

A Paper on the Review of Approaches to Counter Ethnically Divisive Electoral Politics

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1.0 INTRODUCTION

The title of this presentation is “Approaches to Counter Ethnically Divisive Electoral Politics”. I will however limit my discussion on the role of the Independent Electoral and Boundaries Commission (IEBC) in addressing consequences of ethnically divisive electoral politics under the current legal framework.

Ethnically Divisive Electoral Politics is a general concept that is understood to mean making choices based on one’s ethnicity or ethnic affiliation or ethnically motivated or putting in place policies that favour a particular ethnic group against the national interests or that of other groups. The consequence of which is that regardless of what the facts are, an ordinary voter would more often than not be influenced to vote in a certain manner, not because of the development policies or ability of the candidate to represent them, but due to their ethnic affiliation.

Ethnic groups are defined as a community of people who share cultural and linguistic characteristics including history, tradition, myth, and origin. Ethnicity has a strong influence on one's status in a community. Ethnic conflicts are therefore often caused by an attempt to secure more power or access more resources. In politics, these conflicts are geared towards accessing more political power in the hope, for many, to secure more resources to the particular ethnic group. Whenever inequality manifests among these ethnic groups, conflict is inevitable. Hence there is a need to come up with a blue print to effectively manage ethnic conflict in Kenya to

avoid loss of human life, property and any gains made in the country's development agenda. Politicized ethnicity is therefore detrimental to national unity and socio-economic well-being.

An electoral process is an alternative to conflicts and violence as a means of achieving governance. When an electoral process is perceived as unfair, unresponsive, or corrupt, its political legitimacy is compromised and stakeholders are motivated to go outside of the established norms to achieve their objectives. Electoral divisive politics become tactics in political competition.

In most African counties, conflicts arise between politicized ethnic groups due to poverty and weak states and institutions, which politicians capitalize on. This discontentment manifests itself in different ways.

Firstly, in typical scenarios that are evident in some of the African counties, leaders of a dominant ethnic group gain office and then use state institutions to distribute economic and political benefits preferentially to their ethnic brethren. Discrimination against subordinate group members, often portrayed, as less deserving human beings, accompanies this preferential treatment. When force is needed to impose discriminatory practices and quell subordinate group resistance, it is exercised by police officers and soldiers recruited almost exclusively from the dominant group, who often view themselves as "ethnic soldiers"

Members and leaders of contending ethnic groups, whether they are presently discriminating against a subordinate group or the object of discrimination, often portray themselves as victims. A "victim" mentality helps unite group members behind their leaders and justifies existing "sacrifices" made by such leaders. Moreover, members of a victimized group feel justified in victimizing others - being a victim in the past, real or imagined, thus does not ensure humane treatment of rival ethnic groups in the present. Ethnic leaders seek control of state power to ensure their group is never victimized again, by righting past wrongs and to avenge past oppression.

Secondly, divisive politics may manifest itself through leadership roles. More often, political leaders play a divisive role, appealing to ethnic-nationalist sentiments and scape-goating rival groups in order to enhance personal political power to win political office. "Ethnic-bashing," as this leadership strategy is sometimes labeled, serves to reinforce in-group identity, by emphasizing the common ties that bind group members to each other and by emphasizing the differences that distinguish the group as a whole and its individual members from other groups and their members. This often results into a "us-against-them" situations and creates mistrust amongst the various ethnic groups and everything said or done by a member of the ethnic group is seen as an attempt to mislead or bring down the other.

2.0 CAUSES AND RESULTS OF ETHNICALLY DIVISIVE ELECTORAL POLITICS

There are several known causes of ethnically divisive electoral politics. Economic factor has been identified as one of the major causes of conflict in Africa. Some believe that competition for scarce resources is a common factor in almost all ethnic conflicts. In multi-ethnic societies, ethnic communities violently compete for property, rights, jobs, education, language, social amenities and good health care facilities. In Kenya, ethnicity and ethnic conflict appear to be a response to the uneven development, which causes ethnic groups to mobilize to compete for resources along ethnic lines. It follows that multi-ethnic countries with irresponsible political class are likely to experience distributional conflicts.

Another major cause of ethnic conflict is psychology, especially the fear and insecurity of ethnic groups during transition. It has been opined that extremists and politicians build upon these fears to polarize the society. Additionally, memories of past traumas such as the aftermath of 2007/2008 magnify these anxieties. These interactions produce a toxic brew of distrust and suspicion that leads to ethnic violence.

Some are of the view that ethnic conflict is a sign of a weak State or a state embroiled in ancient loyalties. In this case, States act with bias to favour a particular ethnic group or region, and

behaviours such as preferential treatment in resources allocations fuel ethnic conflicts. Therefore, in critical or difficult political situations, the effectiveness of governance is dependent on its ability to address social issues and human needs.

There are those who stress on the need to address the uniqueness and the overriding importance of ethnic identity in any society. It is true that ethnicity is a biological and fixed characteristic of individuals and communities that cannot not be wished away, but it can be managed.

In Kenya, just like anywhere in Africa where poverty and deprivation are becoming endemic, mostly as a result of distributive injustice, ethnicity remains an effective means of survival and mobilization more so by politicians. Some ethnic groups that form for economic reasons easily disband after achieving their objectives. Ethnicity is therefore "a construct" rather than a "constant" that can easily be managed by addressing the wealth distribution, injustices and having responsible political class.

Some ethnic groups fight because they are denied not only their biological needs, but also psychological needs that relate to growth and development such the need for identity, security, recognition, participation and autonomy, where such needs are not easily met by undemocratic regimes. Wherever such non-negotiable needs are not met, conflict is inevitable. The problem of ethnicity largely depends on the level of state effectiveness, accountability, and transparency in handling the demands of diversity and responsible political class.

From election perspectives however, ethnically divisive electoral politics lead to electoral conflict and violence, which can occur at various intervals in an election cycle as follows -

- (a) **Identity Conflict** - this occurs during the registration process when Kenyans who are eligible to vote cannot establish their officially recognized identities for one reason or another. E.g. the Internally Displaced Persons (IDPs) who may have lost their documents of identification relevant to the voter registration exercise;
- (b) **Campaign Conflict** - this occurs as rival candidates and political parties seek to disrupt the opponents' campaigns, intimidate voters and candidates, and use threats and violence to influence participation in the voting;

- (c) **Balloting Conflict** - this occurs on the actual Election Day when rivalries are played out at the polling station during the actual polling;
- (d) **Results Conflict** - this occurs with disputes over election results and the inability of judicial mechanisms to resolve disputes in a fair, timely, and transparent manner. This is what we experienced after the 2007 polls and the crisis that ensued in 2008;
- (e) **Representation Conflict** – this occurs when elections are organized as “zero sum” events and “losers” are left out of participation in governance. This mostly occurs in a First-Past-the-Post (FPTP) system of representation where the winner takes all. In a Mixed-Member-Proportional-Representation (MMPR) however, both winners and the losers get to share out some nominated seats depending on the weight of their representation in Parliament.

In order to protect the electoral process from conflict and violence, whether ethnically instigated or otherwise, the EMB has a role in ensuring that there is a thorough security planning and security instrument throughout the election cycle.

3.0 LEGAL AND ADMINISTRATIVE APPROACHES TO COUNTER ETHNICALLY DIVISIVE ELECTORAL POLITICS

3.1 The Need to Realize Existence Of Ethnically Divisive Politics

Before establishing any mechanisms to address a societal problem, there must be recognition by the duty-holder that there exists a problem. Countries with ethnic diversity need to recognize the existing ethnicity and that it needs to be managed, particularly if it poses a challenge. It is also important to recognize that stability of such States is threatened not by ethnicity per se, but by the failure of national institutions to recognize and accommodate ethnic differences and interests. The lesson for ethnic conflict management is that governments should not discriminate against groups or they will create conflict.

3.2 Constitutional and Legislative Measures

Nomination Process

The internal governance of a party is heavily determined by the nature of a country's politics. It is evident that the nature of Kenya's politics is personality-based rather than issue-based; voters would rather vote for the candidate (or a party) regardless of their policies and party manifestos. This has shifted the focus of the country's politics from highlighting issues that steer and shape the development of the country to issues that serve individuals private interests.

Lack of effective internal party democracy has, for a long time, played a part in fuelling ethnic divisive electoral politics, where parties are run more like family enterprises rather than professional organizations. This problem has partly been resolved by the requirement of Article 88(4)(d) of the Constitution where the Commission is required to regulate the process by which parties nominate their candidates to elections. To this end, the Commission has developed regulations under the Elections Act intended to operationalize this need. One of the requirements for parties to ensure that their governance structure reflects the face of Kenya, and also the requirement of a certain minimum of endorsement through signatures from at least half of the Counties/Wards before any candidate can contest in an election.

Institutions

In view of the intensity of the ethnic conflicts that have rocked Kenya, the issues have been addressed by developing constitutionally backed institutions, which directly or indirectly address this issue. The National Cohesion and Integration Commission (NCIC), which is established by an Act of Parliament as a Constitutional Commission, is mandated to address national unity and eliminate ethnic divisiveness. The Constitution similarly establishes the Kenya National Human Rights and Equality Commission (KNHREC) mandated to address human rights issues and will be on responsible for any human rights abuses arising out divisive politics.

Another step is the establishment of the Truth, Justice and Reconciliation Commission (TJRC) created by an Act of Parliament as a transitory measure to deal with past injustice. It is expected

to help heal the wounds inflicted by past ethnic violence. It is also required to inculcate a commitment to accountability and transparency into Kenyan public life. Though their mandate is coming to an end, the TJRC is expected to put in institutional measures and infrastructure to address past injustices and ways of avoiding a repeat of such occurrences.

The Constitution also established the Commission for Revenue Allocation to address the issue of unfair wealth distribution between and amongst development projects, which has also been a major source of discontentment where certain areas dominated by certain ethnic groups are more favourably allocated than others.

The Independent Electoral and Boundaries Commission (IEBC) is the body responsible for the conduct and management of elections. It is also mandated to review electoral boundaries of Constituencies and Wards. The Commission is currently undertaking its mandate to resolve issues arising out of the First Review of boundaries as done by the IIBRC. As expected, this exercise is very emotive and it is already raising a lot of anxiety in some areas. Ethnic groups are competing for County Assembly Wards and some are determined to have an Assembly Ward unique to their ethnic group to guarantee them representation in the Assembly. As much as the Commission is bound by the criteria set in the Constitution in delimiting boundaries, it will require a lot of political goodwill and support from politicians and all Kenyans in ensuring that there is a balance between the aspiration to ensure equality of the vote while at the same time, meeting the community's expectations. The big test is how the Commission is able to effectively maintain this balance.

National Values and Principles of Governance

Article 10 of our Constitution outlines national values and principles of governance, which ought to guide the conduct of public officers and their interaction. Key among these principles includes national unity, inclusiveness, non-discrimination and protection of the marginalized. All these ought to guide the development of public policies, and hence policies that perpetuate divisive politics.

The former Constitution made way for a Government of national unity. Power-sharing mechanisms were included in the Constitution to address the 2007/2008 crises. This mechanism is now a darling of many African counties, particularly where there exists ethnic or racial domination of any group.

Electoral System

The new Constitution has adopted an MMPR electoral system, which allows the majority to win but also the minority to participate in governance. This system is effective in a multi-ethnic society where different ethnic groups hold conflicting interests, either due to cultural practices or ethnic ideologies in electoral politics as influenced by their leaders.

Whether in the National Assembly, the Senate or the County Assemblies, the running thread is the presence of representations from diverse special interests. In addition, a membership register of any political party, which intends to contest in any of the 6 elective positions, is required by the Constitution to have a national outlook for it to get full registration. This will definitely address the issue of ethnic divisive politics even at the local level.

Political Right

Article 38 guarantees every Kenyan freedom to freely exercise their political right without any undue restrictions. Any form of intimidation; either emotional or otherwise to influence one to vote for or against a particular ethnic group contrary to their free is therefore a breach of this fundamental principle.

With regard to minorities and marginalized groups (groups that may have been marginalized through discriminatory policies in the past), Article 56 of the Constitution obligates the State to put in affirmative action measures and policies that will promote their participation in governance. On its own, this is a first step towards correcting past wrongs and a way for the affected ethnic groups to realize that things are now destined to change for the better. We must note that these measures will be progressively realized.

Equitable Distribution of Resources

With regard to ethnic conflicts arising due to scarce resources, particularly land, the Constitution has laid out clear provisions on how such a resource will be allocated - Land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable. The National Land Commission will be the institution in charge of this. Coming up is the Land Bill, 2012, which will comprehensively address the manner of allocating land and its management. This will go a long way in addressing community conflicts surrounding this issue, particularly ancestral land, which is held communally.

Devolved Governance Structure

The Constitution dismantled the districts and provinces, which were mainly created along ethnic lines and replaced them with Counties, which are multi-ethnic. This will help distribute power and resources between sub-national units. The Counties will enjoy relative autonomy, thus helping to reduce the intensity of conflict.

One of the most attractive features of the new Constitution for most ethnic groups is the devolved structure. Devolving governance of the country to the county levels does not only spread out governance of the country and its participation by the people to the County Assembly levels, but it also allows them to make decisions that are specific to the particular electoral unit, particularly on the functions that County Governments are tasked with under the Fourth Schedule of the Constitution. This creates a sense of ownership by the communities at the County and County Assembly Wards levels and has a potential of eliminating ethnic conflicts, al be it progressively.

Enforcement Mechanisms

The Constitution and the election related laws have put forth stringent enforcement mechanisms in ensuring that the laws are observed to the letter. The Elections Act provides that before political campaigning begins, political parties should sign the Code of Conduct committing themselves to refrain from any actions that risk stirring up inter-communal tensions. Failure to observe this is an electoral offence punishable by fine and jail term.

3.3 *Administrative Measures*

Administratively, the Commission has employed an array of measures to prevent consequences of divisive electoral politics such as tensions, which mostly translate into violence. Below are some of these mechanisms -

- (a) Sensitization and Voter Education – The Commission has a constitutional mandate to conduct public voter education. In executing this mandate, the Commission incorporates messages on the importance of maintaining peace and sobriety during election periods, particularly discouraging misuse by politicians of one ethnic group against another for political gains.

- (b) Arbitration and Dispute Resolution – as it continuously builds its internal capacity, the Commission has trained its officers on the techniques of effective arbitration and other dispute resolution mechanisms that would quell impending conflicts between and amongst different ethnic groupings in terms of electoral processes. The Commission is also putting in place mechanisms to promptly resolve election disputes during campaign and pre-election periods. Resolution of these disputes in a timely, fair, and transparent manner is likely to prevent any post-election disputes.

- (c) Early Warning Tool – The Commission is working with international partners in establishing an Early Warning Tool to detect signs of discontentment from different pockets of the country. The Tool will enable the Commission to detect the various degrees of any such tensions so as to allow appropriate interventions in good time.

- (d) Working with other stakeholders – The Commission has in the past worked with various stakeholders, both State and Non-State actors when disseminating critical messages. Political Parties, the media, security agencies and civil society organizations and faith-based organizations are some of the key partners in all Commission’s initiatives. The Commission intends to work closely with NCIC, the National Steering Committee, the

Public Administration, the State Law office and the relevant communities in the continuous peace programmes being planned by the NCIC ahead of the general elections in the important initiative dubbed Kenya Kwanza Campaign.

- (e) Political Parties Liaison Committees (PPLC) – This is a body that was administratively established by the former Commission (IIEC) to act as a link between political parties, the Office of the Registrar of Political Parties and the Commission. These were established at the national and regional levels. PPLC is now grounded in the law as it is established under the new Political Parties Act, 2011. PPLC acts as a forum where the Commission can share information with political parties and a platform for political parties to air their concerns with the Commission. This forum has proven to be very effective, particularly in ironing out any issues that would otherwise escalate into potential conflicts.
- (f) Conflict Management Panels (CMPs) – These were set up as loose forums to deal with issues at the district levels. They were composed of political party representatives from the areas, representatives from Public Administration and security agencies. As the name suggests, they are intended to prevent and manage any conflict that may arise.
- (g) Peace Committees – These are similar to the CMPs but they were organs set up through civil society and faith-group initiatives that the Commission tapped into to maintain peace during election periods.
- (h) Preventive Measures – The Commission strives to ensure that election related violence is prevented at its early stages. During voter registration exercise, the Commission will have to employ target specific mechanisms to ensure that strategies suit specific circumstances of voters. For example, the Commission will have to make provisions to register individuals who were displaced by conflict to allow them to vote so that their political exclusion does not become a point for future conflict. Relevant Government agencies will

4.0 CONCLUSIONS AND WAY FORWARD

Despite the limited role of the Commission in countering ethnic divisive electoral politics, as the referee in election management in the country, the Commission is in the process of designing innovative conflict mitigation interventions ahead of the next general elections. This will be informed by the past experiences and lessons learnt from other jurisdictions.

There is also a strong need to encourage dialogue between the country's various interest groups and developing multiple democratic approaches to create a foundation for peace and security. The Constitution guarantees freedom of association, languages and religion and includes a very comprehensive Bill of Rights, which must be upheld by the Government, Politicians and all Kenyans in general.

The Government needs to create affirmative action packages for disadvantaged groups, which emphasize “management of diversity” that are intended, among other things, to address the ethnic hatred. This will empower majority of Kenyans particularly jobless youth, hence politicians will not have avenues to use to incite them against each other.

It is important to enhance public confidence in our institutions through integrity, transparency and accountability. This will automatically build community confidence and have the people actively engaged in peace and security matters. It is easier to control a process that the community feels they have played an active role in and thus own the process.

It is also critical to eliminate corruption and negative ethnicity in public institutions, which give rise to perception of one ethnic community being in control over others. In its own this creates feelings of disenfranchisement and discontent, which may lead to aggressive ways of addressing the inequalities.

The Commission ought to create awareness on the role of each key stakeholder towards the next general elections; that of the IEBC, political parties, politicians, potential candidates and voters

generally. This will remove misconceptions on the diverse roles and false expectations, which may lead to tensions and violence.

There is need to continuously build institutional capacity of both national and local institutions to effectively prevent and resolve election-related conflict. Other than the Commission staff, the security forces, the courts and political parties ought to be the focus of such capacity.

As I conclude, I will like to reiterate that approaches to counter ethnically divisive electoral politics are diverse and mostly beyond the mandate of the Commission. However, we realize that our desire to hold free, fair and credible elections cannot be achieved in an environment that is tainted with ethnic divisions and tensions. The Commission therefore is doing everything within its powers and resources to prevent its occurrence and to effectively manage such tensions if they arise.

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