

PATHWAY TO VICTORY

There has been some criticism of the Report and the Draft Bills agreed upon by the Joint Parliamentary Select Committee on matters relating to IEBC. I may not have written this piece if this was just normal political banter. Nay, even if it was genuine criticism and debate in the absurd theatre of political posturing and scoring wrestling points, I would have still kept my silence. In my world I have learned to live with charlatans, cynics and pedagogues in all shapes and forms. But this is serious business.

The world's most quoted author, William Shakespeare, in Henry the Sixth, through the character named Dick, says, "The first thing we do, let's kill all the lawyers". The morbid but memorable line would apply in equal measure to critics and politicians. Paul Barry a professional actor who has directed many Shakespearean plays, in an article, "Let's Kill all the Critics" says "asking an actor and director to write about critics is like asking mongoose to discourse in the subject of cobras?" Politicians often say a goat can never accede to the jurisdiction of a court presided by hyenas.

And so, with great respect, I question the uninformed rhetoric and statements of many who jumped into the judgement throne to determine who takes the baby without having the wisdom of King Solomon. Like Samson and Delilah they want to bring the temple down so all die. That is the demagoguery that has seen elections stolen and rigged in Kenya in 2007 and 2013 because the sovereign power of the people, on those two occasions has been appropriated by absolutely reactionary forces. Institutions and systems matter. Values even more.

In 1997 Moi acceded to the demands of the opposition and had eleven commissioners nominated by DP, FORD-K, FORD-Asili and KSC to the Electoral Commission. This was heralded as the hallmark of the IPPG. Moi still won. Under the National Accord and the Constitution of Kenya 2010, ODM/CORD had more than six commissioners and the CEO in its bag. Elections were still rigged in 2013. Despite a new set of commissioners, a progressive constitution and, to wit, an acclaimed Supreme Court, the elections and the judicial determination of its results were seen not to be fair.

The approach the CORD team had in the negotiations during the proceedings of the committee were under the mantra and refrain, **IT IS THE ELECTORAL SYSTEM STUPID**. If you see only the elephant's tail for the giant mammal you are blind. CORD's pathway to electoral victory has been safeguarded now and protected by a revolutionary change of the election laws that constitutes both a quantitative and qualitative leap in the electoral system.

The first principle is the use of technology and clause 17 of the Election Laws (Amendment) Bill, 2016 provides that – "there is established an integrated electronic electoral system that enables biometric voter registration, electronic

voter identification and electronic transmission of results". This system is defined in clause 2 of the Bill. In order to vote a person needs more than just having his/her name in the register. Eligibility to vote will now require one's biometric data to be in the register which data includes unique identifiers or attributes, including fingerprints, hand geometry, earlobe geometry, retina and iris patterns, voice waves, DNA and signatures.

The definition of the register does not include the words "principal register" but the words "register of voters", which register shall be maintained in a public web portal for inspection by members of the public. One single register. No black book. No green book.

The Bill makes mandatory provisions for the verification of biometric data at polling stations before every general election and an audit of the register of voters must be undertaken which shall be cross checked by the information and data held by the National Registration Bureau which includes identity cards, passports and registers of births and deaths. This same exercise under Clause 6 of the Bill must be undertaken before October 2016 for the purposes of the August 2017 elections.

The totality of all these statutory requirements is that there will be a fresh register of voters. And because of the use of technology in the voting process including biometrics, voter identification and transmission of results at every polling station, each station will not have more than five hundred voters. It is good bye to dead voters, double voting and registration of ineligible voters.

As results are announced at every polling station for the purposes of the presidential elections, the returning officer shall simultaneously, and in real time, transmit, in the prescribed statutory form, the tabulated results of the election to the constituency tallying centre and the national tallying centre. The results will concurrently be published in polling result forms on an online public portal. In effect the results announced at polling stations are final and citizens, political parties and the media can aggregate the results at the same pace with or even faster than the Commission.

Political parties and other stakeholders are going to be directly involved in or oversight the acquisition of equipment, instruments, technologies and other electoral infrastructure. Political parties must hold their heads high and will not be passengers anymore. They will be able to test the equipment and technology to be deployed for the elections well before polling day.

Senator Anyang' Nyong'o will tell you of an incident before the last general elections when we were rudely sent away from Anniversary Towers by the Chairman of IEBC when we insisted that ODM was entitled to check the IEBC equipment and gadgets for the 2013 election. He reasoned that there was no legal framework . Now there is one.

Political parties will be involved in the formulation of regulations providing for inter alia, the transparent acquisition and disposal of information and

communication technology assets and systems; testing and certification of systems; mechanisms for conduct of a systems audit; data storage and information security; data retention and disposal; access to electoral system software, source codes and telecommunication network for voter validation and result transmission. In this arrangement the National Intelligence Service (NIS) will be dead meat.

These reforms are seismic and progressive by any standards or best practices.

You hypocrites! You unbelievers! The sun will rise and set while you are still locked in the darkness of cynicism and scepticism. The spacecraft Juno has now accomplished the planetary expedition to Jupiter and is sending the images of that giant body in our solar system to small little earth. Modern day orthodoxy would still today send Galileo to the inquisition for stating the obvious, that the earth is round and orbitally goes round the sun.

The Report and Draft Bills are not serendipity. It is a result of hard negotiations carried out in the backdrop of great sacrifice and heroic struggles of our people who died and who faced prosecution and have been unlawfully detained to bring freedom and justice to our land.

And now that we have a legal framework, never ever forget the iconic message of Emma Jalamo. *"Tel ikawo. Ok mi ng'ato"*. Power is never granted. It is taken. Now the pathway to victory has been secured. Abradacabra!



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