

KENYA AT A TIPPING POINT: THE 2013 PRESIDENTIAL ELECTION

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The 2012 year was a mixed year for democracy in Africa, with both progress and disappointment. Notably, peaceful transitions followed the deaths of sitting heads of states in Malawi, Ghana and Ethiopia, and relatively peaceful elections occurred in Angola, Egypt, Senegal, Ghana and Guinea-Bissau. In addition, after many years under the rule of the fragile Transitional Federal Government, Somalia successfully held elections for a new president. However, other transitions were neither as peaceful nor as democratic: Mali experienced a military coup, while Libyans ousted their long-standing leader after a bloody popular uprising.

In 2013, elections that could result in leadership transitions are scheduled to take place in Ethiopia and Madagascar. There is also the likelihood that Zimbabwe will hold elections sometime next year, meaning a possible exit of the long-serving incumbent Robert Mugabe. However, probably the most significant presidential election will be in Kenya on March 4, and it is likely to have far-reaching implications not only for Kenya but also for the region.

Kenya's election will not only see the exit of the incumbent president, Mwai Kibaki, but it will also be the first presidential election under a new devolved constitution (Government of Kenya, 2010). This will also be the first general election after the 2007-2008 post-election violence, and there is growing anxiety over whether there will be a repeat outbreak of violence. In fact, two of the leading candidates for president, Uhuru Kenyatta and William Ruto, are currently facing charges at the International Criminal Court (ICC) for allegedly being involved in the 2007 post-election violence. This issue has continued to polarize Kenya and prevented the healing process in the country.

Free, fair and peaceful elections would go a long way in solidifying democracy in Kenya and creating conditions for sustained economic growth. However, should the election erupt in violence, the country's prospects for economic growth would be greatly hampered with far-reaching adverse consequences for other African countries, especially those in the East African Community. Actually, there are early indications that Kenyans will head to the

polls more fractionalized along ethnic and regional lines compared to the previous election, primarily because of the ICC process. Even if the elections are free, fair and peaceful, the outcome may have broader international implications should one of the candidates indicted by the ICC win. Beyond the presidency, the election will see the operationalization of 47 new decentralized units of governments headed by governors. Implementation of this devolution process is expected to radically change service delivery and government-citizen relations in Kenya.

Post-Moi Era Elections and Post-Election Violence

To appreciate the various dynamics at play in the next election including the main players, it is important to reflect on the recent political developments since the end of President Daniel Moi's 24-year rule and especially the 2007 post-election violence. At the height of the transition to replace Moi, current leading presidential candidates—Uhuru Kenyatta, Kalonzo Musyoka, Musalia Mudavadi and Raila Odinga—were all appointed vice chairs of the then-ruling party, the Kenya Africa National Union (KANU). This was Moi's strategy to edge out then-Vice President George Saitoti from party leadership. Moi later anointed Uhuru Kenyatta to be KANU's presidential candidate, a move that led Musyoka, Odinga and Saitoti to leave KANU and to join the opposition party—the National Rainbow Coalition (NARC)—led by the current president, Kibaki, while Mudavadi, Kenyatta and Ruto remained firmly in KANU.

In 2002, a pre-election memorandum of understanding (MOU) was agreed upon between Kibaki, Odinga and other leaders on how they would share power and government positions should NARC win. Kibaki won the 2002 election, but cracks in the coalition started to appear immediately with claims that Kibaki had ignored the pre-election MOU. The relationship between Kibaki and Odinga reached a breaking point over a draft constitution that Kibaki supported but Odinga opposed. The draft constitution was rejected in a referendum held in 2005. As the 2007 elections approached, new coalitions formed with Odinga leading one camp—the Orange Democratic Movement (ODM)—with Kalonzo, Mudavadi and Ruto; while Kenyatta remained in the renamed Party of National Unity (PNU) headed by Kibaki. ODM later split with one wing headed by Odinga

and the other by Musyoka. The three—Kibaki, Odinga and Musyoka—were the main presidential candidates in 2007.

Unlike the 2002 election that had brought together different ethnic groups to support Kibaki against the Moi-supported KANU candidate, the 2007 elections were marked by deep ethnic alignments. A tight race emerged between the incumbent Kibaki and Odinga. The Election Commission declared Kibaki the winner, and he was immediately sworn in for a second term. Kibaki made a post-election deal with Musyoka, who joined the government as vice president—further isolating Odinga. Odinga and his ODM party rejected the results and violence erupted in many parts of Kenya, especially in Nairobi, Kisumu and the Rift Valley. The violence resulted in the deaths of over a thousand people and the displacement of hundreds of thousands of others.

Although the violence was triggered by the claim that the election had been “stolen,” it did appear that in the worst hit parts of the Rift Valley, the violence was well-planned and mirrored prior episodes of violence during the 1992 and 1997 elections. Thus, while it was the case that the announcement of Kibaki's victory did trigger the violence, the underlying causes were much broader and, in many instances, reflected historical grievances. In the Rift Valley, violence was directed at members of the Kikuyu and other communities considered “outsiders” by the Kalejins. In Nairobi and Kisumu, violence was mainly between the Luo and Kikuyus. The violence escalated when organized gangs (mainly Kikuyu) retaliated against the attacks in parts of the Rift Valley. Following the violence, several senior politicians were accused of fueling the conflict and some of them, including two key players in the 2013 election, were later indicted by the International Criminal Court.

The Key Players in the 2013 Kenya Elections

Currently there are 43 registered political parties in Kenya, yet only a few will be fielding candidates for the presidency. There are many candidates who have been campaigning for the presidency, but only five have a good shot at winning—Deputy Prime Minister Uhuru Kenyatta (The National Alliance Party, TNA), Vice President Kalonzo Musyoka (WIPER Democratic Movement,

WDM), Deputy Prime Minister Musalia Mudavadi (United Democratic Forum, UDF), Prime Minister Raila Odinga (Orange Democratic Party, ODM) and William Ruto (United Republican Party, URP). While other candidates are credible in their own right (including Charity Ngilu, Martha Karua, Peter Kenneth and James Kiyapi), they do not seem to have much of a national following.

Among the top five candidates, there are little discernible ideological differences. In many respects, they are ideological clones, and their respective party manifestos are practically identical. All five served as cabinet ministers during the first Kibaki administration and also under the coalition government. In addition, at one time or another, they were all close political allies of former President Moi.

Kenyatta and Odinga are the leading candidates and appear to have the best chance to win the presidency. The other three candidates (Mudavadi, Musyoka and Ruto) have significant support in their home regions. However, none of these three are likely to receive enough votes to move past the first round. The new constitution stipulates that a candidate for president will be declared winner if he or she receives more than half of all the votes cast in the election. Thus, it is almost certain that there will be a runoff between the top two candidates. Another constitutional requirement is that candidates cannot change their party affiliation for a certain period of time before the election. Initially, this period was three months, but it has been amended to two months. This rule means that candidates will have to form coalitions before that date, and already the leading candidates are negotiating coalitions. Kenyatta, Ruto and Mudavadi have entered into what has come to be known as the Jubilee alliance that will have Kenyatta and Mudavadi compete for the nomination for the alliance's presidential candidate and Ruto as the running mate. Odinga and Musyoka have also entered into a coalition, the Coalition for Reform and Democracy (CORD), and both will compete for the nomination. Charity Ngilu who was also a signatory to CORD, later withdrew from the alliance and joined the Jubilee alliance. Such realignments are likely to increase polarization along ethnic lines—an unexpected result of the new voting rule. It is also likely that pre-runoff coalitions will form as some losing candidates may join together to

support one of the two remaining candidates. These coalitions will be crucial in determining the winner.

The 2013 Election and the International Criminal Court Process

Even if the elections are peaceful, the ICC proceedings will continue to exacerbate ethnic tensions within Kenya and in its relationship with the international community. Both Uhuru Kenyatta and William Ruto, who are leading contenders in the upcoming election, have been indicted by the International Criminal Court. They are expected to face trial after the elections (Kimenyi, 2012; Kimenyi & Kamau, 2012). Both Kenyatta and Ruto have significant support from their respective ethnic communities, and these groups see the ICC indictments as a form of victimization. There is a high probability that coalitions with Kenyatta or Ruto or a candidate with their support will win the election. Indeed, the winning ticket will likely involve one of the two. Therefore, such an outcome presents major challenges for how Kenya handles the ICC process.

The Expected Impact of the Decentralized Government

The other important dimension of the upcoming election is the establishment of decentralized, local governments. Under the new constitution, there will be 47 county governments that will be headed by a governor. In addition, each county will elect representatives to a newly established national senate. This is a major step toward reducing the concentration of power in the central government. If devolution is successful, it could help promote economic and social development since the government will be closer to the people and be able to better cater to the different needs of the counties. However, devolution could also create some unexpected negative consequences, such as exacerbate regional inequalities and marginalize minority ethnic groups in some communities.

Hoping for the Best and Preparing for the Worst

The 2007 post-election violence shook Kenya to the core and erased its status in Africa as a country devoid of conflict. There is a great expectation that Kenyans have learned their lesson and are unlikely to engage in violence this time around. Moreover, there have been major

political reforms that should ensure free and fair elections—especially in the judicial and electoral institutions. Nevertheless, the government intelligence and security forces must be prepared to deal with the possible outbreak of conflict. Recent conflicts in the Tana Delta demonstrate that Kenya is still not immune to ethnic conflict.

The ICC process has been counterproductive to building a united Kenya and has instead exacerbated ethnic polarization. Even if those politicians who are indicted do not win the election, the fact that they have a large following suggests that the scars from the 2007 post-election violence will remain for a long time, and the likelihood of future conflict is real (Kimenyi, 2012). There is a good chance that a Kenyatta/Ruto ticket could actually win the presidency and increase major tensions in the country, especially because the ICC intervention is viewed more and more as political rather than judicial. A win by the two would also create a major diplomatic issue for the country. It is therefore critical that the ICC be extremely careful in regard to its investigations and proceedings to ensure that the process is fair, transparent and entirely judicial. The

people of Kenya must also concentrate on building their own strong institutions to deal with cases of electoral violence rather than relying on the ICC process, which seems to be dividing the country even more.

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