

# Re-Defining Hate Speech Towards Reform Agenda: The Discursive use of Referential Strategies in Kenya's 2017 Pre-Election Campaigns

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**Abstract**— *Hate crimes and inflammatory speeches have often been propagated in Kenya's election campaigns. Kenya has put in place various mechanisms to monitor hate speech. This paper focuses on various ways in which referential strategies by key leaders in the 2017 pre-election political discourse reflect and determine hate speech. It also examines the interplay of politics, social theory and linguistics towards achieving Kenya's Reform Agenda. The study is grounded in Fairclough's and Wodak's Discourse Historical Approach as a theoretical framework. The findings discursively depict the leaders as using representations that elevate their authority in the texts and naturalise the ideology of intolerance through vilification of others, intentional misinterpretation, subversive intentions, rumours, threats, innuendos, propaganda, depersonalising metaphors falling short of achieving the reform agenda. Policy makers would use the findings to adherence to laws and policies promoting national cohesion.*

**Keywords**— *Hate speech, Reform Agenda, CDA, Discourse, Kenya.*

## I. INTRODUCTION

Kenya is one of the many countries in Africa that have experienced frequent conflicts in the past two decades. These conflicts have been attributed to many factors among them negative ethnicity and contested general elections. One notable case is the 2007-2008 post-election violence which claimed many lives, loss of property and human displacement (Waki Report, 2008). This situation also threatened the stability and peace that the country was enjoying compared to its neighbouring countries. In order to

arrest this situation, in February, 2008- Kenya's political adversaries aided by the African Union and its international partners negotiated a power-sharing pact to resolve the dispute over the December 2007 Presidential Elections. Under the series of the Kenya National Dialogue and Reconciliation, the Kenyan political parties also conducted a series of agreements aimed at ending the violence, restoring fundamental rights and liberties, addressing the humanitarian crisis, promoting reconciliation and healing, resolving the political crisis and tracking long-term issues affecting the nation. Thus a Coalition Government was formed with the primary purpose of addressing the root cause of the repeated violence in Kenya. This was to be achieved through the implementation of a logical and comprehensive reform agenda, commonly referred to as Reform Agenda 4.

The process of implementing Reform Agenda 4 includes peace building strategies such as moderating the verbal conduct of the leaders. For instance, in the Kenyan situation, the National Cohesion Integration Commission (NCIC) put in place guidelines within which leaders were to operate with regard to the issue of hate speech. In this paper therefore, in part, Reform Agenda 4 is selectively reviewed in relation to the legislation governing political discourse generally and laws governing the conduct of leaders in Kenya. Several studies have indicated that the various political parties that formed the Kenyan coalition were largely ethnic based, generating negative ethnicity. Consequently, it has been observed that such negative ethnicity has been the cause of inflammatory discourse that frequently leads to tribal clashes during and after each general election in Kenya. After the 2007 post-election

violence which was in part linked to inflammatory discourse, there was need to regulate the language used by leaders in order to prevent incitement which could lead to recurrence of violence. The parties in the coalition thus agreed to undertake far-reaching reforms to secure sustainable peace and justice in Kenya.

A peace building strategy must be included in any attempt to resolve political crises. The United Nations (UN) defines peace-building as action to strengthen peace and avoid relapse into conflict, while other literature refers to peace-building as a range of measures targeted to reduce the risk of repeated conflict by strengthening national capacities at all levels. This is the strategy that the Kenyan Government adopted, commonly referred to as the Reform Agenda, as a way of consolidating peace and unity and thus preventing a resurgence of violence. In pushing forward Reform Agenda 4 in Kenya, the National Cohesion and Integration Commission (NCIC) was set up in 2009. The NCIC is a statutory body established under the NCIC Act no.12 of 2008. The Commission draws its existence from the National Dialogue and Reconciliation Agreement that sought to provide a peaceful solution to the political impasse and violence that engulfed the country after the 2007 general elections.

The main items in the Agenda were four (NCIC 2008) namely: Agenda item one to stop violence and restore fundamental rights; Agenda item two to address the humanitarian crisis that involved resettlement of internally displaced people; Agenda item three to resolve political crisis; Agenda item four to examine and address constitutional, legal and institutional reforms, poverty and inequality, youth unemployment and land reforms. With regard to Agenda items 1, 2 and 3, the NCIC Section 13 introduced guidelines to streamline classification of speech and information that may qualify as hate speech and thus face exclusion from the freedom of speech principle, the Hate Speech Act. In this Act, Section 13, 1, a, b, c the indicators of "hate speech" are listed as: speeches that cause hatred, speeches that characterize ethnic or religious violence, utterances that degrade others; use of cultural stereotypes, utterances that promote discrimination on the basis of tribe, ethnic group, use of abusive, negative and insulting language, use of stories that profile people and communities negatively, use of imagery, poems, metaphor, proverbs that could stir up ethnic hatred, and use of alarming language.

However, the hurdle against hate speech is the lack of clarity about what constitutes the crime (NCIC 2010). Some important aspects under the law are undefined such as what constitutes abusive, insulting or threatening words. In

addition, the Act does not specify how the law would deal with coded messages and innuendo in vernaculars that on the surface appear quite harmless. Furthermore, the Act does not explicitly state what the criminal ethnic stereotypes and inflammatory words are. In a nutshell, hate speech is use of threatening, inciting, abusive or insulting words or behaviour or display of any written material with the intention of stirring up ethnic hatred. In regard to political discourse, NCIC reports that it has faced a lot of difficulties determining what hate speech is under the law, even though the Commission is aware of the power of dangerous speech to stir up animosity. Most of those accused of propagating hate speech either end up having court cases drag through the judicial process for years or have their cases dropped. For instance, in 2010, cases against three politicians charged with the crime of hate speech in the heat of the campaigns for the referendum on the Constitution were later dismissed after conciliation became the substitute for criminal justice. Similar cases were reported in 2014 and 2015 but the legislators involved were acquitted after applying for conciliation. Recently, that is June, 2016; six members of Parliament had been locked up for several nights in police cells against hate speech propagation. However, the law makers were freed for lack of evidence. Further, in 2017, a Governor escaped jail on charges of ethnic incitement for making disparaging remarks against Raila Odinga, the former Prime Minister and a highly respected opposition leader. He was however, acquitted due to 'lack of evidence'. In September, 2017 two other legislators, Moses Kuria and Johnson Muthama were arrested and charged in a court of law for propagating hate speech. The two leaders were released on bond pending hearing in January, 2018. Based on this, a critical analysis of political language is necessary in order to reveal the connotations behind the use of language and ascertain whether or not the leaders are operating within the reform agenda paradigm with respect to peace building.

The NCIC (2010) had acknowledged that one of the major impediments during the implementation of the mandate and provisions of the NCIC Act (2008) was lack of a proper definition of hate speech and the necessary parameters within which it operates. In other words, the need to define hate speech is pertinent because lack of it may serve as a lacuna for perpetrators. Further, the NCIC has reported that the courts have also pitched in to interpret certain provisions of law including but not limited to definition of imprecise and ambiguous words. Up to date, the Kenyan courts have not yet embraced the Act as a result, no definition has been established. The climax of hate speech was observed during the post- election violence

of 2007-2008 and its aftermath that involved an array of serious human rights violations (Waki Report 2008; KNHRC 2007, 2008). In these reports, much emphasis was drawn to incitement to violence as one of the main causes of inter and intra-ethnic violence. The Waki Report (2008) found that politicians, local elites as well as the media contributed to the building up of tensions in the lead-up to the elections through “inciting utterances.” Despite the fact that freedom of speech is the cornerstone to democracy, it has been noted that this freedom may be misused (Waki Report 2008). The Waki Report contends that in such instances, the state needs to intervene and draw up a clear line between legitimate and illegitimate speech. This can be effected through enactment of good written laws.

Thus, Agenda Item Four in the Reform Agenda has been dubbed as the “mwananchi agenda” (citizen’s agenda), as it addresses the deep seated problems that most directly affect the lives and livelihoods of most Kenyans. Such are poverty and inequality, youth unemployment, land issues, ethnic conflict, a stalled judicial system and institutional reforms. It should be pointed out that once the Reform Agenda 4 was to be implemented, Kenyans would reap the fruits of the National Dialogue Agreement. Consequently, as Kenyans looked forward to the 2017 General Elections, it would ensure that Kenyans are not exposed and predisposed to a repeat of the horrific violence witnessed after the disputed 2007 Presidential election.

Kenya has espoused a number of legislations prohibiting hate speech and its constituents with regard to the nature of hate speech. It is however, spread out thin and there is need for review and harmonisation to enhance effectiveness (Callamard 2010). In view of the existing laws, several recommendations governing a range of policies and best practices have been adopted to guide review of interventions in Kenya. Firstly, in 2017, the Communications Authority of Kenya started regulating electronic communication and put in place plans to closely monitor social media activity. Secondly, the Kenyan 1963 Constitution was officially repealed on 27<sup>th</sup> August 2010 but no provisions were made in this social contract against hate speech. Callamard (2010) argues that it was important to formulate a clear position unlike the previous constitution which was silent on hate speech. Section 79 (1) of the 1963 Constitution, specifically, provided that no person shall be hindered in the enjoyment of this freedom of expression which was to include freedom to hold opinions without interference, freedom to communicate ideas and information without interferences whether the communication be to the public generally or to any person or class of persons and freedom from interference within

their correspondence. It can be noted that there is no express provisions as regards prohibition of hate speech (Callamard 2010).

Thirdly, the Constitution of Kenya (2010) has been commended as regards the Bill of Rights and the restrictions thereof. However, opinions from critics point out that protection of freedom of expression has not been fully addressed. This social contract has a number of divergences between section 79 of the previous Constitution and Article 33 of the current one that makes the relevant provisions on freedom of expressions and its limitations. Hate speech is premised on the freedom of expression, limitations should therefore be spelt out in the Constitution (Callamard 2010). Article 33(1) provides that every person has a right to freedom of expression, which includes freedom to seek, receive or impart information or ideas, freedom of artistic creativity and academic freedom and freedom of scientific research. It is important to note that issues of hate speech relate to language. However, Article 33(2) provides that the right to expression does not extend to propaganda for war, incitement to violence, hate speech or advocacy of hatred that constitutes ethnic incitement, vilification of others or incitement to cause harm or is based on any ground of discrimination specified or contemplated in Article 27(4).

Further, the National Cohesion and Integration (NCI) Act is the Act that criminalises hate speech in Kenya. Hate speech is provided for under the NCI Act in sections 13 (1, 2 &3) and 62 (1 &2). In addition, the Penal Code does not expressly outline what hate speech is. However, some aspects of hate speech emerge and are captured under this code for instance, subversive activities and incitement to violence. Section 77(1) provides that “...any person who does or attempts to do or make any preparation to do, or conspires with any person to do any act with subversive intention, or utters any words with a subversive intention, is guilty of an offence and is liable to imprisonment for a term not exceeding seven years (Cap 63, Laws of Kenya, Revised Edition 2009 (2008) cited in Callamard 2010).

Additionally, the Media Act (2007) was set up to regulate the media against aspects of hate speech. Newspapers, radio stations, or media stations are among parties that perpetrate hate speech (Act No.3 of 2007, Laws of Kenya). In other words, the media has an impact over a large portion of the populace hence negative messages can exacerbate any existing conflicts. It is observed that regulations of such mediums are therefore vital to enhance peaceful co-existence among people, a similar argument in the Waki Report (2008).

Lastly, the Political Parties Act (2011) was an Act of parliament to provide for the registration, regulation, and

funding of political parties, and for connected purposes. This Act is relevant to this study in three ways: firstly, Formation of Political Parties 3(1): Political parties may, subject to the provisions of the Constitution and this Act, be formed in Kenya to further purposes which are not contrary to the Constitution or any written Law. According to most studies in political science, Political parties' membership is usually ethnic-based and in most cases they do not serve the citizenry but act as vehicles for acquiring and maintaining leadership and legal control (Keverenge 2007, 26; Kipruto 2012; Nyong'o 2012; Masime & Oesterdiekhoff 2010). Further, requirements of a political Party 4(1): Clause 2 states that the Registrar shall not register an association of persons or an organization as a political party if such association or organization does not meet the requirements set out in Article 91 of the Constitution. In line with this Article, the focus of this study is mainly on paragraph (c): promotes and upholds national unity and paragraph (h): subscribes to and observes the code of conduct for political parties. These two paragraphs are relevant to this study because the sustenance of peace and political stability in the country after the post-election violence depended on the actions of the two principals whether verbal or non-verbal. This is because being leaders of their respective political parties, their behaviour whether constructive or destructive would easily influence those of their members. The code of conduct is further highlighted in the First Schedule as explained below.

Furthermore, Code of conduct for political parties, First Schedule (S.6 (2) (c)): Firstly, Political parties shall pursuant to Articles 91 and 92 of the COK, 2010 and section 8 of this Act, subscribe and observe this code of conduct. Secondly, the code of conduct shall regulate behaviour of members and office holders of political parties, aspiring candidates, candidates and their supporters, promote good governance and eradicate political malpractices. Paragraph (7) further states that a political party shall not (f) advocate hatred that constitutes ethnic incitement, vilification of others or incitement to cause harm. In addition, paragraph (8) states that a political party shall promote inter-party relations by (d) promoting national reconciliation and building national unity.

With regard to the Elections Act (2011), reports show that the electioneering period follows an ethnic ploy which is a precursor of hate speech (Kenya National Dialogue and Reconciliation 2008). The advent of the COK, 2010 brought with it changes in the election regime. Notably are the recent laws that have been passed to regulate the entire process and the conduct of the candidates (Election Act 2011). This legislation seeks to define the

general conduct expected to persons running for various state offices. This was as a result of the December, 2007 elections and how the candidates behaved. This necessitated the setting up of a code that regulates the campaign and election process. Rule 6(a) of the Elections Act under the electoral code of conduct provides that,

All those bound by this code shall throughout an election period publicly and repeatedly condemn violence and intimidation and avoid the use of hate speech, language or any kind of action which may lead to violence or intimidation, whether to demonstrate party strength, gain any advantage or for any other reason, and refrain from any action involving violence or intimidation.

The NCIC has made the following progress so far: the promulgation of the Constitution of Kenya, 2010; the process of land reforms has started with preparation of draft Land Bills; and the Truth, Justice and Reconciliation Commission (TJRC) is a progressive step towards the realization of national cohesion and unity. Institutional Reforms especially in the police, judiciary, electoral body and other public sector institutions have been notable. The implementation of Kenya Vision 2030 which guides the government's medium term planning, development and budgeting has provided for various measures for tackling poverty and inequalities. In August 2010, the NCIC Section 13 introduced guidelines to streamline classification of speech and information that may qualify as hate speech and thus face exclusion from the freedom of speech principle.

Given the prominence of negative speech in Kenya's pre and post-election, any analysis of the case requires attention to the relations among speech, power and violence characterizing the situation, even as it must resist the tendency to assume that hate speech is caused by violence (Bichang'a 2010; Jerome 2008; Oloo 2008). Rather, the precise role played by hate speech is best explored in context. This paper also argues that there are various other factors from which hate speech can be determined. For instance, the context of speech: is it inflammatory, discriminatory and targeting a particular group or not. The speaker: is he or she influential? The audience: is it likely to react violently? Content: is it inflammatory, discriminating or hostile towards a targeted group? And the Historical context: have similar statements led to ethnic violence? Thus based on these, only through appreciating the contextual specificity of speech in relation to the pre-election campaign discourse can the implications for prevention, redress and reconciliation be determined (Ikejiaku 2011). Such factors should be weighed against the

tenets of the 1996 International Covenant on Civil and Political Rights on freedom of expression to which Kenya is a signatory as mirrored in Kenya's Bill of Rights Article 33(2) and from which the Reform Agenda is drawn. The numerous reports by national and international organizations that document the threatening atmosphere and violence before, during and after the election all mention the role of hate speech as a feature of conflict (see Bayne 2008; EU 2008; Kiai 2008; KNCHR 2007, 2008).

However, the rhetoric of politicians and political operations prior to the election made it clear that voters should organize along ethnic lines and defend ethnic interests, a tactic also used in the 2002 election (Ikejiaku 2011). Some of the political rhetoric went beyond identifying groups and their interests to denigrating particular ethnicities by using familiar stereotypes of their qualities or behaviours (Bichang'a 2010, Oloo 2008; Ogola 2008). Ikejiaku (2011) asserts that other papers in her study confirmed that when leaders (political, military, religious, or other) produce this kind of speech, and thereby make it acceptable for public discourse, their actions can be highly influential and can open the door for other more nefarious ethnic slurs and intimidation. The statutes have covered the issue of hate speech at large; nevertheless, amendments are still required to cover all aspects of hate speech. This is imperative to ensure that the onus of proof as it is in criminal cases is properly covered beyond reasonable doubt.

The Reform Agenda 4 was therefore geared towards ensuring a stable and prosperous democratic future in Kenya. This was to be achieved through such measures as repealing the 1963 Constitution, promulgating a new Constitution (2010), the National Accord and Reconciliation Act (2008) as a Statutory Provision, reviewing the Penal Code (2008), introduction of Media Act (2007) and Elections Act (2011) inter alia. Therefore, based on the foregoing, this research aimed at investigating the referential strategies of the key leaders in the 2017 pre-election campaigns with a view to establish whether their discourse propagates hate speech or it is within the Reform Agenda Guidelines. This is done with a view to assessing the implementation of the Reform Agenda. It should also be observed that governments form and survive under different conditions. It can further be argued that whatever is the principal function of the government or opposition, language should be factored in since it is the principal tool in power sharing alliances, strengthening an opposition and resolving political conflict. Since stability of any country is not only formed but also needs to be maintained, and irrespective of the purpose or intention for politicking, the

language aspect cannot be ignored in order to attain peace and cohesion.

## II. THEORETICAL FRAMEWORK

This study was grounded in Critical Discourse Analysis (CDA) within Norman Fairclough's Social theory and language and power and Discourse Historical Approach (DHA) by Reisigl and Wodak (2001). Critical Discourse Analysis is premised on the assumption that language is not only a product of society but also an important force in (re)shaping social practices, both positively and negatively (Wodak and Chilton 2005; Fairclough 2010, 2003). CDA is characterized by concepts: critique, power, history and ideology. With such foci, CDA naturally lends itself to the investigation of the ways domination and discrimination are embedded in and mediated through language use (Ietcu, 2006). Discursive strategies are systematic ways of using language located at different levels of linguistic organization and complexity. Reisigl and Wodak (2001, 44-85) distinguish five different strategies, namely: nomination/referential, Predicational strategy, perspectivation, argumentation, and intensifying/ mitigation strategy to bring out strategies of Self and Other presentation try to delineate the scheme of analysing discursive strategies which contribute to the positive self and negative other presentation. All these strategies are interrelated and complement each other to provide the full picture of the phenomenon being understudied. Nevertheless, in this paper we shall limit our focus on Referential/ nomination strategies. Referential strategies, the focus of this paper, are linguistic tools with which persons and groups are identified (Reisigl & Wodak 2001). They encompass the linguistic tools via which individuals and groups are named and referred to (Richardson 2007).

Analyzing these strategies is based on three assumptions: referring to social actors in a certain way is a matter of choice (Reisigl & Wodak 2001), the way social actors are referred to carries value judgements (Richardson 2007) and referential strategies "establish coherence relations with the way that other social actors are referred to and represented" (Richardson 2007, 50). Referential strategies function as a 'basis for the argumentation schemes of the text' (Reisigl & Wodak 2009, 114); they are taken-for-granted starting points for argumentation. In other words, categorizing social actors via nominations is introduced as given and shared background information which conceals to a large extent the political and ideological interests served by this categorization. The Discourse Historical Approach is preferred in this paper because of its extensive use of referential strategies. Referential strategies

include pronominalisation, functionalization, relational identity, linguistic metaphors, depersonalising metaphors, impersonalisation by abstraction, genericisation and nomination. Referential strategies use various linguistic means for identification of a social actor. This paper focused on how referential strategy was used to reveal the ideological underpinnings of key political leaders in Kenya's 2017 pre-election campaigns: Uhuru Kenyatta, William Ruto, Raila Odinga, Kalonzo Musyoka and their close allies. The historical and socio-political context provided by DHA is particularly essential in the understanding of the Kenyan political and social conflicts in general because they have been and continue to be more susceptible to political influences because of the complex historical and socio-political factors such as politics, ideologies and the aftermath of Kenya's post-election violence in 2007, there was need to adopt such an approach in this study for a more objective analysis.

Power is legitimised or delegitimised in discourses (Wodak 2001; Chilton, 2004). Texts are often sites of social struggle in that they manifest traces of differing ideological fights for dominance and hegemony. Thus the DHA practitioners focus on the ways in which linguistic forms are used in various manipulations of power. In line with this, the research findings of Wodak (2001) and Chilton (2004) confirmed that power is discursively exerted not only by grammatical forms, but also by modality, argumentation strategies and by a person's control of the social occasion by means of the genre of the text.

### III. MATERIALS AND METHODS

The data gathered for the purposes of this study were extracted from internet, specifically, You Tube for Live 2017 pre-election campaign discourse by Uhuru Kenyatta, William Ruto, Raila Odinga, Kalonzo Musyoka and their close allies. Using Fairclough's (1989) and Reisigl and Wodak's (2001) Discourse Historical Approach (DHA), the concentration was on the text, which involved, analysing the socio-historical context in relation to language and the implications. The researchers sought to establish whether the texts complement or oppose each other, whether the language used shows political difference or intolerance among the leaders and whether the language used is polarizing. This analysis was done with a view to establishing the adherence to the Reform Agenda.

## IV. RESULTS AND DISCUSSION

### 4.1 Referential Strategies

The first speech we analyse was one made at Kisumu City on 3<sup>rd</sup> August 2017 in the heat of the pre-election campaigns.

#### I. KISUMU RALLY NASA FULL MEGA RALLY IN KISUMU ON 3<sup>RD</sup> AUGUST, 2017

Kisumu City is the stronghold of NASA (National Super Alliance) and specifically, the home to Raila Amolo Odinga, the NASA Principal. During the rally, various political leaders made their speeches. For instance:

A speaker, JN made the following utterance<sup>i</sup> (translated by authors):

In Kisumu we don't want foreigners... do you hear me? Kisumu East, we don't want foreigners. That Asian Shakeel his term is over, is over. We all want Nicholus Oricho as our member of Parliament, Prof. Peter, Anyang' Nyong'o as our Governor...(NASA/ KSM/ 01)

The main language of communication during the rally was Dholuo. This is worth noting because, even though, Kisumu is the hometown of the Luo, NASA as a coalition does not consist of Luos only. Therefore, the use of the mother tongue obviously discriminated against other ethnic communities in the gathering which is against the NCIC Guidelines on national cohesion and integration. Further, in reference to text NASA/ KSM/ 01, the speaker JN uses the term *madoadoa* (undesirable spots) to refer to those who do not belong in that locality. In the history of Kenya, *madoadoa* is a Kiswahili word that was used during the 1990's tribal clashes to evict those ethnic groups that 'did not belong' to specific localities. The speaker uses the term *madoadoa* in an antiphonal structure by allowing the audience to respond that that the days of *madoadoa* (foreigners) in the land is long overdue. Considering the audience in the rally, this type of nomination most likely targeted a particular ethnic community hence inflammatory and discriminatory. Further, the use of the reference of the word *mhindi is* equally a nomination that refers to the Asian race which lives in Kenya. Shakeel who has been a Member of Parliament for two terms comes from the Asian ethnic community. The fact that speaker JN utters that Kisumu East does not want *madoadoa* is illustrative of the fact that he is propagating hate speech. This is because, by virtue of his position and content of the discourse and the audience, the utterance can be considered inflammatory and thus goes against the NCIC 2008 Act and the Constitution of Kenya 2010, among other legal documents. The speaker in context NASA/KSM/01 further mentions the names of the leaders

whom he wants the people to elect in the upcoming 8/8/2017 General Elections. If the names he mentions are analysed critically, they all belong to one ethnic community. This is again indicative of ethnic polarization based on the fact that the audience is likely to react negatively against anybody else who does not belong to the community, hence hate speech.

In the same rally, in Kisumu, we also analyse the speech made by RO:

...our country is full of ethnic exclusion and ethnic discrimination...when a youth goes to do an interview to look for a job...it is the name and not how they perform that will decide. When they hear Wanyama,, leave those; Wafula...leave those; Mutua...leave those; Onyango..leave those...NASA/KSM/02

Text NASA/KSM/02 alludes to features of negative ethnicity and discrimination, vices that have continually bedevilled the country Kenya. The speaker RO states that merit no longer matters in job interviews but one's surname is the determinant for success otherwise. The surnames mentioned in the text all belong to ethnic communities that are in the Western and Eastern parts of Kenya. The fact that the government of the time is being run by ethnic communities from Central and Rift Valley parts of Kenya, drums the point that other ethnic communities that do not belong to either of the two in government are being discriminated against in terms of job searching. The reference *wakisikia* (when they hear) refers to those in government positions and is a nomination that characterises the government as propagating ethnic exclusion. In as much as speaker RO castigates the government of the time for promoting ethnic exclusion, on the contrary, his ally in Text NASA/KSM/02 appears to propagate the very same ethnic discrimination and exclusion by asking the voters not to vote in 'foreigners'. This speech, therefore, also smirks of hate speech on the basis that the youth in the audience and others listening to the utterances would react negatively towards the supposed favoured ethnic communities.

In addition, another speaker WM says the following:

My brothers in Kisumu, how are you?... Today is a very important day because we have come here to Kisumu for our final rally. During the last elections, they stole our votes. The court cheated us. The ship of Kenya is in the hands of people who are unable to govern it well. We have been watching them commit one mistake after the other, theft after theft, insincerity after insincerity,

corruption after corruption, killings after killings. And now they tell you that they are ready to solve Kenya's problems. I want to tell you... Uhuru and Ruto that problems cannot be solved by the same level of thinking that created them... NASA/KSM/03

The speaker in NASA/KSM/03 seeks for inclusivity and solidarity in the use of the nomination *ndugu Zangu* (my brothers). He reminds the audience that in the 2013 general elections, their (by then ODM: the Orange Democratic Movement's) victory was stolen. It should be mentioned here that during the 2013 General Elections in Kenya, ODM took TNA (The National Alliance) to court challenging the announcement of Uhuru Kenyatta as president elect. The Supreme Court ruled in favour of TNA. Thus the use of the pronominal *tulikuwa tumeibiwa* (our votes had been stolen) refers to the ODM votes and victory. Further, the use of the terms *meli ya kenya* (Kenya's Ship) refers to the ruling government which the speaker says that is unable to deliver to the Kenyans. *Wakifanya* (they do ... in this case a reference for the ruling government) *makosa* (mistakes) one after the other such as stealing, corruption, and killings. These are allegations made by the speaker against the ruling government. The allegations in this context are considered weighty and emotive based on the knowledge that an ICT manager in charge of the elections had been found murdered and the killer was unknown. It is observed that such an aspersion could easily cause the audience to react violently given the fact that the murdered ICT manager hailed from this community. As such the content in Text NASA/KSM/03 may be considered inflammatory because it targets a certain group and thus can qualify as hate speech. This is also based on the knowledge that the speaker is a very influential person and so whatever he says is considered true by the audience.

The second rally we analyse is the final rally by the opposition just before close of the campaign period just before the actual elections.

## II. NASA GRAND FINAL RALLY IN UHURU PARK NAIROBI COUNTY, 5TH AUGUST, 2017

A speaker AL delivers a speech that also has implications for what may be characterised as hate speech. He says:

This time round, Baba (Dad) and Kalonzo have cycled bicycles and buses. This time round my friend if it is bad... it is bad (audience response) (twice). If it is risky...it is risky (audience response). Raila Amolo Odinga's votes will never

be stolen this time round my friend. Kenyans are tired of theft; they want Raila; Kenyans are tired of corruption, they want Raila. Kenyans are tired of poverty, they want Raila, Kenyans are tired of poor health, they want Raila. Kenyans are tired of poor education, and they want Raila. Kenyans are tired of killings, they want Raila. Kenyans are tired of land thieves, they want Raila. Kenyans have decided they are tired and they want Raila. *NASA/UP/ 04*

The speaker in NASA/UP/04 alludes to the allegations of evils which the THEY (Jubilee) have committed, among them, corruption, thievery, poor health, poor education, poverty and others. These allegations appear to be in tandem with those in NASA/KSM/03 despite the different contexts of speech and the communicative events. The use of the nomination 'safari hii' (this time round) refers to the 2017 General elections. The utterance is made against the background that the opposition party led by Hon. Raila Amolo Odinga has claimed stealing of his victory in the past two General elections i.e. 2007 and 2013. The nomination safari hii is said repeatedly to emphasise to the audience that the NASA group may not accept the outcome of the elections if it is not just and fair and may be also not in their favour. Historically, such statements can be considered inciting since they appear to prepare the audience to psychologically and physically prepare for ethnic clashes. Thus, the speaker could be said to be selling a propaganda for war which goes against Article 33(2) of the Constitution of Kenya, 2010.

Further, the reference of Baba (Dad) indicates the referent is shepherd of Kenyans and thus whatever he says is cast in stone. Speaker AL indicates that Baba's votes will not be stolen as has been the practice in previous elections. The speaker paints a picture of Jubilee which portrays them as people who are inhuman since they have stolen from Kenyans what belongs to them. Kenyans are suffering because of poor governance. The speaker consequently, in an antiphonal tone calls on the audience to deny and denounce the Jubilee Government in full measure. The use of the expressions safari hii, kama ni noma ni noma and kama ni mbaya ni mbaya (this time round, if it is bad, it is bad and if it risky it is) as the audience responds calls on the audience to ensure that Baba's votes are not stolen, and if they are stolen, they should not let them go but fight for them sounds inciting and could be construed as propaganda for war. In view of the definition of hate speech, it can be observed that the utterances by speaker AL are threatening and inciting based on the fact that the speaker is influential.

Further, the utterances cause the audience to react in a manner that suggests hostility towards the targeted group. This is evidenced in the audiences' responses. The nomination Wakenya (citizens) in this case refers to the unbearable life of a common mwananchi (citizen) in Kenya who is tired of poor governance and therefore wants change in the form of Raila Amolo Odinga. Based on the referencing by the speaker, the call for the supposed change can be considered inciting and discriminatory because it targets a certain group of people that is to be resisted.

In the same rally we also have speaker MK who avers:

This time round. This time round. This time round Mt. Kenya is lying low looking at the rest of the country on how Kenyans want change. Kenyans have said they are dying of hunger and this will be change of maize flour. Say maize flour. Say maize flour. Jubilee will be voted out due to maize flour. Therefore those who said they eat meat while the rest of the Kenyans and common citizens swallow saliva... today we have come to snatch that meat from them and give it to the citizens. Kenyans hoyee, Kenyans hoyee, Kenyans hoyee, how many of you believe that the Maize Flour change will be peaceful on 8/8/2017? ... Therefore you Chebukati and Chiloba. You Chiloba (*speaker repeats thrice*), if you try to steal Raila Odinga's votes, you are cursed forever. This country will not tolerate extra-judicial killings. They have killed Msando (*repeats thrice*) those who killed Msando are those ones who killed Jacob Juma. We want Jubilee to know that we know who killed Msando. Inspector General, spare Kenyans. Kenyans are intelligent... We can have state-sponsored terrorism killings then you allege that you are investigating the killings. Which investigations? You have killed him (*says it thrice*). NASA (catch) those! Are they killers or not?... they are killers (*audience responds thrice*). How can they kill Chris Msando who had confirmed that there would be no vote stealing this time round? Time for change is now. Nobody will stop this change, not even Satan himself... (Ululations from the audience). *NASA/ UP/ 05*

Various references are used by speaker MK in the text NASA/UP/05 among them 'safari hii, Mt. Kenya, Wakenya, Polisi, Unga (flour), Jubilee, Nyumbani (home), nyama (meat), mate (saliva), we (pronoun), nation, Chebukati, Chiloba, Msando, Jacob Juma, wamemua

(they), Inspector General, Satan, and Uhuru'. To begin with, these references point towards a common motif in the utterance: change. The speaker MK uses the nomination safari hii (this time round) to refer to the 8/8/2017 General elections. As indicated elsewhere in this paper, the NASA campaigns were advocating for change of power citing various reasons of poor governance. The context in which safari hii is used indicates that power has been in the hands of Mt. Kenya; a reference to the composition of the ruling party Jubilee, which is said to be lying low because change is inevitable. It may be observed that Mt. Kenya as used in this context refers to an ethnic community that has been in power for a very long time and thus the speaker is calling for change. Based on the fact that the speaker is a very influential person and the venue of the rally (Uhuru Park) which is historically, a symbol of freedom corner in Kenya, and the composition of the audience, the utterance could be considered inciting and inflammatory because it calls upon other ethnic communities which are 'non-Mt. Kenya' to bring change in power. Change in this case may be interpreted to mean bringing in power of another ethnic community.

Speaker MK also mentions the issue of Unga (maize flour). This reference is used in the context that the country was at the time experiencing hunger due to lack of maize flour for the preparation of Ugali which is the major staple meal in Kenya. Therefore, the reference of lack of Unga indicates a failed government which is unable to feed its people. The speaker thus calls upon the audience to change such a government by taking it nyumbani (home), removal from power. The issue of Unga is metaphorically juxtaposed with that of eating nyama (meat) as common citizens are watching (kumeza mate) (swallowing saliva). The nomination of 'kula nyama na kumeza mate' was used by the Jubilee government in one of its political rallies, during the burial of a former prominent Maasai leader in Narok. The Jubilee leadership boasted that they were 'inside the house eating meat' while those in the opposition were outside power merely 'swallowing saliva'. This reference to a small group enjoying Kenya's resources at the exclusion of others served to confirm what the opposition has always complained about-that whereas Kenya's resources were sourced from taxes from all over the country, only a few select groups in power were benefitting from them while others were excluded because of their political stance. Nyama ('Meat') in this case refers to the national resources. The implication is that those in power, in this case two ethnic communities will continue enjoying the national resources as the rest of the country continues suffering. The speaker reminds the audience of the Nyama

and mate (eating meat and swallowing saliva) issue which was likely to cause the audience to react violently towards the nyama-eating groups. This could be considered inflammatory as it rouses high emotions in the people. In Kenya, reference to unga and nyama (maize flour and meat) are terms that form a collocation of cheaper and better living without which, a common citizen may die of starvation. For this reason it is painful that two ethnic communities should not continue enjoying such fruits of independence while the rest continue facing starvation by missing out on the basics of life which are theirs rightfully.

The use of the reference polisi (police) is used in the context: Wakenya wameamua tarehe 8/8/2017 watapiga kura kwa Amani. Kwa hivyo polisi musijaribu kuja kufanya riot mahali wananchi wanapigia kura zao, which could be interpreted as a warning to the armed men and at the same time an incitement of the citizens against the police. The utterance could be termed as inflammatory and inciting because it targets a certain group, the police, and given the historical context of the 2007 post-election violence when the police were said to have killed the civilians, it is interpreted that this time round, the citizens should be "more careful" when dealing with the police.

The speaker also invokes the Constitution of Kenya 2010, to warn and threaten the IEBC (The Independent Electoral and Boundaries Commission) of Kenya against vote stealing. Chebukati is the chairman and Chiloba the CEO of the commission. The warning may be interpreted as inciting the audience against the IEBC in the context that earlier in the utterances, the speaker reminded the audience never to accept their vote to be stolen this time round. In line with this threat, the speaker again reminds the audience that they (unknown people) had killed Msando who was the IEBC ICT Manager that promised Kenyans that there could be no vote stealing. Despite the fact that he does not mention who the killers were, he seems to allege that it was through state machinery by the use of the reference to the Inspector General of police. The speaker alludes that those who killed Msando are the very ones who killed Jacob Juma. Juma was a prominent business man who was found murdered by unknown people. Juma was verbose on the Eurobond scandal in Kenya. Such expressions may be considered inciting against the police department because, the speaker does not provide any evidence towards the allegations of extra-judicial killings in the mentioned killings. It should also be mentioned that the two men, Msando and Jacob Juma hail from one ethnic community. Given the fact that the composition of the audience are mostly sympathisers of the fallen men, the utterance could stir animosity and violence towards the alleged killers and

their ethnic communities hence may be regarded as hate speech. Finally, the reference to Satan in the utterance, Nobody will stop this change, not even Satan himself (ululations from the audience), indicates that the change is inevitable.

Another speaker in the rally OJ says the following:

We have received names of the police officers who invaded the NASA tallying centre. Can I read their names? (The audience responds by telling him to read). The police officers were fifteen in number but we only have five names. **NASA/UP/06**

In context NASA/UP/06, speaker OJ informs the audience that they( NASA coalition) has received names of the police officers who raided the NASA tallying centre a few day to the date if the rally. It should be mentioned that during the NASA campaigns, the leaders indicated that since there was a likelihood of their (NASA) vote being stolen, the coalition had put in place measures to curb this by setting up similar tallying centres to IEBC from which they could tally their votes. However, NASA never disclosed where these tallying centres were located. Subsequently, it was reported in the mainstream media centres that one of the NASA tallying centres had been raided and property destroyed. Therefore during the NASA rally at Uhuru Park, speaker OJ informs the audience that he wanted to read out the names of those officers who raided the NASA tallying centre. The researchers observed that out of the names that were read out to the audience, four were from one ethnic community. The interpretation in this context is the given the composition of the NASA audience at the rally, the names could stir ethnic animosity against the ethnic community from which the officers come from. Therefore the utterance could be considered inflammatory and discriminatory because it targets a particular group.

### III. JUBILEE BOMET RALLY ON 16TH JUNE, 2017

President Uhuru Kenyatta and Deputy Vice President William Ruto addressed the political rally at Bomet. It is observed that the main language of the rally was Kalenjin. Kalenjin is a Nilotic language of the natives of Bomet County in the Rift Valley.

KM says the following (translated):

We want to tell you that an adult man of his age is not possible a grown up man , a Kalenjin like Isaac to enter the NASA bait based on the lies that there is a high ranking political position for him. ... I'm saddened your excellency, that a full grown man, that old fake Joshua at his age can use his age and position to divide Kenyans that each

one of them should return to his/her fore fathers' land where they came from. We will not allow in our generation to allow somebody to ascend to political office using the blood of the people of Kenya... go retire and receive pension JUBILEE/BMT/07

Firstly, speaker KM makes reference to the nomination *mwanaume* (man) which in the African context may be interpreted to mean an adult who has undergone the rites of passage to be called a man, particularly circumcision from those ethnic groups that practice the ritual. Based on this interpretation of who a man is, it is unexpected that such a person cannot do the unthinkable. In this case the unthinkable is join a coalition which is headed by those who do not circumcise their men and therefore in view of this, the men are not men in the context of initiated adults. Thus the speaker uses this context of manhood to castigate and admonish Isaac for joining such a coalition. In our interpretation, such remarks are full of innuendo, vilification, abusive, degrading, and demeaning words and could stir ethnic animosity because they focus on cultural stereotyping. Secondly speaker KM uses the references of *mzee* (old man), *uzee* (old age) to refer to leader of the NASA coalition whom he also nominates as the *mzee yule Joshua bandia* (an old fake Joshua). It should be said that the use of the reference *Mzee* is meant to emphasise the fact that NASA is old fashioned whereas Jubilee is for the young generation. The reference of age is thus meant to appeal to the young people to vote for Jubilee and not NASA which is for old people. Further, the use of the reference Joshua is a biblical allusion which the NASA coalition coined to refer to their leader, Raila Odinga. Joshua in the Hebrew description means Jesus (Mathew 1:3; Numbers 13:16 from the Clear word Version). He is also called Yashua which means God saves. Joshua is also a biblical leader who led the people of Israel into the Promised Land, Canaan. Joshua is thus the saviour of the people of Israel and in this context, Raila Odinga is the supposed saviour of the Kenyans (his followers). The fact that the speaker calls NASA's Joshua *bandia* (fake) may be interpreted as having a subversive intention meant to destroy, the others' belief or loyalty. Further, the utterance could be considered demeaning and may stir religious animosity based on the fact that Raila Odinga is perceived as a baba (father) of the people.

In view of the concept of the Biblical Joshua, the speaker alleges that NASA's Joshua is fake because he had said that people who bought land or settled in areas not of their origin should relocate to their ancestral lands. In Kenya,

historically, since the 1990s, land is a very emotive issue and in worst cases often results in ethnic clashes. Similar statements have led to ethnic violence in the past and therefore based on this, leaders who make public utterances on land aspects are more likely to stir violent reaction from the audience which in this case may qualify as hate speech.

Another **speaker NA says the following in the same Bomet Rally:**

We in the Rift Valley and Kenya at large are aware that you have brought unity but we hear our brother Raila yesterday when he was in Kajiado and recently when he was in Laikipia that he told natives to evict those who are non-residents. He said it when in Kajiado and in Laikipia. Honourable President, I am not saying that he should go to the ICC but Kenyans should know the character of such a leader. We are telling him that he cannot be the president of Kenya to spill the blood of Kenyans. People of Kajiado, do not give him votes. People of the Rift Valley, you know those who took us to the ICC. You know it was the gang of Raila. Recently you heard that lawyer Bensouda she was with Raila, Isaac Ruto, Musalia and Wetang'ula telling her that they will assist her arrest Ruto and Uhuru...

**JUBILEE/BMT/08**

Speaker NA claims that Raila Odinga had called on the inhabitants of Kajiado and Laikipia to evict those who do not belong there. The reference 'those who don't belong' is used to refer to either those people who bought land and settled in these places or those who are just living there either by virtue of doing business or farming. It should be noted that a similar synonymous reference *madodoa* was made by speaker JN in NASA/KSM/01 when referring to who should take up the Kisumu East parliamentary seat. Therefore when speaker NA in **JUBILEE/BMT/07** alleges that his brother Raila (brother in this case may be used to refer to political frenemy), has asked that non-residents should be evicted from Kajiado and Laikipia is tantamount to ethnic discrimination. However, the researchers consider this as allegations and can be classified as either intentional misinterpretation of the actual utterance or rumours to cause hatred among the audience. But if this were the words spoken by the alleged person (Raila), then it may also qualify as an utterance that could spur ethnic animosity. Speaker NA also makes reference to the ICC (International Criminal Court) based in The Hague. This is used in the context that those who had alleged to have perpetrated the 2007 post-election violence in Kenya had been taken to the ICC court for prosecution. Based on this context, speaker NA alludes that Raila Odinga was the one

who had taken them (Uhuru and Ruto) to the ICC and he wants to do it again when he takes power. Such utterances could stir ethnic animosity among the audience because the speaker who is influential appears to warn the audience that if they elected Raila Odinga to power, then two of their own (Uhuru and Ruto) would be heading to the ICC. Thus speaker NA uses the ICC as a bet to hoodwink the audience into believing that Raila Odinga, Isaac Ruto, Musalia Mudavadi and Wetang'ula (The NASA core principals) are the peoples' enemies and should be trusted with power.

**MU, a speaker in the Bomet rally says the following:**

We have no problem with competition. I will repeat some of the things they have been doing for the last two years. He was in Laikipia and he said that people will be evicted from their farms. As if that was not enough, he went to Pwani and told the people to evict the non-residents. Yesterday he was in Kajiado telling people that those who don't belong there should leave to where they were born. Surely, my question is whether this person wants a peaceful election or he wants people to cause violence and divide people. I will remind you of the year 2007 when he caused violence. He has been bad mouthing us saying that the 2007 violence was caused by Ruto and Uhuru. Look at the history of the man. I say must say here that if he tries this again, he will know that there is a government.

**JUBILEE/BMT/09**

Speaker MU reiterates what speaker NA said in text 8. The referencing by use of pronouns "he" and "we" indicate different referents. The pronoun "he" refers to Raila Odinga and the pronoun "we" refers to Uhuru and Ruto. The use of these pronouns bring out an US and THEY distinction. Speaker MU appears to remind the audience of the "bad" things that "He" supposedly did in the year 2007. It should be observed that the year in question was when the country experienced post-election violence leading to several civilian deaths. The fact that the speaker juxtaposes 2007 and the issue of land, conjures a picture of violence and divisiveness in the country. Hence the audience may be forced to react violently toward those alleged to be spearheading ethnic cleansing which historically caused violence in the country in 2007. In our interpretation, this utterance may be inciting based on the opinion that it targets a certain group though the speaker has no evidence of the allegations he is making. The speaker's accusations are thus based on rumours. Further, the speaker threatens the "he" that if he tries it again (causing violence) he will know that there is a government. This statement may also

qualify as hate speech because it threatens the other group, given that the speaker wields power.

## V. CONCLUSION

The referential strategies used by the key political leaders in the 2017 pre-election campaigns are suggestive of hate speech and thus fall short of Article 33(2) of the Constitution of Kenya, 2010 and the Reform Agenda. In this regard, the key leaders have made little progress in each area of the Reform Agenda and the following conclusions can be drawn. Firstly, stopping violence and restoring fundamental rights and liberties. The utterances employed by the key leaders were outside Article 33(2) of the Constitution of Kenya (2010) which provides that the right to expression does not extend to propaganda for war, incitement to violence, hate speech or advocacy of hatred that constitutes ethnic incitement, vilification of others or incitement to cause harm or is based on any ground of discrimination specified or contemplated in Article 27(4). This was in tandem with the NCI (2008) Act sections 13(1, 2 &3) and section 62 (1&2) Section 13 (1), a, b, & c. It is also observed that the leaders' utterances fell outside the Penal Code (2008) section 77(1) because their discourse implied subversive intentions. In addition, their speeches were divisive and so threatened national unity and code of conduct as stipulated in the Political Parties Act (2011) section 4(1) c. Based on the foregoing, it is concluded that it is a milestone to prevent ethnic animosity that may lead to violence as it should be envisaged in Reform Agenda item 1. Secondly, addressing the issue of promoting national healing and reconciliation, the key leaders' utterances exhumed past sad experiences which should have been laid to rest for purposes of conciliation and healing. Such utterances could easily rekindle ethnic animosity that could lead to violence. Thirdly, in regard to re-defining hate speech, this paper recommends that besides what is stipulated in the existing laws and Acts, hate speech should also include perpetuation of unfounded lies, rumours, innuendos, intentional misinterpretation of another person's utterances and loose talks, and personal attacks whether physical, cultural or psychological.

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<sup>i</sup> This and the other texts have been translated by the authors

<sup>ii</sup> Jacob Juma was also an influential leader affiliated to NASA that was killed in what appears political murder