Kenya’s 2013 election: Lessons for democracy promotion

On 4 March 2013, Kenya held general elections for six levels of government office, under a new constitution adopted in 2010. The elections were largely peaceful, and produced a presidential result that was ultimately accepted by losing parties. Given the controversy, instability and violence that followed the flawed polls of December 2007, and the scale of the challenge posed by the 2013 elections – six simultaneous ballots in a single day, across a large and diverse country – this was no mean feat. However, while the elections were peaceful, the electoral process broke down in multiple ways. As a result, the principal opposition alliance appealed against the result and continues to insist that the polls were not fully free and fair, although they accepted a Supreme Court decision that upheld the presidential result. More worryingly, a significant number of Kenyans – largely concentrated in the historically marginalised areas of the country and opposition strongholds – do not believe that the election was free and fair and have lost faith in key public institutions. The election thus offers a contradictory picture, and it is unclear whether, in the long run, it will have furthered the consolidation of democracy.

Given the range of institutional and social programmes supported by the international community and local civil society between 2008 and 2013 – from the implementation of a new constitution and establishment of a new electoral commission to inter-community dialogue sessions and peace campaigns – this mixed legacy offers important lessons for those involved in democracy promotion. This briefing highlights some of the lessons that can be drawn in the areas of institutional reform, the promotion of democratic norms, peace and justice, and technologies and their implementation. But first, one needs to set these lessons in context.

Kenya’s 2013 election and the fear of violence

Kenya’s 2007 elections were followed by widespread violence, triggered by accusations that Mwai Kibaki’s presidential poll victory over Raila Odinga was the result of malpractice. Over 1,000 people died, and 700,000 more were displaced. The violence was shocking in its scale and intensity, in the high levels of inter-communal animosity it revealed, and the apparent ease with which a seemingly peaceful country was brought to the brink of civil conflict. The general consensus was that, while the crisis was triggered by an electoral dispute, it was fuelled by deep-seated problems including: a culture of impunity; the loss of the state’s monopoly over the legitimate use of force; a winner-takes-all political logic; ethnically-delineated narratives of marginalisation and historical injustice; high youth unemployment; and social and spatial inequalities. It was widely acknowledged that these intractable problems had not been sufficiently addressed by the time of the 2013 elections. Together with previous episodes of election-related violence in 1992 and 1997, the experience of 2007/8 led many commentators to fear that the polls and, more specifically, the announcement of the results, could trigger further violence in 2013.

Ultimately, however, the 2013 election proved relatively peaceful. This was despite controversy over the electoral register and the failure of new technology; an extremely close presidential election in which Uhuru Kenyatta of the Jubilee Alliance won a surprise first round victory by just 8,418 votes; and the initial rejection of the result by his principal opponent, Raila Odinga of the Coalition for Reform and Democracy (CORD). Rather than call his supporters out onto the street, as he did in 2007, Odinga brought an electoral petition before the new Supreme Court and then accepted the court’s validation of the official results. One of the questions that the election raises is thus: why, despite questionable credibility, were results ultimately accepted, and what does this mean for the efficacy of democracy support efforts and the future of Kenya’s democracy?

Political institutions, political culture and the reform agenda

The post-election crisis of 2007/8 prompted an ambitious programme of institutional reform. Most notable was the inauguration of a new constitution in 2010, which, among other things, sought to decrease the powers of the President, devolve power to new county governments and formally establish a broad range of human and socio-economic rights. Partly as a result of this new constitution, a number of key institutions were reformed including the
police and judiciary – although the latter more successfully than the former – while the Electoral Commission of Kenya (ECK) was disbanded and replaced by the new Independent Electoral and Boundaries Commission (IEBC). Efforts were also made to change political behaviour through the institutionalisation of political parties, and closer monitoring and prosecution of incitement and organised violence, through new rules and regulations and intervention of the International Criminal Court (ICC) to investigate those deemed most responsible for the post-election violence of 2007/8.

A number of important lessons can be drawn from these processes. First, institutional reforms and interventions had a strong impact on the way in which political actors and their supporters responded to the result. Because the electoral commission and the judiciary had recently been reformed and enjoyed extremely high levels of public confidence and international support going into the election, Odinga was left with little option but to go to the Supreme Court with his complaints, and then accept its verdict. In turn, high expectations of devolution served to mitigate popular dissatisfaction with the presidential election in opposition strongholds due to CORD’s success in securing control of new county governments. At the same time, closer monitoring of hate speech throughout the campaign, and the fear of international prosecutions for human rights abuses, served to curtail incitement and political violence.

However, while institutional reforms increased public confidence in key political processes and thus rendered violence less likely, they were less successful in changing other aspects of political behaviour. For example, the new constitution and associated legislation had sought to encourage the emergence of a new kind of political party that would promote internal democracy with the aim of ending the dominant pattern of ‘big man’ clientele politics and ushering in a new period of popular involvement in determining party policy. However, this simply did not happen, as shambolic party primaries and ongoing practices of voter bribery demonstrated. Such institutional reforms failed for two reasons. First, nothing was actually done to change the incentive structures facing political leaders or to inculcate a different set of expectations amongst their supporters. Second, in the face of outright defiance by political leaders, the IEBC and the judiciary drew back from enforcing the laws at key moments.
This leads to a second important lesson, namely that processes of political engineering through institutional or constitutional reform can only be achieved through a long-term strategy that addresses social as well as institutional change and enjoys the commitment of politicians and other key actors.

The third key lesson to be learnt from the 2013 polls is that while Kenyans were generally happy to accept external support for a long-awaited programme of constitutional reform, many reacted negatively to interventions that seemed to favour one political candidate over another. In the wake of the 2008 election violence the International Criminal Court (ICC) had pressed charges against six people, including Uhuru Kenyatta (an ally of Kibaki at the time) and William Ruto (then an ally of Odinga). Largely as a result, Ruto supported Kenyatta’s candidacy in 2013. In the run-up to the polls a number of key international actors expressed their support of the ICC process and their formal policy of limiting contacts with ICC indictees. Such statements were interpreted as evidence of international meddling in support of Odinga. The Jubilee Alliance proved able to turn it to their advantage, presenting Kenyatta and Ruto as victims of an international conspiracy by ‘the West’. This successful public relations war against the ICC chimed with anti-neocolonial sentiments on the ground and helped the Jubilee Alliance to effectively mobilise their supporters. Kenyatta’s victory is thus evidence of the unintended, and perverse, consequences that well-intentioned interventions can have, especially when they are seen to cross the line of interfering with domestic politics.

**Peace versus justice?**

Awareness of the deep roots of the 2007/8 post-election violence, and partial reforms, led a wide range of actors – from members of the international community to local politicians, civil society activists and clergy – to emphasise the importance of maintaining peace in 2013. However, the emergent ‘peace narrative’ proved Janus-faced. On the one hand, it helped ensure that the election was Kenya’s most peaceful since a return to multi-party politics – an outcome that should not be underestimated given the high stakes involved and slim margin of Jubilee’s first round victory.

On the other hand, a near-continuous emphasis on peace – together with the way that this usually well-intentioned message was used for political gain – also helped delegitimise dissent in ways that could have negative implications for Kenya’s longer-term peace and stability. Most importantly, the pervasiveness of this peace narrative helped to legitimise a range of repressive measures including an unconstitutional police ban on political meetings and demonstrations in the wake of the elections and then again at the time of the Supreme Court’s decision on the basis that they constituted a ‘threat to peace’. At the same time, the great premium placed on peace was invoked to defend the strategic location of security forces in CORD strongholds that, while understandable, no doubt intimidated many opposition supporters. A similar logic was also employed to justify the use of force to quell dissent when it occurred, with six confirmed fatal police shootings during demonstrations that followed the Supreme Court’s validation of the presidential election on 30 March.

It is also possible that concern for national stability shaped the Supreme Court’s response to CORD’s election petition. This is certainly the perception of many opposition leaders and supporters, who believe that the decision to unanimously reject the appeal was motivated by political, not judicial, concerns. If the court did intend to convey an image of unity and minimise the prospects of political conflict it backfired because the initial cursory decision and the absence of a dissenting opinion left many CORD supporters feeling that their concerns were not treated seriously, and that a focus on peace and stability prevailed over ‘truth’ and ‘justice’.

The Supreme Court’s ruling also has important implications for future elections. Most significantly, it seems likely that the burden of proof adopted and the limited time for losing parties to put together their case, will make it all but impossible for the court to reject the outcome of future presidential elections in the absence of a clear ‘smoking gun’. This is important because it raises questions about how losing candidates and their supporters, and the international community, would respond to more glaring and unacceptable irregularities in future elections. Will Odinga, or his successor, be willing to go to the Supreme Court knowing that the official results are most likely to be validated, or, as in 2007, would they instead opt to go out onto the streets in protest?

Significantly, many CORD supporters appear to have ‘accepted’ the results of the 2013 election because of the importance placed on peace and the sense that Kenyatta was likely to win any run-off election. But this resignation in the face of defeat – by CORD politicians and their supporters – should not be read as proof of universal confidence in the political process. Instead, many Kenyans did not mobilise against the official result because they were afraid that taking their protests to the streets would trigger violence and found it difficult to challenge new institutions in which they had placed so much hope. This situation is unlikely to hold for future elections and so the potential for political unrest is likely to rise. In this regard it is particularly troubling that public opinion concerning the election is divided not only on political lines, but on regional and ethnic ones as well. As a result, the disputed 2013 election may be added to the list of grievances among communities on the socio-economic periphery who have never provided a president.

The lesson for those involved in democracy support initiatives is two-fold: peace campaigns can bear fruit in the short-term, however, an emphasis on peace to the neglect
of the credibility of political processes has the potential to threaten the consolidation of democracy in the longer-term. Finding a balance between peace and political competition is necessary if countries are to actually achieve a lasting peace that is not simply the absence of violence, but is based on more cohesive inter-ethnic relations and broad public confidence in the rules of the game.

Technologies and implementation

The IEBC succeeded in the immense logistical task of establishing, staffing and equipping some 34,000 polling streams. However, the new technology introduced to safeguard the electoral process failed during the voting and tallying processes. Three new processes had been introduced to protect against rigging. First, voters were to be biometrically registered using their fingerprints to ensure that no individual could register more than once. Second, voters were to be biometrically verified – in other words, in order to vote individuals would have to prove their identity 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 had been counted 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. However, while biometric registration led to Kenya’s cleanest register to date, the electronic identification and transmission of votes collapsed. In addition, key elements of scrutiny slipped, including the removal of election observers from the national tallying centre. The observers were subsequently re-admitted, but only to a vantage point from which they could not verify the numbers tallied. Despite this they made no public statement at the time, creating the public impression that they had enjoyed full access.

A number of lessons can be drawn from this experience.

First, high public confidence in the IEBC prior to the elections owed much to the introduction of new technology, which in this sense contributed to a peaceful poll. However, the use of new technology in and of itself does not ensure the credibility of the election and the collapse of such systems can undermine confidence in the electoral system even if no actual rigging takes place.

Second, the Kenyan case shows how the introduction of new technology requires significant preparation and testing. There are two important issues here: the ease with which technology can be tampered with to support electoral manipulation, and basic logistical challenges. But this does not mean that technology cannot be used. There was nothing specific to Kenya that made it inevitable that the technology would fail. Mobile phone companies engage in a more complex array of transactions every day. Rather, the new technology did not work because of a lack of basic planning and testing, and as a result would most likely have failed in any country in the world.

Third, faith in new technology fostered a sense of complacency and led people to give insufficient attention to the credibility of electoral processes before and during the election. The most extensive election monitoring was conducted by the domestic Election Observer Group (ELOG), which, among other things, conducted a parallel vote tabulation (PVT) or an exit poll. However, a margin of error of plus or minus three per cent in the context of a close election meant that the PVT was unable – despite claims to the contrary – to validate the electoral result because it showed that Kenyatta could plausibly have polled anywhere from 46.7 per cent to 52.7 per cent. International election observation teams could also have done more to alert the public to the restrictions placed on their activities and will need to consider whether their long silence in between reports is suitable in countries in which the credibility of the polls changes by the day.

Conclusions

The lessons of Kenya’s most recent election are thus mixed. Perhaps the most important lesson however, is the difficulty of predicting with any certainty the direction or extent of progress or decline in the quality of election administration. In short, processes of democratisation are not clear-cut or linear, but the result of complex and interrelated processes. Institutional reform is likely to mean little if democratic norms are not instilled and the political elite are not provided with the necessary incentives to play by the rules of the game. Democracy is not something that is immediately created by the adoption of a new constitution, but a political ideal that needs to constantly be fostered and supported.

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