POST-ELECTION SITUATION BRIEF

12-14 AUGUST, 2017

Introduction

8 August 2017, the long-awaited Election Day of Kenya's 5th multi-party elections, passed without much incident. Long queues and challenges with slow electronic devices were patiently borne, and voting ended at 5:00pm in most polling stations. The Independent Electoral Boundaries Commission (IEBC) began tallying and transmission of provisional results that evening from the National Tallying Centre. On 9th August, however, the National Super Alliance (NASA) Presidential Candidate and other principals held a press statement rejecting the provisional results. NASA cited deviation from electoral law, specifically the absence of scanned copies of signed Forms 34A and 34B relayed from Polling Station and Constituency level respectively to verify the announced Presidential results. NASA argued that without the forms, the provisional results were 'fake and fictitious' as there was no proof that the numbers being posted on IEBC and media screens corresponded with those announced at polling stations. NASA further claimed that the IEBC server had been hacked to manipulate the results.

In response to these allegations, the IEBC promised to investigate the allegations of rigging, invited all chief party agents to the National Tallying Centre to verify the Forms 34As and 34Bs received, and began to upload the same on a portal accessible to the public. The process of verification against hard copies from the 40,883 polling stations took more than day a day longer, and at around 9:00pm on Friday 11 August 2017, the IEBC chairman declared Uhuru Kenyatta of Jubilee Party the Winner of the 2017 General Elections, with 54.19% of the votes casts against Raila Odinga's 44.94%.

The build-up of tensions

The Wednesday 9th August rejection of provisional results created high tension in both NASA and Jubilee strongholds. Jubilee supporters could not countenance the specter of reversal of the projected win. In some NASA strongholds, particularly urban informal settlements in Nairobi and Kisumu, the claim that the election was being rigged to their disadvantage prompted street protests. Reports of threats of violence spread, fueled by WhatsApp and social media platforms, created fear and high tension in some areas. The high incidence of fake news on social media, including posts of graphic photographs and video clips catalyzed speculation and deepened polarization along political and ethnic lines. People from communities believed to have voted for NASA or Jubilee began to report intimidation and fear of attack in each party's stronghold. As reported in the Uwiano Briefs on 9th, 10th and 11th August, the Uwiano Platform verified these reports and escalated the early warning information to various responders, including security agencies, humanitarian actors, and peace structures to provide security, emergency response, and measures to reduce tensions. The announcement by the IEBC that final results would be released only after all the relevant Forms had been received and verified contributed to cooling tensions.

On Friday 11th August, NASA held three press briefings: in the morning to reiterate its claim to victory, in the afternoon to cite errors noted in Forms 34A and 34B and warn of an attack on its Tallying Centre; and in the evening to complain that the IEBC had neither received all the Forms 34A and 34B to determine a conclusive outcome nor taken measures earlier agreed to address NASA's concerns and therefore demanded access to the IEBC server. However, in a press statement, the IEBC said it had investigated NASA's allegations and found that no hacking had taken place, and assured all stakeholders that the integrity of the entire electoral process, including tallying and transmission of results, had been protected. Following this development, street protests and running battles with anti-riot police started afresh in some informal settlements in Nairobi and Kisumu

Preliminary observations by national and international observer missions

On Thursday 10th August 2017, all international observers released their preliminary reports in which they commended the peaceful E-day and all aspects of the electoral process. The missions reported that they had held consultations with NASA and taken its concerns into account, and in their view, although a few aberrations were noted, the elections were free, fair and credible.[1] Observer missions and other international actors urged the aggrieved parties to use legal mechanisms for electoral dispute resolution, although NASA maintained it would not go to court.[2]

 Preliminary analysis

Preliminary analysis shows that Jubilee received strong support from all its strongholds, won most of the swing counties and ate into areas considered NASA strongholds.[3]

However, some discussions on some social media platforms give NASA team the benefit of the doubt. These discussions are based on Kenya's past of alleged rigging of elections

Allegations of use of excessive force against protestors

Following the announcement of the Presidential election results, people also sent messages to Uwiano SMS108 calling for state protection in Mathare, Dandora, Kariobangi, Kawangware and Kibera areas where street protests had broken out almost immediately. On the other hand, reports came in from the same areas of Nairobi and Kisumu alleging that security officers deployed to restore security were using live bullets against protestors and beating up people.[4] Posts on social media about gun shots, videos of uniformed officers breaking into homes in Kisumu county, and estimates of people killed were widely circulated in various platforms. While verification found most the reports to be false, the incidence of use of excessive force were recorded by some partners. The Uwiano partners escalated the information to relevant responder agencies, which after carrying out investigations issued statements with figure ranging from 4 to 24.[5] However, NASA claimed that over 100 had been killed. The claims and counter-

[1] Reuters, 'No signs of manipulation of Kenya vote - EU observers' https://www.reuters.com/article/us-kenya-election-eu-idUSKBN1AQ124; see also press statement by John Kerry of Carter Centre, http://edition.cnn.com/2017/08/10/africa/kenya-elections/index.html

[2] Emmanuel Wanjala, 'We won't challenge presidential results in court' *The Star*, 11 Aug 2017. Other media channels reported that NASA has not provided strong evidence for why they believe the elections was rigged

[3] Jubilee did better than expected in Garissa, Isiolo, Kajiado, Kisii, Marsabit, Narok, Nyamira, Samburu, Trans Nzoia, Turkana and Wajir. See Allan Kisia, 'Jubilee went for low-hanging fruits in past opposition strongholds' https://www.standardmedia.co.ke/article/2001250831/jubilee-went-for-low-hanging-fruits-in-past-opposition-strongholds

[4] The star Reporter, 'NASA claims 100 killed in post-poll chaos, reject Uhuru re-election' http://www.the-star.co.ke/news/2017/08/12/nasa-claims-100-killed-in-post-poll-chaos-reject-uhuru-re-election_c1615502

[5] KNCHR Press Statement, 'Status Update on Developing Post Election Human Rights Violations' accessed at http://www.knchr.org/Portals/0/PressStatements/Press%20statement-%20Developing%20Post%20elections%20scenarios%202017%20.pdf?ver=2017-08-12-202548-347

claims nonetheless turned attention to the conduct of security agencies in responding protests, including alleged criminals engaging in opportunistic looting and destruction of property.[6]

De-escalating tensions and return to normalcy

The call by multiple actors on the police to desist from excessive use of force and uphold constitutional rights, NASA's call to its supporters to 'stay out of harm's way' and heightened mediation and confidence-building measures by Uwiano partners have begun to bear fruit.

The factors in the political environment has some important implications for peace, justice and national cohesion. Some of these include:

1. The violence after the 2017 elections is experienced in small pockets in two counties, as opposed to widespread violence across the country. Since only a few geographical areas are affected by the protests, most actors and stakeholders have urged the NASA coalition to use existing mechanisms of electoral dispute resolution. While the 'pockets' are few and far between, the need to move by the rest of the country is having the effect of isolating and profiling these areas and the Kenyans who live in those areas

2. Calls to move on after the elections. Newly elected leaders in both Jubilee and NASA strongholds are eager to assume office and begin to roll out their programmers. Governors-elect have called on people in their counties to maintain peace. While this is desirable for all, the manner of messaging is being interpreted as an attempt to isolate NASA presidential candidate on the one hand, and lack of magnanimity on the part of Jubilee on the other. The 'arrogant' and 'boastful' tone in which some public statements are made needs to be more reconciliatory

3. Devolution has transformed Kenyan politics. Competition for county level positions- especially the Governor and MCA seats, has made Kenyan politics more and more local. Local contests between different clans and social groups has shifted attention away from the national level, which is seen as a given (regardless of how they vote, they are either Jubilee or NASA). Given county level dynamics, political actors are focused at sub-national political struggles as opposed to national level interests. This compounds the sense of isolation of the NASA presidential candidates' struggle

4. Accusations of betrayal, profiling and targeting of the Luo nation. An examination of which candidates won which seats has revealed that Jubilee took many seats in areas considered NASA strongholds. While the result may reflect county dynamics and fielding of multiple candidates, there is a growing perception that other communities betrayed the political settlement made with the Luo nation. The sense of dejection and isolation has been compounded by contradictory reports and outright denial of use of excessive force against protestors by security agents. A retrospective narrative has emerged about 'Lounisation' of problems in Kenya, which has permitted key actors to maintain silence or take sides on matters of concern to them. The sentiment that international observer missions dismissed NASA claims feed into this reflective narrative of systematic isolation with the intention of further repression of a people

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[6] Kiplagat Sam, 'Matiangi says criminals looting property during demos' http://www.nation.co.ke/news/Matiangi-denies-use-of-live-bullets/1056-4054826-tidamkz/index.html

These and other narratives in the political environment, fueled by fake news and polarized analysis in the media and other platforms are likely to entrench existing polarities and make it more difficult to promote post-election healing and national cohesion.

Going forward: The Peace, Justice and Reconciliation agenda

More than any other election since the 1960s, the 2017 general elections brought attention to the influence of incumbency on the electoral environment and prospects for the opposition in African politics. It is against this background that debate about whether or not the vote has been rigged, or excessive force used against protestors. While criminals taking advantage of the protests should not be allowed to cause mayhem, there is a need to send a reconciliatory message assuring that the claims will be investigated. In the emerging post-election environment, messaging for peace or justice has become difficult due to political polarization among the public and perception of loss of independence by institutions mandated to promote peace, justice and national cohesion. (edit this)

The Uwiano Platform for peace has made the following observations about the political environment and the threats to peace:

1. No death has been attributed to inter-community violence; most deaths are attributed to the police. Claims about attacks by Mungiki have been reported in some areas of Nairobi, but preliminary investigations have discounted the claims. Affected people in all areas have observed that harassment has not come from their neighbours but 'outsiders'. That neighbours have not turned against each other is a strong starting point for messaging on peace and national unity

2. There is need for humanitarian assistance with food and non-food items in areas that have been cut off for long. Parts of Kisumu county are lacking basic commodities, and these need to be provided alongside measures to expedite resumption of normal life

3. Key political actors need to exercise magnanimity and tone down political rhetoric to prevent raising emotions and begin the process of healing. Those declared winners should celebrate in a manner that demonstrated political maturity, not that they have won the license to act without regard for the rule of law. Individual elected leaders should reach out to NASA supporters as Kenyan citizens and desist from derogatory references to the opposition leader. Public pronouncements of extending friendship to NASA should be accompanied by gestures that demonstrate sincerity

4. There is a need to address the sense of isolation and profiling of sections of the Kenyan population. While much focus has been on Kisumu, Kibera, and Mathare, these are not the only areas where people were aggrieved over the elections. However, public discourse that characterize some sections of NASA supporters as 'these people' is building a sense of isolation and dejection of the mostly ODM supporters. It is important for national cohesion to create safe spaces to allow people to talk about their experiences, and to provide psyco-social support to those who are hurting after the elections

5. Extend political support to measures to hold security agencies accountable. The National Police Service should respond specifically to allegations of excessive use of force and beatings by committing to support investigations and justice, not shower praise on this matter for doing a good job

In order to expedite the transition to normalcy and begin the process of post-election healing, justice and reconciliation, the technical team of the Uwiano Platform makes the following recommendations to Uwiano partners:

1. Leverage the work of local level partners to provide safe spaces and psycho support for people to talk about their experiences and sentiments
2. Enhance partnerships and peace messaging through community radio
3. Use community influencers to pass messages of non-violence and transition to normalcy
4. Sustain high level mediation by the Group of Concerned Kenyan Citizens
5. Engage the media to exercise responsible, objective and conflict-sensitive journalism, including polarizing political analysis. Draw lessons from Radio Koch
6. Hold community level meetings in collaboration with existing peace structures: Peace Committees, County Mediation Panels and religious leaders bringing together youth, political actors, youths, other stakeholders
7. Targeted engagement with political actors, youth leaders, 'bodaboda groups' and community leaders
8. Enhance peace and justice messaging through bulk SMS
9. Link with Humanitarian actors for humanitarian assistance with food and non-food items in parts that have been cut off for extended periods
10. Enhance information-sharing and partnership with human rights, humanitarian and security instructions to address conflicting reports on matters in the public domain