# Democracy and its Discontents:
# Understanding Kenya's 2013 elections

Nic Cheeseman, University of Oxford
Gabrielle Lynch, University of Warwick
Justin Willis, University of Durham

In the months leading up to Kenya's general election of March 2013, there was much concern – both within Kenya itself and internationally – that political competition would trigger a fresh wave of ethnic violence.[1] However, the 2013 elections passed off largely peacefully, despite an unexpected presidential result and fact that the losing candidate, Raila Odinga, appealed the outcome at the Supreme Court. This article argues that Kenya avoided political unrest as a result of four interconnected processes. A dramatic political realignment brought former rivals together and gave them an incentive to diffuse ethnic tensions; a pervasive "peace narrative" delegitimised political activity likely to lead to political instability; partial democratic reforms conferred new legitimacy on the electoral and political system; and a new constitution meant that many voters who "lost" nationally in the presidential election "won" in local contests. This election provides two important lessons for the democratisation literature: processes of gradual reform may generate more democratic political systems in the long-run, but in the short-run they can empower the political establishment; while a lack of violence at the perceived cost of justice risks a "negative peace" that can be associated with an increased sense of marginalisation and exclusion in some quarters. The question for Kenya is how these contradictory trends will bear out in the future.

*Key words: Kenya; elections; democratisation; constitutional and institutional reform; peace and justice*

In the months leading up to the Kenyan elections of March 2013, there was much concern – both within Kenya itself and internationally – that political competition would trigger a fresh wave of ethnic violence. The disputed elections of 2007/8 led to widespread civil unrest that captured the attention of the world's media. Kenyans were uncomfortably aware that every election since 1992, with the partial exception of that in 2002, had seen considerable local violence. Popular apprehension was heightened by the fact that there was much at stake in the 2013 elections, which, as in 2007, boiled down to a two-horse race between a Kikuyu leader – Uhuru Kenyatta of the new Jubilee Alliance – and a Luo rival – Raila Odinga who headed the new Coalition for Reform and Democracy (CORD). The polls were also the first to be held under a new constitution designed to devolve power away from the president. The elections thus seemed to hold dramatically contrary possibilities: they might see Kenya plunged back into violence, setting one ethnic group against another; or they might confirm the success of a process of institutional transformation. Ultimately, the elections passed off largely peacefully, but they did not confirm a process of institutional transformation or herald the end of inter-ethnic tension and mistrust.

Despite the complexity of the political process established by the new constitution – with six simultaneous elections for different levels of representation – the ballot was conducted on time and voting was completed

within a single day. Official voter turnout was very high at 85.91% and, while the Jubilee Alliance won both the presidential contest and secured a parliamentary majority, elections for new devolved structures of government left many county governments in the hands of other parties. Though there have been numerous legal appeals over the outcome of many of the contests – including that for the president – the decisions of the courts have been generally timely and have been accepted, albeit often begrudgingly, by the losers.

This apparent success deserves explanation given a history of election-related violence, high stakes involved, and fact that so much went wrong with the elections. There were multiple and extensive problems with voter identification – ironically, the result of a biometric registration system that had been introduced to improve public confidence in the system. Even more alarmingly, there was a complete breakdown of a new electronic system for the transmission and tallying of results that, again, had been introduced in an attempt to create a more credible system. The narrowness of the presidential result when it was finally declared, five days after the poll, made this uncertainty all the more significant – since, while Uhuru Kenyatta certainly secured a plurality of the vote, reported results gave him the absolute majority needed to avoid an expected run-off contest with the second most popular candidate, Raila Odinga, by just 0.07%.

Though Odinga formally accepted the verdict of the Supreme Court, which upheld the declared result, he has continued to claim that he was the victim of malpractice. Given this, it is perhaps unsurprising that a survey conducted in May 2013 found that only 56.1% of the population believed that the presidential election had been free and fair.[2] Moreover, in Kenya's poorest areas – the coast, the north, and the west – where the presidential vote went largely to Odinga, levels of popular confidence were even lower, an alarming signal that the elections had exacerbated a sense of marginalisation, rather than reduced it.[3] The much-delayed result of the complete set of election results, which came more than four months after the election, ended rumours that there had been wild disparities in the numbers of votes cast for different elections in some areas. However, a significant number of Kenyans remain convinced that the presidential election was stolen,[4] while the sole exit poll, discussed by Long et al in this issue, provides further reason for suspicion.

Any analysis of the elections must start by explaining the lack of violence; the emergence of, and patterns of support for new alliances; and the swiftness and effectiveness of a judicial system that until recently was seen as lacking credibility. Many of the papers in this special issue are directly concerned with these questions. This introduction draws from research conducted by the three authors as part of an election-monitoring project. However, while the analysis has been greatly enriched by their involvement in that collective endeavour, the arguments – and any mistakes – are the authors' own.

The paper argues that Kenya avoided disaster as a result of four interconnected processes. First, the decision of the International Criminal Court (ICC) to prosecute Kenyatta and William Ruto for crimes against humanity for their

alleged role in the post-election violence of 2007/8 had the unexpected effect of bringing these former rivals together in the Jubilee Alliance, which reduced the prospect for violence between their respective Kikuyu and Kalenjin communities. Second, a pervasive "peace narrative" emerged, which delegitimised election protests and political activity seen to challenge the status quo and encourage instability. Combined with the heavy deployment of security forces in potential "hot spots", this significantly constrained the options available to the losing candidate: civil disobedience was both less popular, and more risky, than in 2007/8. Third, the partial democratic reforms implemented in the run up to the election worked to undermine Odinga's position – because many key democratic institutions had been reformed in line with Odinga's own demands in the years leading up to 2013, he came under great pressure to accept the outcome of the process despite significant problems with it. Finally, the creation of a new constitution with 47 new county governments in which many Odinga supporters were able to secure county-level seats, meant that, while CORD lost nationally, they often won locally, softening the blow of the controversial presidential elections.

The Kenyan case is therefore instructive for wider debates about democratisation and transitional justice, because it demonstrates the capacity for both international prosecutions and limited processes of institutional reform to empower a political establishment. The ICC proceedings against the leaders of the Jubilee Alliance enabled them to create a "siege mentality" among their communities that facilitated political mobilisation. At the same time, the partial institutional reform introduced following the 2007/8 crisis constrained Odinga's ability to contest the election result, while a concentration on peace led to a politically constrained environment in which people felt unable to protest. As a result, the election left many CORD supporters questioning the value of the democratic reforms for which they had campaigned for so long. These are democracy's discontents – those Kenyans who firmly believe that yet another election was stolen from them and their leaders, but who did not feel able to protest, and who have consequently lost faith in key institutions such as the executive, electoral commission and judiciary.

By making these arguments we do not mean to imply that reformers should stop pushing for prosecutions or democracy, or campaigning for peaceful elections, but to highlight the unintended consequences such efforts can have. The solution is to improve the way in which we pursue peace, justice and reform, not to abandon these causes. Moreover, our conclusions are by no means wholly pessimistic. This was the first multi-party election that was not characterised by significant violence, which may be associated with lower expectations and, in turn, preparations for violence in the future. The self-interest of national politicians created space for accommodations between local communities that seemed impossible a few years ago. Televised debates forced many candidates – gubernatorial, as well as presidential – into a novel political forum that raised genuine policy questions. And the post-election implementation of party legislation may yet create a new sort of political party.

Staffan Lindberg has argued that the repeated holding of elections promotes democratisation – even if they are not fully free and fair.[5] Although the way in which partial democratic reform actually undermined Odinga's position in 2013 challenges Lindberg's optimism, it is still possible that Kenya will turn out to support his argument in the long-run – as the new constitutional dispensation, high voter turnout, peaceful transfer of power, and entry of many first-time elected office holders, may yet prove to have been a major step in the slow process towards democratic consolidation.

**The political landscape**

In the aftermath of the second liberation of the early 1990s, Kenya became a case study of the problematic relationship between multi-party elections and genuine political reform.[6] President Daniel arap Moi and the Kenya African National Union (KANU) maintained their hold on power. National elections in 1992 and 1997 were each preceded by the explicit mobilisation of ethnic constituencies and substantial violence, which sought, at least in part, to drive Kikuyu, Luo, Luhya and Kisii voters – then associated with the opposition – out of particular areas. A two-term limit prevented Moi from standing again in 2002. Uncharacteristically he misjudged the politics of succession and backed Kenyatta, the son of his predecessor Jomo Kenyatta, as the KANU presidential candidate thus unwittingly facilitating an alliance of major politicians and ethnic constituencies. Odinga, son of the veteran opposition politician Oginga Odinga, threw his weight behind the candidacy of a former regime insider, Mwai Kibaki, who swept to power in a largely peaceful election in which multiple minor irregularities were made irrelevant by the size of Kibaki's overall victory. Kenyatta ensured a peaceful transition by conceding defeat without demur.[7]

The moment of national optimism that resulted was brief. The appearance of political transition was partly illusory; KANU's defeat had been rendered possible by the support of many established politicians and former government ministers for Kibaki's National Rainbow Coalition (NaRC). The new government had come to power with a commitment to create a new constitution, but debate over the terms of that constitution soon split NaRC. When Kibaki proposed a new constitution in 2005, Odinga campaigned against it on the grounds that it did not offer sufficient reform – it also failed to create the position of Prime Minister that Kibaki had promised him in return for electoral support. By building a coalition of influential regional leaders including Ruto, a key ally given his unrivalled ability to mobilize support in the populous Rift Valley, Odinga defeated the draft constitution in a referendum in which an orange became the symbol of his 'no' campaign.[8] The Orange Democratic Movement (ODM) was born, and the split between Odinga and Kibaki became irrevocable. When national elections were held at the end of 2007, the two stood as rival candidates, with Odinga explicitly presenting himself as the candidate of change and reform.

The multiple failings of the electoral process meant that the outcome of that election will never be known.[9] The announcement of Kibaki as the winner triggered unprecedented violence. In Nyanza, Odinga's home area, this largely took the form of public demonstrations; elsewhere, notably in the Rift Valley, but

also in Nairobi's informal settlements, it took overtly ethnic lines, pitting Kalenjin, Luo and other ODM supporters against Kikuyu (widely seen as Kibaki's core supporters) and Kisii (who had divided their vote between PNU and ODM). State security forces then responded to violence with a heavy hand, while members of the Kikuyu community later participated in "revenge attacks" in Nakuru and Naivasha towns in the Central Rift Valley. The Commission of Inquiry into Post-Election Violence, or Waki Commission, confirmed 1,133 deaths in the unrest, and 300,000 more displaced[10] – the government later increasing the latter figure to almost 700,000.[11] In retrospect, it is worth noting that this violence may have claimed fewer lives than the prolonged election-related violence of 1991 to 1993. Nevertheless, the intensity and geographical scope of the clashes, together with the unprecedented levels of displacement, came as a profound shock to Kenyans and to an international community that had assumed that 2002 had marked a stable political transition. A deal mediated by international negotiators appointed by the African Union ended the violence, and brought Odinga into a grand coalition government that was committed to introducing a new constitution.[12] For most Kenyans, as well as the international community, the violence of early 2008 offered terrifying evidence both of the need for real political reform and value of peace and stability.[13]

The polls of 2013 were intended to be a major step in the process of transforming Kenyan politics, as a new institutional structure for the conduct of elections, new judicial safeguards to ensure integrity, and a new regulatory framework for political parties were all linked to the new constitution, agreed by the coalition partners, and approved through a referendum in 2010. This constitution was meant to devolve power, end the 'imperial presidency', and ensure political stability and inclusion.[14] The elections would seal the transformation, exemplifying the new politics even as they produced new democratic institutions that would oversee devolution. This was a bold scheme for engineering change through constitutional and institutional reform, inspired not simply by an urgent need to avoid any repeat of the events of 2007/8, but by a longer sense of frustration with a centralised political system that had entrenched inequality.[15] Economic and political marginalisation was the key issue identified by critics of Kenya's status quo – and credible elections and devolution were widely seen as the answer.[16]

**Political realignment and the victory of the "coalition of the accused"**

It was clear long before the elections that the new constitution had not changed Kenyan politics overnight.[17] Politics still revolved around patronage and direct personal relationships between political leaders and those whose support they seek; if anything, the expenditure by political aspirants was even greater and more ostentatious. But the new coalitions formed were of great significance because, by bringing together Kenyatta and Ruto, the Jubilee Alliance reduced the likelihood of inter-ethnic violence at least in the short term.

The campaign quickly exposed the continued weakness of political parties. Somewhat ironically, a salient feature of Kenyan multipartyism has been the ephemeral nature of political parties.[18] Political change – and continuity – has

revolved around the manoeuvrings of prominent personalities who have claimed the role of ethnic and regional power-brokers, and who create parties often specifically for the purpose of elections. The new constitution of 2010 was meant to transform this politics, and to create in its place a political system that would be regulated and ordered by parties, which would encourage a new kind of policy-driven debate and undermine the politics of ethnic clientelism. But the uneven implementation of key pieces of legislation – and the selective application of some laws – meant that the parties of 2013 were as organisationally insubstantial and unaccountable as those of 2007. Each was associated with one national politician, and often with a particular ethnic group; none of them possessed the sort of enduring internal organisation that allows for popular policy debate; and most were, quite simply, very new.

The party which had been declared the winner of the 2007 election, PNU, had vanished; so too had Kalonzo Musyoka's ODM-K, which had formed an alliance of sorts with PNU after that election. In the place of ODM-K was the Wiper Democratic Movement (WDM). Apart from a scattering of minor parties that were at most of local significance (including, ironically, the once-dominant KANU), the only party that showed any sort of institutional continuity from 2007 was ODM. But even this apparent continuity was largely illusory. Between 2008 and 2012, the landscape of political alliances in Kenya had changed profoundly, and the 'Pentagon' of five regional power-brokers who had been at the centre of the 2007 ODM campaign had fragmented leaving only Odinga still associated with the party by 2013.

The aftermath of the 2007/8 violence propelled that fragmentation. In this, as in so many respects, the 2013 elections can only be understood as the consequence of the multiple mistakes and problems of 2007/8. The Waki Commission found evidence that the election violence had been politically led. Ruto, then in the ODM Pentagon, was singled out for allegedly mobilising anti-Kikuyu attacks in the Rift Valley. At the same time, Kibaki-ally Kenyatta was alleged to have organized revenge attacks against Odinga's Luo and Kalenjin supporters in Nakuru and Naivasha towns. The decision by the ICC to indict Kenyatta and Ruto for their role in the violence may have been intended as an attempt to be even-handed, identifying one senior politician from either side of the political divide, but it had the entirely unintended result of driving the two men together. Once Kenyatta and Ruto came to realise that they shared a common interest in securing power and using it to protect themselves from international prosecution, they set about constructing the "coalition of the accused", changing the dynamics of the election dramatically.[19]

The ICC was not the only factor of course; after Odinga had secured the position of prime minister in the power sharing government inaugurated in 2008 his erstwhile Pentagon colleagues fell out with him, one after another, believing that he had failed to support them, or their communities. Well before the ICC cases started to dominate Kenyan politics, relations between Odinga and Ruto had deteriorated over accusations that Odinga had abandoned the Kalenjin who had "fought for him" in 2007/8. Odinga's decision to order the eviction of mostly Kalenjin squatters from parts of the Mau escarpment in 2008 was a major rebuff

to Ruto and to the Kalenjin MPs allied to him. From that point on the relationship between the two men was doomed, and the ICC's confirmation of charges in January 2012 against Kenyatta and Ruto completed their separation.

The 2010 referendum over the new constitution offered an opportunity to Ruto, who threw his weight behind claims that it would favour Muslims and legalise abortion, in order to position himself as a spokesman for evangelical Christianity and to distance himself from Odinga. His campaign was unsuccessful, as the new constitution was approved with a large national majority, but the size of the 'no' vote in the Rift Valley confirmed Ruto as the principal Kalenjin politician, and no doubt gave him new credibility in discussions with Kenyatta.[20] The ICC's confirmation of charges in January 2012 then brought the two leaders yet closer together. In turn, while Kenyatta and Ruto's alliance took time to settle – a reminder of the delicacy of the relationship between these politicians and their ethnic support bases – it facilitated a grassroots political accommodation which, temporarily at least, defused the chronic tension between Kikuyu and Kalenjin in the Rift Valley that had exploded so dramatically in previous elections.[21]

There has been much debate over whether political violence in Kenya has primarily grown out of local-level grievances and jealousy, or whether such violence has routinely been incited by politicians who seek to encourage ethnic sentiment in order to instrumentalise it.[22] Events in 2013 suggest that when national politicians are not encouraging ethnic violence it is less likely to occur; but also show the importance of determined efforts at the local level to prevent any outbreaks of violence between these new allies, particularly in long-standing areas of tension such as Nakuru and Burnt Forest. As Lynch's paper shows, Kenyatta and Ruto touted their alliance as an exemplar of peace for Kenyans more generally: as Kenyatta told one rally, "Our union with Ruto is informed by the need to preserve peace in the country".[23] There were limits to the alliance however, and Ruto took care to establish his own United Republican Party (URP), rather than joining Kenyatta's The National Alliance party (TNA). They came together in December 2012 to form the Jubilee Alliance, a name that ingeniously combined multiple themes of Christian evangelism, redemption, and the celebration of Kenya's independence. Without this political realignment, the election would have been radically different; with Ruto by his side, Odinga would likely have won a convincing victory, and the danger of ethnic violence along the lines of 2007 would have been far higher.

Two of the lesser lights of the Pentagon, Najib Balala and Charity Ngilu also attached themselves to the new Jubilee Alliance. Neither commanded substantial support among the communities that they claimed to represent, but their presence allowed Jubilee to mock Odinga for having alienated all of his former allies. Another member of the former Pentagon, Musalia Mudavadi, dithered over his political choices, evidently hoping that – as many expected – he would be taken up by powerful figures around Kibaki as a presidential candidate who offered continuity and stability. The making, and immediate breaking, of a deal along those lines provided one of the most dramatic moments of the whole campaign, as Kenyatta first signed a deal with Mudavadi and then publicly renounced it claiming that he had only agreed to it under demonic influence;

Mudavadi ultimately stood as a candidate for another newly-created party, the United Democratic Forum (UDF).[24]

These new parties all had money to spend, though in varying amounts – some provided from the individual or family wealth of the leaders, some drawn from donors seeking to purchase future political influence. But none had any organisational basis, and their fundamentally insubstantial nature was revealed by the embarrassing spectacle of party primaries. In general, these were poorly organised, undemocratic, and resulted in considerable anger against the perceived imposition of candidates close to the leadership against the will of party supporters. This proved to be a particular problem for the ODM in Nyanza and Siaya. These areas should have been its stronghold, but the expectation of various of Odinga's relatives and friends that they should have the power to allot nominations led to confused and violent primaries.[25] The impact of these locally acrimonious disputes on the elections may have been significant: turnout in Siaya and Nyanza was markedly lower than in the Jubilee strongholds, and it seems clear that Kenyatta's presidential victory rested partly on such differences in turnout.

The Jubilee Alliance also had other advantages. During the election campaign itself, new techniques supplemented old ones, rather than displacing them: there was, as Moss and O'Hare discuss in this issue, a televised presidential debate, but candidates also continued to address rallies where the crowd was swelled by direct gifts of t-shirts, food and cash. Campaigning was also more intense, as the lavish expenditure of money also helped the campaigns to acquire fleets of vehicles – and aircraft – and to occupy all forms of social space in a strikingly pervasive way.[26] Alongside public meetings, billboards, radio commercials and television broadcasts, there was an increased internet and twitter presence where commentators and bloggers – some paid by candidates – offered campaign material thinly disguised as opinion.[27]  In this, as in much else, the campaign of "Uhuruto" – as the paired candidates were immediately dubbed – was most creative and effective.

The Jubilee name also signalled another important element of the campaign, which tied Kenya's fifty years of independence to an assertion of national sovereignty against western interference. Both elements of Uhuru Kenyatta's name evoke independence in the Kenyan context, and Jubilee's implicit celebration of independence was accompanied with an explicitly nationalist rhetoric which focused on the ICC, and cast Kenyatta and Ruto as victims of neo-colonialism.[28] This was not a novel rhetoric in Kenya – in the 1990s, Moi expended much energy on repeated denunciations of western interference – but it was pursued more determinedly and successfully by Jubilee, who tapped into a popular vein of resentment at perceived foreign interference.[29] Kenyatta and Ruto presented themselves as leaders who had acted bravely to defend their communities and were consequently being persecuted by foreign powers, and who could – and should – be saved through the ballot box.[30] Ruto especially played very successfully to the idea that he was an outsider, though he had been deeply involved in politics for more than two decades.[31]

By contrast, Odinga's decision to make an alliance with his former adversary, the sitting vice-president Kalonzo Musyoka, and failure to resign as prime minister prior to the election, encouraged the sense that CORD was a coalition of incumbents – the "analogue generation" of former politicians, who had been outpaced by Jubilee's "digital generation". Odinga's awkward performance in the television debate underlined his discomfort with this style of politics. The more accomplished style of the Jubilee presidential campaign no doubt owed something to the greater resources available to it, but Jubilee was smarter as well as richer. Odinga's former Pentagon allies denounced him, and a one-time Odinga aide was encouraged to publish a memoir that depicted his erstwhile boss as an incompetent tyrant.[32] Through such strategies, and a clever focus on the linked ideas of youth and technology, "Uhuruto" were able to present themselves as a team that offered change. This inverted the narrative of 2007 when Odinga had made much of the Pentagon line-up and his outsider status.

International response to the Jubilee campaign was maladroit, partly out of uncertainty. Until a few months before the election, neither European governments nor the US seem to have given much thought to how they would handle a Kenyatta victory, nor to how to coordinate their response. The formal mantra of "only essential contact" was inevitably open to differing interpretations. In trying not to say too much, more than one diplomat stumbled into policy statements that were vague, but could be interpreted as threatening.[33] Jubilee readily seized these opportunities to present Kenyatta and Ruto as victims of an international conspiracy by "the west". Consequently, while Brown and Raddatz's paper in this collection argues that diplomats failed to use their influence to press for reform, it is clear that popular suspicion of "neo-colonial" forces means that the consequences of such pressure can be unpredictable. Even after the election, for example, civil society groups seen to be too close to their western backers continue to be targeted by Jubilee leaders with serious consequences for their room for manoeuvre. At the time of going to press, the government had just published The Miscellaneous Amendment Bill 2013, which "seeks to cap the amount of foreign funds NGOs can get to 15 per cent of their budget".[34] The Bill is a powerful reminder, if one was needed, that international choices have far-reaching domestic consequences.

This range of campaign strategies had an important impact on the electoral outcome, and the way that the public responded to it. Kenyatta, initially trailing in the opinion polls, gradually caught up with Odinga as the elections neared, and the last opinion polls found the result "too close to call". Although it was clear that Kenyatta was closing the gap, many Odinga supporters found it hard to believe that his opponent could have cleared the "50% + 1" constitutional threshold required for a first round victory by the 8,000 votes (a 0.07% margin) announced by the electoral commission; their suspicions were further fuelled by the confusion created by the problems with the transmission and tallying of results. However, although ODM were quick to reject the results, it seems clear that the Jubilee Alliance was the more effective political machine. The parallel vote tabulation process generally lent credence to the reported results (though it left open the issue of the first round majority, and the article by Long *et al* in this issue pursues the debate over that). Moreover, in contrast to 2007, when

Kibaki's PNU performed less well in parliamentary and local elections than ODM, Jubilee emerged from the 2013 election with a majority in the other electoral contests: 58% of seats in the National Assembly and 57% in the Senate, as compared to CORD's 39 and 43% respectively.[35]

By using the ICC as a common enemy, Kenyatta and Ruto overcame the historical distrust between their two communities. As a result, victory and peace in the Rift Valley went hand in hand, but although the complex process of political realignment helps to explain both the election outcome and the containment of Kikuyu-Kalenjin tensions, we need to consider three further factors in order to understand why Odinga and his supporters ultimately decided against mass protest, despite Kenyatta's slim first-round victory and the queries over various aspects of the electoral process.

**Peace as the marker of success?**

After the relative peace of the 2002 election, the events of 2007/8 were seen to bring Kenya "to the brink"[36] and to threaten a "democratic rollback".[37] It was thus understandable that the spectre of election-related violence loomed large over the 2013 election,[38] especially since the country now faced its most complicated election to date in a context where few (and no high level) perpetrators of previous election-related violence had been brought to justice;[39] levels of mistrust remained high in many parts of the country;[40] many of the underlying issues (such as historical land injustices, inequality, and youth underemployment) had not been addressed;[41] and security sector reforms lagged behind meaning that, the "very same policing structures blamed by many for serious human rights violations" during the post-election violence, remained in place.[42] As a result, many Kenyans came to prioritize peace over political competition, creating a very different backdrop to the 2007 polls.

The consequent rhetorical emphasis on peace was not novel. From independence and through to the early 1990s, the Kenyan public had routinely been enjoined to maintain peace and order during elections. For example, just before the 1974 election, the *Daily Nation* told its readers that: "Peace and order are in the interest of every citizen, be he a policeman, a Government official or an ordinary citizen...The part which each person plays in this respect will be a major contribution to the nation's image both here and abroad".[43] Such statements were associated with what Atieno Odhiambo has called the "ideology of order", which was constantly rehearsed during elections, but which underpinned Kenyan politics throughout the 1960s, 70s, and 80s, and through which the government insisted upon its monopoly over the legitimate use of violence.[44] Elections between 1992 and 2007 saw rather less of this rhetoric, but it came back to the fore in 2013 and in a much more pervasive way due to the memories of 2007/8 and ongoing threat of further violence.

Indeed, a wide array of actors encouraged Kenyans to be peaceful, and to actively participate in the cultivation of a broader culture of non-violence. Civil society, community and faith-based organisations across the country organised trainings, workshops, inter-community dialogues, and monitoring and conflict-resolution

activities; media houses and international organisations trained journalists on conflict-sensitive reporting and ran peace campaigns; and theatre groups, musicians, and public advertising all called upon Kenyans to vote in peace.[45] Most importantly, politicians competed to display their peace-loving credentials. In this way, and as discussed by Moss and O'Hare in this issue, presidential debates became a stage for the promotion of peace, while all of the major presidential candidates participated in a prayer rally a week before the election during which they vowed to maintain the same. This emphasis resonated with many ordinary Kenyans and with donors who funded a range of projects on early-warning, conflict resolution, and peace-building from civil society groups.

The resulting "peace narrative" produced a general consensus among Kenya's "political elite and the citizenry not to bring Kenya to the brink of civil war again".[46] For many Kenyans, peace was the most important issue during the election: revealingly, for those citizens who deem the election to have been free and fair, a lack of violence is one of the primary reasons cited.[47] The peace narrative also served to shape and constrain political discourse and action, delegitimising dissent in a way that may have negative implications for Kenya's longer-term peace and stability. Some commentators talked of the emergence of a "peace-ocracy",[48] and of how the "tyranny of peace messaging … led many to feel Kenya slaughtered justice at the altar of a temporary and deeply uneasy apparent calm".[49]

In other words, for all of the good work done as part of the peace narrative, it is also clear that "a peace-at-all-cost message … also suppressed frank discussion of critical reform issues that historically contributed to violent elections".[50] For example, a month before the election, the Inspector General of Police, David Kimaiyo, issued a directive that:

> Land should not be one of the issues on the campaign trail because it is so emotive and can trigger violence. All politicians should be self-respecting and should, forthwith stop dwelling on issues that will cause tensions and animosities.[51]

As Willis and Chome's paper suggests, this directive was mocked and disregarded on the coast, but elsewhere it may have helped Jubilee sidestep the tricky issue of the Kenyatta family's large land holdings, and the narratives of historical land injustice that had hitherto divided their Kalenjin and Kikuyu support bases.[52]

The peace narrative was also politically manipulated in other ways. Most notably, Jubilee emphasised the primacy of peace in order to discredit Odinga as a "trouble-maker" who had rejected the result and thus "caused" the post-election violence in 2007/8, in contrast to Kenyatta who had accepted his defeat in 2002. This positioning helped mobilise support for Jubilee, but also made it extremely difficult for CORD to organise public demonstrations following the election for fear that this would further demonise Odinga among certain constituencies.

The opportunity to express dissent was also shaped by the peace narrative in more subtle ways. One prevalent message was that ordinary Kenyans were to blame for the intensity of violence in 2007/8. This fed into a range of civic education and other behaviour-shaping activities through which a particular notion of the "good citizen" was framed. According to this logic, a good citizen was "set up for [the] particular purpose"[53] of peace-building, as an array of local, national and international efforts encouraged citizens to vote, return home and wait for – and then accept – election results. A good citizen would inform the authorities of any untoward behaviour, and take time to encourage dialogue and peaceful conflict resolution strategies at the family, neighbourhood and community level. Once again, such efforts had a clear impact on reducing the likelihood of violent conflict, but they also helped to curtail the range of activities that were deemed to be politically legitimate.

Efforts to instil a particular framing of the "good citizen" were particularly effective when they came from powerful voices such as politicians, influential civil society organisations, and the media. Media houses together with local, national and international organisations offered targeted training for journalists on the idea and importance of conflict-sensitive reporting, the aim of which "was to sensitise journalists to be careful in what they report so [they] don't arouse passions".[54] This included guidance on "setting agendas right, avoiding words that are alarming, and [ensuring that] different voices are given an opportunity to speak".[55] However, the constant reiteration of these messages also instilled a strong sense that individual journalists would "be the first person to be held responsible" for any report published.[56] Together with the heavy criticism that journalists faced following the post-election violence of 2007/8 for their alleged role in fanning the violence – and the fact that journalists are also members of the communities from which they hail – this led to a level of self-censorship where the "message was massive turnout, patient crowds",[57] with little attention given to the shortcomings of the elections, which fostered a perception in certain quarters that the media had been "gagged or gagged itself ... for [the] sake of peace".[58]

The pervasiveness of this peace discourse also helped to legitimise a range of more repressive measures including: the strategic location of security forces in CORD strongholds; an unconstitutional ban on political meetings and demonstrations in the wake of the elections on the basis that they constituted a "threat to peace"; and the use of force to quell dissent when it occurred, with six confirmed fatal police shootings during demonstrations following the Supreme Court's validation of the presidential election on 30 March.[59] Under these circumstances Odinga's hands were firmly tied – to take his protests to the streets risked both delegitimisation and great harm to his supporters. As one commentator noted: "Kenyans have been praised for their "order" and "restraint" and control during this election, but how could it be otherwise" with over "90,000 military personnel...deployed across the country to guarantee "peace"".[60]

The complex impact of the peace narrative has reinvigorated an old debate of peace versus justice – and of whether peace is an essential precondition for

governance, or whether "truth and justice are critical for real peace".[61] Thus, on the one hand, many interviewees in the Rift Valley were adamant that "peace was more important this time than anything else" and that now, instead of having to focus on recovering from another bout of election-related violence, the country has an "opportunity to reflect on promises"[62] and "work on systems".[63] On the other hand, CORD supporters speak of how "most communities [have] chosen the path of being quiet – not because [they're] satisfied – but because [they] don't know what to do next".[64] For them, peace was prioritised over a competitive and fair election leading to a "negative peace" characterised by the cessation of hostilities, rather than a "positive peace" built on trusting and harmonious inter-ethnic relations.[65]

**The new constitution and the limits of institutional design**

The new coalitions and the peace narrative were widely understood to constrain the options available to Odinga. The new constitution, on the other hand, was supposed to help him by creating a level playing field. Although strictly speaking there was no 'incumbent' and 'opposition' candidates, as both Kenyatta and Odinga had participated in the executive of the power sharing government, in practice, President Kibaki clearly preferred Kenyatta to Odinga, and it was widely believed that if state resources and personnel were used to manipulate the election, it would be to prevent Odinga from securing power. As a result, most Kenyans understood that the constitutional changes agreed in 2010 were of far greater benefit to Odinga than to Uhuru. The reality was more complex. While many important reforms were passed and the power of the president was reduced, these were not enough to deliver a credible election. Instead, the partial democratic reforms implemented in the run up to the polls served to confer a sense of legitimacy on the electoral system and so constrained the ability of Odinga to contest the result of a process that was extremely problematic.

The process of institutional change between 2008 and 2013 was in many ways remarkable. The new constitution transferred some of the president's powers of appointment to the legislature, created a second legislative chamber, introduced a new system of devolved government complete with 47 new counties – all with their own elected governors and assemblies – and established a Supreme Court. Partly as a result of the new constitution, and partly as a result of a related set of processes set in motion after the political violence of 2007/8, a number of other key institutions were also reformed. Most notably, the Electoral Commission of Kenya (ECK) was disbanded following criticism by the Independent Review Commission (IREC) – an international commission of inquiry set up by the Kenyan government to investigate the electoral process – and the Independent Electoral and Boundaries Commission (IEBC) was formed in its place under the chairmanship of a hitherto untainted lawyer, Ahmed Issack Hassan.

Police reform was also initiated following criticism of the performance of the police by the Waki Commission, which created a new unified body headed by an Inspector General of Police and civilian oversight body, although this process had barely gotten under way by the time of the elections.[66] A process of judicial vetting by a panel of international judges proved to be more successful, and led

to the removal of three of the eight existing appellate judges in April 2012, and four more judges from the High Court, Supreme Court, and Court of Appeals by the end of the year.[67]

These reforms had a dramatic impact on public confidence in key political institutions. Opinion polls conducted prior to polling day revealed that Kenyans had high levels of confidence in key institutions, most notably the judiciary.[68] For its part, the IEBC enjoyed unprecedented approval ratings of 93% prior to the election.[69] To a large extent, this unprecedented confidence in an electoral commission stemmed from the introduction of three new processes, which were meant to protect against rigging. First, voters were to be biometrically registered using their fingerprints to ensure that no individual could be on the register more than once. Second, voters were to be biometrically verified – in other words, in order to vote, individuals would have to prove who they were by providing the same fingerprint that was registered on file. Third, the election results were to be transmitted from the polling station level as soon as they were released using a specially designed mobile phone application, creating a provisional set of results that could then be used to detect any manipulation of the results when they were aggregated at the constituency and national level.

Although the voter registration process failed to meet its target of 18 million, the IEBC registered more Kenyans than ever before and the electoral register was widely agreed to be a far better reflection of the actual electorate than that used in 2007 and 2010.[70] But as the elections approached, the cracks in the system began to appear. Problems with procurement put intense pressure on the electoral timetable and ultimately led to criminal charges being brought against senior employees of the IEBC.[71] There was insufficient time to trial the new processes; although the Commission had piloted biometric registration and mobile phone transmission during the constitutional referendum and by-elections it had never operated these systems on such a vast scale.

As soon as voting began, the electoral process fell apart. Some polling stations simply did not receive the necessary equipment to biometrically verify voters.[72] More typically, the equipment arrived, but the Electronic Voter Identification (EVID) kits did not work or ran out of power. According to the domestic Elections Observer Group (ELOG), the EVID kits failed in a majority (55.1%) of polling stations.[73] When this happened, the polling station officials followed protocol and crossed voters' names off on a paper list. There is nothing wrong with manual voting – which is the same process used in most democracies – but its failure was seen as a bad omen by CORD leaders; one of the key checks against rigging had failed. Worse was to come.

When polling streams had finished counting their results, officials around the country found that they often could not submit the results through the mobile phone transmission system. The failure of the mobile phone transmission system did not directly affect the vote count – these results were only ever intended to be provisional and to act as a way of verifying the official process of tallying the paper forms – but the collapse of the process was nonetheless significant because it potentially left the system open to electoral manipulation, and thus

further dented the confidence of CORD leaders and supporters in the electoral process.[74]

The impact of the mobile phone transmission system was exaggerated by CORD's failure to provide party agents in an estimated 12.1 percent of polling streams.[75] Combined with the drawn out process of counting, which in some cases took days and forced even devoted party agents to withdraw to their beds, this undermined their capacity to scrutinize the vote count. The sense that there was no real way to check the process of tallying was exacerbated by a regrettable incident in which international election observers were expelled from the main tallying center in Nairobi; they were only readmitted to a position from where they could not effectively verify the process. Amid the uncertainty, rumours and accusations flew: many of the election forms were not signed by the relevant parties, over 100 percent turnout was recorded in some polling streams, and it became apparent that the IEBC was operating with multiple voters registers some of which included names that were not present when the registration process ended in December.[76] All told, more components of the electoral system failed in 2013 than in 2007; subsequently, courts found significant procedural deficiencies in the elections of several governors and members of the national assembly and ordered fresh polls.[77]

It was therefore unsurprising that, following the IEBC's announcement that Kenyatta had won a surprise first round victory, CORD rejected the election results. But, in contrast to 2007, they did not take their protest to the streets. Instead, they followed the official procedures and – together with leading civil society activists through the Africa Centre for Governance (Africog) – appealed to the Supreme Court. In large part this was because of a lack of support for any other response due to the impact of the peace narrative discussed above. But Odinga's decision was also shaped by the attitude of other actors towards the electoral process. In 2007, European Union election observers openly questioned the result of the election. Combined with popular frustration against the Kibaki regime and a general sense that the ECK had been compromised, this created an environment within which Odinga knew that he would have significant domestic and international support if he took his protest to the streets.[78] The situation was very different in 2013. Keen to support Kenya's new political institutions, many international electoral observers pulled their punches with influential donors keen to avoid a repeat of the instability and violence that shook the country in 2007, while, as noted above, many Kenyans had come to see a peaceful election as a successful election.

These changes, combined with CORD's faith that the Supreme Court could be trusted to deliver a fair verdict, encouraged Odinga and other actors to play by the rules of the new political system. In his first public statement after the election result was announced, Odinga summarised his position as follows: 'Let the Supreme Court determine whether the result announced by the IEBC [Independent Elections and Boundaries Commission] is a lawful one. We are confident the court will restore the faith of Kenyans in the democratic rule of law.'[79] CORD leaders and prominent civil society activists were therefore dismayed when their petitions were not only rejected, but dismissed in a

perfunctory statement that, instead of recognising the many failures of the electoral process, simply stated that petitioners had failed to show that the final outcome was the wrong one.[80]

CORD supporters made a number of telling critiques of the Court's procedures and decisions: the two weeks they were allotted by the constitution was far too short to go through all of the relevant evidence; the presentation of a unanimous verdict appeared to be a political, rather than a judicial decision; some of the judges appeared not to have read all of the evidence presented to them; and, the burden of proof set by the Court was so high that, short of finding a smoking gun, it was hard to see what would have led them to re-run the election.[81] While these complaints were not without foundation, they reflected a degree of naivety within the CORD hierarchy. The Court was always likely to take a conservative position: annulling the election based on procedural failures would set a dangerous precedent, as Kenyan elections are typically procedurally faulty, while there was also a vocal section of Kenyan society who were pleased with a Jubilee win and presented the largely peaceful election as a success and re-run as expensive and destabilising. Given this, it was always going to take strong evidence of systematic rigging to force the Court's hand – and this is what CORD, operating under intense time pressure, could not provide.

But having realised the limitations of the system, CORD leaders had little option but to accept it. Despite their limitations, the electoral commission and the judiciary continued to enjoy considerable domestic and international support.[82] In this way, the latest iteration of institutional reform in Kenya not only failed to protect the interests of the opposition, but also served to legitimise a problematic election. The Kenyan elections of 2013 thus have an important lesson to teach the democratisation literature: processes of iterative reform may generate more democratic political systems in the long-run, but in the short-run they can also empower incumbents.

**Devolution as an end to a zero-sum game**

The process of institutional reform also contributed to a peaceful election in other less problematic ways. Most notably, devolution – one of the more popular aspects of the new constitution – seems to have increased the willingness of opposition supporters to accept the results. According to the 2010 constitution, devolution is meant to bring government closer to the people, promote accountability, protect and promote the interests and rights of minorities and marginalised groups, and facilitate an equitable sharing of national and local resources. Moreover, while the ability of decentralisation or devolution to achieve such ends – from the promotion of equitable development to more cohesive relations – has a mixed record in Kenya and beyond,[83] at the time of the 2013 elections, Kenyans were generally optimistic about what devolution could and would achieve.[84]

In this context, it was significant that, while CORD supporters generally believed that the presidential elections were not free and fair, they had far more faith in sub-national polls.[85] This was largely because the parties of the Jubilee Alliance

won very few seats in any of the areas with a significant CORD support base – the former Coast, Nyanza, Western, and Eastern provinces. Odinga's ODM won 16 governorships, eight more than Kenyatta's TNA, and secured the same number of senators as its main rival (11). Moreover, ODM won 377 county assembly ward representatives – the best performance of any party. So, while Odinga supporters in these areas may have lost nationally, locally they are now typically governed by people of their own ethnic community and political persuasion thanks to the new constitution; and as Cornell and d'Arcy's paper argues, the position of governor may yet create a new kind of politics. ODM even won the highly prized contest of Nairobi governor, giving the party a foothold in the country's political and economic capital.[86]

Given this wider context, even the most ardent Odinga supporter had to admit that not all of the elections could have been rigged. Devolution will remain an important mechanism for integrating CORD's disgruntled support base into the political system so long as the new government is seen to respect the principle of decentralization with the latter leading to a fairer distribution of resources and economic development.

**Conclusion: "the triumph of democracy"?**

Kenya achieved a peaceful election, but at a cost. The focus on avoiding a return to conflict was understandable, but also constrained the possibility of political debate and contestation. This was a trade off that many Kenyans were prepared to make in 2013, but it is important to note that the same may not be true next time around. The fallout of the election has exaggerated a sense of political marginalisation within the communities that supported Odinga; peace may have been more important than victory, but for some the "theft" of the 2013 elections has been added to a long list of historical grievances.[87] The fallout of the disputed polls has also undermined public confidence in the system – at least among CORD supporters. The number of Kenyans reported to have a "lot of confidence" in the IEBC decreased from 62% before the election to 32% afterwards, while the number of Kenyans with "no confidence at all" in the Commission increased sharply from 2 to 22%.[88]

Political stability may also be undermined from within the Jubilee Alliance. The Kikuyu and Kalenjin communities within the Rift Valley remain deeply suspicious of each other despite the success of Jubilee's "anti-ICC" campaign; détente depends on the continuation of healthy relations between Kenyatta and Ruto. The history of coalitions in Kenya suggests that this marriage of convenience is likely to break down at some point. If it does, the likelihood of political violence around the next elections will increase dramatically. Kenya's peace thus remains a fragile one.[89]

This conclusion however, is not wholly pessimistic or defeatist. For all of the limitations of Kenya's democratic system, the country may be undergoing a gradual process of democratization, and it is important to consider the complex and non-linear way in which democratic consolidation usually occurs. Andreas Schedler has argued that in processes of democratisation two games are being

played simultaneously: "At the same time as incumbents and opponents measure their forces in the electoral arena, they battle over the basic rules that shape the electoral arena". These two battles are intimately linked.[90]

Desperate to hold onto power, governments seek to give themselves an unfair advantage in electoral contests. But in order to retain credibility and international finance, they are often forced to make small concessions before or in the wake of elections and these changes, over time, create fresh opportunities for opposition parties. In turn, stronger electoral performances enable the opposition to bring greater pressure to bear for far reaching constitutional reform, which in turn creates the conditions under which the opposition can make further gains. In cases where governments are unable to effectively contain popular frustrations this virtuous cycle can result in a more level playing field and, ultimately, opposition victories.

Staffan Lindberg's work on Africa complements Schedler's more general framework, pointing to the way in which elections train voters and opposition parties in democratic arts and thus inculcate democratic norms and values, and lead to more effective reform coalitions, over time.[91] Lindberg describes a process of "democratization by elections" similar to the virtuous cycle identified by Schedler, in which the more elections a country holds, the higher the quality of civil liberties. In particular, Lindberg finds that democratic gains are particularly likely to be reaped once countries have held three consecutive elections.

These two stylized accounts help to illuminate the battle for democracy in Kenya over the last two decades. Democratic reforms in Kenya have never been given; they have always had to be fought for, in line with the basic assumption that underpins Schedler's approach. More specifically, the interconnected processes of electoral reform and electoral competition have played out in much the way that Schedler and Lindberg describe. Although incumbents have constantly sought to block reform, Kenya has made remarkable progress over the last twenty years. President Moi may have implemented the most minimal reforms possible in order to sustain the flow of international financial assistance and win poor quality elections,[92] but over time his decision to lift the ban on opposition parties and allow them to campaign with fewer restrictions on their activities, changed the nature of electoral competition. Over five successive elections (Kenya passed Lindberg's three election threshold in 2002), Kenyan voters and opposition parties converted political openings into political change – the National Assembly, for example, now enjoys relatively high levels of independence from the executive, as Opalo argues in this issue.[93]

Of course, this process has not been without its setbacks. The breakdown of the political system around the 2007 elections provided damning evidence of the lack of consensus on the need to play by the rules of the democratic game.[94] But the violence did not bring an end to the slow process of institutional change; rather, it created a new window of opportunity within which long deferred reforms were initiated. Because of this process and Kibaki's willingness to support constitutional change in 2010, Kenya now has a constitution that

features stronger checks and balances and is potentially far more effective at integrating marginalised communities into the political system. Thus, despite the failings of the electoral system in 2013, the cumulative effect of these changes should not be underestimated.

From a constrained media in 1992, the Kenyan press has become one of the most vibrant on the continent – although the passage of recent legislation that could pave the way for the creation of a Communications and Multimedia Appeals Tribunal with the capacity to impose penalties of up to £146,710 on journalists that violate a code of conduct is a major cause for concern.[95] Opposition parties are largely free to organise their own campaigns and hold rallies, and while presidential elections have – with the exception of 2002 – been won by the candidate with the greatest access to state funding and support, opposition parties have regularly won around half the seats in parliament. Progress towards democratic consolidation is therefore being made, if unevenly and with ongoing threats.

Over the past twenty years, Kenya has therefore undergone two very different processes simultaneously. In one, a perception of an ethnically biased state and the political manipulation of ethnic identities around election times have increased inter-communal tensions and the prospects for civil conflict. In another, a gradual process of iterative reform has moved the country from one of the continent's more repressive regimes to a relatively open and competitive political environment. So far, these two trajectories have occurred side-by-side and it is not yet clear which will win out. While institutional change has so far proved insufficient to resolve inter-communal tensions, ethnic politics has yet to completely undermine the process of gradual reform – as the passage of the new constitution after the post-election violence of 2008 demonstrates. Building a stable democracy will not be easy, but it is far from impossible.

**Bibliography**

AI [Amnesty International] *Police Reform in Kenya: "A drop in the ocean"*. AFR32/001/2013 (January 2013).

Africa Confidential, "The Closest of Shaves", 54, No. 6 (2013), <http://www.africa-confidential.com/article/id/4817/The_closest_of_shaves>.

Africa Confidential, "The Closest of Shaves", 54, No. 6 (2013), <http://www.africa-confidential.com/article-preview/id/4818/Credibility_of_the_IEBC_under_fire>.

AFRICOG. *The Election Petition: Petition Number 4 by AFRICOG Consolidated By the Supreme Court*. Nairobi: AFRICOG, 2013, <http://www.africog.org/category/election-petition>.

Anderson, David. "Kenya's elections 2002 – the dawning of a new era?" *African Affairs* 102, no. 407 (2003): 331-342.

Anderson, David. "Kenya on the brink." *Prospect Magazine* 20 (2008): 142.

Barkan, J. and M. Chege. "Decentralising the State: District Focus and the Politics of Reallocation in Kenya." *Journal of Modern African Studies* 27, no. 3 (1989): 431–53.

Bayart, Jean-Francois. "Africa in the world: A history of extraversion." *African Affairs* 99, no. 395 (2000): 217-67.

BBC News, 'Kenya Supreme Court upholds Uhuru Kenyatta election win', 30 March 2013,  <http://www.bbc.co.uk/news/world-africa-21979298> (2 June 2013).

Brancati, D. "Decentralization: Fuelling the fire or dampening the flames of ethnic conflict and secessionism?" *International Organization* 60, no. 3 (2006): 651-685

Branch, Daniel, and Nic Cheeseman. ''The Politics of Control in Kenya: Understanding the Bureaucratic-Executive State.'' *Review of African Political Economy* 33, no. 107 (2006): 11-31.

Branch, Daniel, and Nic Cheeseman. "Democratization, Sequencing, and State Failure in Africa: Lessons from Kenya." *African Affairs* 108, no. 430 (2010): 1-26.

Branch, Daniel, Nic Cheeseman, and Leigh Gardner. *Our turn to eat: politics in Kenya since 1950.* Berlin: Lit Verlag, 2010.

Brown, Stephen. "Authoritarian leaders and multiparty elections in Africa: how foreign donors help to keep Kenya's Daniel arap Moi in power." *Third World Quarterly* 22, no. 5 (2001): 725-39.

Brown, Stephen and Chandra Lekha Sriram "The big fish won't fry themselves: criminal accountability for post-election violence in Kenya." *African Affairs* 111, no. 443 (2012): 244-60.

Brownsell, James. "Odinga: From the polls to the courts", *Al Jazeera*, 10 March 2013, <http://www.aljazeera.com/indepth/features/2013/03/201331014341081445.html> (3 June 2013).

Cheeseman, Nic. "The Kenyan elections of 2007: an introduction." *Journal of Eastern African Studies* 2, no. 2 (2008): 166-84.

Cheeseman, Nic. "Kenya Since 2002: The More Things Change the More they Stay the Same." In Lindsay Whitfield and Raufu Mustapha, eds. *Africa since 2002*. London: James Currey, 2008.

Cheeseman, Nic. "African elections as vehicles for change." *Journal of Democracy* 21, no. 4 (2010): 139-153.

Cheeseman, Nic. "Kenya in 2012" in Andreas Mehler, Henning Melber, and Klaas van Walraven eds. *Africa Yearbook: Politics, Economy and Society South of the Sahara in 2012*, Leiden: Brill, 2013.

Cheeseman, Nic. "Why villagers love Uhuru and urbanites don't back him", *Democracy in Africa*, 3 August 2013, <http://democracyinafrica.org/why-villagers-love-uhuru-and-urbanites-dont-back-him/> (2 June 2013).

Chege, Michael. "Kenya: Back from the brink?" *Journal of Democracy* 19, no. 4 (2008): 125-39.

Conyers, D. "Decentralisation and Service Delivery: Lessons from Sub-Saharan Africa." *IDS Bulletin* 38, no. 1 (2007): 18-32.
Cornell, Agnes and Michelle d'Arcy, "Plus ça Change? – County Level Politics after Devolution", this volume.

Cottrell, Jill and Yash Ghai. "Constitution-making and democratisation in Kenya, 2000-2005." *Democratization* 14, no. 1 (2007): 1-12.

Diamond, Larry. "The Democratic Roll-back: The resurgence of the predatory state." *Foreign Affairs* 87 (2008): 36-48.

ELOG. *The Historic Vote: Final Report on the Kenyan Elections of 2013*. Nairobi: ELOG, 2013, <http://www.gndem.org/sites/default/files/THE%20ELOG%20REPORT%20-%20Final%20%20Copy-%2028%20-%2007%20-%202013-1.pdf>.

European Union. *Election Observation Mission to Kenya: General Elections 2013 Final Report*, Brussels: EU (2013), <http://eeas.europa.eu/eueom/missions/2013/kenya/pdf/eu-eom-kenya-2013-final-report_en.pdf>.

Ferree et al. "Voting behaviour and electoral irregularities in Kenya's 2013 election." This volume.

Galtung, Johan. "Peace, and Peace Research." *Journal of Peace Research* 6, no. 3 (1969): 167-191.

Ghai, Yash. "Devolution: restructuring the Kenyan state." *Journal of Eastern African Studies* 2, no. 2 (2008): 211-226.

Githongo, John. "Fear and Loathing in Nairobi." *Foreign Affairs* 89 (4): 2-9.

Greiner, Clemens. "Guns, land, and votes: Cattle rustling and the politics of boundary (re) making in Northern Kenya." *African Affairs* 112, no. 447 (2013): 216-237.

HRW [Human Rights Watch]. *Turning Pebbles: Evading Accountability for Post-Election Violence in Kenya*. HRW, 2011.

HRW [Human Rights Watch]. *High Stakes: Political Violence and the 2013 Elections in Kenya*. HRW, February 2013.

ICG [International Crisis Group]. *Kenya's 2013 Elections*. Africa Report No, 197 (17 January 2013).

ICG. *Kenya after the elections*. Africa briefing No. 94 (15 May 2013)

Ipsos Synovate. "Polls Political Barometer Survey: Jubilee First 90 days", 10 July 2013 < http://www.ipsos.co.ke/home/index.php/downloads>

Jenkins, Sarah. "Ethnicity, violence, and the immigrant-guest metaphor in Kenya." *African Affairs* 111, no. 445 (2012): 576-596.

Kagwanja, Peter and Roger Southall. "Introduction: Kenya – a democracy in retreat?" *Journal of Contemporary African Studies* 27, no. 3 (2009): 259-77.

Kahl, C. "Population Growth Environmental Degradation and State-Sponsored Violence: The Case of Kenya, 1991–93." *International Security* 23, no. 2 (1998): 80–119

Kanyinga, Karuti and James Long. "The political economy of reforms in Kenya: the post-2007 election violence and a new constitution." *African Studies Review* 55, no. 1 (2012): 31-51.

Kathina Juma, Monica. "African mediation of the Kenyan post-2007 election crisis." *Journal of Contemporary African Studies* 27, no. 3 (2009): 407-30.

Kegoro, George, "Hassan should stop chasing shadows and release pending poll vote tallies", <http://www.thepeoplescourt.co.ke/opinions/218-hassan-should-stop-chasing-shadows-and-release-pending-poll-vote-tallies> (8 September 2013).

Kenya, Republic of. *Report of the Commission of Inquiry into Post-Election Violence*. Nairobi: Government Printers, 2008

Kenya, Republic of. "Supreme Court Rulings: Petition 5 of 2013 Raila Odinga & Others Vs. IEBC & Others", Petition 5 of 2013, <http://www.judiciary.go.ke/portal/assets/files/Rulings/PETITION%20NO.%205%20OF%202013...DCJ.pdf> (2 June 2013).

Kenya Stockholm, 'Bitter Lessons from the Supreme Court Ruling on Raila Odinga's Petition', 31 March 2013, <http://kenyastockholm.com/2013/03/31/kenya-bitter-lessons-from-the-supreme-court-ruling-on-raila-odingas-petition/> (3 July 2013).

Klopp, J. "'Ethnic Clashes' and Winning Elections: The Case of Kenya's Electoral Despotism." *Canadian Journal of African Studies* 35, no. 3 (2001): 473–517

KNDR [Kenya National Dialogue and Reconciliation]. *Kenya National Dialogue and Reconciliation Monitoring Project. Kenya's 2013 General Election: A review of preparedness, February 2013 report.* <http://www.dialoguekenya.org/Monitoring/%28February%202013%29%204TH%20Review%20Report%20on%20Electoral%20Preparedness.pdf>

Lindberg, Staffan. *Democracy and Elections in Africa*. Baltimore: Johns Hopkins University, 2006.

Lynch, Gabrielle. "The Fruits of Perception: 'Ethnic Politics' and the Case of Kenya's Constitutional Referendum." *African Studies* 65, no. 2 (2006): 233-270

Lynch, Gabrielle. "Durable Solution, Help or Hindrance? The Failings and Unintended Implications of Relief and Recovery Efforts for Kenya's Post-election IDPs." *Review of African Political Economy* 122 (2009): 607-613

Lynch, Gabrielle. *I Say to You: Ethnic Politics and the Kalenjin in Kenya*. Chicago: University of Chicago Press, 2011

Lynch, Gabrielle. "Electing the alliance of the accused: The success of the Jubilee Alliance in Kenya's Rift Valley Province." This volume.

Lynch, Gabrielle. "Trust, Reconciliation, and Sustainable Peace: The case of the Rift Valley." In International Commission of Jurists – Kenya Section (ICJ-Kenya) (eds) *Kenya's Post-Election Agenda*. Nairobi: ICJ-Kenya, Forthcoming 2014.

Mayabi, Lordrick. "14.3 million registered for 2013 poll", Capital FM, < http://allafrica.com/stories/201212201696.html> (3 June 2013); EU EOM, "General Elections 2013".

McGroarty, Patrick & Idil Abshir. "Kenya Vote Begins Amid Threat of Violence", Wall Street Journal, <http://online.wsj.com/news/articles/SB10001424127887324178904578333872216670256> (7 October 2013).

Mueller, Susanne. "Dying to win: elections, political violence and institutional decay in Kenya." *Journal of Contemporary African Studies* 29, no. 1 (2011): 99-117.

Murunga, Godwin R., and Shadrack W. Nasong'o (eds), *Kenya: The struggle for democracy*. London: Zed Books, 2007.

Mutua, Makau. *Kenya's Quest for Democracy: Taming Leviathan*. Kampala: Fountain Publishers, 2008

Mwangi wa Githinji and Frank Holmquist. "Kenya's hopes and impediments: the anatomy of a crisis of exclusion." *Journal of Eastern African Studies* 2, no. 2 (2008): 344-58.

Nasong'o, Shadrack. "Constitutional Reform and the Crisis of Democratization in Kenya". In Daniel Branch, Nic Cheeseman, and Leigh Gardner (eds) *Our turn to eat: politics in Kenya since 1950*. Berlin: Lit Verlag, 2010.

Ngenge, Yuhniwo. "Kenya 2013 elections: reflections on the Supreme Court ruling and the role of the judiciary in democratisation." *Open Democracy*, 18 April 2013, <http://www.opendemocracy.net/yuhniwo-ngenge/kenya-2013-elections-reflections-on-supreme-court-ruling-and-role-of-judiciary-in-dem> (6 September 2013).

Opalo, Kennedy. "The Long Road to Institutionalization: The Kenyan Parliament and the 2013 Elections". This volume.

Oucho, J. O. *Undercurrents of Ethnic Conflict in Kenya*. Leiden, Netherlands: Brill, 2002

The People, "State moves to cut NGOs foreign cash", 4 November 2013, <http://www.thepeople.co.ke/29925/state-moves-to-cut-ngos-foreign-cash/> (2 June 2013).

Posner, D.N., and D.J. Young. "The institutionalization of political power in Africa." *Journal of Democracy* 18, no. 3 (2007): 126-140.

Ossmann, Kathy. "African Great Lakes Initiative Report on Observation of March 2013 Kenyan National Elections", 6 April 2013, <http://kenyanelections2013.org/?p=239> (14 April 2013).

Pykett, J, M. Saward & A. Schaefer. "Framing the good citizen." *British Journal of Politics and International Relations* 12, no. 4 (2010): 523-538.

Robinson, M. "Introduction: Decentralising service delivery? Evidence and policy implications." IDS Bulletin 38, no. 1 (2007): 1-6.

Rutten, Marcel, Alamin Mazrui, and Francois Grignon (eds.) *Out for the Count: the 1997 General Elections and prospects for Democracy in Kenya*. Kampala: Fountain, 2001.

Schedler, A. "The nested game of democratization by elections." *International Political Science Review* 23, no. 1 (2002): 103-122.

Scheilber, Andrea. "The Kenyan Elections of 2013 Workshop Report". Workshop Proceedings, Nairobi Safari Club, June 2013, <www.democracyinafrica.org> (9 November 2013).

Shah, Seema, "Ethnicity and Electoral Legitimacy in 2013: How Kenyans make Judgements about Elections." Paper presented at the Kenyan elections of 2013 workshop, Nairobi, 4 June 2013.

The Telegraph, 'Kenyan press outraged at controversial media law', 1 November 2013, <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/kenya/10420218/Kenyan-press-outraged-at-controversial-media-law.html> (27 July 2013).

Throup, David and Charles Hornsby. *Multi-Party Elections in Kenya.* Oxford: James Currey, 1998.

Tsuda, Miwa. "The experience of the National Rainbow Coalition (NARC): political parties in Kenya from 1991 to 2007", IDE Discussion Paper 22, 2010, <http://ir.ide.go.jp/dspace/bitstream/2344/871/1/222.pdf> (13 August 2013).

---

[1] For a classic example see Patrick McGroarty and Idil Abshir, "Kenya Vote Begins Amid Threat of Violence", Wall Street Journal, <http://online.wsj.com/news/articles/SB10001424127887324178904578337872216670256> (7 October 2013); for the recent academic debate on the potential for elections in Kenya to result in political violence see Jenkins, "Ethnicity, Violence, and the Immigrant-Guest Metaphor" and Greiner, "Guns, Land and Votes".

[2] Shah, "Ethnicity and Electoral Legitimacy in 2013".

[3] *Ibid.*

[4] Interviews and conversations with civil society activists, Nairobi, September and October 2013

[5] Lindberg, *Democracy and Elections in Africa*, 44.

[6] Throup and Hornsby, *Multi-Party Elections in Kenya*; Rutten, Mazrui and Grignon, *Out for the Count.*

[7] Anderson, "Kenya's elections 2002".

[8] Lynch, "The fruits of perception".

[9] Cheeseman, "The Kenyan Elections of 2007".

[10] Kenya, Report of the Commission of Inquiry into Post-Election Violence, 305 & 272.

[11] Lynch, "Durable solution, help or hindrance?", 604.

[12] Kathina Juma, "African mediation of the Kenyan post-2007 election crisis".

[13] Githongo, "Fear and loathing in Nairobi".

[14] Kanyinga and Long, "The political economy of reforms in Kenya".

[15] Mutua, *Kenya's Quest for Democracy.*

[16] Ghai, "Devolution"; Githinji and Holmquist, "Kenya's hopes and impediments".

[17] Mueller, "Dying to win".

[18] Tsuda, "The experience of the National Rainbow Coalition".

[19] Brown with Sriram, "The big fish won't fry themselves".

[20] Kanyinga and Long, "The political economy of reform", 46-47.

[21] Lynch, "Electing the alliance of the accused"; Lynch, "Trust, Reconciliation and Sustainable Peace".

[22] For example see Klopp, "'Ethnic clashes' and winning elections"; Lynch, *I Say To You*; Oucho, *Undercurrents of Ethnic Conflict in Kenya*.

[23] *Daily Nation,* 11 January 2013, "Jubilee anchored on desire for peace, says Uhuru" <http://www.nation.co.ke/News/politics/-/1064/1663400/-/aiftdo/-/index.html> (1 July 2013).

[24] *Daily Nation*, 20 December 2012, "Why Mudavadi-TNA deal failed" <http://www.nation.co.ke/News/politics/Why-Mudavadi-TNA-deal-failed-/-/1064/1648014/-/g4exdqz/-/index.html> (2 July 2013).

[25] 'ODM hurdles won't hinder me in Siaya race, says Oduol', The Star, 29 Jan. 2013, http://184.106.76.113/news/article-104870/odm-hurdles-wont-deter-me-siaya-race-says-oduol; 'Court nullifies Siaya Governor Cornel Rasanga's election, orders fresh poll', *Daily Nation*, 23 August 2013, <http://mobile.nation.co.ke/counties/Siaya+Governor+Cornel+Rasanga+loses+seat/-/1950480/1964654/-/format/xhtml/-/e7e0a8z/-/index.html> (24 August 2013).

[26] *Daily Nation*, 3 February 2013, "Competing coalitions exhibit campaign swag ahead of polls" <http://www.nation.co.ke/Features/lifestyle/Campaign-swag/-/1214/1682300/-/2i1g9/-/index.html> (5 February 2013).

[27] *Daily Nation*, 21 October 2012, "Battle for votes moves to social media" <http://www.nation.co.ke/News/politics/Battle-for-votes-moves-to-social-media/-/1064/1538708/-/i970hxz/-/index.html> (22 October 22).

[28] Lynch, "Electing the alliance of the accused"

[29] *Daily Nation*, 26 December 2012, "Foreigners have no business telling us how to run our polls and other affairs", by Joyce Nyairo <http://www.nation.co.ke/oped/Opinion/-/440808/1651924/-/km1hh3z/-/index.html> (1 January 2013).

[30] Lynch, "Electing the alliance of the accused"

[31] Lynch, *I Say to You*.

[32] *Daily Nation,* 23 February 2013, "Miguna does it again with "Kidneys for the king"", <http://www.nation.co.ke/News/Miguna-does-it-again-with-Kidneys-for-the-King/-/1056/1701708/-/gqial1/-/index.html> (26 February 2013).

[33] *The Star,* 8 February 2013*, "*US warns of ICC consequences" <http://www.the-star.co.ke/news/article-106424/us-warns-icc-consequences>; *Star,* 12 February 2013, "Back off, Kenya tells EU envoy", <http://www.the-star.co.ke/news/article-106988/back-kenya-tells-eu-envoy> (14 February 2013).

[34] The People, "State moves to cut NGOs foreign cash", 4 November 2013, <http://www.thepeople.co.ke/29925/state-moves-to-cut-ngos-foreign-cash/> (2 June 2013).

[35] ICG, *Kenya's 2013 Elections*, 18.

[36] Anderson, "Kenya on the brink"; Chege, "Kenya: Back from the brink?".

[37] Diamond, "The Democratic Roll-back".

[38] HRW, *High Stakes*, 5.

[39] HRW, *Turning Pebbles*.

[40] Lynch, "Electing the "alliance of the accused""; Lynch, "Trust, Reconciliation and Sustainable Peace".

[41] HRW, *High Stakes*, 13.

[42] AI, *Police Reform in Kenya*, 6.

[43] Editorial, 'Role of the police', *Daily Nation,* p. 6, 12 Sep. 1974.

[44] E.S. Atieno Odhiambo,. 'Democracy and the Ideology of Order in Kenya.' In The Political Economy of Kenya, edited by Schatzberg, 177-201. New York: Praeger, 1987.

[45] Lynch, "Trust, Reconciliation and Sustainable Peace".

[46] ICG, *Kenya's 2013 Elections*, 1.

[47] Shah, "Free and fair?".

[48] Ibid.

[49] *The Star*, 6 April 2013, "Whither civil society?", by John Githongo, <http://www.the-star.co.ke/news/article-115523/whither-civil-society> (2 August 2013).

[50] ICG, "Kenya", 3.

[51] *The Star*, 6 February 2013, "Raila ignores police directive on land", by Walter Menya, <http://allafrica.com/stories/201302061526.html> (1 June 2013).

[52] Lynch, "Electing the alliance of the accused".

[53] Cf. Pykett, Saward and Schaefer, "Framing the good citizen", 523.

[54] Interview, local newspaper journalist, Nairobi, 10 April 2013.

[55] Interview, local radio presenter, Nakuru, 3 April 2013.

[56] Interview, local newspaper journalist, Nakuru, 3 April 2013.

[57] Interview, civil society activist, Eldoret, 27 March 2013.

[58] Interview, clergyman, Eldoret, 26 March 2013.

[59] ICG, Kenya after the elections, 4.

[60] *The East African*, 9 March 2013, "The Kenya election and the militarisation of peace" by Keguro Macharia, <http://www.theeastafrican.co.ke/OpEd/comment/The-Kenya-election-and-the-militarisation-of-peace/-/434750/1715508/-/y62oo7/-/index.html> (2 August 2013).

[61] KPTJ [Kenyans for Peace with Truth and Justice], 16 March 2013, "Kenyan Civil Society Group files case challenging Election Process",
<http://transitions.foreignpolicy.com/posts/2013/03/18/trading_peace_for_justice_in_the_kenyan_election?wp_login_redirect=0> (6 October 2013).

[62] Interview, local radio presenter, Nakuru, 3 April 2013.

[63] Interview, Peace activist, Nakuru, 3 April 2013.

[64] Interview, civil society activist, Nakuru, 4 April 2013.

[65] Cf. Galtung, Peace, and peace research". Also see Lynch, "Trust, Reconciliation and Sustainable Peace".

[66] AI, *Police Reform in Kenya.*

[67] Cheeseman, "Kenya in 2012".

[68] KNDR, Kenya National Dialogue and Reconciliation Monitoring Project, 16 & 33.

[69] *Ibid*, 36.

[70] Lordrick Mayabi, "14.3 million registered for 2013 poll", Capital FM,
<http://allafrica.com/stories/201212201696.html> (3 June 2013); EU EOM, "General Elections 2013".

[71] 'IEBC suspends CEO Oswago and Shollei', *The Star,* 1 Nov. 2013, <http://www.the-star.co.ke/news/article-142026/iebc-suspends-ceo-oswago-and-shollei>, (3 Nov. 2013).

[72] AFRICOG, "The Election Petition".

[73] ELOG, "The Historic Vote".

[74] Newspaper article on CORD leaders and electoral commission

[75] ELOG, "The Historic Vote".

[76] Many of the failings of the electoral system are detailed in AFRICOG, "The Election Petition". For more on the CORD response see Africa Confidential, "Credibility of the IEBC under fire" and "The closest of shaves".

[77] See, for example, 'Court nullifies Siaya Governor Cornel Rasanga's election, orders fresh poll', *Daily Nation*, 23 August 2013,
<http://mobile.nation.co.ke/counties/Siaya+Governor+Cornel+Rasanga+loses+seat/-/1950480/1964654/-/format/xhtml/-/e7e0a8z/-/index.html> (24 August 2013).

[78] Cheeseman, "The Kenyan Elections of 2007".

[79] James Brownsell, "Odinga: From the polls to the courts", Al Jazeera, 10 March 2013,
<http://www.aljazeera.com/indepth/features/2013/03/201331014341081445.html> (3 June 2013). For a sense of the anger and frustration that the ruling caused, see *Kenya Stokholm*, 'Bitter Lessons from the Supreme Court Ruling on Raila Odinga's Petition', 31 March 2013,
<http://kenyastockholm.com/2013/03/31/kenya-bitter-lessons-from-the-supreme-court-ruling-on-raila-odingas-petition/> (3 July 2013).

[80] BBC News, 'Kenya Supreme Court upholds Uhuru Kenyatta election win', 30 March 2013,
<http://www.bbc.co.uk/news/world-africa-21979298> (2 June 2013). A summary of the Supreme Court's rulings can be found at <http://www.judiciary.go.ke/portal/supreme-court-rulings1.html> (2 June 2013).

[81] For an interesting discussion see Yuhniwo Ngenge, "Kenya 2013 elections".

[82] Wanyeki, "See no evil".

[83] For example see Barkan & Chege, "Decentralising the State"; Brancati, "Decentralzation"; Conyers, "Decentralisation and Service Delivery"; Robinson, "Introduction".

[84] Nic Cheeseman, "Why villagers love Uhuru and urbanites don't back him", *Democracy in Africa*, 3 August 2013, <http://democracyinafrica.org/why-villagers-love-uhuru-and-urbanites-dont-back-him/> (2 June 2013).

[85] *Ibid.*

[86] Cornell and d'Arcy, "Plus ça Change?".

[87] Interviews and conversations, Nairobi, September and October 2013.

[88] Ipsos Synovate, "Polls Political Barometer Survey: Jubilee First 90 days".

89 Kenya, "Trust, Reconciliation and Sustainable Peace".

90 Schedler, "The nested game", 110.

91 Lindberg, *Democracy and Elections in Africa.*

92 Brown, "Authoritarian leaders and multiparty elections in Africa".

93 Opalo, "The Long Road to Institutionalization".

94 The roots of the Kenya crisis are discussed from a variety of different angles in Branch, Cheeseman and Gardner, *Our Turn To Eat.*

95 *The Telegraph*, 'Kenyan press outraged at controversial media law', 1 November 2013, <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/kenya/10420218/Kenyan-press-outraged-at-controversial-media-law.html> (27 July 2013).