

OUT IN THE COLD: Why the Kenyan diaspora must be allowed to vote

The crisp sting of the November cold hugged me tight as I waited for the polling station at a Baltimore precinct to open up. It was four o'clock in the morning; the darkness of the just concluded campaigns still had its uncertain grip over the land.

As I waited for the chief election judge to come and open the doors, a fellow election judge joined me. We exchanged pleasantries.

After a few hours, when the voters began to trickle in, I became a neutral citizen, as was required of my job as an election judge. I did not show my preferences and diligently provided my services to ensure a free and accessible election. I also observed and made useful comparisons with what I know of the Kenyan system.

I am a Kenyan, I am an American. My dual citizenship bears civic responsibilities and rights in two countries. I am invested in both the country I was born in and the country I live in, as are millions of others who live and work outside their countries of birth.

The current globalised reality has created dual and multiple citizenships that obligate citizens to water the tree from which they receive daily shade, and to nourish the distant soil that raised them because they still have loved ones there; but most important, their identity is rooted in that distant soil, a belonging that is more powerful than the foreign residence that becomes a new home.

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An interest in civic engagement led me to becoming an elections judge in the 2016 US elections for the State of Maryland. This is a volunteer position, although it does come with an honorarium that varies from state to state. Elections in the

United States are state-regulated, with each of the fifty states dictating their own election processes.

This is different from Kenya where elections are centralised and regulated by the Independent Electoral and Boundaries Commission (IEBC). This centralisation leaves the IEBC vulnerable to manipulation by incumbency politics. It has also given IEBC officials a sense of belligerence when it comes to serving a constituency such as the diaspora, a population they deem a bother, inconsequential or potential spoilers in the game of power-shifting.

The diaspora-IEBC tango

The relationship between the IEBC and the Kenyan diaspora constituency has been salty, rife with litigation and deliberations that produce no results.

The Kenya Diaspora Alliance (KDA), an organisation that has championed the collective civic engagement aspirations of the diaspora since the 2012 elections, has several times sued the elections body for failure to implement diaspora voting rights. Winning a lawsuit in 2015 in which the Supreme Court directed IEBC to enable the diaspora to exercise their right to vote has not made a difference.

The IEBC, while promising to honour the constitution, uses Article 82 (1)(e) “progressive registration of citizens residing outside Kenya, and the progressive realisation of their right to vote”, to keep the diaspora disenfranchised. “Progressive realisation” is a grey area subject to interpretation that suits whoever holds the keys to diaspora participation. The phrase suggests that you can allow just one extra person to vote every election and that can pass for progressive.

The argument also needs to be made that the “progressive realisation” phrase should to be expunged from the constitution as it leads to the suppression of the rights of an estimated 3 million Kenyans far into an unseen future. Article 257 (1) allows for amendment of the constitution by popular initiative that gathers at least one million signatures.

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The frustration of unrealised rights has carried over to the current election season. In January, 2017, KDA made another public threat that appeared in the newspapers to sue IEBC as the body had made empty promises and failed to implement satisfactory mechanisms for diaspora voting.

To its short-lived credit, the IEBC had, towards the end of 2015, released the IEBC Diaspora Policy that guides the registration and voting exercise for Kenyans abroad, or what some have come to call the 48th county.

Disappointingly, the IEBC continues to fail the test of trustworthiness. Upon persistent inquiry as to why the body failed to honour its publicised plan to start the registration of Kenyans at embassies, the official response cited lack of funds as the reason. Often, IEBC has also mentioned that it lacks reliable statistics to implement registration processes.

These excuses are disingenuous as diaspora representatives have made presentations of diaspora-led solutions to IEBC, and the IEBC officials had found the i-Vote.net solution quite impressive. i-Vote.net is a fully functional and secure digital platform for counting and mapping Kenyans in the diaspora, and recording the demographics in real time. It also has online voting capability. The system is an initiative of Kenyans in the diaspora.

An official endorsement of such a solution would immediately begin to solve the problem of lack of funds or statistics as it would allow a great number of diaspora Kenyans to count and provide the needed statistics. There has been zero political will to create productive partnerships. Change can come through one person with a million dollars or through a million voices with one purpose. The platforms that the diaspora has created can be used to raise a million voices.

The IEBC gets its funding from the government, and also from foreign donors, including the United Kingdom, the United States, Denmark and Norway. The failure to budget for a constituency of millions of Kenyans is not just negligence, it is criminal.

Diaspora as marginalised citizens

Article 82 (1)(c) calls for “the continuous registration of citizens as voters”, which can be used to press for the treatment of Kenyans in the diaspora as deserving of their rights as any other citizen. In nation-building, no real unity is ever achieved

until all communities that are part of that nation are accorded equal realisation of their rights.

The discrimination of citizens using geographical location has historically affected the communities in the northern parts of Kenya, driving them to extreme socio-political and economic marginalisation. This discrimination has become a reality for the diaspora, notwithstanding this constituency's economic clout.

Voting leads to the right to representation, which lends a voice to communities that might not otherwise be heard. It is this voice that the diaspora seeks.

The diaspora's potential to build the country cannot be overstated. Unlike the courtship of foreign donors by African governments, which sustains an unpleasant trail of neocolonisation, courting diaspora partnerships should be easy as this is a population with its heart already invested in their home country.

For the diaspora, this includes the ability to access those in power in order to establish local businesses, to make social impact investments, such as schools and hospitals, and to lobby for policies that are friendly to both Kenya and the diaspora.

With diaspora remittances now amounting to KSh160 billion (\$1.6 billion) annually, 10 percent of this amount can go a long way towards realising these aspirations, putting thousands of Kenyans to work and reducing the amount of money Kenya now borrows from China for its infrastructural needs.

In 2015, the National Treasury Cabinet Secretary, Henry Rotich, mentioned that more than half of these remittances are sent through unofficial channels that cannot be traced for taxation. At the time, he estimated untraceable remittances at KSh120 million annually. Finding solutions to tapping a percentage of these hidden remittances is best achieved by involving diaspora Kenyans in making direct investments in national infrastructure. The diaspora's potential to build the country cannot be overstated. Unlike the courtship of foreign donors by African governments, which sustains an unpleasant trail of neocolonisation, courting diaspora partnerships should be easy as this is a population with its heart already invested in their home country.

It is the mindset of cutting off diaspora involvement while scheming to get its money that has deepened disillusionment. Many Kenyans abroad have complained about being used as cash cows to fund establishment interests, especially alluding to the standing ultimatum by the Kenya Revenue Authority (KRA) for diaspora Kenyans to file their taxes.

The KRA cannot legally demand to tax Kenyans who do not have fiscal residency in Kenya, a status that requires a residency of an aggregate 183 days or more in a fiscal year, regardless of one's citizenship status. The attempt at double-taxing diaspora Kenyans has been an emotive issue that cannot be resolved through multilateral tax treaties alone.

A government's efforts to use laws and institutions selectively fail when it does not involve all parties, in this case, the diaspora constituency, in everything diaspora-related. There are active diaspora organisations that have a history of handling diaspora issues.

An example of the forceful attempt to milk a diaspora without building civic engagement bridges is Eritrea's government, which introduced a 2 per cent Recovery and Reconstruction Tax (RRT) on individual diaspora income. This led to the 2011 UN Security Council intervention through Resolution 2023 which "decides that Eritrea shall cease using extortion, threats of violence, fraud and other illicit means to collect taxes outside of Eritrea from its nationals or other" (Article 11). However, this reprimand was also linked to the Eritrean government's use of the 2 per cent tax levy to fund its civil war.

The uneasy relationship between the diaspora and the Kenyan government dates back to the Moi dictatorship years when those who moved abroad were labelled as dissidents. The establishment of organisations, such as the Kenyan Community Abroad (KCA), allowed for an organised struggle that saw the constitutional realisation of dual citizenship, against great odds, and later voting rights.

The victory that ushered Kenya's "second liberation" fighters into establishment politics allowed the diaspora organisations to pursue diplomatic engagement, which later developed into the search for a slippery *détente*, especially with the Washington DC embassy. When the DC embassy sneezes, the rest catch a cold. There has been progress to be sure, as with two steps forward, one backward. The diaspora itself also bears responsibility for that one step back.

Attaining unity of purpose among Kenyans abroad has been a great challenge. Partisan and ethnic divisions have in the past contributed to rancour that spread its poison through social media exchanges; this was witnessed especially during the 2007 election period. Some continue to maintain a grotesquery of nationhood that elevates deep tribal loyalties in foreign lands. These are inconvenient truths that the diaspora does not like to see published, but they need to be reflected back and acknowledged often until the reflection in the mirror is altered by its bearer.

American tribalism

The thought about the diaspora's struggle with tribalism snaps me back to what America just went through: the most bizarre campaign period that saw the rise of Donald Trump. My Kenyan understanding and experience of tribalism made me grasp the demagoguery of Trump as a tribal kingpin funnelling primitive emotions for his own gain.

Looking at the phenomenon through the neorealist spectrum, one could see that the extremist members of the Caucasian tribe had succeeded in defining the interests of the country as primarily those of the white race. Trump is the embodiment of *animus dominandi*, or the obsessive desire for dominance that, at any cost, procures the interests of a race that feels threatened by subjugation, the said subjugation being real or imagined. It is quite reminiscent of the 41-against-1 rhetoric in Kenya.

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A section of White America has been observing the dwindling numbers of its own race and the rise of minority groups in demographics, political power and consumption of resources. Like animals in a jungle, *animus dominandi* dictated that power must be grabbed back for the sake of survival and greatness.

Trump's followers were not just driven by their frustration with Washington politics - that swamp that needed to be drained - they were also driven by a primal fear that found its perfect camouflage in the slogan "Make America Great

Again". The entire scenario mirrored what I knew to be true in my country, Kenya. American tribal politics had driven a wedge between a people that should have built a nation as one people.

The US voting system

Every polling station in the United States has a trained team of election judges whose job is to execute a fair and accessible election. The team is led by a chief election judge whose job is to: ensure early arrival of all voting material under tight security provided by the police department; set up the polling station; coordinate the judges; field questions from journalists and observers; tally the votes at the top of every hour and post the results hourly at a publicly visible place within the polling station; and ensure that voting machines are emptied and locked at the end of the day.

Each step is witnessed by party agents; this ensures the auditing process is incorporated from the beginning to the end. It is also a chief election judge's job to ensure the storage device that contains the final tally in digital format is securely transported to the Board of Elections counting center where canvassing is done. Canvassing in this case refers to the final tallying, verification and audit of the votes, which produces the official count. This included absentee ballots, provisional ballots, vote-by-mail ballots and early voting ballots. The results that come out of the polling stations, before official count, are believed to be a true reflection of the people's choice because the auditing starts right from the first hour of the voting process. Claims of voter fraud have been debunked by various political forensics. Out of 135 million voters, there were only a reported four cases of voter fraud, a negligible percentage.

My experience as an election judge showed me just how near-impossible it is to rig an American election process, even with voter registries that have a good number of dead people. A voter who comes in to vote as one of the dead persons has to go through biometric verification before getting a ballot. That is the same safeguard the Kenyan system is intended to provide. The rigging with Kenya comes in when one party is known to have access to IEBC voter rolls and can manipulate the numbers as the election proceeds. This was the case in the 2013 elections, which resulted in the machines declaring over a million spoilt votes, leading to the abandonment of a system that had cost billions of shillings and using manual counting. Rigging robs a country of massive resources.

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At the moment, Kenyans are struggling with trusting registries that are confirmed to have thousands of dead people still registered. This should not be a point of worry. The diligence of election officials at polling stations should be enough to stop anyone trying to appropriate someone else's identity. Death is a daily guarantee, and it should be no mystery that names of deceased persons appear on registries for a period of time. Voter purging should be as frequent as practically possible to remove deceased persons.

However, in the current US situation, there's fear that the federal government wants to control voter data in order to do its own targeted purging. Because voting is state-controlled, each state is able to independently deny the request of the president's commission to release voter data; this hinders any attempt by a rogue establishment to engage in large-scale voter suppression.

Bold legacies

Absentee voting is the method most commonly used by US residents living abroad. They register online through the Federal Voting Assistance Program that sends them absentee ballots. Once filled out, these are mailed back to the voter's claimed state of last residence in the US. Should an absentee ballot not be received on time, one can still vote online through the Federal Write-In Absentee Ballot.

The US diaspora also faces the challenge of counting the uncountable. While the State Department puts that population at 7.6 million, the Migration Policy Institute (MPI) states, "Despite efforts by American organizations and the U.S. government to achieve more consistency, current estimates vary from 2.2 million to 6.8 million — a substantial range." The lesson here should be that the challenge of statistics, though important, should not be used as an excuse to delay the enfranchisement of Kenyans abroad.

A constituency that is bound by unique characteristics provides an opportunity for innovative solutions. Diaspora voting for Kenyans abroad has become a problem

child for IEBC and the government, yet it presents one of the most exciting frontiers in the science of voting methods and technology. All it requires is one bold and visionary official who welcomes the challenge with a determination to leave a legacy. There has to be a beginning, one that must break through the doubts and fears of rigging and manipulation of a diaspora vote.

The implementation of online voting for the diaspora constituency should still be seriously considered. In 2013, we attended a workshop organised by the International Foundation for Electoral Systems (IFES) in Washington, DC. A team of expert computer programmers led by Dr. Alex Halderman, professor of computer science and engineering at the University of Michigan, made a presentation on the danger of online voting. While he and the IEBC team were impressed by our i-Vote platform devised for diaspora voting, they cautioned that online systems were not ready for use. This may be true, but that does not mean we cannot conquer new frontiers. Estonia is fully aware of all the pitfalls of online voting, but that did not stop that small country from embracing the technology, and efficiently implementing e-government in all its sectors. It has presented itself as a case study, willing to fail and reinvent and conquer. This should be the spirit that guides Kenya.