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KatibaNews

The birth of a new Republic



Ensuring a peaceful 2013 election

Inside:

- * Security preparedness during the upcoming elections
- * Implementing Chapter 6 of the Constitution
- * Civic education under the new Constitution
- * Voter registration and the impending challenges

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ABOUT THE MEDIA DEVELOPMENT ASSOCIATION

The Media Development Association (MDA) is an alumnus of graduates of University of Nairobi's School of Journalism. It was formed in 1994 to provide journalists with a forum for exchanging ideas on how best to safeguard the integrity of their profession and to facilitate the training of media practitioners who play an increasingly crucial role in shaping the destiny of the country.

The MDA is dedicated to helping communicators come to terms with the issues that affect their profession and to respond to them as a group. The members believe in their ability to positively influence the conduct and thinking of their colleagues.

The MDA aims at:

- Bringing together journalists to entrench friendship and increase professional cohesion; Providing a forum through which journalists can discuss the problems they face in their world and find ways of solving them;
- Organising exhibitions in journalism-related areas such as photography;
- Organising seminars, workshops, lectures and other activities to

discuss development issues and their link to journalism;

- Carrying out research on issues relevant to journalism;
- Organizing tours and excursions in and outside Kenya to widen journalists' knowledge of their operating environment;
- Publishing magazines for journalists, and any other publications that are relevant to the promotion of quality journalism;
- Encouraging and assist members to join journalists' associations locally and internationally;
- Creating a forum through which visiting journalists from other countries can interact with their Kenyan counterparts;
- Helping to promote journalism in rural areas particularly through the training of rural-based correspondents;
- Advancing the training of journalists in specialised areas of communication;

- Create a resource centre for use by journalists;
- Reinforcing the values of peace, democracy and freedom in society through the press;
- Upholding the ideals of a free press.

Activities of MDA include:

- Advocacy and lobbying;
- Promoting journalism exchange programmes;
- Hosting dinner talks;
- Lobbying for support of journalism training institutions;
- Initiating the setting up of a Media Centre which will host research and recreation facilities;
- Working for the development of a news network;
- Providing incentives in terms of awards to outstanding journalists and journalism students;
- Inviting renowned journalists and other speakers to Kenya;
- Networking and liking up with other journalists' organisations locally and abroad.

This newsletter is meant to:

- 1 Give critical analysis of democracy and governance issues in Kenya.
- 2 Inform and educate readers on the ongoing Constitution Review Process.

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Terrorism continues unabated.

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Ensuring peaceful 2013 elections

The role of politicians, media and other stakeholders

By Kiprotich Yegon

Kenyans are crossing their fingers and hoping that we shall not have a repeat of the 2007/08 post election violence. There are however things that should be done and others done differently to avert such a crisis that resulted in 1,133 people losing their lives and over 600,000 being displaced.

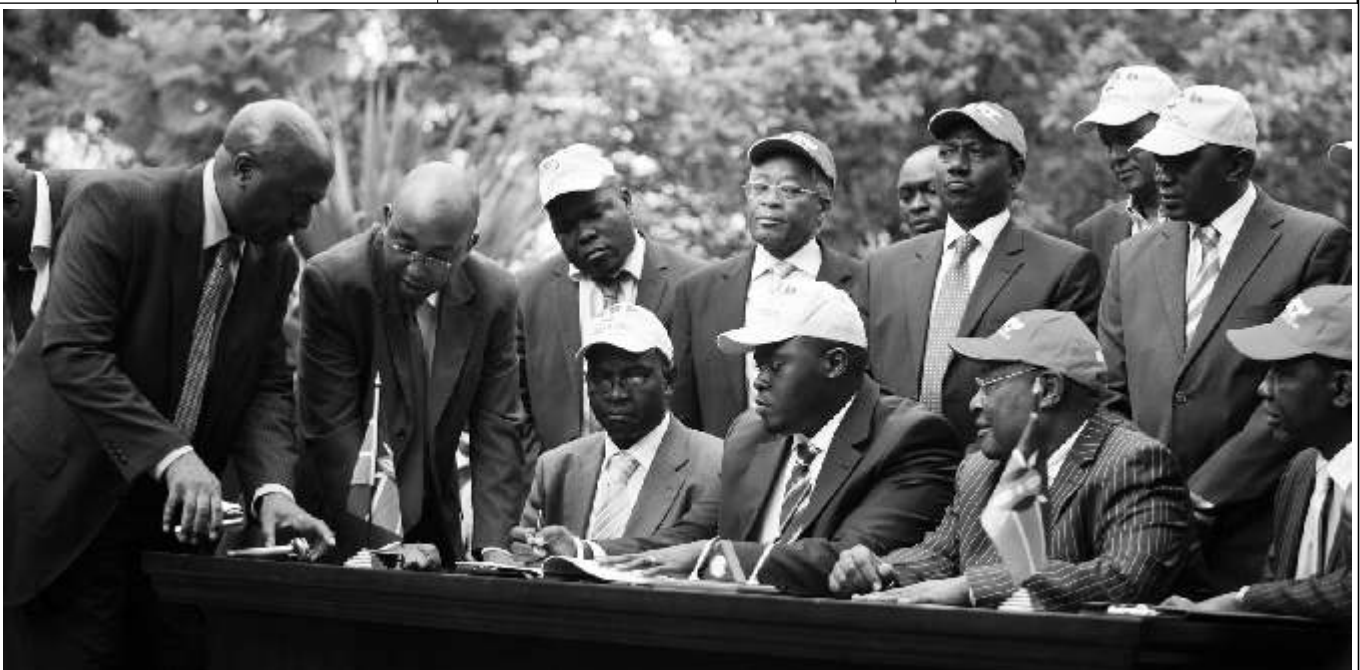
During the violence, there was also massive destruction of property, looting and even rape. Things ought to be done and others done differently by

politicians, the media and other stakeholders. Albert Einstein once stated that "insanity is doing the same thing over and over again and expecting different results" and George Santayana in his work *Reason in Common Sense* stated that "those who cannot remember the past are condemned to repeat it."

Given the nature of the ramifications of the violence and its overarching effect on the economy, a peaceful election should be every citizens business-whether as an individual or as an organisation. Even our neighbours and trade partners

are affected by the lack of tranquility in our nation. As citizens we should have the duty to maintain peace closer to our hearts, since we bear most the full brunt of the violence.

Every Kenyan thus has a duty to try to do things differently and smartly. Each person should try to inculcate the seeds of peace in their own sphere of influence, whether in the community, church, work place or school. We must seek to cleanse ourselves and the society of the tribal 'demons' that came to haunt us in 2007/08 election. In this article however I try to look at the role that can be played by



Moment of truth: Members of the Jubilee Coalition during the signing ceremony at the Jevanjee Gardens, Nairobi.

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Responsible and impartial

The media is supposed to exercise their work independently without outside influence or driven by desire to be bias. They should be agents or messengers of information and should not take sides. Questions of impartiality of the television stations and some radio stations were raised during the 2007/08 elections. There was gaping discrepancies in the results that were being streamed live as they were received from various polling stations, one could wonder whether they were receiving the results of elections from the same country.

This distorted the true picture of the state of election results, and therefore led to citizens mistakenly believe that the elections were stolen. Some media stations are also at fault in the way they cover conflicts and handle hateful utterances by politicians. The launch of the updated guidelines for election coverage on 2nd April by the Media Council of Kenya, is thus a much awaited solace in the media industry. The Media Council of Kenya is an organ created by an act of parliament to regulate media in the country.

the stakeholders with greatest influence, that is, the media and the politicians.

Media

The Kenyan media space today has been made open. The process of licensing has been made more transparent and less bureaucratic. The openness has led to the advent of many radio and television stations, a clear break from the past where there was a monopoly of airwaves by Voice of Kenya, which later changed to the Kenya Broadcasting Corporation.

Freedom of the media is a pertinent internationally recognised threshold for measuring democracy of a particular state. Freedom of the media is provided under Article 34 of the Constitution. Freedom of the media buttresses the freedom of expression, in that it gives the citizens a platform to air their views and grievances.

The media is thus a very important tool. However if not tamed it can be a spectacular instrument of misuse. A recent and more vivid example is the News International's phone-hacking scandal, where the employees of the newspaper were engaged

in malpractices such as phone hacking and police bribery.

The media can also be used to incite and fan negative ethnicity. The ICC prosecutors in their charges against Joshua Sang, a radio journalist, are alleging that he used his influence as a radio personality to incite violence in Rift Valley using coded language - of course Joshua Sang remains an innocent man till proven otherwise. The media was also a blamed in the 1994 Rwandan genocide that resulted in over 500,000 people losing their lives. It was used in coordinating the extermination of Tutsis by the Hutus.

The Kenyan Constitution is clear that the freedom of media, does not extend to propaganda for war, incitement to violence, hate speech and advocacy of hatred under article 33(2).

Every Kenyan thus has a duty to try to do things differently and smartly. Each person should try to inculcate the seeds of peace in their own sphere of influence, whether in the community, church, work place or school. We must seek to cleanse ourselves and the society of the tribal 'demons' that came to haunt us in 2007/08 election.



The role of journalists in ensuring peaceful elections cannot be overemphasized.

The revising of the guidelines also involved several stakeholders in the media industry such as Editors Guild, the Media Owners Association, Kenya Union of Journalists, as well as the Independent Electoral and Boundaries Commission (IEBC). The guidelines have been signed by all media houses in Kenya.

Pansy Tlakula, Chairperson of the Independent Electoral Commission of South Africa, while speaking at the launch of the guidelines emphasized the need of IEBC to train journalists on the electoral process, to enable them to cover elections more professionally. She also

emphasized on the need of the electoral management body to work cordially with the media during the Election Day to ensure they disseminate accurate results and information.

Highlight of the revised media guidelines and responsibilities:

Media and the voter

The media shall ensure that the voter is given all the relevant and accurate information so as to enable the voter to make an informed choice.

Media and the candidates

The media will ensure equal coverage of all the candidates

without any bias. Each candidate should be given equal opportunity to market his or her policies.

Media and the nation

The media has duty to strive to build the nation and avoid unnecessary utterances that may serve as a catalyst of breaking the nation's tranquility and cohesion. The rationale of building the nation is inspired by the fact that the journalist themselves are citizens of Kenya.

Values of a journalist

Some of the values in the guidelines include accuracy, impartiality, protection of sources of confidential information and distinguishing of opinion from news.

Other important features of the guidelines

Journalists are expected to be persons of integrity and should also strive to be more knowledgeable in what they are reporting. Media houses should also desist from airing utterances that encourage hateful behavior towards other persons or tribes.

This distorted the true picture of the state of election results, and therefore led to citizens mistakenly believe that the elections were stolen. Some media stations are also at fault in the way they cover conflicts and handle hateful utterances by politicians. The launch of the updated guidelines for election coverage on 2nd April by the Media Council of Kenya, is thus a much awaited solace in the media industry.

Implementation of the guidelines

Some media stations such as Citizen TV, on 2nd December this year, when airing rallies of ODM and TNA official coalition with URP, decided to split the screen equally while giving each party equal time for the sound. The move clearly shows the effort of the media stations to abide by the guidelines.

There is debate currently going on about the challenge of ensuring equality in coverage of campaigns, when there is clearly more demand for some specific candidates than the others as evidenced by the polls. It is also important to note that media houses are in business and will thus be more interested in coverage of issues that sell as opposed to any other news. It is our hope that all the media houses will strive to adhere to the guidelines, which they all signed, despite the challenges that they may face.

Role of politicians

Politicians in Kenya enjoy fanatical support, especially in their tribal turfs. In fact, it was a National Accord Agreement culminating in power sharing agreement between ODM and PNU, agreed by politicians and signed by a politician that resulted in calm returning to Kenya after the 2007/08 election. The negotiations were spearheaded by former UN Secretary General Kofi Annan.

The politicians should thus use their influence to not only sell their policies, but also to preach

The media can also be used to incite and fan negative ethnicity. The ICC prosecutors in their charges against Joshua Sang, a radio journalist, are alleging that he used his influence as a radio personality to incite violence in Rift Valley using coded language - of course Joshua Sang remains an innocent man till proven otherwise. The media was also a blamed in the 1994 Rwandan genocide that resulted in over 500,000 people losing their lives. It was used in coordinating the extermination of Tutsis by the Hutus.

peace. Most of the politicians have been very good at preaching peace and some like TNA and URP have cited the pact, as being inspired by the need to ensure that Kenyans communities co-exist peacefully.

Hate speech

There has been several numbers of incidences of politicians engaging in hate speech, the most recent being the MP for Embakasi Hon. Ferdinand Waititu famous for his so called 'instance justice Embakasi style', who was charged with inciting violence against the Maasai community in Kayole. He was charged on 27th September.

Matuga MP Chirau Ali Mwakwere was let off the hook by the court on 19th September, after he was charged with incitement to violence at a rally.

There have also been utterances that have scary intonations. Utterances such as 'join us or perish' should be condemned, although the slogan may have been deployed

figuratively. Such utterances by politicians are not helping the attempts to reconcile and co-exist peacefully, ahead of the upcoming elections.

Conclusion

It is pertinent that all stakeholders, especially the major ones, media and the politicians, should be actively engaged in the process of preaching peace ahead of the 2013 elections. Post election violence had overarching effect on the economy; it is thus the duty of each one of us to own up the process of preaching peace as opposed to leaving it to specific institutions or individuals.

It is also pertinent that the politicians prepare their supporters for loss, so that they do not resort to violence in case they lose. The current rhetoric of stating their party or coalition is bound for State House without preparing for a possible loss, doesn't help. [KN](#)

The writer is a law student at Kenyatta University.

What is our security preparedness in March 2013 General Election

Jane Kwamboka

What resonated with most Kenyans with regard to the term 'election' before the 2007/08 was politicians competing for office. But after the 2007/08 macabre violence that resulted in 1,133 deaths and over 600,000 people being displaced, the term 'election' has acquired another meaning; it has acquired a meaning not just of competition but of horror.

Currently there is a state of uncertainty among citizens as to whether the upcoming election 2013 will be peaceful or the 2007/ 08 horror be relived. Some have made arrangements to be on the 'safe zone', so that they are insulated against eviction, murder, destruction and other types of ills that may be perpetrated against them from being on the wrong region. A Kenyan woman in BBC's 'Sema Kenya' programme admitted that she was reluctant to register as a voter since she fears persecution during election time.

The importance of security in ensuring that citizens exercise their constitutional right to vote

provided under article 38(3) (b), cannot be overemphasized. The right to vote in a secret ballot as opposed to "Mlolongo" or 'queue-voting' practised in 1988 during KANU party nominations, alone cannot be the only security to a voter. There need to be adequate measures to ensure that every citizen is secure.

The voter should vote in an environment where there is no fear of imminent attack in the event that a particular leader losses election. Under section 14(1) of the Police Act, it is the police who are mandated to do

duties such as maintenance of law and order, preservation of peace, protection of life and property and prevention and detection of crime. However, in the Baragoi and Garissa, the Kenya Defence Forces have been used, controversially citing article 241(3)(b) in which the army may be required to come in during disaster to assist the police.

Security during campaign period

The campaign period always culminate in rallies attracting large crowds. One can remember the incident that occurred in



All eyes on him, the new Inspector General of Police David Kimaiyo.

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June 2010 in which a grenade attack was hurled against a crowd in a 'NO' camp during a referendum campaign rally which resulted in 6 people losing their lives and 109 of them being seriously injured. In light of the recent spate of grenade attacks, most of which have been termed as retaliatory attacks instigated by invasion of Somalia in pursuit of al-Shabaab militia, in fulfillment of Kenya's right to self defense, the police should up their game.

Political crowds gatherings are bound to be a target for the militia, and the police have to be extra vigilant to ensure that attacks do not occur. They should be watchful and if possible, all the persons getting into rallies should be screened. It is also pertinent to note that the Waki Commission identified security deficiencies as one of the factors that didn't help the 2007/08 post election violence.

Capacity and number

The ratio of Kenya's police force to the population has been criticized for being too low, there was however promise by Mathew Iteere that 90,000 more officers will be deployed to ensure there is peace and order during the March 2013 elections. The officers are expected to be appointed from the Kenya Wildlife Service, the Prisons Department and the National Youth Service. The move is a positive one, since it will ensure order and will act as deterrence to any possible perpetration of violence.

The police machinery in terms of vehicle and gun sophistication has also been lacking. Top officers have also lamented at the low daily fuel budget that inhibits their ability to perform their functions effectively. The release of several land rovers to be used during the election



A victim of one of the grenade attacks in Nairobi being assisted. These are sad scenes coming just before the elections.

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Baragoi

The Baragoi incident resulted in 42 deaths occasioned by a sudden bandit attack. Some of the speculations which have been milling around the media is that the intelligence was leaked to a spy, while others have alluded to the fact that the bandit's weapons were more sophisticated compared to those of the police.

Some politicians such as Honorable William Ruto have called for transparency in the tendering process of acquisition of weapons, saying it is common sense that the police use guns and there should be no secret in the tendering process, but instead the process of acquisition of guns should be transparent process subjected to public scrutiny.

Several ideas should be considered to ensure that the weapons acquired by the police force are state of the art weapons and at good rates.

Attack on civilians by Kenyan military in Garissa

The nature of response by the Kenyan military in Garissa, with retaliation to three of their own being shot while repairing a

puncture, has left us with a lot to worry about.

It is not just the behavior of the military towards the civilians but also the decision to order the army, to do a job, whose sole jurisdiction is the police. Several parliamentarians criticised the decision to invoke article 241(3)(b) of the Constitution, which allows the army to be called in, in periods of emergency or during disasters.

It also ironic that the same people expected to protect life and property, have instead decided to do the opposite by torching property and assaulting innocent Garissa residents. Such a scenario should not be repeated since it does not augur well, especially considering the elections are just around the corner.

MRC

Mombasa Republican Council is a group advocating for secession due to marginalisation in terms of resource allocation and other opportunities. Most of the members have however

buried their radical demands and instead promised to preach peace, after being brought to light on the opportunities that lie in the new constitution. Their conversion is also partly caused by the firm response by the Police to their unreasonable secessionist demands.

The group had threatened to disrupt the ongoing voter registration, but was warned against such an attempt by Deputy Police spokesman Charles Owino. Given such threats in the region and the fact that the mock election were disrupted in Malindi, it will be important that the police rise to the task to ensure that the Kenyans at the 'hot regions' have an election without a hitch.

Remuneration and working conditions

Poor pay and sorry state of police working conditions were some of the factors identified by Justice Phillip Ransley in his report, which drained passion off police officers to diligently serve the citizens. In a step to address the problem, on January this year, a project estimated to Sh62 billion was launched to refurbish 14 stations. The facelift entails features such a provision of better housing facilities for the officers and their family.

he police machinery in terms of vehicle and gun sophistication has also been lacking. Top officers have also lamented at the low daily fuel budget that inhibits their ability to perform their functions effectively.

Remuneration has also been a problem in the force. The police are earning meager salaries and their situation is aggravated by the fact that they have no right to strike like other workers. There was, however, a reported go slow early November, especially Nyanza in protest of their low salaries. It is pertinent that the government looks into their grievances and gives them a better pay, so that we can get the best out of them. Correcting such problems is crucial in

ensuring that you have a satisfied officer, who will provide their services diligently.

Reforms

In the Constitution of Kenya 2010 under article 243(2), both the Kenya Police Service and Administration Police Service have been placed under one umbrella called the National Police Service. The National Police Service will be headed by an Inspector General, with the two services being headed each

by a Deputy Inspector General who shall be appointed by President on recommendation by The National Police Service Commission.

The Chairman of the commission released the nominees for the position of Inspector General and the two deputies on 20th November. President Kibaki and Prime Minister Raila Odinga are expected to consult and forward selected nominees to Parliament for approval. It our hopes that the august house will fast track the process to ensure that the new drivers will be on

their seats, come election time on March 4, 2013.

The process of appointment of state officers under the Constitution of Kenya 2010 is a revolutionary, especially with the advent of interviews being carried on live television.

Such a process has ensured that there is transparency in the process and the formulae of appointment is explained to the citizens. In the process of selection of aforementioned positions the National Police Service Commission gave a percentage suitability assessment of each of the candidates after carefully scrutinising them.

Afloat

With the transparent appointment process employed by the commission, we are hopeful that we are going to see change in the service that has been struggling to stay afloat in both performance and public confidence. It is pertinent that the Inspector General and his deputies are installed before March 4, 2013 so that we can have a fresh perspective and leadership. The police should be given better pay, better housing and more sophisticated equipment so that they can be abreast with the ever changing world of criminals.

Such a move will inspire the officers and attract youths to join the force, as opposed to recent situation where youths shunned the recruitment due to the Baragoi killings. [KN](#)



Former Police Commissioner Mathew Iteere

Implementing Chapter 6 of the Constitution

The case of Uhuru Kenyatta and William Ruto

By Katiba News Correspondent

The process of implementing Chapter 6 of the Constitution has been simply mind-boggling. There has been pushing and pulling from all fronts. The CIC (Commission for the Implementation of the Constitution) has been haggling with Parliament over the watering down of Chapter 6 by the Leadership and Integrity Bill 2012, which has now been passed and signed into law.

The other fight is being fronted by the individuals and civil society organizations, who have asked the court to rule that some prominent politicians are unfit to run for the presidency. The IEBC has the power to determine the suitability or otherwise of some candidates to run for office by rejection their nomination papers. It has the power to create a code of conduct for candidates under article 88(4)(j) of the Constitution.

The experts have also been arguing valiantly with each side fronting cogent and sound arguments for or against the candidature of Eldoret North MP William Ruto and Deputy Prime Minister Uhuru Kenyatta. I will now look at the three battle fields in detail.



Is their destiny intertwined? Jubilee Coalition president and deputy president Uhuru Kenyatta (right) and William Ruto.

The watered down Leadership and Integrity Act 2012

The CIC has been up in arms against the Leadership and Integrity Act 2012, since it early stages when it was still a bill. It asserts that the Act does not conform to the letter and the spirit of Chapter 6. Some of the objections to the Act include; failure to incorporate the demand of the public and absence of procedures and mechanisms to implement provisions of Chapter 6.

It also claims it failed in meeting the provisions of article 73 regarding responsibilities of leadership and article 77 on restriction on activities of State Officers. It also has a problem in its failure to provide a mechanism that would allow the Ethics and Anti-Corruption Commission instigate prosecutions when Chapter 6 is contra-

vened, when the Director of Public Prosecutions is unwilling to prosecute without any just cause.

It is on the above grounds that the CIC was against the passing of the Act. It had even threatened go to court to seek a declaration that the Act was unconstitutional.

Seeking redress

Several civil society groups and individuals have filed cases in the court to seek to bar some presidential candidates from running for office. The Uhuru and Ruto case was initially filed in January by Mr Augustino Neto (now Ndhiwa MP), Mr Zechariah Momanyi, Mr Maurice Mwariama, Mr Abdulaziz Abubakar, Kenya Youth Parliament, the Kenya Youth League, Mr Omanga and Mr Njuguna.

They sought to move the court to give orders to IEBC not to accept the nomination papers of Mr Ruto and Mr Kenyatta after their cases were confirmed by ICC. They argued that allowing them to run would be in blatant breach of Chapter 6 of the Constitution.

Patrick Njuguna had sought an amendment to the petition to include Prime Minister Raila Odinga, Vice President Kalonzo Musyoka and Deputy Prime Minister Musalia Mudavadi. The application was however dismissed by Justices Mohammed Warsame, Isaac Lenaola and Philomena Mwilu.

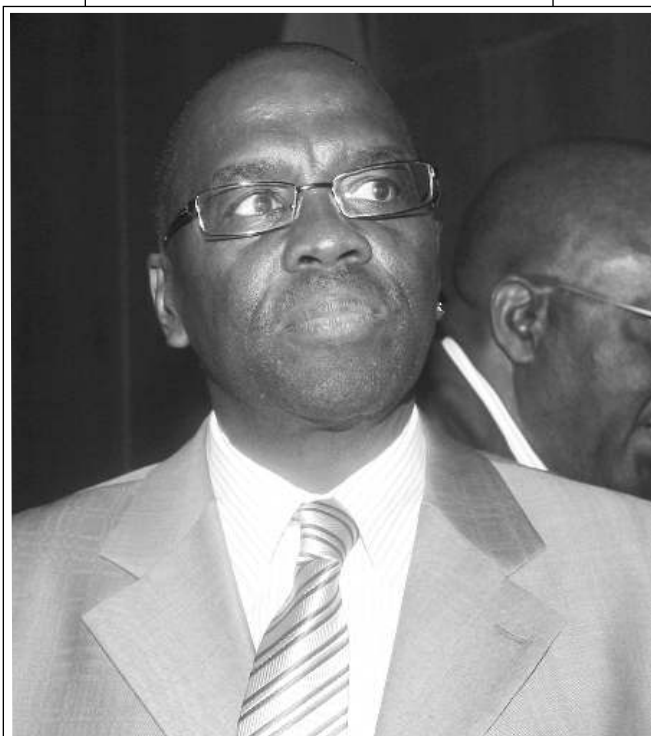
Njuguna argued that his effort to amend the petition was informed by the need not to look partisan by including all the candidates in the integrity case. Netto however dissociated himself from the petition, maybe due to the fact that he himself is an ODM member (now elected as an MP on the party's ticket). On 29th November the case was withdrawn through the petitioners' lawyer Ambrose Weda.

Fresh case

Another case was filed against the two- Uhuru and Ruto, together with other presidential candidates, Prime Minister Raila Odinga, Musalia Mudavadi and Kalonzo Musyoka. They will all now have to clear their names

before they can get a slot on the ballot paper. The petition was filed on 30 November by an NGO, called Public Corruption, Ethics and Governance Watch. An individual activist is also joined in the suit. They are seeking a declaration that their candidature would not be in tandem with the provisions of Chapter 6 of the Constitution.

In the case Raila Odinga is accused of fostering the 1982



Chief Justice Dr Willy Mutunga

attempted coup, changing the Molasses plant venture into family business and he is also alleged to have had a hand in the 2008 post election violence. Kalonzo Musyoka on the other hand is alleged to have taken part in underhand sale of Somali embassy and inappropriate acquisition of public land in Yatta and Msambweni settlement schemes.

Mudavadi will have to rebut claims of being linked with the Goldenberg scandal and grabbing of land during 2007/08 post-election violence. The case joins another filed by International Centre for Peace and Conflict that seeks to specifically bar Mr Ruto and Mr Kenyatta from running from office citing the same Chapter 6 reasons. There has been vociferous argument by experts and citizens at large on whether Mr Uhuru and Mr Ruto should run in the upcoming presidential election 2013. I will look at the arguments fronted by both sides.

The root of the argument against the running of Mr Uhuru and Mr Ruto is that they are facing serious charges of crimes against humanity at the International Criminal Court. It would thus be in breach of Chapter 6 of the Constitution to allow them to run for the highest office in Kenya. Some like Maina Kiai have sensationally

argued that there shall be enormous ramifications in terms of international relations, if the two win the election and decide to abscond from the jurisdiction of ICC.

Of course both Uhuru and Ruto have dispelled such fears by reassuring Kenyans that they will continue to honor and cooperate with the court, and that they are innocent men who are eager to prove their innocence

in the court. There have been also fears that it would be difficult for the two to run Kenya, while honouring their days in court at the ICC. Mr Ruto has dispelled such fears claiming that they can comfortably do so especially in this age of technology.

Case in support

The heart of the argument in support of Uhuru and Ruto is the internationally recognized criminal law principle that an accused is presumed innocent till proven otherwise. The principle is anchored in article 50(2)(a) of the Constitution. They continue to argue that that it would be unfair to deny them a chance to pursue the seat of presidency and vice presidency, since they are innocent men till proven otherwise.

They two candidates, together with the experts who support them, have argued the power of choosing the candidates rests with the Kenyans themselves and not any particular arm of government. They have lashed out at attempts to stop the two from running as an attempt 'to have an election before an election', which is in blatant breach of democracy.

The court currently vested with the matter will have to weigh these arguments among others. It was expected that the sub-judice rule will be applied. The rule provides that persons should desist from commenting on issues before court before they are dispensed with. That however does not seem to apply in this case given the immense

interest by the public on the matter-in fact opinions are being written nearly every day regarding the matter.

The IEBC is also mandated to ensure that the candidates meet the code of conduct which it is mandated to proscribe under article 88(4)(j). It was therefore expected that IEBC will have power to reject some nominations papers of some candidates for failure to meet the provision of Chapter 6.

However IEBC Chairman Issack Hassan while speaking on Citizen TV's Cheche show, asserted that the since Mr Uhuru and Mr Ruto are not guilty of any electoral offence, they will be eligible to run if the courts clears them. By asserting this, he therefore intimated that the courts will have a final say and that IEBC will not wear the shoes of having to determine their eligibility.

Innocent

With the pushing and pulling and the great public interest in the matter, there will be immense challenge in implementing the provisions of Chapter 6 of the constitution. The court has momentous matter before it and it will have to deal with it prudently, trying to balance the arguments being fronted by both sides.

The main issue that the court will have to grapple with, is



Pro-ICC activist Maina Kiai

whether to dismiss the candidates in accordance to Chapter 6 following the argument that they are innocent till proven otherwise or whether to give them the green light to run, if the argument that democracy demands that power of electing the leaders belong to the people carries the day.

As for now all eyes will be on the courts, to see how they will determine the matter, and how the citizens will receive the judgment. The matter should also be dispensed with quickly, given the fact that the parties may seek appeal at the Court of Appeal and even at the Supreme Court, since it is a matter of great public interest.

If it reaches the Supreme Court, questions will be raised about impartiality of Chief Justice Willy Mutunga (who sits on the court), since he had commented on the issue of integrity of leaders in a rally. His comments appeared to be leaning on the side of the petitioners. KN

Civic education under the new constitution

By Thuita Guandaru

Civic education is basically the enlightenment of the citizens of their rights and duties. It may also entail the study of various arms of the government, with special regard to the role of citizens in these governments. In this article I will give special illumination to the upcoming elections.

In the definition of civic education, I will be generally referring to enlightenment in terms of citizens appreciating the importance of voting, understanding the process of voting and even being able to fathom electoral offences and malpractices that may occur during the process of voting.

In other words I will focus on the need of voter education, as opposed to the general broad civic education. Without the citizens getting the above mentioned knowledge regarding the election, it will be tantamount to disenfranchising them of their constitutional right to vote provided under article 38 (3)(b).

It was not until the 1997 Inter-Parties Parliamentary Group reform package that voter

education was made as one of the function of Electoral Commission of Kenya. Prior to this voter education was not a business of the commission, and hence many citizens were immensely incapacitated in their ability to participate in elections with understanding.

After the reforms in 1997, voter education was enshrined in the then Constitution as one of the functions of the Electoral Commission of Kenya.

Importance of voting

It is important for the citizens to know that by exercising their



Former CKRC Chairman Prof. Yash Pal Ghai

right to vote, they are invoking their democratic right of being able to choose their preferred government. According to the landmark definition proffered by Abraham Lincoln, democracy is a government of the people, by the people, for the people.

From the definition it means that it is the citizens who are actually supposed to run the government, but due to efficiency and faster decision making, the role is delegated to certain elected persons who are able to present their interests. Prime Minister Raila Odinga recently captured the importance of voting by stating that during every election period, good citizens choose bad leaders by waiving their right to vote by not registering.

Rights that may appear obvious such as right to vote by secret ballot provided under article 38(3)(b), should be imparted on the citizens. The rationale of such a right is to ensure that every citizen has the freedom to choose without any duress or persecution after the vote. The rule was flamboyantly flouted in 1988 during KANU's preliminary nomination where the 'queue-voting' or 'mlolongo' was used. Such a method exposed voters to persecution and pressures that interfered with their freedom of choice.

In the definition of civic education, I will be generally referring to enlightenment in terms of citizens appreciating the importance of voting, understanding the process of voting and even being able to fathom electoral offences and malpractices that may occur during the process of voting.

There is an adage that goes 'there is not better check to the government than an informed citizenry'. The truth of such a statement is based on the fact that it is very difficult to manipulate the citizens who are armed with knowledge. It is thus important for the citizens to be brought to light on types of electoral offences provided in Part VI of the Elections Act.

Offences

The offences provided range from those that are simple to fathom such as bribery and use of force to some which may require some training in order to spot them, for example offences by members of staff of the Commission. Education on such offences should be accompanied by enlightenment on the mode of seeking redress, in case such offences are spotted. Voter education has never been more important, than in the current dispensation in which new positions have been

brought in by the devolved government provided under the Constitution of Kenya 2010 that was inaugurated in August that year. The system is not only new to the citizens but also to the IEBC.

The IEBC carried out mock elections on 21st March, in an effort to ascertain among other logistics, the time that can be taken by each voter to cast his or her ballot. It was a perfect learning opportunity for both the IEBC and the citizens whose constituencies were selected for the process, that is, Malindi and Kajiado North.

It was a shame that there was poor attendance especially in various polling stations in Kajiado North, since this would have been a perfect opportunity for the residents of the two constituencies to engage closely with the system ahead of the upcoming elections. A chance for practical voter education was missed by the residents of the constituency.

The number of positions to be vied has gone up to 6 because of the devolved governments, a drastic departure from the past. The positions include President and Deputy President,

Without the citizens getting the above mentioned knowledge regarding the election, it will be tantamount to disenfranchising them of their constitutional right to vote provided under article 38 (3)(b).

Governor and his or her Deputy, Senator, Member of Parliament, Civic Ward and Woman Representative. The time taken was approximated to be just over 4 minutes by each voter. The time may go up to 10 minutes if the voter is illiterate.

If a good number of voters take 10 minutes to vote, then it's definitely going to be challenge to IEBC in ensuring that results are tallied timely. The nature and extent of the challenge is going to be drawn clearly when the number of voters who are registered is going to be unveiled. Thorough voter education will play a pertinent role in ensuring that voters take shorter time in casting their vote.

In fact, a voter who is familiar with the process can hardly take two minutes, since it is assumed the voter already knows the candidates he or she is voting for, and the only thing he or she

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will do, is appending the mark stipulated on the ballot paper. The challenge had led the then Justice Minister, Mutula Kilonzo, to suggest a constitutional amendment to have two elections, a presidential one in December and that of MPs, Senators and County representative in the year 2013. Of course this is now not possible after the ruling of the High Court and Court of Appeal that elections will be held on 4 March 2013.

Innovations

Thumbs up to IEBC for the innovation of different colored ballot boxes. The innovation will greatly assist a voter, especially the illiterate, to ensure that he/she casts the ballot paper in the right box. Each ballot paper matches with the ballot box, with each of the 6 positions being given a different colour.

The above will ensure that each paper is cast in the right box, and will prevent the necessity of seeking help from the officers-which can at times be uncomfortable. The old and the partially visually impaired will also benefit from the innovation.

In the mock election, the use of thumb print was also introduced as one of the marks allowed in marking the preferred candidate in the ballot paper. Such a move will greatly aid the illiterate and the very old.

The IEBC is constitutionally mandated to provide voter education under article 88(4)(g)



IEBC undertaking a mock election in one of the constituencies in the country.

of the Constitution. Failure of the commission to provide such education can thus lead to a citizen or any other institution going to court to compel the commission to perform its constitutional duty. That may not however happen since the commission has been diligent in the performance of its duty to provide civic education by the launching of Voter Education Curriculum on 1st October.

The launch also culminated in the unveiling of Voter Registration Curriculum, Handbook on Elective Positions and Voter Education Training Manual. During the launch, Chief Executive Officer, James Oswago, encouraged citizens to get rid of the fallacy that voter education is for illiterate persons. He went on to warn that some ignorant persons may be more knowledgeable than the literate. The Vice-Chairperson Lillian Mahiri-Zaja on the other hand promised that the commission will use SMS and other various forms of media to educate voters.

Most of these steps have actually been implemented. The civic education by the commission is expected to last up to June 2013, which is 3

In fact, a voter who is familiar with the process can hardly take two minutes, since it is assumed the voter already knows the candidates he or she is voting for, and the only thing he or she will do, is appending the mark stipulated on the ballot paper.

months after elections. The government has also made a commendable step in providing civic education through the launch of a website dedicated to providing civic education to the youths and those who can access the internet. The website address is www.Knice.go.ke. The website can also be accessed through Facebook and Twitter.

Facebook

This is a bold step and is in tune with the changing times and will go a long way in educating the youth. The IEBC has also not been left behind, since it operates Facebook and Twitter accounts that are active thus assisting in voter education. It is important for the process of voter education undertaken by IEBC to spread its footprints into interior and remote parts of Kenya and not be just restricted to certain urban areas.

The commission should even consider ways in which the civic and voter education can be conducted in vernacular, so that those who can't understand English or Kiswahili are not left behind. The physically challenged should also not be left behind, for example sign language should be employed for the deaf and Braille and other relevant materials should be availed for the visually impaired. Voter and civic education are very pertinent in ensuring that citizens are able to fully exercise their constitutional right to vote.

The education should thus be taken seriously by the commission to avoid certain myths and fallacies being disseminated by some people taking advantage of the naivety of some citizens. Some of the fallacies that are being floated around include those with regard to the fact that women will now not be eligible to run for offices since they have their 47 seats reserved. ^[KN]

The writer is a lawyer with Mwangi and Guandaru Advocates.

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Voter registration and the impending challenges

By Dorothy Momanyi

Kenya finally decided to change gears from manual voter registration to Biometric Voter Registration this year in a move expected to curb electoral malpractices. The long-awaited BVR kits arrived early November and registration kicked off on November 19.

The manual system has been marred with anomalies such as dead voters rising from their graves during the polling season. It is expected that the electronic system will arrest such issues and further increase efficiency. Voter registration is the process by which the citizens are given the power to exercise their constitutional right provided under article 38(3) (a), which provides that every citizen has the right to be registered as a voter. It is through voter registration that a citizen is able to exercise the right to vote provided under article 38(2).

Absence of adequate measures to ensure that every person registers as a voter is tantamount to disfranchising a person of his right to vote. According to article 88(4) (a) of the Constitution, the ball is on Independent Electoral and Boundaries Commission's court to ensure that the registration

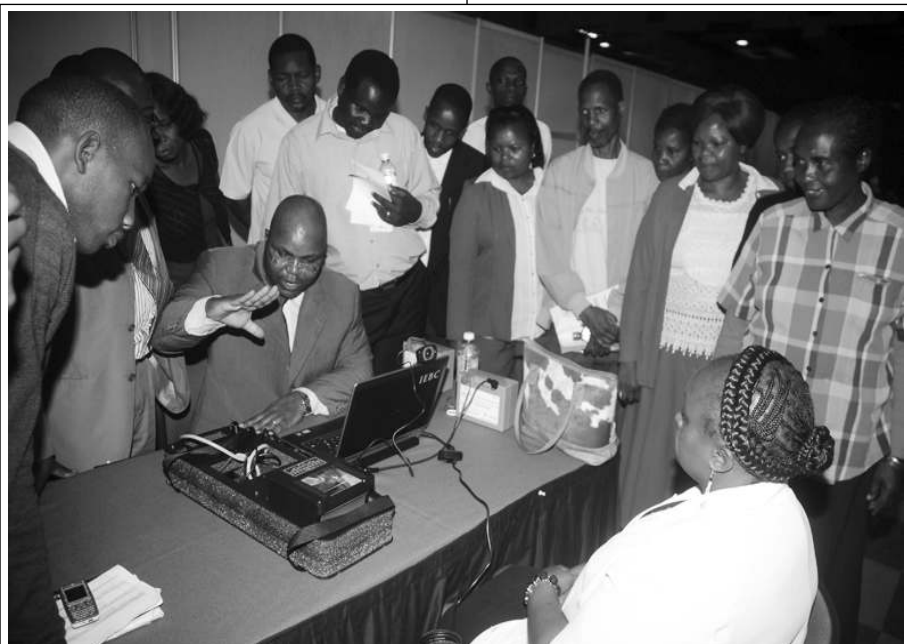
process is smooth and that there is adequate and thorough sensitisation of citizens of ongoing voter registration process.

The commission has so far done a good job in terms of being vigorous in the sensitisation process. It has deployed nearly all means at its disposal, including the various media such as radio, newspapers, televisions and others. It has even gone an extra mile in organising events such as the marathon which commenced on November 2 on various region of the country. Such an event will go a long way in sensitising the people and also enable them to own the process.

Delay of BVRs

The registration was expected to commence on November 12 but was dragged by the delay of the arrival of the BVR kits. The delay definitely disorientated the IEBC and made it to work under a tighter schedule. This means that the 30 day period granted from 19 November to December 19 is unlikely to be extended. It is only Garissa which will be expected to ask for injury time since they started two days late due the riots that took place in the area.

The manual system has been open to manipulation to meet vested interests, key among them double registration. This mostly occurs where a voter is



Massive investment. Will the BVR kit ensure free and fair elections?

registered in two different polling stations and therefore giving the person an undue advantage. Such an offence defeats democracy that requires one man to have one vote. The manual system has also been barraged with an array of other criticisms such as inefficiency, delay in disseminating results and several others.

Even though many have lauded the electronic system as being the saviour, it is not a panacea to an election made in paradise. Of course, there are a good number of advantages that instigated the government to spend a whopping Sh9.6 billion to move from the manual system to the electronic system, such as increasing efficiency and reducing loopholes of manipulation I have explained earlier.

The new system however is bound to face some new challenges some of which include possibility of electronic system being hacked, possibility of system failure due virus attack, operation challenges due to electricity failure, lack of public trust and several others.

The manual system has been marred with anomalies such as dead voters rising from their graves during the polling season. It is expected that the electronic system will arrest such issues and further increase efficiency. Voter registration is the process by which the citizens are given the power to exercise their constitutional right provided under article 38(3) (a), which provides that every citizen has the right to be registered as a voter. It is through voter registration that a citizen is able to exercise the right to vote provided under article 38(2).

Hackers

The electoral system can be hacked by malicious experts who may be agents of certain scrupulous parties. The electronic register it thus not as safe since if hackers gain access, they can interfere with it through altering the number or identification of voters to tilt to a particular candidate.

The IEBC Chairman Isaack Hassan in a local TV station allayed such fears by stating that it was almost impossible to hack into the electronic register and alter the number of voters. He added that since every

person will be required to produce his or her Identification Card before casting their vote, it will be impossible for imposters to vote.

Any attempt to 'import' new voters into the IEBC register through hacking, will be impossible since their ploy will be uncovered in the polling day when they will be required to produce their identification card.

The hackers may however try to employ other mechanisms apart from inflating the register, such as trying to bring down the whole system and therefore paralyzing the election process. It is thus pertinent that IEBC develop a reliable backup system to avert any crisis, especially considering the fact that contested elections was the spark that triggered the 2007/08 post-election violence. Another good idea is to ensure that the manual system

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is kept in a safe 'store', so that if the electronic system is struck with the hacking 'disaster', then we can go back to the manual system.

Possibility of virus attack

The BVR system has a laptop as one of the major operating components. The laptop can thus be brought down by computer virus attack. A virus is a type of programme that can be created by malicious experts to bring down the register. The solution to the above is a bit straight forward for it can be averted by installation of a strong and up to date antivirus. The commission should also employ technical experts who can come to the rescue in case of any such problem.

Operation failure to electricity/power failure

The electronic system could also be crippled by power shortage. The BVR system though possessing some backup power battery, may be

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depleted after use for some hours. In the course of carrying out registration in the first day, on 19th November, the problem was identified in some parts of the polling stations. The IEBC should thus ensure that it is not dragged down by power shortage especially considering the majority of parts in Kenya, do not have electricity connection.

Lack of public support/ trust

Some groups of persons, especially the old, have not

developed a firm trust on the electronic system. The lack of trust may be due to the fact that the manual register looks more 'real', since it can be seen touched and it simple and doesn't require any expertise to operate.

The lack of trust is also founded on the challenges which I have earlier alluded to which include; propensity to manipulation and several others. IEBC has also alleged that some persons are taking advantage of the illiteracy and naivety of some sections of the citizens by spreading propoganda that undertaking process of electronic registration can make one impotent of lead to one getting cancer.

Lessons from abroad

There are several countries that have successfully deployed the electronic system of voting, for example USA. IEBC should study such models keenly and ensure that they take notes, so it can make the most of the system and arrest any contingent problems.



People queue to register during the previous manual voter registration.

The US system has matured to the level of enabling voters to cast their votes early, such a mechanism should be considered in future by IEBC since it relieves the commission of any last late rush and ensures convenience to voters who may be absent during the polling day.

The US system has even reached a maturity of being able to conduct absentee voting- process where voters can cast their votes without necessarily going to the polling station. Their mastery has also

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enabled them to conduct registration during the actual voting day, that means that a person who for any reason did

not have time or wasn't available during the registration process, can wake up on the polling day and kill two birds with one stone by registering and voting at the same day.

The change from manual to electronic system is a great stride that will lead to many benefits, key among them being ensuring that loopholes that characterized the manual system are taken care of. That said, the new system is bound to be faced with challenges that are ubiquitous to any change

The IEBC should ensure that it is armed with adequate technical expertise that will get under any emerging challenges. Civic education is also needed to counter the baseless propaganda that could dissuade citizens from registering. [KN](#)

The writer is a Nairobi based lawyer.



Will he make history? IEBC Chairman Issack Hassan.

THE KONRAD ADENAUER FOUNDATION IN KENYA

Konrad-Adenauer-Stiftung is a German political Foundation which was founded in 1955. The Foundation is named after the first Federal Chancellor, Prime Minister and Head of Federal Government of the then West Germany after World War II. Konrad Adenauer set the pace for peace, economic and social welfare and democratic development in Germany.

The ideals that guided its formation are also closely linked to our work in Germany as well as abroad. For 50 years, the Foundation has followed the principles of democracy, rule of law, human rights, sustainable development and social market economy.

In Kenya, the Foundation has been operating since 1974. The Foundation's work in this country is guided by the understanding that democracy and good governance should not only be viewed from a national level, but also the participation of people in political decisions as well as political progress from the grass roots level.

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- Securing of the constitutional state and of free and fair elections;
- Protection of human rights;
- Supporting the development of stable and democratic political parties of the Centre;
- Decentralisation and delegation of power to lower levels;
- Further integration both inside (marginalised regions in the North/North Eastern parts) and outside the country (EAC, NEPAD); and
- Development of an active civil society participating in the political, social and economic development of the country.

Our programmes

Among other activities we currently support:

- Working with political parties to identify their aims and chart their development so that democratic institutions, including fair political competition and a parliamentary system, are regarded as the cornerstones for the future development in Kenya.
- Dialogue and capacity building for young leaders for the development of the country. Therefore, we organise and arrange workshops and seminars in which we help young leaders to clarify their aims and strategies.
- Reform of local governance and strengthening the activities of residents' associations. These voluntary associations of citizens seek to educate their members on their political rights and of opportunities for participation in local politics. They provide a bridge between the ordinary citizen and local authorities, and monitor the latter's activities with special focus on the utilisation of devolved funds.
- Introduction of civic education to schools and colleges. We train teachers of history and government in civic education. In addition, we participate in the composition of a new curriculum on civic education.

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