international media described these terrible acts of violence by armed militia and by the police and GSU as being "post-election violence" and examples of "tribalism".

The outcome of these events was to bring Kofi Annan to Kenya to oversee the establishment of a

“Government of National Unity” between the coup leader, Mwai Kibaki, and Raila Odinga, the former as president and the latter as prime minister. Those responsible for the carnage were never arrested, charged or tried. The police and security forces involved in killings and other abuses were never brought to account. The militia were never disarmed. Impunity prevailed. And those who lost their land and possessions were effectively told, as John Kerry was to tell Odinga ten years later, to “get over it.” What was established, thus, was a government of national impunity, ardently supported by Kenya’s civil society organisations. “We didn’t have a choice, it was the only way to guarantee peace,” I was told by the head of a leading human rights organisation. Quite what peace was enjoyed by the victims and survivors is not entirely clear. Very little protest was made by civil society against the growing culture of impunity nor was any attention paid to the failure to disarm the militias.

So then came the 2013 elections

Uhuru Kenyatta and his loyal ally, William Ruto, stood for elections. These are two individuals who had been implicated in crimes against humanity and who were to be brought before the International Criminal Court. They were able to present the threat of prosecution by the ICC as the attempt of imperialism to interfere in the election. So they gained popularity by presenting themselves as resisters against empire. The proposed prosecution collapsed when witnesses disappeared, died under mysterious circumstances, or refused to testify.

But it became clear as the elections results began to be tallied that there had been, according to many, widespread fraud that was designed to ensure Kenyatta’s victory. Once again, as in 2017, the IEBC was found to have been engaged in corrupt deals and manipulation of the electronic data. Odinga challenged the results at the Supreme Court, which was headed at that time by long-term human rights defender and former political prisoner, Willy Mutunga. But Odinga failed to provide adequate evidence that would have allowed the court to uphold his appeal. To the chagrin of many in civil society who expected Mutunga to give Odinga the benefit of any doubt, the results of the election were upheld. Kenyatta was therefore sworn in as president.

And so we come to 2017

This time the Odinga camp was meticulous in preparing water-tight evidence about the scale of fraud that had been carried out by the IEBC and the Kenyatta camp. But they were also aided by what appears to have been a surprising degree of complacency amongst the incumbents that they would get away with theft once again. Not only was there overwhelming evidence of an attempt to steal the elections, but also confirmation that the thieves were not particularly competent in what they set out to do.

The response of Kenyatta to the Supreme Court was to appear on television to say that while he accepts the decision of the court, it was “a coup by four people in court”. He denounced the judges as “wakora” [2] – crooks! He claimed that the judgment showed that “the voice of the people matters no more.” His announcements have become more and more belligerent, fostering a mood amongst his followers that could result in encouraging them to resort to violence. Meanwhile, in an attempt to undermine those in civil society who were critical, the regime arranged to deregister and freeze the assets of two human rights organisations [3], including the Kenya Human Rights Commission. The judges have said that they have received death threats, and have demanded protection. Given the collusion of the security forces and the police in carrying out extrajudicial killings against political opponents, as documented by Al Jazeera recently, it is unclear who would provide such

protection.

And that is what is terrifying. We know from 2007/8 what happens when armed thugs are released to deal with those who challenge the outcome of the presidential elections. The current spread of hate radio, Facebook announcements and hate videos on the internet is frighteningly reminiscent of the hateful agitation of Radio Mille Collines in Rwanda before the 1994 genocide. Kenyatta's agitation and threats could easily result in the outbreak of civil war if the election results don't go his way.

Meanwhile, recent polls undertaken by Infotrak in September 2017 [4] indicate that 77% of Kenyans are satisfied with the Supreme Court's ruling, but 52% have no confidence in the IEBC to conduct free and fair elections. Furthermore, there are petitions lodged with the Office of the Director of Public Prosecutions calling for criminal prosecutions against those involved in election fraud. In response, Uhuru Kenyatta has sought to exercise his powers to establish a commission of inquiry into the Supreme Court's decision which he claims stole the elections. Kenyatta issued a statement claiming that the Supreme Court had carried out a "judicial coup" [5].

But what is the likelihood of the elections being run fairly, or indeed at all? The private company that is responsible for the election technology claims that there is no way that adequate infrastructure can be put in place before the end of October. That is well beyond the 60-day rule that is required by the Constitution. The critical issue is that those responsible for the fraudulent election results at the IEBC remain in place, despite calls for their resignation in the light of evidence of their collusion in the electoral fraud. There is evidence of growing intimidation of local government officials by Kenyatta's people; some claim that Kenyatta has mobilised volunteers to pay or press people to vote for him. So, the outcome is uncertain.

Why the international endorsement for Kenyatta?

How do we account for the fact that John Kerry for the US, as well as the European Union and African Union observers claimed that the elections were fair? As the Supreme Court points out, the observers only monitored the process of citizens casting their vote at the ballot box, and completely ignored what happened thereafter. There were numerous examples of forgeries, lost and corrupted data and imaginary returns that these observers decided not to focus on despite the fact that the evidence of the 2013 elections indicated that it was precisely in these areas that there had been acts aimed at depriving the country of fair elections.

But there was another reason for the enthusiastic, if somewhat premature, endorsement of Kenyatta and his regime. This is the regime that has enthusiastically collaborated with the transnational corporations and with international financial institutions in privatising healthcare, education, water, transport and communications and anything else that allows for a fast buck to be made. This is the regime that allows — nay, encourages — these corporations to avoid taxes, to be free to undertake extraction of natural resources, to repatriate profits, to grab land for industrial agriculture using GMOs, paying paltry wages to the few that are employed. This is the regime that has overseen the impoverishment of millions. According to the Society for International Development, 45 per cent of the population lives on less than the US\$1 per day that they claim is the poverty line.

But, as Jason Hickel has pointed out [6], in reality, those earning less than US\$5 a day are amongst the most impoverished. That means that at least 85 per cent of people in the country are impoverished. Life expectancy which in 1989 had reached 60 years, by 2008 had fallen to 56 years. In the same period, maternal mortality ratio has increased from 365 to 488 per 100,000 births. Meanwhile, value-added production has been in decline for decades, but the scale of wealth of the

minority has continued to soar. Every month new buildings are constructed in Nairobi and examples of conspicuous consumption abound. Where is that wealth coming from? True, some of it may be associated with the presence of UN organisations based in Nairobi. But it is hard not to conclude that money laundering is the source of much of it.

Why is there such antipathy amongst the international community to the possibility of a Raila Odinga victory? We should not delude ourselves that Odinga represents a radical alternative to Kenyatta from the point of view of the policies offered. We should remember that Odinga once served as a minister in the despotic Moi government, as well as prime minister in the government of national impunity.

That said, however, there is a mood amongst the young and the dispossessed for change, and Odinga's election rhetoric appeals to many. Capital is not threatened by Odinga's politics per se. What they fear is that he may not be able to control the desire of his popular base for change.

At this point we can only speculate on whether Raila could win. But we should not discount the possibility that such a victory would be met with violence from armed militia at the encouragement and behest of the Mount Kenya Mafia, who are the real power brokers in Kenya. They have had access to the state machinery that has allowed them to accumulate at an unprecedented scale. They won't give that up without a fight.

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P.S.

* Amandla! Magazine issue 54 | October 2017:
<http://aidc.org.za/kenya-tradition-stolen-elections/>

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Footnotes

[1] <http://fahamubooks.org/book/?GCOI=90638100965350&>

[2] <http://nairobinews.nation.co.ke/news/uhuru-threat-chief-justice-maraga/>

[3] <https://www.bloomberg.com/news/articles/2017-08-16/kenya-authorities-seen-stepping-up-bid-to-quell-election-dispute>

[4] <https://www.capitalfm.co.ke/news/2017/09/84-pc-kenyans-want-polls-october-17-infotrak/>

[5] <http://www.nation.co.ke/news/Jubilee-s-plot-to-overhaul-the-Supreme-Court-/1056-4109496-qu1d2a/index.html>

[6] <https://www.theguardian.com/global-development-professionals-network/2015/nov/01/global-poverty-is-worse-than-you-think-could-you-live-on-190-a-day>