

A Reflection on Elections since 1988

**Ballots, Bullets, IDPs and Electoral
Injustice**

Tudor, June 25th 2021

1988 – MLOLONGLO – Start of the Rot

- 65 MPs favourable to KANU were selected at the preliminary stage and 123 elected by secret ballot. Still under the one party system
- The Corruption was exposed by NCCK Magazine Beyond that detailed how the fraud took place. The Magazine was banned and the Editor Pius Nyamoru went into exile after first being jailed for submitting ‘false returns’
- Saba Saba – July 7, 1990 marked clamor for multi-party democracy in Kenya

Demand for Multi Party Elections- Saba Saba 1990



Prelude to 1992 General Election

- December 1991 at a KANU delegates conference, Daniel Arap Moi agreed to repeal Section 2(a) of the Constitution thus permitting Kenyans to restore multi-party politics in the country
- Moi never embraced democracy and continued to remind Kenyans that multi-party politics would lead to ethnic strife and division
- First ethnic land clashes in Saboti Division, Trans Nzoia in December 1991. Hundreds displaced at Catholic Church.
- Moi won General Election in December 1992 with 36.6% of the vote

Violence and Commissions of Inquiry

- According to KHRC between 1991-96, 15,000 people died and 300,000 were internally displaced in Rift Valley, Western and Nyanza Province in tribal clashes
- Kiliku Commission of Inquiry presented its report to Parliament in 1992
- Moi established the Commission of Inquiry into Tribal Clashes in July 1998 under the chairmanship of Justice A. M. Akiwumi. Their report was submitted to President in July 1999 but only released to the public in October 2002 after a High Court decision. It was accompanied by a rejoinder of comments from the government rejecting its own report. Evidence expunged (See Official Reports)

What did Akiwumi Report and Recommend



Police and Provincial Administration were aware of imminent clashes and frequently connived



100 people were killed in the Coast and 100,000 displaced in 1997



Named 189 persons adversely who should be investigated and prosecuted

Events Between 1997- 2007

- **Akiwumi Report was not implemented – No one prosecuted for the violence**
- Never been able to find agreement on what to do with TRUTH uncovered. Task Force under Prof Makau Mutua did report on feasibility of Truth Commission but Kibaki Government ignored its recommendations in 2003
- Culture of IMPUNITY taking root ever since 1992
- Land – Njonjo Commission of Inquiry, November 2002 followed by Ndungu Commission of Inquiry into Illegal/Irregular Allocation of Public Land whose report was submitted in June 2004
- Issues of VIOLENCE, ETHNICITY and LAND intrinsically linked but ignored

THE REALITY EVEN THEN

- 'the impossibility, de jure or de facto of bringing the perpetrators of violations to account whether in criminal, civil, administrative or disciplinary proceedings since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victims.' KHRC & AFRICOG

2007 Election and Aftermath

- At least 1,133 Kenyans died in Post Election Violence (PEV) and 600,000 people were displaced. Kofi Annan led the Serena talks that eventually led to a power sharing government.
- As part of the agreement the Commission into Post Election Violence was established in February 2008 led by Justice Philip Waki and its secretary was George Kegoro. They submitted their list of main suspects to Kofi Annan and thereafter Annan took the list to ICC who took up the two cases against Uhuru Kenyatta and William Ruto when Kenya failed to establish a local Tribunal – despite promises.

Disputed Elections and Democracy on Trial

- A majority of Kenyans believe that the 2007 vote was stolen
- The 2013 election brought together the two ICC suspects in a deal that lasted for a little over five years. The election dispute was taken to Supreme Court and dismissed
- The 2017 election again disputed. Supreme Court overturned the result and called for a repeat ballot in October 2017. ODM boycotted and Raila was sworn in as People's President. Conflict followed. Then in March 2018 Uhuru and Raila announced the now famous handshake that later gave way to the BBI Task Force

For Better or For Worse!



Nine Core Challenges Facing Kenya

. Lack of a National Ethos - The country lacks shared beliefs, ideals and aspirations.

2. Responsibilities and rights of citizenship - Kenyans place more emphasis on their rights than on their responsibilities as citizens

3. Ethnic antagonism and competition - Particularly noted during elections and limits of the electoral system, frequency of hate speech unpunished, and ethnic audits in public service not addressed. Reluctance to implement TJRC, Ndungu Reports have added to the problems

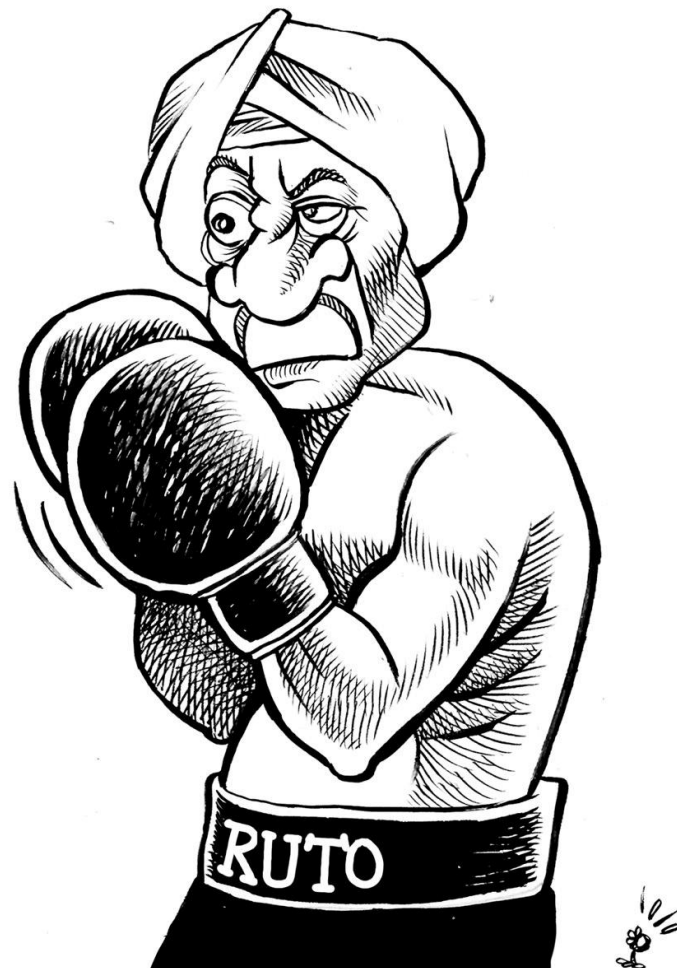
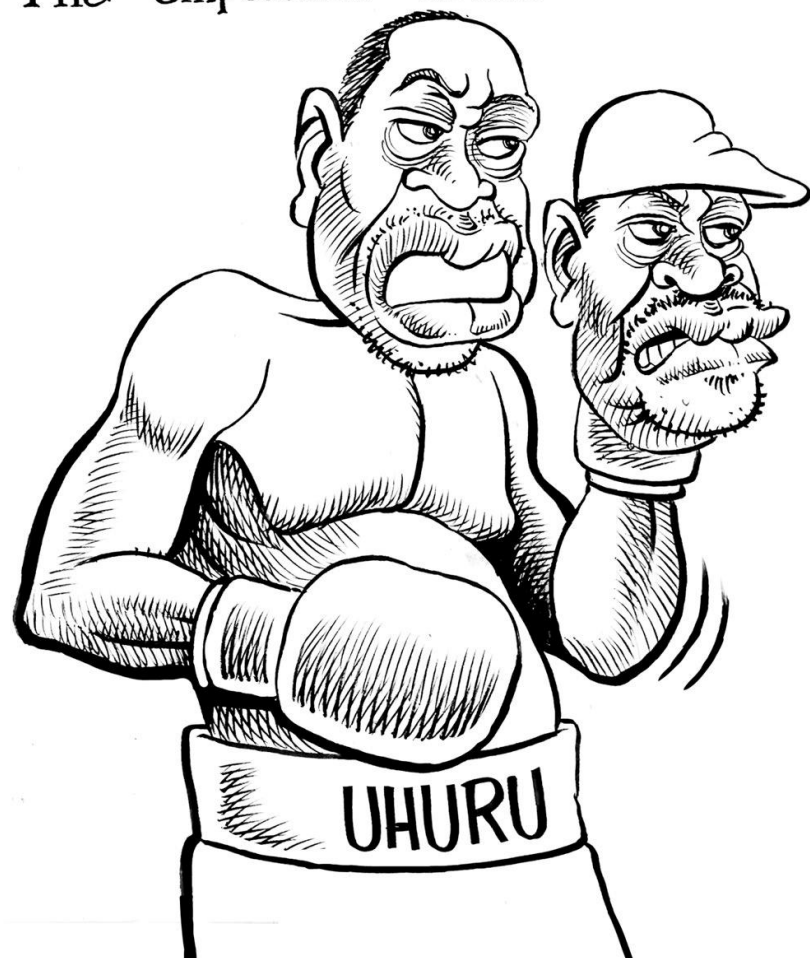
- **. *Divisive elections*** - Competition for the highest political office has been become the source of division and ethnic segregation.
- **5. *Inclusivity - Kenyans*** feel marginalized & under-served, and know crippling poverty. There are historically marginalized communities and new ones in peoples settlements, PWDs. Lack of meaningful public participation was expressed everywhere. One million children are out of school and 2.5m lack any access to medical care – Oxfam – despite promises of UHC.
- **6. *Shared prosperity*** - Unequal taxation, inequality, no living wage, land grabbers, landless communities. Three former Presidents own a million acres. 0.1% or 8,300 people in Kenya own 99.9% of the wealth (Oxfam, 2019)

- **7 Corruption** – The principal threat to the existence and well being of Kenya. The public has little to no trust in the public institutions. According to Rtd. Auditor General Ed Ouko 330bn is looted annually from the budget.
- **8. Devolution** – Increase of Devolved Funds from 15% to 35% - Cf Article 203(2) Note there is no proposal as to which ministries should be devolved nor it necessary to have a referendum to increase the figure.
- **9. Security** – Kenyans feel insecure and security agencies have become corrupted.

World BBI Bout

The Umpteenth Round

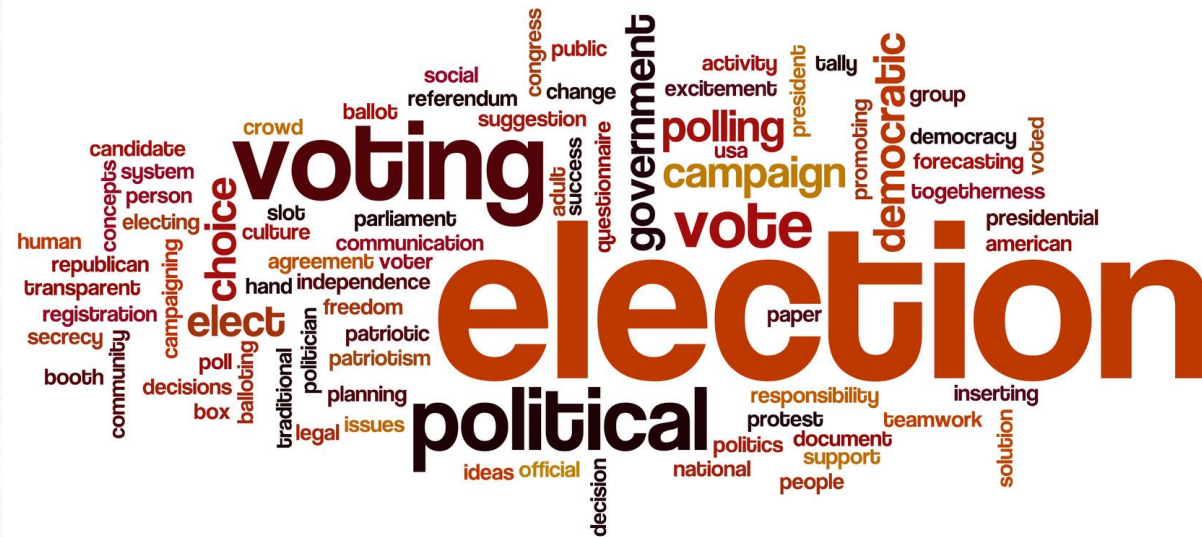
2012 Jan 12 GAO



CONCLUSION

- 1. Every general election since 1988 – apart from 2002 – has been flawed
- 2. Kenyans are continuously losing confidence in the Electoral System
- 3. Do elections bring change or they just shuffle the seats around?
- 4. Parliament has only recently begun the process to replace 4 Commissioners of IEBC
- 5. Despite the SC order the Server of IEBC has not been opened
- 6. Most of the election violence has been orchestrated by the deep state
- 7. No perpetrators of any election violence have ever been prosecuted
- 8. Will the referendum and 2022 Presidential Election be decided in a boardroom or at the ballot?

Will Elections Be Credible?



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Recommendations – What Can We do?

1. Be mindful that all organised violence has political/state approval
2. Groups like MRC and Pwani Si Kenya emerge and given life around elections and then disappear – why?
3. Should we push for a postponement of the BBI Referendum as there are greater priorities in the country
4. Can we set up an early warning monitoring system
5. Land Reform is not a concern for BBI yet it was for the Coastal People
6. Should we spend our energy and resources on monitoring hot spots rather than the ballot?

QUESTIONS ABOUT THE IEBC

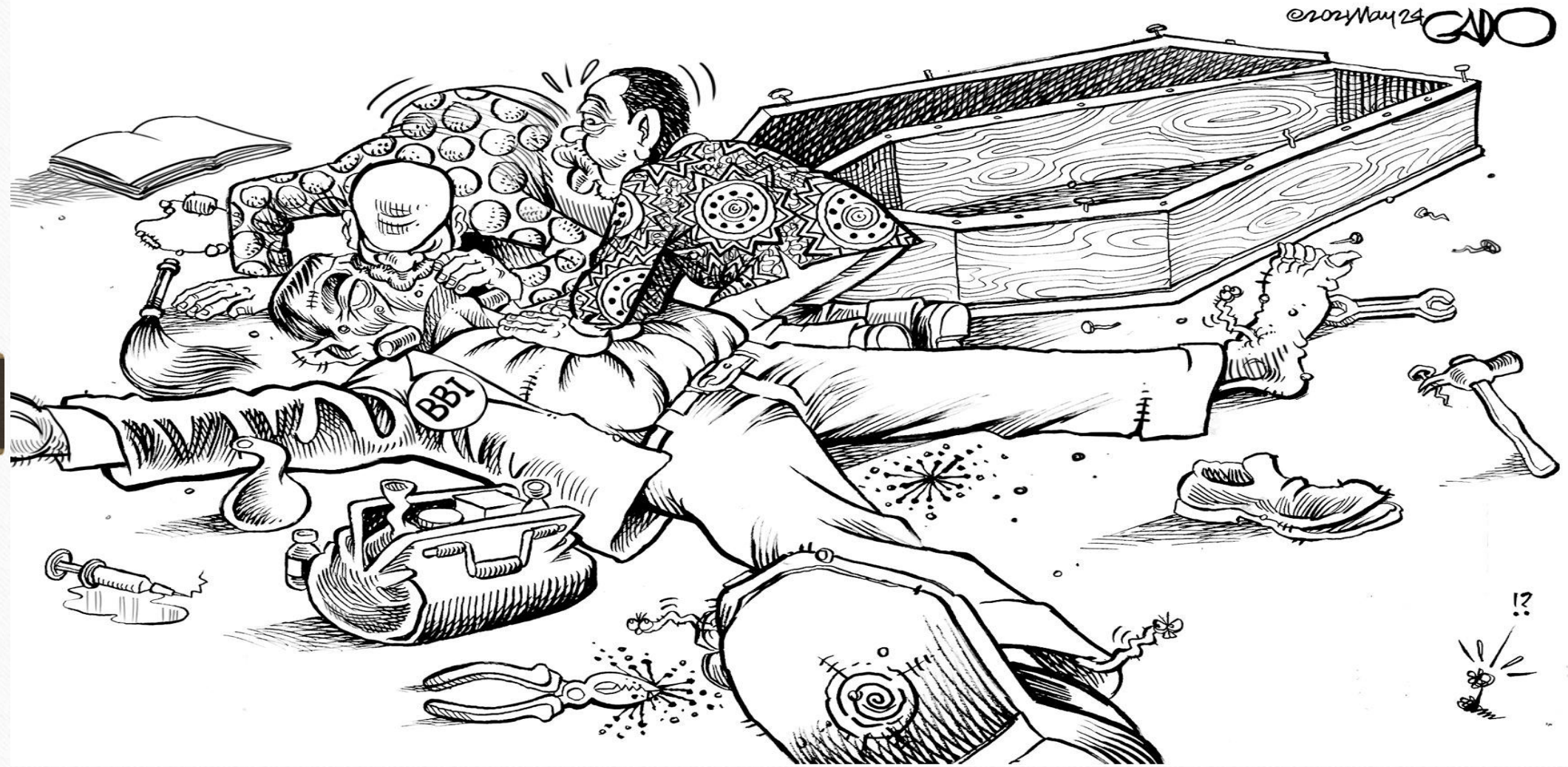
- 1. After 2013 Commissioners were paid to leave office rather than being arraigned in Court
- 2. Selecting weak commissioners who can be corrupted, instead of selecting strong, competent ones who will deliver a credible election
- 3. Delay in replacing Commissioners leads to unpreparedness and conflict with a competent secretariat.
- 4. Corruption in procuring electronic technology that has failed successive elections – Chicken Gate Scandal
- 5. Extravagant election. In 2017 Kenya spent \$25.4 on every vote cast. Uganda spent \$4, Rwanda \$1.05, Australia \$3.2 and the global average is \$5.
- 6. The Voters Register is hopelessly compromised. This has not been updated since 2017

Problems with the Register and Politics

- 7 – Between 2012-17 up to one million dead voters, maybe now 2m not removed from the register – This Audit was done by KPMG in May, 2017 too soon before the elections. Another one is scheduled for this year, 2021
- 8. – 170,000 Voters without matching IDs
- 9. We don't have political parties but vehicles for entrepreneurs
- 10. Has the deep state taken over the electoral process. Credible people will not apply for the positions of Commissioners. That is why there are no cases on electoral crimes and electoral violence. The problem of impunity can overshadow even the greatest reform exercise.

Looking Towards August 9, 2022 – Scenarios

- 1. The BBI process has been stopped in its tracks by the High Court
- 2. Appeals in Court of Appeal and Supreme Court are likely to drag on for up to a year. Hearings take place next week
- 3. The courts have taken over from CSOs in setting the standards and the agenda
- 4. A joint Parliamentary Reform team be established to facilitate reforms that can ensure a fair and peaceful ballot – recommendation from many groups
- 5. Move towards postponement of the Elections – Atwoli, IEBC, Kalonzo.
- 6. Issuing of IDs – Huduma Cards – has been haphazard and could lead to many youth not being able to register as voters.



CATHOLIC BISHOPS MAY 27TH 2021

- “It may not be possible to hold a Referendum before the General Election of August, 2022. We, therefore, propose that, to ensure a democratic, constitutional and inclusive process that is based on the law and dialogue, any far reaching amendments should only be addressed after the General Election. In the meantime, Kenyans should pursue through Parliament, some essential reforms to ensure a peaceful, prosperous and progressive country in the lead up to the elections. We demand that the August 2022 Elections proceed as provided in the Constitution, and no thoughts of postponing it to a later date should be entertained whatsoever.”

IEBC TIMETABLE FOR ELECTIONS

- 1. Registration of Voters August 2nd – 16th
- 2. Audit of Register of Voters October 1st – 30th
- 3. Diaspora and Prisoners Voter Registration December 6th – 20th
- 4. Enhanced Voter Registration December 6th – 20th
- 5. Publication of the Register of Voters May 2, 2022
- 6. Voter Education August 6th – December 30th 2021
- 7. End of Public Fundraising – December 9, 2021
- 8. Resignation of Public Officers seeking election

IEBC TIMETABLE - 2

- 9. Submission of Party Nominees for Election, April 9, 2022
- 10. Parties conduct Primaries – April 16, 2022
- 11 Independent Candidates exit from Parties and prepare submission of symbol – May 9, 2022
- 12. Submissions for all positions May 30 – June 7th
- 13. Campaign Period May 30th – August 6th
- 14. General Election Tuesday August 9th, 2021
- 15. Gazettement of Election Results, August 15th

How will the Election Be?

