

Anatomy of Election Rigging Claims in Kenya: 1988-2017



Kenya's Ground Zero

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©International Policy Group
P. O. Box 14670 00400 Nairobi
0722217602
media@ipgjustice.org
www.policy-group.org
twitter: @ipgjustice
Facebook: IPG Justice

Kenya's Ground Zero is an IPG initiative on elections in Kenya. Elections have become moments of vulnerability to violence and conflict. These are moments that expose and exploit the weaknesses of institutions. The objectives of this initiative are;

1. Provide field based analysis of issues and challenges relating to the management of elections in Kenya.
2. Make recommendations to guide practical action and research based policy to guide action and response to challenges generated by the elections.
3. Contribute to peaceful and transparent elections leading to post election stability.



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Executive Summary

Election rigging claims have been a constant feature of Kenya's electoral cycles. A historical analysis of these claims however bears out the fact that election rigging claims have been more of political tools to gain power in Kenya than a genuine commitment to the integrity of the electoral process.

A key finding in this historical analysis is the constant feature of the convicted British ballot papers printing firm Smith and Ouzmann which has printed ballot papers for Kenya at every election since 1992 at its first presidential ballot. The elections of 1992 and 1997 saw the opposition blame the firm for providing extra ballots to former President Moi for ballot stuffing and in 2007 and 2013 to Mwai Kibaki and Uhuru Kenyatta respectively. Raila Odinga has always been at the forefront in the allegations.

The united opposition in 2002 did not show any meaningful rejection of Smith and Ouzmann as a provider of ballot papers. After taking power in 2002 when in government, the political establishment did not reject the company's involvement in the 2005 constitutional referendum. The same firm would provide ballots in 2007 with the acquiescence of both the government and the section of it that had now formed the opposition.

The aftermath of the 2007 election is the only credible effort Kenya has seen at addressing electoral systems integrity. A complete overhaul of the electoral system and institutions took place as Kenya would face its first elections under the new 2010 constitution. Bizarre enough, Smith and Ouzmann was still the procured entity for the ballot papers for the referendum even after commitments to restoring the integrity of the electoral system.

The 2013 election was approached with some confidence in the electoral process as it was an election between incumbents where Raila Odinga was Prime Minister and his challenger Uhuru Kenyatta was Deputy Prime Minister. Election rigging claims would follow the election results. Smith and Ouzmann would still be the providers of ballot papers in the 2013 elections. The company and its directors would shortly thereafter be formally charged for using bribery to secure printing contracts following investigations by the Serious Fraud Office (SFO), a United Kingdom investigations unit. They were convicted and prosecuted. Kenya has just formally charged its officials involved in the fraud.

The use of rigging as a political strategy for power acquisition can be historically demonstrated in two other instances outside the Smith and Ouzmann conundrum. After the 1997 elections, Raila Odinga a presidential candidate in the election would claim that serious rigging had brought President Moi back to power. Shortly thereafter, Raila would get into a cooperation and then merger with the same government he blamed for stealing the election from him. He

would become Secretary General of the ruling party Kanu and minister in its government under President Moi.

After the 2007 elections violent aftermath, Raila would as well go into government with the same president he swore had stolen the election from him. He would serve as Prime Minister under Mwai Kibaki until 2013 where he would lose and then yet again claim rigging in what is the foundational claim that has led to the numerous allegations against the 2017 election.

Kenya faces the 2017 election with the most fragile election management systems it has ever had before any of its elections. The IEBC is besieged and floundering under attacks and obstructions with the aim of scuttling the whole process. Claims of election rigging have never been this consistent and numerous during a pre-election period.

The consequences of rigging this election have been variously enumerated by the opposition as “regrettable”, “dire”, “incite revenge”, “take the country to the dogs”, “have no country to talk about” among many. It is clear that violence will be the consequence if the election is alleged to have been rigged.

Kenya stands at a precipice. The allegations of election rigging show a historical pattern of use as tools for political negotiation by the same actors rather than a genuine concern for electoral integrity. The 2017 claims show a similar trend and disposition.

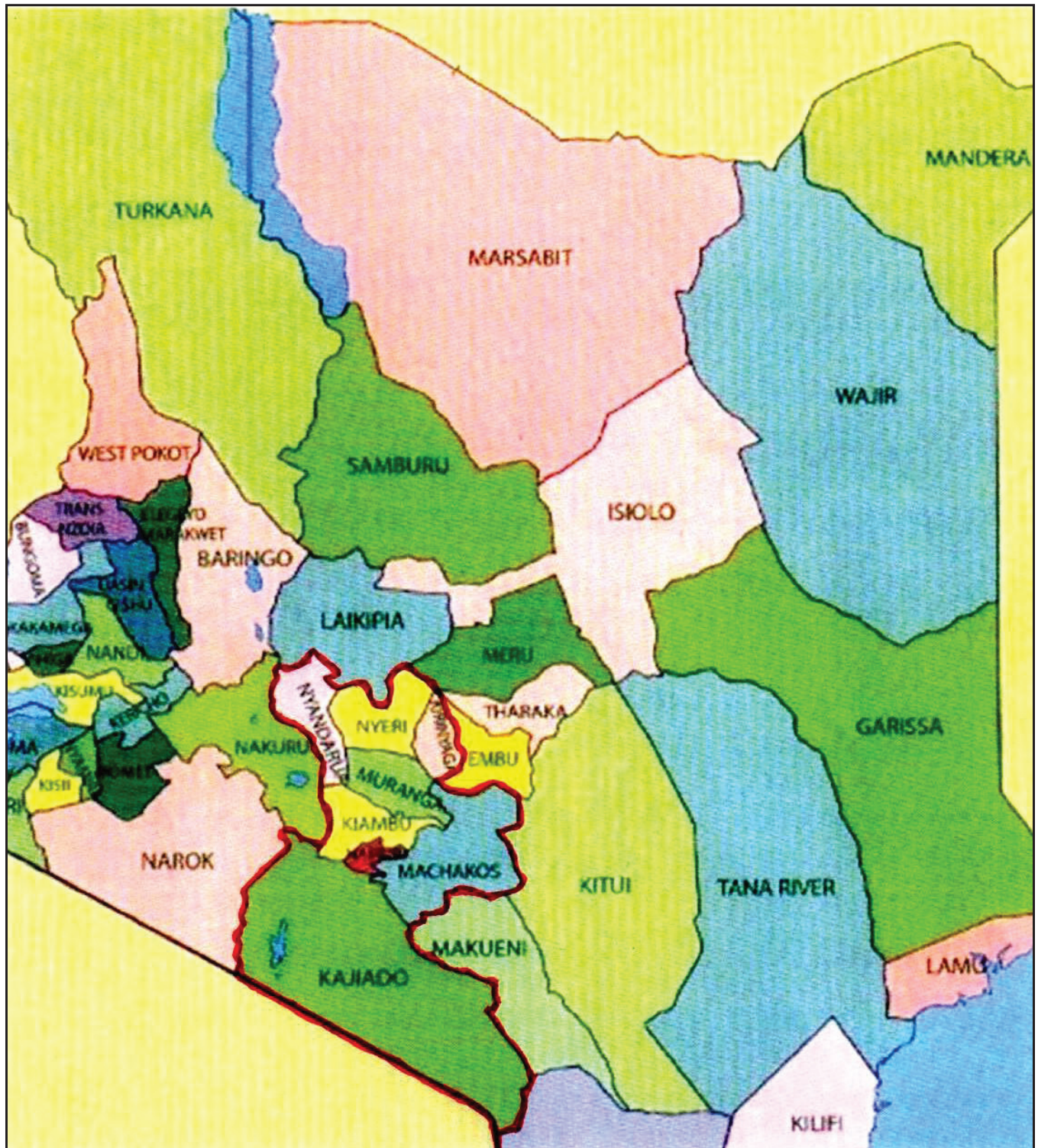
Recommendations

- The Opposition should in the interest of the integrity of the election process begin to provide empirical evidence of rigging rather than the alarmist approach it is taking that has the effect of undermining a process that is already difficult.
- The IEBC should give greater access to observing and monitoring parties to the election management process to ensure transparency is guaranteed at every step of the process.
- All the Election management professionals at the IEBC should seize themselves appropriately of the reasonably high duty of care they owe Kenya based on the electoral code of conduct and the principles embodied by it to ensure that no negligence or interference takes part in the election management to the extent that it would constitute criminal malpractice or election fraud to potentially nullify the entire election.
- The IEBC should take seriously its role as the election manager and weigh, verify and provide critical access to information and data that is at the heart of its election management process.
- The IEBC should report election data efficiently, in a consistent format, across platforms and to all stakeholders simultaneously to avoid the implication of illegitimate advantages to some actors in the political process.

LIST OF ACRONYMS

AfriCOG	Africa Centre for Open Governance
BVR	Biometric Voter Registration
CORD	Coalition for Reforms and Democracy
CA	Communication Authority of Kenya
ECK	Electoral Commission of Kenya
ID	Identification Document
ICC	International Criminal Court
ICT	Information and Communications Technology
IEBC	Independent Electoral and Boundaries Commission
IFES	The International Foundation for Electoral Systems
KANU	Kenya African National Union
KDF	Kenya Defense Forces
K-DOP	The Kenya Domestic Observation Programme
KPU	Kenya People's Union
MVR	Mass Voter Registration
NASA	National Super Alliance
NARC	National Rainbow Coalition
NIS	National Intelligence Service
NYS	National Youth Service
NCIC	National Cohesion and Integration Commission
ODM	Orange Democratic Movement
TUCK	Trade Unions Congress of Kenya
WDM	Wiper Democratic Movement

MAP OF KENYA



I. Introduction

As the countdown to the August 2017 polls narrows down, the government and the Opposition are engaging in furious wars characterized by allegations and counter-allegations on claims of the August polls rigging.

These assertions undermine the legitimacy and credibility of the electoral management systems and its results. Fears about electoral fraud resonate broadly and can have devastating consequences to election management and the stability of countries thereafter as Kenya experienced in 2007.

In his landmark speech on March 9th 2013 “Democracy on Trial in Kenya”, Raila Odinga laid down the foundation, based on his projection on the 4th March election, of what has come to be the overbearing message towards the 2017 election. The 2013 elections were rigged and the 2017 one will also be rigged.

“The IEBC failed to translate Kenya’s faith in democracy into a completely credible election which would unite the country,” he said, “What Kenyan’s experienced instead was the systematic failure of every instrument the IEBC had deployed for the election.”

“There was massive tampering with the final IEBC voters’ register, the tallying process at Bomas was compromised as their agents were expelled from the centre, voter registration numbers were reduced in their strongholds and added to jubilee strongholds, a change and rise of figures in jubilee constituencies and other illegalities that accompanied the election” he further said.

“It was clear that the constitutionally sanctioned process of electing new leaders had been thwarted by another tainted election bringing out a crisis in the faith Kenyans had placed in the institutions they expect to respect their democratic right and the rule of law...it is democracy that is on trial,” he asserted.

“As repeatedly said during the campaign we would have readily conceded if the IEBC had attempted to deliver a reasonably honest election or addressed the serious concerns that the Cord team had presented to the commission. Both judge Kriegler and the former ECK Chairman both admitted it was impossible to know who had won the 2007 election, we thought this would never happen again but most regrettably has happened.” The Cord Coalition would not recognize the election results announced by the IEBC.

In the following presidential petition in the Supreme Court, the main issue was that the electoral process was so fundamentally flawed that it was impossible to ascertain whether the presidential results declared were lawful.

The court found no major anomalies between the number of registered voters and the total tally

in the declaration of the presidential election results made by IEBC. The anomalies noted were not substantial enough to affect the credibility of the electoral process, and besides, no credible evidence was adduced to show that such irregularities were premeditated and introduced by IEBC or anyone else for the purpose of causing prejudice to any particular candidate.

The court concluded that the voter registration process was, on the whole, transparent, accurate, and verifiable; and the voter register compiled from this process did serve to facilitate the conduct of free, fair and transparent elections.

Speaking at the Bomas of Kenya during the proclamation of the outcome of the 2013 election, IEBC Chief Executive James Oswago said that it was Kenya's most complex election and comparatively most complex elections Africa has ever had. It had success and disappointments in the use of ICT in election management.

Technical challenges in voter identification and results transmission experienced led to delays in election results announcement and raised doubts about its preparedness for the elections but even with the challenges, the commission was satisfied it had ran a credible and transparent election.

The IEBC Chairman Issack Hassan disputed the fact that even if the electronic transmission had failed, the result to manual counting was illegal as the physical presentation of Form 26 by returning officers is the mandated legal procedure for tallying of results.

In his acceptance speech, "Triumph of Democracy" Uhuru Kenyatta the president elect thanked the people and specifically the IEBC for what he said was the freest, the fairest elections in Kenya's history despite challenges.

He claimed anxiety for the time where election results will be relayed in real time while pledging his support for the reform of IEBC systems going into the future. His victory, he said was in a free and fair election where every single vote mattered and would contribute to national dialogue.

The Opposition, led by Raila Odinga, has been evoking that the Jubilee administration is determined to rig the elections based on its 2013 model. On the other hand, Jubilee led by President Kenyatta is assuring Kenyans that there are no intentions of rigging the polls and the Opposition is raising false claims since they have foreseen their loss.

Going into the 2017 elections, many forms of election fraud (rigging) have been mentioned as likely to happen. They broadly fall within the three categories of "pre election fraud" which includes tampering with the voters register, Election Day fraud which may include ballot stuffing and post election fraud which includes tampering with vote aggregation after ballots are cast.

The fragile institutional capacity for election management in Kenya provides space for political elites to manipulate electoral politics around the fraud narrative and retain or grab some legitimate claim to power. 1997 and 2007 was a perfect example of both scenarios. In 2017, the subjection of the electoral management institutions to election rigging claims is a stress that may very well provide opposition elites with the audacity to claim and grab power should they lose the election.

International Policy Group
Nairobi, Kenya

II. What Is Vote Rigging?

There is still no widely accepted definition of election fraud (rigging as it's generally called in Kenya) because the applied understanding of fraud depends on the context: what is perceived as fraudulent manipulation of the electoral process differs over time and from country to country.¹

This is because, besides Article 21 of the Universal Declaration of Human Rights that states that “the will of the people shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures”² there is limited agreement on the necessary elements of democratic elections.³

This means that many allegations of election fraud are not clear-cut, but will be context-dependent. Suspicious behavior may be the only “evidence” of election fraud, and it can be difficult to prove; the supposed fraud may instead be the result of administrative errors or simple misunderstandings.

1) Electoral Malpractice vs. Election Fraud

In the 2013 Presidential election petition⁴ where the main issue raised was based on the elections administrative failures rather than outright fraud it was alleged that the electoral process was so fundamentally flawed that it was impossible to ascertain whether the presidential results declared were lawful.

This raises the issue of administrative inefficiency and/or errors or “malpractice” as another broad area of interest in election management that in Kenya is also popularly referred to as rigging.

The implied rigging is usually based on the implied connections and illegitimate advantages between election officials and the incumbency. In his Democracy on Trial Speech in 2013 Raila in fact claimed that the electoral process failures had been planned with the intention to benefit Jubilee.

The International Foundation for Electoral Systems (IFES) in its publication “Assessing Electoral Fraud in New Democracies: Refining the Vocabulary”⁵ makes a clear distinction between Fraud, Malpractice and Systemic Manipulation.

It states that “Fraud is based on wrongful intent, whereas malpractice is a form of negligence” and goes on to clarify that in some instances, severe malpractice can rise to the level of fraud regardless of intent and in that instance becomes criminal malpractice.⁶

1 R. Michael Alvarez, Thad E. Hall, and Susan D. Hyde (2008) Election Fraud: Detecting and Deterring Electoral Manipulation, Brookings Institution Press, Washington, D.C.: page 3.

2 Universal Declaration of Human Rights

3 ibid

4 Raila Odinga & 2 others v Independent Electoral & Boundaries Commission & 3 others [2013] eKLR

5 Chad Vickery and Erica Shein IFES White Paper May 2012: P 9.

6 ibid

Systemic manipulation, the IFES report says, refers to the use of domestic legal provisions and/or electoral rules and procedures that run counter to widely accepted democratic principles and international standards, and that purposefully distort the will of voters.

In its ruling in the Kenyan Presidential election petition of 2013⁷, the Supreme Court observed that the procurement process for the technology for the election may have constituted a criminal malpractice on the part of the commission and it recommended that the matter be entrusted to the relevant State agency, for further investigation and possible prosecution of suspects.

It also hasn't been clearly defined how much fraud must take place in order to constitute a fraudulent election. As one noted scholar of comparative politics states:

*"Democratic norms are not perfectly realized anywhere, even in advanced democracies. Access to the electoral arena always has a cost and is never perfectly equal; the scopes and jurisdictions of elective offices are everywhere limited; electoral institutions invariably discriminate against somebody inside or outside the party system; and democratic politics is never quite sovereign but always subject to societal as well as constitutional constraints. . . . There is much room for nuance and ambivalence . . . [and] bending and circumventing the rules may sometimes be considered "part of the game.""*⁸

2) Election Rigging Claims as Political Strategy

However, it is also true that many claims of election fraud may be initiated for purely political reasons and that some irregularities really are just administrative inefficiencies, errors or oversights. Unfounded accusations of fraud can undermine public confidence in the electoral process and complicate an already difficult job.

A vital consequence of election fraud is the negative effect it has on public confidence in the electoral process. This consequence may occur even when no election fraud actually takes place. Simple allegations of fraud can be enough to depress citizen participation and harm the reputation of the institutions charged with administering elections. The current low turnout for voter registration may be an outcome of the ongoing claims of election fraud afoot.

For a definition of vote rigging as applies to Kenya, it is critical to go into the history of rigging and claims of rigging in Kenyan elections in order to understand what it is generally meant to be.

⁷ Raila Odinga & 2 others v Independent Electoral & Boundaries Commission & 3 others [2013] eKLR
⁸ Andreas Schedler, "The Menu of Manipulation," *Journal of Democracy* 13, no. 2 (2002): 36–50;

III. Historical Background to Election Rigging Claims in Kenya

Kenya has held elections with varying degrees of suffrage since 1920. The 1961 elections were the first held under universal suffrage. The Kenya African National Union (KANU) emerged as the largest party, winning 19 seats and taking 67.5% of the vote. The electoral system was changed again prior to the 1963 elections allowing Jomo Kenyatta to become the first Prime Minister, and upon independence the following year, President.

Multi-party politics remained in place for a few years after independence; when several KANU MPs left the party to form the Kenya People's Union (KPU) in 1966, a constitutional amendment was passed requiring them to face by-elections. This came to be known as the little general election, in which the KPU received a majority of the vote, but KANU won more than 60% of the seats. This was the first time election rigging was claimed in Kenya.

Later in the year the Senate was abolished, as it was merged with the House of Representatives to form the National Assembly. The KPU was subsequently banned in 1969 and Kenya became a one-party state. As a result, KANU won every seat in elections in 1969, 1974, 1979, 1983 and 1988, with the elections seeing multiple KANU candidates run against each other. Each of these elections was marred with claims of rigging specifically state control to ensure only government friendly people were elected.⁹

It was the 1988 election however that would lay the mark as the election that was rigged to a state its entire legitimacy was in question.

1) The 1988 Election Rigging Claims

For the first time in Kenya's history the 1988 polling was preceded by a ruling party nomination process that was carried out at the grass roots level. Every registered member of KANU was free to choose a candidate to stand in a given constituency. The registered party members queued behind candidates of their choice.

Those candidates who obtained at least 30% of the total number of votes recorded in each constituency were declared nominated by the Party to stand for the general election in that constituency. Furthermore, any candidate who was unopposed or who obtained more than 70% of the total votes recorded in a constituency was automatically declared the sole candidate by the Party to stand for election in that constituency.¹⁰

Party nomination day was set for 22 February, when 796 candidates were in contention in the 188 constituencies. In accordance with the new Electoral Law, 65 candidates of the Kenya African National Union (KANU - the country's sole political party) were thereafter unopposed,

⁹ Nohlen, D, Krennerich, M & Thibaut, B (1999) Elections in Africa: A data handbook, p486
¹⁰ http://www.ipu.org/parline-e/reports/arc/KENYA_1988_E.PDF

leaving 123 seats to be contested by some 300 other candidates on 21 March.

Cases of ballot rigging and bribery were witnessed. According to Martin Shikuku, massive ballot fraud was conducted by the Kenya National African Union (KANU). In the party primary, Shikuku had 4,000 votes more than those of his rival, a month prior to the general elections and had qualified to go unopposed as per the rules but was subjected to the election three weeks later.

Candidates who had long queues were declared losers while those who had shorter queues were declared winners. During the general elections, Shikuku lost by 400 votes to his opponent. "This result has been rigged against me by local officials and KANU," Shikuku said.

Shikuku said that polling officials had cheated many illiterate voters who asked for help on how to cast their ballot. Shikuku also cited evidence of extra ballot boxes that had votes against him already cast which indicated ballot stuffing.

Some of the boxes that were submitted for vote counting had broken seals. Mwai Kibaki called for a press conference after he lost in the nominations. Kibaki said, "Even rigging requires some intelligence."¹¹

The 1988 election rigging claims took many forms and eventually catalysed the pro reform movement that would lead to the repeal of Section 2A of the then constitution and open politics to pluralism.

1988 was a case of almost exclusive election fraud as the entire process had been conceived with the intent of eliminating certain persons from the electoral process and eventually from parliament.

Some of the processes that can be determined and have been referred as rigging in 1988 included;

- a) The queuing system eliminated the sanctity of the secret ballot thereby vitiating the principle of free choice and disenfranchising a sizeable part of the electorate.
- b) Under Kanu rules, officials were required to count people in the queue with "an audible voice" where some did and others did not disqualifying the universality of the electoral process
- c) The lack of records on the number of people who queued behind the picture of their candidate left the election to the whim of the returning officer who in this case was the District Officer.
- d) Officials blatantly declared winners of their choice or as instructed without regard to the length of queues

¹¹ Branch, D., & Cheeseman, N. (2009). Democratization, sequencing, and state failure in Africa: Lessons from Kenya. *African Affairs*, 108(430), 1-26.

- e) Elimination of competition by declaration that anyone who got more than 70% of the vote was elected unopposed
- f) Disenfranchisement of voters who were not registered as Kanu members since they would not vote once someone was declared elected unopposed
- g) The rejection of all appeals that resulted from the election

2) The 1992 Election Rigging Claims

The first multi-party elections in Kenya since the repeal of Section 2A were held on 29th December 1992 that was generally catalysed by the monumental rigging of the 1988 elections. The 1992 multi-party elections also marked the beginning of a presidential ballot and an electoral commission in the Electoral Commission of Kenya ECK. The election results were soiled by accusations of massive rigging that also took the form of election fraud particularly the use of violence and dislocation of people to disenfranchise them and the pursuant fraud of ballot stuffing to favour some candidates.

The election results were delayed by 48 hours before the announcement giving indications of aggregation fraud where numbers were changed at the tallying level. There were claims that Kenneth Matiba (Opposition leader) had defeated Daniel Moi.

However, the Electoral Commission of Kenya (ECK), announced triumph of Daniel Moi without any real and proper documentation. The entire election process had a number of election irregularities with the ECK liable for acts of criminal electoral malpractice.

On the Election Day, cases of voter importation and lack of secret ballot for the illiterate voters were reported. Prior to the election, opposition parties claimed that there were plans to import voters from Somali to various polling stations in the Coastal region. On the Election Day, a bus was stopped by opposition leaders who claimed the passengers were being transported to the polling stations.

Tallying of votes was also affected. In most of the tallying centers, counting was delayed. Party agents were being forced out of some counting centers. Additionally, in some centers the ballot boxes arrived without the accompaniment of the party agents and some of them had broken seals.

Voter bribery was rampant where Kanu used the resources of the state to mobilize and influence the voters. It was reported that the economically vulnerable youth were manipulated to join unscrupulous groups. Groups like Operation Moi Wins and Youth of KANU'92 were used to collect money that bought votes on a large scale. The money was also used to intimidate candidates and voters.¹²

¹² Daily Nation, 21 and 26 November 1992

The 1992 elections were characterized by ethnic violence especially in the Rift Valley Province. Noticeable politicians such as President Moi and the then Vice-President George Saitoti were accused by Human Rights Watch for inciting the violence¹³.

Kenneth Matiba filed two election petitions in early 1993 against the election results. One petition was struck out on preliminary issue that he had already filed another petition and the other on the technicality that he had failed to sign the petition personally. The court never pronounced itself on the election rigging claims.

3) The 1997 Election Rigging Claims

The 1997 elections in Kenya reported various election irregularities. The irregularities forced the electoral commission to extend the voting process to the second day. This prompted the opposition leaders to accuse the government of election rigging.

On the Election Day, various polling stations witnessed lost and insufficient ballot boxes. This delayed the start of the voting process. “We want to protest very bitterly at what we perceive to be going on in the middle of this election,” Mwai Kibaki (Opposition leader) said. “The electoral commission has been infiltrated and is being manipulated by the government with the intention of distorting the results of the election,” Kibaki added.

There was a mix-up in the allocation of ballot papers in various polling stations. Misprinted ballot papers and lack of ballot papers was also reported. Incidences of alleged election rigging were reported in various centers.

For instance, George Saitoti was blocked by supporters of his opponent as he tried to introduce a ballot box into the counting center with the help of the electoral commission officials in Kajiado North.

Mwai Kibaki who was the DP presidential candidate, alleged that the electoral commission had conspired with a British firm (Smith and Ouzmann) to print two set of papers in a bid to facilitate rigging. The firm had been contracted to print ballot papers for the 1997 elections.

President Moi also accused the electoral commission of an attempt to rig the election in favor of the opposition. Raila Odinga, a presidential aspirant also claimed that the elections were rigged. “Moi has rigged the process as he did in 1992, just that this time round he will not fool anybody,” Raila said. “We are prepared for him, and we are ready to take him head on,” Raila added.

Daniel Moi was declared the winner of the elections by the electoral commission with a 40% win. He was closely followed by Mwai Kibaki who had 33%. “We know that he has not won, so

¹³ Human Rights Watch (1993), Divide and Rule: State Sponsored Ethnic Violence in Kenya

he can only be a winner by bringing himself in,” Kibaki said. Kibaki and Raila had said they would reject the declaration of Moi’s victory as they said the electoral body had allowed for massive election irregularities and rigging hence the results were not credible.

After Moi was declared the winner, Samuel Kivuitu the head of the electoral commission, said that the commission would disregard calls of rerunning the elections as requested by the opposition. Kivuitu cited lack of power by the commission to void the election.¹⁴

4) The 2002 Elections “Free and Fair Elections”

Faced with the possibility of a “train crash” scenario, outgoing President Moi held “free and fair” elections in 2002 and stepped down from office with his preferred candidate Uhuru Kenyatta conceding the election because a united opposition had credibly threatened to rebel in unison against potential transgressions.

The general election in 2002 was the third multi-party election in Kenya. The 2002 elections were the first fairly free and fair elections in Kenya since the country attained independence in 1964. The elections marked the end of the long-lasting dominance of KANU. Mwai Kibaki was declared the winner of the presidential race as he won the majority of the votes under the National Rainbow Coalition (NARC).

The elections were conducted in a peaceful manner. The history of election victories was rewritten in Kenya. Uhuru Kenyatta, a presidential candidate, issued a press statement accepting the victory of the NARC before the final tally was announced.

The 2002 elections were praised by international and local observers. They witnessed the momentary birth of Kenyan electoral history as peaceful, transparent, comprehensive, and one that was conducted in a pleasing atmosphere.

The election results were widely accepted and there were relatively low levels of violence when compared to the 1992 and 1997 elections. The Kenya Domestic Observation Programme (K-DOP) played a significant political role in affecting the election result by bringing the public back to the electoral process in 2002. A number of political commentators described the 2002 election scenario as ‘home grown democracy’.¹⁵

Despite earlier calls by the opposition to have the ECK drop the British Smith and Ouzmann Security printing company from printing the ballot as the united opposition had fingered it for duplicate printing of ballots in 1997, the opposition to it was quite muted.

¹⁴ Nohlen, D, Krennerich, M & Thibaut, B (1999) Elections in Africa: A data handbook, p486 ISBN
¹⁵ <http://africanelections.tripod.com/ke.html> retrieved on 15/2/17.

On the floor of parliament in October 2002, Nyeri Town MP Wanyiri Kihoro objected to the grant of the tender to the company. He among other things said that the company had released some samples of the election ballots to the government which printed identical ballots at the government printer.¹⁶

5) The 2007 Election Rigging Claims

The 2007 general elections were held on 27th December 2007. The election plunged Kenya into massive violence with loss of life and injury to persons, destruction of property and displacement of people on the back of a stolen election narrative.

In its report, the Kriegler commission said that it was irrelevant to whether there was rigging of the presidential results announced by ECK. The commission said that the process was undetectably perverted at the polling stage and the recorded and reported results were inaccurate as to render any reasonably accurate, reliable and convincing conclusion impossible.

The commission said that “the conduct of the 2007 elections was so materially defective that it is impossible- for IREC or anyone else- to establish true or reliable results for the presidential and parliamentary elections.” Therefore, the commission recommended restructuring of the electoral legal framework in ensuring fair and transparent political competition.¹⁷

The presidential race was between Mwai Kibaki (PNU) and Raila Odinga (ODM). The elections were marked greatly by tribal hostility. Kibaki had support of the Kikuyu community and its neighbours; Embu and Meru. On the other hand, Raila had built a coalition with Luo, Luhya, Kalenjin and Muslim leaders from Coast. There were numerous claims of election rigging in the 2007 elections.

The Inter-Parties Parliamentary Group Agreement (IPPG) deal was signed in 1997 and the deal required that political parties were stakeholders in the election and they therefore had a right to nominate members to the electoral commission.

A month before the general elections, President Kibaki appointed the members of the ECK single-handedly. Samuel Kivuitu retained his post of the Chairman. The vice-chairperson, Kihara Muttu and Jack Timwa were also retained. Timwa and Kihara had been nominated in 1997 by Democratic Party ((Kibaki’s party) to the commission. The two were great supporters of President Kibaki.

Opposition politicians cited possibilities of biasness in the election with the retention of Kihara and Timwa while other commissioners were dismissed. The appointments greatly undermined the perceived integrity of the electoral body.

¹⁶ Kenya National Assembly Official Record (Hansard) 22 Oct 2002.

¹⁷ Kriegler, J. (2008). Report of the Independent Review Commission on the General Elections held in Kenya on 27th December 2007. Govt. Printer.

According to the Kriegler Commission's report, electoral fraud started at the polling stations and the fraud was rampant across the country. Errors that were made in the tallying and aggregation process were enormous and widespread.

The election results were delayed for more than a day. According to many stakeholders, massive rigging took place in the tallying center. Results that were announced at some constituencies were different from those announced at the national tallying center.

Observers were barred from entering the tallying center for 48 hours by armed agents. Reports started mounting that irregularities had heightened and this forced Kivuitu to allow five observers and representatives of political parties to the room. The observers established that results in 44 constituencies had been announced without the required supporting documents.

Later on, all observers were ordered to leave the tallying room. Rumors had spread that Kibaki was about to be declared the winner. Odinga ordered for a news conference where he accused the electoral commission of rigging the vote results of 48 out of the 210 constituencies.

Hours later, the lights in the convention hall went off while the paramilitary officers cleared the building. Subsequently, the ECK Chairman announced the results where he declared Kibaki the winner. Kibaki was immediately sworn in after the results were released.

On the other hand, Raila called for Kibaki to step down. "It is a shame that a few people are robbing Kenyans of the democratic progress they have achieved," Raila said. Raila's campaign team sent messages to Raila's supporters announcing that his inauguration would be conducted. The meeting was however declared illegal by the police.

6) The Aftermath of the 2007 Election

After Kibaki was declared the winner, violence erupted in parts of Nairobi. Opposition supporters took to the streets to protest Kibaki's declaration as the winner. Unrest spread widely across the country.

Kibera slum experienced a black out as police were trying to disperse the protesters. The protesters were chanting anti-Kibaki slogans. In other regions that supported Kibaki such as Naivasha, pro-Kibaki youths torched an ODM office.

The violence was mainly between the Kikuyu and Kalenjin and Luo communities. In the slums and the Rift Valley the Kikuyu homes were burnt and this forced the Kikuyus to flee for their safety.

Many businesses were closed down in Nairobi and the streets were empty. Many people were displaced while others lost their lives between January and February of 2008. There was a rise in the crime rates in the densely populated areas such as Nairobi, Kisumu and Mombasa.

In some towns, there was constant rioting up to the end of February. People fled to neighboring countries such as Uganda in a bid of escaping the social unrest. The 2007 elections greatly contributed to political, social and economic instability in the country and the fragility of the electoral system experienced to date.¹⁸

The ballot papers for the 2007 elections were also printed by the same British Company which had been accused of aiding in election fraud particularly in the 1992 and 1997 elections.

7) The 2013 Election Rigging claims

The 2013 general elections were conducted on 4th March 2013. The presidential race was a hot contest between Uhuru Kenyatta (Jubilee Alliance) and Raila Odinga (CORD). Kenyatta was announced the winner of the election having attained 50.7% of the total votes cast. Raila garnered 43.3% of the votes cast.

There were allegations of vote rigging and various election malpractices. After the election results were announced, Raila called for a press conference in his “Democracy on Trial” speech where he said that the election was characterized by massive and significant failures of the biometric voter registration (BVR) kits. He also said that tallying system was not efficient. This made CORD to file an election petition with the Supreme Court.

Independent reports on the election have also come out with skepticism on the election result with a particular one claiming that “The data, while not definitive, are highly suggestive of a deeply flawed electoral process and challenge claims that Kenyatta won a majority in the first round”.¹⁹

There were claims that manual tallying was not appropriate and hence called for a scrutiny of the commission. In the presidential petition at the Supreme Court, the petitioner sought to have invalidation of the results on the basis of numerous irregularities in registration of voters, electronic voter identification and tallying.

The petition on invalidation of results was filed by Africa Centre for Open Governance (AfriCOG). There was a petition to invalidate the presidential election results on allegations of massive electoral fraud and malpractices which helped Uhuru Kenyatta win. This petition was filed by Raila Odinga.

¹⁸ Ndungu, N. (2008). Kenya: The December 2007 Election Crisis. *Mediterranean Quarterly*, 19(4), 111-121.

¹⁹ Ferree, K. E., Gibson, C. C., & Long, J. D. (2014). Voting behavior and electoral irregularities in Kenya's 2013 Election. *Journal of Eastern African Studies*, 8(1), 153-172.

The respondents of the petitions were IEBC, Ahmed Issack Hassan who was the returning officer for the presidential election, Uhuru Kenyatta and William Ruto. However, the court ruled that the election had been conducted in accordance with the law and that Uhuru and Ruto were validly elected.

In 2016, Raila Odinga provided an alleged account of how Jubilee had rigged the 2013 elections. He said that the electronic results transmission system was jammed and there were stuffed ballot boxes that had two million votes that gave President Kenyatta the victory.

Raila said that ballot papers were printed abroad and they were marked in favor of Uhuru. The ballots were delivered to Jubilee strongholds via Geneva and Switzerland. He also said that National Intelligence Service (NIS) was aware of extra ballots.

“IEBC records showed 10 million people voted for all other candidates, including governors, MPs and MCAs, yet the same record show 12 million people voted for the Presidential candidate,” Raila said. “Two million votes were cast abroad and taken for stuffing in Central Kenya. But after computers rejected them, they were reflected directly in the IEBC server in favor of Jubilee,” Raila added.²⁰

The same company, Smith and Ouzman, that Raila had castigated in 1997 as a facilitator to election rigging was the same company that printed the 2013 ballot papers. This happened when Raila was Prime Minister and had taken part in appointing some of the commissioners in the 2013 IEBC.

The IEBC would respond to the manifestly false allegations by releasing the variance between the presidential and the other votes cast at was 458,085.²¹

He also added from their analysis, Cord had 5.8 million presidential votes against Jubilee’s 4.7 million. This was a difference of 1.1 million. In 2015, Raila had told the then IEBC Chairperson, Issack Hassan that the 2013 polls were rigged in favor of Kenyatta.

Raila would say that there was no way he would go into the next election, 2017, with the then commission in office. After several weeks of violent protest in late 2016, the commission would be dismissed in a bipartisan select committee recommendation that saw the appointment of new commissioners who took office in January 2017.

20 http://www.the-star.co.ke/news/2016/12/24/2-million-votes-used-to-rig-2013-election-raila_c1478146 Retrieved on 15/2/17.

21 <http://www.nation.co.ke/news/IEBC-sneaked-in-2-million-votes--claims-Raila/1056-3467160-view-asAMP-k7vcro/index.html> Retrieved on 15/2/17.

IV. The 2017 Election Rigging Claims

Raila has severally claimed that the 2017 election will be rigged and has equally said he will not allow Jubilee to steal the election. He has also claimed that the consequences of such an action will be “too hard to contemplate and the cost will be regrettable.” He has juxtaposed this election with that of Ghanaian President Nana Akufo Addo whom he claimed “has been rigged out two times and is now president.”²²

The many ways he has claimed the election will be rigged include

1. Rigging by the IEBC

Coalition for Reforms and Democracy (CORD) called for the dismissal of the IEBC team led by Isaack Hassan on grounds that the commission was recruiting foreigners who would help to rig the 2017 elections. On 9th May 2016, the Opposition leaders accused the electoral commissioners of working with a Korean institution to rig the 2017 polls.

Kalonzo Musyoka, Cord co-principal claimed that an IEBC commissioner visited Korea to get help on programming the Biometric Voter Registers (BVRs) in preparation for tampering with the polls. Kalonzo was speaking during the Opposition’s demonstrations in demand for the removal of the IEBC commissioners prior to the 2017 polls. Kalonzo also said the Deputy President was certain that Jubilee will win the elections because they have mechanisms in place of rigging the elections.

Raila Odinga also accused Jubilee of being behind the IEBC’s defiance of the Opposition’s demands. “It is Jubilee that is pushing IEBC to stay, but we cannot just watch someone sharpen a knife in readiness for our slaughter. We will continue with our protests until IEBC Chairman Isaak Hassan and his team go home,” Raila said.

The Opposition pushed for the exit of the Hassan-led team because they did not trust them to hold a free, fair and credible election in 2017. The Opposition organized protests each Monday for five consecutive weeks. They accused the commissioners of rigging the 2013 polls in favor of Jubilee.

“There will be no elections without reforms. We have had Jubilee telling us that elections will be free and fair. How can our competitors convince us that we go to an election which is already rigged?’ Wetangula asked.

Following the weekly anti-IEBC protests, a 14-member joint committee was formed to spearhead electoral reforms. The committee was chaired by senators Kiraitu Murungi and James Orengo. The committee urged the Hassan-led team to leave office and after deliberations the commissioners agreed.

²² Raila Odinga speech at the Launch of Nasa at the Bomas of Kenya on January 11 2017. Speech available at <https://www.youtube.com/watch?v=ryIMFzBpr5Q> Retrieved on 15/2/17.

“We have been pleading with the commissioners to be patriotic and leave peacefully to enable the country hold peaceful elections in 2017. Kenya is a peaceful country and we don’t want a repeat of the 2007 post-election violence,” Kiraitu said. Finally, the commissioners bowed to pressure and agreed to leave office.²³

2. Use of Security Agencies to Rig the Election

On 24th January 2017, Opposition leader Raila Odinga accused the National Intelligence Service (NIS) of being used by the government in interfering with the ongoing voter registration exercise. In his statement, Raila said that the spy agency is involved in the voter registration exercise with an aim of influencing the 8th August polls as it did in 2007 and 2013. “NIS interference in the current voter registration involves taking BVR kits across our borders into Uganda and Ethiopia and assisting citizens of the two countries to register in a Kenyan election process,” said Mr. Raila.

“The NIS is also interfering with the voter registration process by having youths whose data were collected through the dubious National Youth Service exercise over the last few years and registering them as voters without their knowledge,” he added.

He also said that the process that is being carried out by NIS is responsible for the multiple registrations, shared identity cards and many cases of people who are captured as registered when they are not registered.

Raila challenged the NIS to come clean on the matter and assure Kenyans that it will abandon the disgraceful involvement in the voter registration exercise. “It must do this with the full awareness that there will be no country if it does not abandon course it is currently pursuing,” he added.

On 24th January 2017, Mombasa Governor Hassan Joho claimed that the Jubilee government was using the Kenya Defence Forces (KDF) in a scheme to rig the August polls. “They have turned KDF officers, NIS police and civil servants into Jubilee campaigners. Let them be warned that we are taking their names and will reveal you. Don’t dare steal votes and if you do, we will deal with you ruthlessly. Things will be bad,” Joho said. The Governor was speaking in Kilifi during a voter registration drive.

3. Use of Register of Voters to Rig Elections

On 21st August 2016, Raila Odinga called for a thorough scrutiny of the voters register so as to prevent irregularities in the 2017 polls. Raila said that the Jubilee government plans to rig the elections if the voters register is not audited and inspected properly.

23 <http://www.theeastafrican.co.ke/news/Kenya-s-polling-body-officials-to-exit-office/2558-3328976-14qp4mpz/index.html> Retrieved 15/2/17

Dead Voters: He said that the existing register is full of names of dead people whom the government will use in rigging the elections if not accessed properly. On 16th December 2016, Raila echoed his sentiments of the Jubilee government trying to use dead voters in the August polls.

“Jubilee is keen on ensuring that the dead and underage are illegally slotted in the voting process as a means to rig the elections. That is why they do not want to embrace biometric verification of voters during the elections,” he said.

When the contentious law governing the 2017 Elections was amended, Opposition legislators termed it as a move by Jubilee to allow “dead” voters to vote in August polls.

Double Registration of Voters; On 21st January 2017, Raila raised an alarm over double registration. This was after the CORD chief discovered that there was a voter who had been registered using his ID number. Earlier on Kalonzo Musyoka had found that there is a voter who had been registered with details that matched his.

Raila said that he has a comprehensive list of cases of double registration across the country. He said that the list proved a deliberate effort of inflating the numbers on the register in various parts of the country that are perceived to be Jubilee strongholds. He also said it was a pre-rigging attempt of using details of youths who were registered biometrically by NYS.

Skewed Deployment of BVR Kits: CORD leaders accused the IEBC of deploying faulty BVR kits to their strongholds. The leaders claimed that a number of BVR kits that were deployed to Mombasa were faulty.

ODM’s director of elections noted that there was biasness in the manner the BVR kits were distributed. He said that majority of the kits were deployed in Jubilee strongholds. Matungulu MP Stephen Mule alleged that the commission had issued insufficient kits in the lower Eastern region when compared to the number of wards.

He said that only 27 kits were received in his constituency against the 110 polling stations. He said that Jubilee did not the Ukambani region to attain its target in the voter registration exercise. “Jubilee is looking for ways to rig the elections. We will not allow this to happen because it is our right to register as voters and vote because it is our constitutional right,” he said.

4. Use of Manual Processes to Rig election

The opposition led by Raila Odinga claim that the incumbent Jubilee government plans to rig the elections by use of a manual back-up system for voter verification and transmission of results.

The controversial amendment to the elections law that allows the IEBC to set up other “complimentary systems” to the electronic processes faced criticism from the Opposition as they attempted to block it.

Raila said that use of a manual backup system was a way of manipulating the election. Deputy minority leader in parliament Jakoyo Midiwo said that the opposition was challenging the legality of the amendment as Jubilee was trying to force a law that will aid in rigging the elections.

The opposition said that use of manual systems in prior elections was used in rigging and hence they do not want a repeat. The opposition went forth to threaten mass actions in the country in regard to the law.

“We will not allow them to rig the election this time. Jubilee Government thinks the manual back-up will help them cheat but it is not going to happen. We are watching their every step,” Raila said.

On 15th January 2017, Bomet Governor Isaac Ruto said that Jubilee was plotting to use the manual voting system in manipulating the election in favor of President Kenyatta. He asked Kenyans to be vigilant and they should demand for credible elections. He said the manual back-up system paved way for use of dead voters in the elections.

5. Disenfranchising Opposition Areas

CORD has accused Jubilee of assisting supporters from its strongholds to acquire IDs while denying the same to CORD’s strongholds. The Opposition leaders said Jubilee was firm to marginalize regions that do not support the government.

Junet Mohammed, ODM Director of Elections, accused the National Registration Bureau and IEBC of aiding Jubilee in manipulating the electoral process. “County commissioners are accompanied by registration clerks and IEBC officials who issue voters cards immediately IDs are issued. There are clear instructions to the county commissioners and their juniors to make sure there is maximum issuance of ID cards in Jubilee strongholds,” he said.

President Kenyatta issued a directive that IDs should be processed within three days of application. However, Raila said the directive was not being applied universally. “We have noted that chiefs in Nyanza, Western, Coast and other regions perceived to be Opposition-leaning are being denied the basics like fuel and travel allowances that they need to implement the order by the President, Raila said.

He also said that registration offices in areas perceived to Cord’s strongholds, including Huduma centers, lack the documents needed in facilitating registration of persons.

6. Use of Interior Ministry to Rig

Raila has accused the Interior Cabinet Secretary Joseph Nkaissery of intimidating and issuing illegal orders to Chiefs not to facilitate registration in the perceived Opposition zones.

“This is an attempt at advance rigging of the August polls. We put the minister on notice that we take his threat to the chiefs and its visible consequences and that he must be prepared to bear its consequences in the fullness of time,” Raila said.

Former Provincial Administration officials have also been linked to rigging of the polls. ODM raised a claim that retired District Commissioners were tampering with the register of voters in an attempt of favoring Jubilee.

7. Hacking Electronic Systems to Rig

ANC leader Musalia Mudavadi accused the ICT CS Joe Mucheru of planning to rig the August polls by use of technology. The party’s secretary-general said that the rigging plan was linked to the launch of Jubilee’s smart card.

ANC said that the servers of IEBC are being linked to Jubilee’s system. “Jubilee’s Party’s launch of the smart card and the timing of their countrywide membership registration is designed to coincide with the ongoing voter registration to connect Jubilee election rigging experts to the IEBC voters’ database,” he said.

8. Use of Prisoners to Rig

On 29th January 2017, the Opposition alleged that the government was plotting to use prisoners in rigging of the 2017 elections. The opposition leaders said that would not give any chance to the Jubilee team to rig the Presidential polls.

They said that the government had hatched a new plot of registering inmates. “They have said even prisoners will be registered as voters, but we know that it is an opportunity to steal the election. If someone has been imprisoned for life, whom will they vote for?” Wycliffe Oparanya asked.

V. The Consequences of Rigging Elections

During the launch of the National Super Alliance (NASA), Raila Odinga warned Jubilee against election rigging as he cited dire consequences. “The cost of stealing this election will be regrettable, therefore don’t try it,” Raila said.

He asked the supporters of the opposition to shed the fears of the government rigging the elections. “Yes, Jubilee will try to steal the elections, but we shall not allow it, we shall make it impossible for anyone to steal the election,” he added. He also said that the 2017 election would determine whether Kenya remained a viable nation or it would collapse.

On 24th January 2017, Raila warned of any stealing of votes as he said that things will be bad in the country if a single vote is stolen. Mombasa Governor Hassan Joho warned Jubilee against stealing votes as it would lead consequences.

“Don’t dare steal votes and if you do, we will deal with you ruthlessly. Things will be bad,” Joho said. Kisauni MP Rashid Bedzimba said that they would (Opposition) revenge if votes were stolen. “It will be an eye for an eye because we will revenge,” he said. Mombasa Women Representative Mishi Mboko also added by saying that the country will erupt into chaos if the election will be rigged.

After the 2013 election results were released and Uhuru Kenyatta was declared the winner, Raila made his speech “Democracy on Trial” where he denounced an election that was biased with questionable results, in comparison to the 2007 election.

However, Raila choose his words carefully in avoidance of inflaming the audience. He said that any form of violence would destroy the country completely. “...we would have readily conceded if IEBC had attempted to deliver a reasonably honest election,” he said. He then said that the coalition had left the matter to the Supreme Court to determine the credibility of the results announced by IEBC.

Even after severally subjecting the current electoral process to the courts, observers are skeptical that Raila will take the way of the court petition should he lose the election and have grievances against it.

The opposition has made it clear that violence will be the only route they will take should they have a grievance with an election they will lose.

Conclusion

Election rigging assertions undermine the legitimacy and credibility of the electoral management systems and its results. Fears about electoral fraud resonate broadly and can have devastating consequences to election management and the stability of countries thereafter as Kenya experienced in 2007.

Going into the 2017 elections, the public space is being bombarded with many allegations of election fraud likely to happen. They broadly fall within the three categories of “pre election fraud” which includes tampering with the voters register, Election Day fraud which may include ballot stuffing and post election fraud which includes tampering with vote aggregation after ballots are cast.

The fragile institutional capacity for election management in Kenya provides space for political elites to manipulate electoral politics around the fraud narrative and retain or grab some legitimate claim to power. 1997 and 2007 was a perfect example of both scenarios.

In 2017, the subjection of the electoral management institutions to election rigging claims is a stress that may very well provide opposition elites with the audacity to claim and grab power should they lose the election. Kenya needs constant vigilance and action to avert the likely violence that is going to accompany this election.

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