Has Kenya Democratized? Institutional strengthening and contingency in the 2022 general elections

Nic Cheeseman (International Development Department, University of Birmingham, n.cheeseman@bham.ac.uk), Karuti Kanyinga (Institute of Development Studies, University of Nairobi), Gabrielle Lynch (Department of Politics and International Studies, University of Warwick), and Justin Willis (Department of History, Durham University).

Kenya's 2022 general elections saw – for only the second time in the country's history – a transfer of power from a retiring president to a candidate that they had not backed. Moreover, despite accusations of electoral malpractice, the Supreme Court upheld the results, fewer petitions were submitted for lower-level races, and political unrest around the election itself was relatively minor. This has led some commentators to speculate that Kenya's political institutions are becoming robust and that the power of ethnicity is waning – and hence that the country is on a steady path towards democratic consolidation. We counsel against this interpretation, arguing that the 2022 polls were anything but a formality, and rested, at least in part, on a set of contingent factors that may not be reproduced. It is thus important to understand both the structural changes that have transformed Kenyan politics and the challenges that remain. We undertake such an appraisal by considering three areas often seen to be the building blocks of a vibrant and high-quality democracy: the strength of democratic institutions, how politicians seek to mobilise support, and the independence and vibrancy of civil society and the media.

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Kenya's 2022 general elections were the seventh since the reintroduction of multiparty politics. In a close and bad-tempered contest, William Ruto defeated Raila Odinga in the first round of voting, while his party – the United Democratic Alliance (UDA) – won the most seats in the legislature. Although Ruto had previously been Deputy President in the Jubilee Party government, the breakdown of his alliance with outgoing President Uhuru Kenyatta, and Kenyatta's decision to back the candidacy of Odinga – his former rival – meant that the status of both front-runners was ambiguous. Some commentators viewed Ruto as more of an "opposition" candidate than Odinga, despite the latter's lengthy time out of power.[1] At the very least, Kenyatta's rejection of Ruto and support for Odinga meant that the result represented a transfer of power from a president to a candidate that they had not backed.

This made 2022 the second election to witness an unfavourable result to the incumbent in Kenyan history, after the defeat of the ruling Kenya African National Union (KANU) party in 2002. There were also other differences to previous elections. Multi-party elections in 1992 and 1997 saw significant pre-election violence, whereas the 2022 campaign was largely peaceful.[2] Moreover, while Odinga disputed his defeat – as he had in 2007, 2013, and 2017 –

the outcome of this process was rather different. In 2007, election controversy prompted a crisis in which over 1,000 people were killed and almost 700,000 were displaced. In 2013 and 2017, presidential petitions were combined with prolonged protests that resulted in violent clashes with the security forces – particularly in 2017, when the Supreme Court nullified Kenyatta's initial victory on procedural grounds.[3] Violence in 2017 was followed by Odinga's informal swearing-in as the "people's president" in January 2018 in an explicit challenge to Kenyatta's authority. In contrast, in 2022, the announcement of the result and the Supreme Court's decision to uphold the results passed without major incident. Although Odinga subsequently led protests to demand "electoral justice" and a reduction in the cost of living, the protests ended after he agreed to establish a joint committee to make recommendations on these challenges. In this way, the post-election period was like 2017 when protests ended with the "handshake" between Kenyatta and Odinga and initiation of the Building Bridges Initiative. There were also fewer legal challenges to the results of lower-level races in 2022 than in previous elections – 123 as compared to 188 in 2013 and 388 in 2017.[4]

The comparatively peaceful transfer of power was noteworthy given the heated language and personal rivalries that animated the campaign. During the 2013 and 2017 elections, Kenyatta had promised to back Ruto for the presidency in 2022 – a deal that helped to maintain peace between Kalenjin and Kikuyu communities in the Rift Valley, who had previously been involved in some of the worst election-related violence.[5] Breaking that deal, and the personal attacks that Kenyatta and others subsequently made on Ruto's character, threatened to reanimate major ethno-regional fault lines. Against this backdrop, the fact that the election passed without widespread unrest, and that Ruto was able to gain power by securing a majority of votes among Kenyatta's own Kikuyu community, is remarkable.

So how should we understand these changes? Following the 2017 elections, Chege lamented that the unrest witnessed was the consequence of a persistent lack of institutionalization in Kenyan electoral politics.[6] Chronic institutional weakness has often been interpreted within Kenya as reflecting the continued influence of what Lonsdale called "political tribalism",[7] along with what some in Kenya call the "deep state". Though vague and problematic, the latter term evokes the idea of a small and secretive group of people in key positions with the ability to shape political and economic events in their own interests. The build-up to the election saw considerable public discussion of whether Odinga was assured of victory having teamed up with Kenyatta, or whether Ruto could mobilise the "deep state" to his own advantage having been Deputy President since 2013.[8]

Thus, although the election did not foreground democracy – there was no strong focus on the need to change the constitution, or on devolution, as in previous years – the question of how credible the polls would be and how key institutions would perform ran through the campaign. Against this background, it is tempting to interpret the fact that the political system largely held together despite a high-stakes political controversy as being due to institutional changes made since the 2007/8 crisis. The 2010 constitution introduced an independent Supreme Court, devolved considerable power and resources to 47 countries, and introduced

stronger constraints on executive power; it also established the Independent Electoral and Boundaries Commission (IEBC), which has since developed its structures, experience, and technological competence . In this interpretation, the shift from the 2017 to the 2022 polls could be seen as evidence of a process of democratic transition, in line with Lindberg's argument that even controversial elections can foster processes of democratization.[9] This would imply that future elections are unlikely to see a return to the unrest of the past now that Kenya has passed the 'two-turnover test', to use a once-fashionable term.[10]

Without seeking to deny the achievements of the 2022 polls, or the structural changes that Kenya has witnessed over the last twenty years, this cluster of papers warns against such an interpretation – not least because of the electoral teleology that it embeds. Instead, these articles demonstrate that the successful conclusion of the 2022 polls was anything but a formality, and rested, at least in part, on a set of contingent factors that may not be reproduced. To do this, the papers draw on mixed methods including interviews, social media analyses, and nationally representative surveys. The latter includes publicly available surveys such as Afrobarometer as well as surveys that the authors either had access to or conducted as part of collaborative research projects. Thus, this paper draws on surveys conducted by IPSOS Kenya for the Rift Valley Institute following the 2017 elections and by TIFA Research for South Consulting ahead of the 2022 elections. TIFA Research surveys are also drawn upon by Cheeseman and Kamencu and Chome and Willis, while Ajwang et al draw upon a survey that they designed and which was conducted by GeoPoll.

This Introduction frames the key issues addressed by the cluster, providing an overview of the election that draws on extensive in-country research by all the authors during the year that preceded the elections. This included attending rallies for both main coalitions inside and outside of the capital, Nairobi, and conducting more than fifty interviews with leading political figures, local activists, and commentators.[11] These findings were then triangulated with media sources and nationally representative surveys.

Based on this data and the findings of the articles that follow, we argue that it is important to distinguish between the reform of key governance institutions – which allowed them to resist political pressure – and the wider institutionalization of parties and democratic norms. We build this argument by first providing an overview of the campaign and then considering in turn: the strength of key institutions, the basis of political mobilisation, and the independence and vibrancy of civil society and the media. We focus on these areas because they were topics of considerable media and policy discussion during the elections and are often said to be key building blocks of a robust democracy. A focus on strong institutions, and their ability to act as a check and balance on each other, is central to a classic Madisonian view of democracy. Literatures emphasising the value of a middle-class to democracy, and the importance of programmatic politics – as opposed to ethnic or religious voting blocs – have consistently pointed to the significance of societal cleavages and how leaders seek to mobilise support.[12] Finally, a strong tradition from de Tocqueville to Putnam has stressed the importance of a

vibrant civil society informed by a free press as an antidote to the authoritarian tendencies of central government and the "tyranny of the majority".[13]

We recognise that a wide range of factors impact on the quality of democracy, including party system institutionalization, sovereignty, and equal resources, as Coppedge *et al* have argued.[14] But the three areas we have identified feature prominently in their list and have been central to the discussion of the fate of democracy in Africa.[15] Where institutions are concerned, we conclude that some have been considerably strengthened – especially the Supreme Court – but also highlight the role of agency and caution that state institutions may have appeared more "neutral" because there was no straightforward "incumbent" or clear likely winner to side with. As Galava and Kanyinga demonstrate, this unusual combination of factors is unlikely to be repeated, and so the historic tendency of incumbents to win is – other things being equal – likely to remain.[16]

At the same time, Ruto's ability to rally support by claiming that he was on the side of Kenya's hardworking "hustlers" against out-of-touch "dynasties", is proof – if proof were needed – that Kenyan elections are about far more than ethnicity. As Chome and Willis explain, one of the common refrains of the election in Central Kenya was that voters felt they had a moral and political debt to Ruto due to his support for President Kenyatta, and the (broken) promise that it would be returned in 2022. Galava and Kanyinga in turn drawing out the importance of class and religion. Yet, while the salience of economic issues in the campaign may have been rooted in long-term processes such as education, urbanization, and growing inequality, it was also shaped by the distinctive nature of political alliances. As Cheeseman and Kamencu argue, there is evidence that political parties remain dependent on the personal and communal networks of their leaders.

The lessons of the election are also mixed when it comes to civic organizations and the media. While Kenya's civil society and traditional media are among the most vibrant in the region, both have emerged from the elections weakened due to their failure to maintain an independent position. As Ajwang, Abboud and Lugano show, the record of social media is also mixed: while it is increasingly central to campaigns, it has not transformed them, and while politicians often distance themselves from online hate speech and misinformation, these activities can be delegated to others. The 2022 elections thus demonstrate the extent to which Kenyan politics has evolved since the reintroduction of multiparty politics, but also reveal considerable continuity with past practice. This cautious argument should not be interpreted as a pessimistic one – changes since 2007 have led to a more inclusive and robust political system that will constrain future attempts to erode democracy.

The 2022 election campaigns

The 2022 presidential poll confirmed the pattern already evident in 2013 and 2017: the 2010 constitution, and the introduction of the requirement for successful presidential candidates to secure 50%+1 of the vote, has created strong incentives for coalition formation, turning

presidential contests into a two-horse race. The 2022 elections also confirmed that, while the impact of devolution has been significant, the presidency remains the focus for political action, with lower-level races shaped by the binary national contest.[17] Ahead of the election, almost all parties joined either Odinga's Azimio la Umoja (Resolution for Unity) coalition or Ruto's Kenya Kwanza (Kenya First) alliance, and almost every candidate at every level, including independents, sought to align themselves with one or other of the presidential candidates.

Election campaigns never really end in Kenya, and in this cycle, it was the "handshake" between Odinga and Kenyatta in March 2018 that triggered the campaigns in earnest – years ahead of the official start date. That public reconciliation ended a prolonged standoff following the disputed 2017 elections. It also aroused speculation that Kenyatta would renege on his earlier commitment to support the candidacy of Ruto – who it was said was not liked or trusted by others in the Kenyatta family – and would support Odinga instead.[18] This speculation turned out to be correct and was used by Ruto's campaign to depict the Odinga/Kenyatta alliance as a desperate attempt by political "dynasties" to cling to power. Ruto's rhetoric contrasted these dynasties with Kenya's hard-working and self-made "hustlers", whose interests Ruto claimed to represent through the newly formed UDA.[19] This was a bold claim, given that Ruto had been prominent in national politics since the 1990s and had served as deputy president for ten years. Yet Ruto managed to set the agenda, forcing others to respond: as one pro-Odinga activist put it, 'it is a total lie, but it is selling'.[20]

Since the 1990s, political reform has been foregrounded in Kenya's elections – first the demand for a new constitution, then the argument over its implementation. This time, however, the constitution was not a prominent issue, perhaps in part because the ill-fated attempt by Odinga and Kenyatta to revise the constitution following "the handshake" (the "Building Bridges Initiative") suggested that there was little popular enthusiasm for such a project.[21] However, this did not mean that the election lacked issues, as some have suggested.[22] Instead, the focus shifted to the economy and an argument about inequality. Drawing on the hustler narrative, Ruto exploited growing frustration concerning economic stagnation to present himself as the "change" candidate, demanding the opening of opportunity although he later walked back from suggestions that he would seek to redistribute wealth.[23] This narrative echoed down the multiple levels of the election and, by the end, many candidates from both coalitions were promising cheap credit to promote small enterprise. While ethno-regional politics were still very much alive, the suspicion that established interests were denying opportunities to ordinary Kenyans was a significant force. As one small businessman in central Kenya told us, the election became a matter of 'them and us'.[24]

In line with that narrative, Ruto did not initially mobilise support through making deals with established regional "big men". Instead, he relied on a team of lower-level politicians, many of them relatively young MPs whom he had recruited during party primary nominations for the 2017 general elections.[25] This meant that UDA remained focused on Ruto himself: at a

local level, potential candidates aligned themselves with Ruto, with most of their supporters becoming UDA members. Ruto subsequently complicated his strategy by reaching out to some of Kenya's long-standing regional figures – notably Musalia Mudavadi and Moses Wetang'ula – as well as some less prominent politicians.[26] The resulting coalition, Kenya Kwanza, was unveiled in January 2022. However, Ruto's initial pitch of standing aside from "politics as usual" survived this marriage of convenience.

In the absence of a tier of regional big names, the hallmark of Ruto's campaign was the intensity of his public appearances.[27] Already in 2018, Ruto was mocked for *tanga tanga* or "wandering around" the country seeking support.[28] But Ruto and his supporters made the label their own as he travelled around and donated in smaller locations as well as cities and towns.[29] Although this raised questions about the source of Ruto's money,[30] his regular attendance at – and generous donations to – churches offered a public demonstration of his faith, maintaining the very public religiosity he had cultivated since chairing the Christian Union whilst a student at the University of Nairobi. A religiosity, which, as Galava and Kanyiga make clear, resonated with many voters. This mix of energetic campaigning, resonant messaging, and local-level alliance building helps to explain how Ruto came to be ahead in early opinion polls, leading Odinga by 25% in November 2021.[31]

The UDA leader's ability to capture the change mantle meant that Odinga was left as the continuity candidate, despite having been the centre of opposition politics for two decades. Odinga's new connections with the establishment also gave his team confidence that he would win.[32] The logic was clear: Odinga's supporters believed he had been the true winner of the last three elections.[33] With Kenyatta's backing, he would now enjoy the support of the powerful networks and institutions that had previously blocked his path.[34] Such assumptions were encouraged by some in Azimio, such as Sabina Chege – then the Murang'a County Women's Representative – who told a rally in February 2022 that 'I have overheard others saying we [Jubilee] rigged [in 2017], there is some truth in it. So if we managed to rig, even this one we can'.[35] Odinga's brother, meanwhile, announced that, with the 'system' on side, victory was a 'sure bet'.[36]

Such assumptions fostered a sense of complacency within Azimio. Campaign insiders later complained that Odinga opted to renovate his homes in preparation for becoming president when he should have been focused on the campaign trail. His messaging also suffered from having two sets of campaign leaders – Kenyatta's allies in Jubilee and Odinga's own daughter – leading to a confused strategy.[37] According to Boniface Mwangi, who campaigned for Odinga's running-mate Karua, '[w]e failed because we weren't well organized. Our team appointed people for their loyalty instead of their professional skills. We trusted incompetent and dishonest people with huge and sensitive responsibilities.'[38]

Another reason the Odinga campaign lacked clarity was that one of his strongest strategies in previous elections – running against the record of the ruling party – was now off the table. Instead, a "10-point plan" released at an Azimio national convention in December 2021 included a promise of 'administrative continuity'.[39] There were other promises too, but this,

together with Kenyatta's appointment as chair of Azimio in April 2022, fostered the idea that Odinga was a "project" of senior Jubilee leaders.[40] Against a backdrop of high inflation and a decline in government popularity – in May 2022, 64% of Kenyans thought the country was moving in the wrong direction – it became clear that the alliance with Kenyatta was as much a curse as a blessing.[41]

In contrast to Kenya Kwanza, Azimio was a classic Kenyan coalition, featuring well-known figures such as Kalonzo Musyoka, while constituent parties were allowed to maintain a separate existence but required to campaign for Odinga. One problem with this approach was that there was more chance of Azimio's constituent parts competing against each other at the sub-national level. Another was that Azimio parties made greater use than UDA of the direct selection of candidates, which further encouraged the sense that a privileged few were in control. Where Azimio parties did hold primaries, there were allegations that these had been manipulated, often with considerable political fallout.[42] For his part, Ruto was forced to engage in a frantic process of micro-management to iron out petty political rivalries across the country, but his efforts – and the absence of prominent "Big Men" – appear to have reduced the number of damaging defections.

With no viable candidates from the vote-rich Kikuyu group on the presidential ballot, both sides identified the community's Central Kenya homeland as a critical battle ground. Consequently, both Odinga and Ruto selected well known Kikuyu leaders for their running mates. Odinga picked Martha Karua, whose reputation as an independent thinker meant she was best placed to respond to the impression he was a "project".[43] While this coincided with a poll boost for Odinga, it ultimately had a modest impact on the vote in Central. One reason for this was that many Kikuyu sought to punish Kenyatta 'for his failure to create prosperity in the region' and were simultaneously drawn to Ruto's hustler narrative.[44] Second, a history of deeply hostile and chauvinistic attacks on Odinga's personality by Kikuyu leaders created powerful barriers to mobilising support, as Cheeseman and Kamencu argue. A second reason was Ruto's choice of Rigathi Gachagua as his deputy who, while controversial, brought – as Cheeseman and Kamencu detail – considerable resources and a knowledge of how to mobilise voters at the grassroots.[45]

The presence of senior figures from the previous government on both sides of the campaign led to widespread speculation about who would be able to influence key institutions such as the security forces and the IEBC. Such speculation often foregrounded popular suspicion of the "deep state" – a term which was powerful partly because it was so vague. According to a nationally representative post-election survey,[46] 55% of respondents had heard of the deep state. Of those, 49% said that it refers to a "state controlled by a small and secretive group", while 25% said that they did not know. Popular conceptions of the deep state are thus often unclear – and may reflect conspiracy theory as much as reality, as Egbejule has warned.[47] Yet they are also rooted in past experiences of electoral manipulation and corruption in the heart of government that have left many Kenyans concerned about the resilience of their democracy. It is therefore significant that 61% of survey respondents who had heard of the

deep state said that it exists, and 69% believed that it tried to influence the 2022 elections. This helps to explain why Odinga and Ruto both warned that aspects of the "deep state" were hostile to their ambitions, whilst also denying that they intended to use their influence to manipulate the process.[48]

The results and their interpretation

Ruto was able to win the presidential election in the first round (table 1) by combining a dominant performance in his Rift Valley homeland (78%) with three-quarters of the vote in Central and considerable support in Nairobi (42%) and Eastern (51%). Odinga's vote was distributed more broadly across the country: he dominated traditional strongholds such as Nyanza and Western, and considerably improved his performance in North Eastern while holding on to the majority of support in Nairobi and at the Coast. The support of Karua and Kenyatta enabled him to perform better among Kikuyu voters than in 2017, but he still only polled 20% in Central.

A second important feature of the 2022 vote was a significant drop in turnout from 79% in 2017 to 66%. This came on top of unexpectedly low figures for the registration of new voters.[49] In absolute terms, this means that, despite a "youth bulge", a million fewer Kenyans cast their ballots in 2022 than 2017. That reverses a trend of steadily improving participation since 2002 and might be seen as evidence of a lack of confidence in either presidential candidate. Falling turnout was felt across the board, but may have been more damaging for Odinga, with a 14% fall at the Coast, a 13% drop in Nairobi, and a 9% decline in Nyanza, Odinga's heartland. The latter outcome was particularly notable. Odinga slightly increased his share of the Nyanza vote due to the support of Kenyatta's Cabinet Secretary, Fred Matiang'i, which helped him to secure more votes from the significant Kisii minority. But disillusionment with the status quo, an expectation that Odinga would win, and frustration with problematic party primaries, encouraged many Luo voters to stay at home.[50] If the Luo community had turned out to vote for Odinga at the same rate as in 2017, Ruto would not have won in the first round.

Table 1 Votes for William Ruto (2022) (and as % of votes cast).

	Coast	North-eastern	Eastern	Central	Rift Valley	Western	Nyanza	Nairobi	Total
2022	37%	105,424 (28%)	1,073,162 (51%)	1,632,788 (78%)	2,666,683 (70%)	513,506 (37%)	284,035 (13%)	561,775 (42%)	7,173,951 (50%)

SOURCE: IEBC data

Table 2: Votes for Raila Odinga as presidential candidate, August 2017 and August 2022, as % of valid votes cast. Compiled from IEBC data.

	Coast	North-eastern	Eastern	Central	Rift Valley	Western	Nyanza	Nairobi	Total
2017	71%	33%	46%	3%	23%	79%	82%	50%	44%
2022	64%	71%	47%	20%	29%	61%	86%	57%	49%

SOURCE: IEBC data

Table 3: Votes cast in presidential election (including invalid), 2017 and 2022 as % of registered voters. Compiled from IEBC data.

	Coast	North-eastern	Eastern	Central	Rift Valley	Western	Nyanza	Nairobi	Total
2017	66%	73%	80%	87%	81%	77%	81%	73%	79%
2022	51%	60%	64%	67%	71%	63%	72%	60%	66%

SOURCE: IEBC data

Ruto's narrow presidential victory was mirrored in the results of lower-level races. UDA won considerably more seats than other parties, but this was partly because Azimio affiliated parties ran their own campaigns at the sub-national level. When viewed through the lens of the two coalitions, the 47 county governor and senator positions were split almost evenly between Azimio and Kenya Kwanza, while Kenya Kwanza secured slightly more county assembly seats than Azimio. This does not mean, however, that Ruto will necessarily face a challenging legislative landscape. Ruto's efforts to fragment the opposition rapidly paid off, with a series of defections that enabled Kenya Kwanza to build a clear parliamentary majority.[51] Similarly, several independents and governors from smaller parties quickly rallied behind Ruto when it became clear he would hold power. By contrast, although Odinga's Orange Democratic Movement (ODM) took a respectable number of National Assembly seats (89 out of 349), it struggled to organize as an effective opposition party.[52] Thus, although the elections were extremely close, weak party identities and the president's ability to co-opt MPs is likely to compromise the effectiveness of legislative scrutiny. That raises the question of how far the 2022 general elections can be seen to represent a significant step in the direction of democratic consolidation.

Kenya on a path to democratic consolidation?

Three areas often seen to be critical to a higher quality and more robust democratic system are stronger "checks and balances" institutions, more programmatic relationships between leaders and citizens, and an independent civil society and media. We look at each of these dimensions in turn, highlighting areas of transformation and continuity, starting with what the 2022 polls can tell us about the IEBC, Supreme Court, and police.

The strengthening of democratic institutions

Although the elections ultimately demonstrated that the IEBC had improved its processes, a lack of unity among its commissioners almost undermined the whole process, demonstrating the institution's continued fragility. This is unsurprising given that after major electoral controversies in 2007, 2013, and 2017, the IEBC went into the 2022 elections facing multiple questions over its logistical capacity and political independence, exacerbated by a continuity of leadership – three of seven commissioners (including the chair, Wafula Chebukati) had been in office since January 2017. In an opinion survey conducted in October 2017, 46% of respondents said they had no confidence in the IEBC to run the next elections.[53] This improved somewhat as the polls approached, but still, by December 2021, 27% of respondents said that they were 'unconfident' or 'very unconfident' of the IEBC's ability to manage the coming polls.[54]

The challenges facing the IEBC were intensified by circulating rumours and accusations in advance of the poll. The decision to award the contract for election technology to Smartmatic, a company whose origins lie in Venezuela, attracted criticism.[55] That reached a peak when three consultants reportedly hired by Smartmatic were arrested while bringing election-related materials into the country. An extraordinary public stand-off ensued, pitting Chebukati against George Kinoti, the Director of Criminal Investigations, who suggested that there was a criminal attempt to rig the elections.[56] The consultants and their equipment were eventually released, but levels of mistrust had been significantly raised.

At the same time, the increase in the number of polling stations – from 40,000 in 2017 to over 46,000 in 2022 – and the need to simultaneously manage six elections (a result of Kenya's devolved constitution) led to logistical concerns: would the IEBC, which had struggled to provide and sustain technology and train staff in 2013 and 2017, be able to manage? There were also reports of divisions among the electoral commissioners between four recent appointees and the three longer-standing members most notably over procurement.[57] These worries reached fever pitch when it transpired that the ballot papers for some sub-national elections contained mistakes, including gubernatorial elections in Kakamega and Mombasa, resulting in their postponement. This failure led to accusations from Azimio that the postponements had undermined the fairness of the presidential vote by reducing turnout in its strongholds.

Where the presidential ballot itself was concerned, however, the voting process ran remarkably smoothly. The Kenya Integrated Election Management System (KIEMS) worked to verify voters in the vast majority of polling stations, while the counting process was quicker

than in previous years, since each polling station had fewer voters. Most importantly, and as Galava and Kanyinga detail, the staff at almost all polling stations were able to post presidential results (Form 34a) onto the IEBC's public online portal. In stark contrast to 2017, when the absence of a significant number of forms became one of the main controversies of the election, within 24 hours of the polls closing in 2022 97 percent of the forms were online.[58] These individual results still had to be tallied, but by the evening of 10 August it had become clear that Ruto was ahead. This triggered a wave of accusations of fraud from Odinga supporters.[59] The IEBC, meanwhile, made no announcement, since the official results had to await the arrival of the hard copies of the forms, which remain the official results. The Commission then announced that the results would be declared on 15 August – the legal deadline. It was at this point that things almost fell apart.

Just before the deadline, four commissioners held a press conference at the Serena Hotel challenging the process. The statement of the "Serena Four" was similar in wording to that of a near-simultaneous one by Azimio, raising concerns of collaboration. The Serena Four's statement, however, provided no immediate evidence of malpractice and their claims included a basic mathematical error, which further undermined their credibility.[60] Meanwhile, at the national tallying centre, members of Odinga's team tried to physically prevent Chebukati from announcing the results.[61] When the Chair was finally able to do so, he declared Ruto the winner.

The fact that the Serena Four went rogue – together with subsequent allegations that state insiders had tried to pressure IEBC commissioners into modifying the results for Odinga – highlights just how close Kenya came to a major political crisis. Had the security forces present in the tallying centre not protected Chebukati so that he could release the result, Kenya would have been left in a dangerous constitutional limbo. Moreover, had the digital process of sharing results via the public portal not worked so well, it would have been easier for Azimio leaders and the Serena Four to persuade others to back the rejection of the outcome. The fact that these processes worked better than in the past, and that the attempt to disrupt the declaration failed, increases the prospects of credible elections in the future. At the same time, the internal divisions within the IEBC demonstrates once again how the heavily politicised appointment process, in which technocrats are consistently overlooked in favour of those with party allegiances, is a major structural weakness.

Odinga and the Azimio team petitioned the outcome of the presidential election to the Supreme Court. They claimed that the "Venezuelans" had hacked the IEBC system and changed the results electronically; that the IEBC had rounded off votes cast to obtain the 50% plus one threshold; and, that the views of the majority of the commissioners (i.e. the "Serena Four") should prevail. The Court's nullification of Kenyatta's election in 2017 on procedural grounds gave Odinga supporters some hope that a fresh election would be called. However, Azimio were unable to provide credible evidence to sustain the weightiest parts of their petition and the case was comprehensively dismissed.[62] This is particularly significant given that Chief Justice Martha Koome had been appointed by President Kenyatta, and so could not

be dismissed as an "activist" judge.[63] Nevertheless, Odinga and many of his allies continued to denounce the result.[64] This had a significant impact on how Kenyan citizens view key institutions: while 61% of all respondents in the post-election survey said they were satisfied with the Court's decision, large numbers of Odinga's supporters believed he had won.[65]

Like the IEBC, the police entered the elections with credibility problems. Ruto supporters suspected that the police were being used by Kenyatta to favour Odinga. In particular, they were critical of Matiang'i, whose docket included Ministry of the Interior, and Kinoti, who they accused of being used by the government to harass Ruto supporters through fabricated cases. The disappearance of two Indian nationals working with Ruto, allegedly at the hands of a special police unit, encouraged these suspicions.[66] Yet, when the fate of the election hung in the balance – during the attack on Chebukati at the tallying centre discussed above – the quick action of the security forces was critical in protecting IEBC officials and allowing the result to be announced.

That these three key institutions – the IEBC, Supreme Court, and police – and prominent figures within them were able to ultimately resist partisan pressure suggests that Kenyan governance institutions may be getting closer to the vision of the 2010 constitution. Yet it is important to recognize the weaknesses that remain and the specific conditions that generated this outcome. In the case of the police the decision to protect Chebukati may have been shaped by the fact that both coalitions had leaders who had recently been in power – and were thus close to the security forces – and that by this point it was clear that Ruto had won. Under these conditions, it was in the interests of security officials not to be seen to have moved against the country's most likely future president. That may not hold in future elections.

The politics of mobilisation

The role of ethnicity in Kenya's elections has been the constant theme of everyday political discourse for many years. Although scholarship has demonstrated that elections are far from an "ethnic census", and that numerous considerations shape how citizens vote, ethnic identities and narratives remain a significant factor in shaping political behaviour.[67] Against this backdrop, the evolution of stronger political parties that mobilise support on the basis of programmatic issues rather than ethnicity has long been identified as a critical step in Kenya's democratization.

On the surface, Kenya certainly seemed to be moving beyond ethnic politics in 2022. Odinga's inability to turn out Luo voters, and Kenyatta's failure to persuade Kikuyu voters to back his chosen successor, demonstrated the limitations of communal mobilization. The major candidates largely eschewed ethnic stereotypes and instead sought to present themselves as national politicians. Against this backdrop, the power of the hustler narrative reflects, as Galava and Kanyinga show, the significance of class and inequality in Kenyan politics,[68] while Chome and Willis stress the significance of wider ideas about debt and reciprocity.

However, this should not be taken as evidence that ethnicity did not play an important role. Ethnicity and socio-economic status have long been inter-related in Kenya, and much of the frustration with Kenyatta among the Kikuyu community came from the fact that he was seen to have failed in his duty to provide preferential treatment to his own community.[69] Cheeseman and Kamencu argue that Odinga's lack of success in Central may also have been partly attributable to the crude ethnic chauvinism used against him in previous campaigns, which made him an unpalatable choice for many. As one of Odinga's supporters in Central Kenya remarked ruefully, 'removing that from the mind of a Kikuyu will take many years'.[70] The ongoing role of ethnicity was also apparent from voting patterns. The two communities with a competitive presidential candidate each largely voted for their co-ethnic. Many community spokesmen also proved remarkably successful in mobilising co-ethnics for their presidential candidate – most notably, Musyoka among Kamba voters, Wetang'ula among Bukusu voters, and Matiang'i among Kisii voters. Their success revealed the continued power of ethnic narratives of state bias and interest, which can render it rational to vote for co-ethnics and against particular "others", as well as patrimonial logics whereby shared ethnic identity can underwrite the exchange of demands and promises between voters and candidates.[71]

The reduced visibility of ethnicity in 2022 also owed much to the nature of coalition formation. In contrast to previous polls, the two leading presidential candidates selected Kikuyu running mates. Odinga and Ruto therefore had a vested interest in maintaining good relations between their own communities and the Kikuyu. That meant that two of the most powerful ethnic fault lines in Kenyan politics – Luo/Kikuyu tensions and Kalenjin/Kikuyu tensions – were not brought to the fore. This situation may not be repeated in all future elections, not least because the legacy of the 2022 elections for ethnic politics is decidedly mixed. On the one hand, the polls revealed the power of inclusive cross-ethnic campaigns based around economic issues. On the other hand, however, the elections added a new layer to narratives of ethnic exclusion, with many of Odinga's supporters feeling that once again he has been unfairly denied the presidency in favour of the Kikuyu and Kalenjin, who have held the presidency since independence.

The dependence of parties on their leaders for both funding and identity, and the rapid fragmentation of Azimio after the polls, points to another important continuity. Kenyan parties have a remarkable capacity to mobilise, but once again this was done predominantly through the personal networks of leaders rather than by developing strong formal structures. Thus, although previous scholarship has – rather hopefully – suggested that legal reforms since 2008 might make Kenya's parties more institutionally robust, events in 2022 do not provide support for this hypothesis.[72] Instead, formal party structures remained ephemeral – as they have in much of Africa.[73] That reality was best illustrated by Ruto's determination to personally visit as many locations around the country as time allowed, rather than relying on his party structures to get out the vote.[74] If the state of the economy is not such a pressing issue in future elections – for example, if inflation drops – the politics of ethnicity may return

to centre stage. Given that the election also saw deteriorating inter-communal relations in some areas, it should be clear that it is too early to pronounce the death of either ethnic or patrimonial politics.

The independence of civil society and the media

Reflecting on the role of civil society in Kenya's politics since the early 1990s, one observer described a sector 'replete with actors of varied persuasions and multiple motivations'.[75] That variation and multiplicity has increased in recent years, with new fault-lines emerging around the 2013 elections over the International Criminal Court (ICC) and whether to accept the outcome of the polls.[76] In 2022 a similar division arose. The domestic Election Observation Group (ELOG), which brings together numerous civil society and faith-based organisations, conducted a parallel vote tabulation, the outcome of which was in line with the declared presidential result.[77] By contrast the Angaza Movement, a group of CSOs which emerged to counter ELOG after the 2013 elections, denounced the presidential results.[78] Allied organisations held a series of post-election events where allegations were made of a lack of transparency.[79]

This divide was intertwined with debates over who was fit to rule. For many in civil society, Ruto was not only one of the country's most corrupt politicians, but a long-term foe. Once linked to the pro-Moi group Youth for KANU '92, Ruto was charged by the ICC for his alleged role in the post-election violence of 2007/8, and was said to be responsible for much of the hostility towards civil society by the Ruto-Kenyatta alliance from 2013 to 2017.[80] Many associated with Angaza feared a Ruto presidency at both a personal and national level, which led some to openly back Odinga's campaign. This partisanship was particularly damaging because it extended into the post-election period. Most notably, the former anti-corruption czar, John Githongo, submitted an affidavit in support of Odinga's election petition which claimed to include evidence of malpractice – but then acknowledged that he had been misled by doctored documents.[81] Meanwhile Makau Mutua, who had stood down as the chair of the Kenya Human Rights Commission in June 2022, took on the role of Odinga's spokesmen and responded to the IEBC's declaration of the result by saying 'I can't accept, or recognize, William Samoei Ruto as President of Kenya. I can't and won't'.[82] He subsequently turned his ire on the same judiciary he had previously worked to strengthen, claiming it is 'CORRUPT to the CORE'.[83]

In addition to undermining the ability of the sector to present itself as non-partisan and thus conduct certain pro-democracy activities such as civic education, the behaviour of some of the country's most prominent civil society leaders may make it easier for the Ruto government to move against the sector. This is particularly concerning because the media also operated in ways that called into question its neutrality and professionalism during the campaign. Kenya's traditional media is known as one of the most independent and vibrant in sub-Saharan Africa, with nearly 200 radio stations, 92 television channels, and 100 print publications licensed in the country.[84] At the same time, however, a handful of conglomerates dominate – namely, the Nation Media Group, Standard Media Group, and Royal Media

Services – all of whom had 'ties to political and business interests' associated with Kenyatta and Odinga. It was thus unsurprising that the major newspapers gave more space to Azimio and tended to provide more critical coverage of Kenya Kwanza.[85]

Questions around partisan influence on media coverage are exemplified by the fiasco around the tallying of votes by the major news houses. Varied approaches to the order of tallying led to discrepancies between figures aired by different media houses, which 'created confusion among voters'.[86] Moreover, when it became clear that Ruto was winning, the media houses slowed and then entirely abandoned their tallies, leading some to suspect that they had succumbed to pressure from Azimio – despite the insistence of the media houses that this was not the case.[87] Much like civil society, Kenya's media houses therefore face an uphill battle to re-establish their credibility.

Social media, by contrast, turned out to be less problematic than many had feared.[88] An increasing number of Kenyans rely on social media for political news.[89] In turn, aspirants at all levels invested more time and energy in communicating via Facebook, WhatsApp, and Twitter than in previous elections. However, they often used these platforms to advertise off-line activities[90] ensuring, as Ajwang, Abboud and Lugano argue, that social media fell short of radically transforming how candidates campaign. At the same time, and in line with recent elections in countries such as Nigeria, these social media platforms saw considerable ethnic stereotyping and misinformation. Yet the extent and impact of these messages was less damaging than some had feared. As Ajwang, Abboud and Lugano show, Kenyans remained highly sceptical of messages online, whilst a combination of social media monitoring by fact-checking groups, media houses, and ordinary citizens, and efforts by campaign teams to call out problematic speech or actions by their opponents ensured that major politicians mostly distanced themselves from anything that could be interpreted as hate speech and from false claims that could be relatively easily debunked.[91]

Once again, however, this is not a reason for complacency. While the circulation of misinformation and hate speech did not trigger conflict, it did make the job of the IEBC and Supreme Court considerably harder, and there remains a constant threat that the delegation of misinformation and more effective deep fake videos could exacerbate political divisions and fuel ethnic tensions.

Conclusion: Where next for Kenya?

When countries experience a peaceful transfer of power via the ballot box, citizens, academics, international donors, academics, and the media all tend to overlook the challenges to democratization that remain. This is a natural result of the "alternation effect" described by Michael Bratton, in which public support for democracy and optimism about the future spikes and the defeat of the government is taken as evidence that democratic institutions performed well.[92] This is a natural response, but it can also be deeply misleading

and can lead attention to be diverted from democratic strengthening despite continued weaknesses in many parts of the political system.

Kenya has already provided a paradigmatic example of how this process can play out. In 2002, the landslide victory of President Mwai Kibaki and the National Rainbow Coalition (NaRC) over KANU, the ruling party since independence, led to a general consensus that the country had turned a critical democratic corner.[93] Yet only a few years later, allegations that Kibaki's government had manipulated the outcome of the 2007 polls triggered widespread ethnic and state violence. Democratization is a long-term process that is inherently prone to setbacks and which – as demonstrated by recent events in the United States and other supposedly "established" democracies around the world – is never truly complete.

Kenya's key democratic institutions have come a long way since 2002. Devolution, a robust private sector, a more educated and demanding electorate, and a more independent electoral commission and judiciary, represent significantly stronger barriers to democratic backsliding than Kibaki faced. In the absence of effective opposition coordination, however, the legislature will remain pliant, and media and civil society are arguably weaker than ten years ago. Political parties also remain overly dependent on their leaders, and it is important not to exaggerate the extent to which ethnic forms of mobilization have been superseded. Moreover, the institutional legacy of the elections has been complicated by the intense controversy over their conduct.

The IEBC has certainly improved its internal capacity to deliver credible elections, but it remains prone to politicised internal divisions and is believed by many Odinga supporters to have overseen another stolen election. The security forces ultimately worked to protect the IEBC, but the police are still associated with gross human rights abuses (including a deeply concerning increase in extra-judicial killings under Kenyatta) and may now come under greater pressure from the Ruto administration to demonstrate loyalty to the new government. Finally, while there has been considerable institutionalization where the Supreme Court is concerned, the judiciary is still troubled by allegations of corruption and periodic allegations of a pro-Ruto bias.[94] Kenya came close to experiencing a major political crisis in 2022 and further democratic progress will require an ongoing struggle to protect and extend the gains achieved to date.

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