

Analysis No. 170, May 2013

FRAGMENTATION AND DEMOCRATIC TRANSFORMATIONS IN KENYA: ETHNICITY AS AN OUTCOME RATHER THAN A CAUSE (1992-2013)

Andrea Rigon

The article analyses the relationship between ethnicity and political pluralism in Kenya, exploring the post-independence political process with a focus on the democratic transition of the past 20 years. The paper argues that political ethnic mobilisation and violence cannot be appreciated without considering the fragmentation of the political elite and their struggle for the control of public assets such as land. The article concludes by looking at the 2007 post-election crisis – the worst outbreak of violence in Kenyan history – and, examining the past five years, it provides an assessment of the recent 2013 elections and democratic progress thus far.

Andrea Rigon, works at the Development Planning Unit, University College London. He is currently working on the DFID-funded initiative Participate: knowledge from the margins.

Fifty years after its independence, ethnic mobilisation still plays a key role in the politics of contemporary Kenya. Today, it is not possible to understand the formation process of the Kenyan nation-state – and particularly the democratic transformations of the past two decades – without dealing with ethnicity. In 2002, the relatively peaceful political change that took place via elections, which ended the 24 year long autocratic rule of President arap Moi, convinced many that the process of democratisation initiated with the 1992 multiparty elections had finally been accomplished. However, just five years later, the alleged rigging of the presidential elections led one of the most stable African democracies into what was by far the deadliest crisis of post-independent Kenya, causing over 1,100 deaths and hundreds of thousands people to be displaced.

It is not surprising that during the March 2013 presidential elections, foreign press and diplomatic staff were very concerned with the possibility of another explosion of ethnic violence. Due to a failure in the IT system, voters had to wait five days from the moment they cast their ballot to find out who was the winner. Uhuru Kenyatta, son of the ‘Father of the Nation’ Jomo Kenyatta and already the vice-president, was elected as the fourth Kenyan president in the first round by a very slim margin (50.5%). Uhuru Kenyatta and his vice-president, William Ruto, are also the two highest-level political figures of the six Kenyans facing trial at the International Criminal Court (ICC) for crimes against humanity, allegedly committed in the aftermath of the 2007 elections. On the surface, the victory of those deemed responsible for the deadliest ethnic violence in the country’s history created serious concern, and the news was not received positively by Western governments and media.

As often happens, a peaceful election is quickly interpreted as an accomplished democratic transition; likewise, political violence is rapidly understood to be a ‘return to primordial tribalism’. This article argues that it is important to contextualise political events within a longer-term historical perspective in order to shed some light on the recent democratic process in Kenya, and offer a more balanced and realistic account.

Moreover, this paper claims that in order to understand the relationship between democratic political competition and ethnic fragmentation, there is the need to add a third dimension to the analysis: control over state resources (particularly land) and their distribution. This analysis will also demonstrate how political competition in Kenya effectively takes place between only a few key actors, and it will

therefore highlight the importance of an analysis of the fragmentation of the ruling elite, as well as how their alliances and conflicts determine the patterns of ethnic political violence in the country. After a couple of introductory premises, the article will present the political history of

In 2002, the relatively peaceful political change that took place via elections, which ended the 24 year long autocratic rule of President arap Moi, convinced many that the process of democratisation initiated with the 1992 multiparty elections had finally been accomplished

political competition in Kenya effectively takes place between only a few key actors, and it will therefore highlight the importance of an analysis of the fragmentation of the ruling elite, as well as how their alliances and conflicts determine the patterns of ethnic political violence in the country

Kenya with a specific focus on ethnicity and the events of the last two decades. Different ways to interpret the complex relationship between ethnic fragmentation and democratisation in Kenya will be offered to the reader and employed to draw some conclusions on the latest elections. Processes of democratisation have been initiated in many African autocracies since the 1990s. Democratic governments were thought to be more legitimate and accountable, and therefore capable of mediating between sub-national ethnic interests, thus preventing political violence. They were also considered more able to create a conducive environment for economic growth and development. Unfortunately, the outcomes of recent elections have shown that democratic political competition in ethnically diverse African countries may actually lead to political instability¹. One of the key failures of democratic politics has been the inability to achieve a fairer distribution of state resources, particularly land. In the case of Kenya, land is the most important political issue due to its importance in the country's culture and history from colonialism to independence, and because of the inequality of its distribution². Considering that the reward for electoral victory is control over key resources, it is not surprising that politicians use the full range of available means to win the contest. According to Dercon and Gutierrez, prior to the 2007 Kenyan elections, half the voters interviewed experienced attempted vote buying³. Another key finding of their work was that rather than ethnicity or wealth, living in an area which had experienced land disputes in the past is a key determinant of the likelihood of being a victim of post-electoral violence⁴. Before a brief and selective historical overview of the history of independent Kenya, it is important to provide a picture of Kenyan ethnic diversity as a useful reference for understanding the article below. In Kenya there are more than 40 ethnic groups; however, the major 5 ethnicities account for roughly two-thirds of its population of 38.6 million (National Census 2009). The same census figures presented the following ethnic composition: Kikuyu 17%, Luhya 14%, Kalenjin 13%, Luo 10%, Kamba 10%, Kisii 6%, Mijikenda 5%, Meru 4%, Turkana 2.5%, Maasai 2.1%. The remaining 9% belongs to smaller indigenous groups.

¹ E.D. MANSFIELD and J.L. SNYDER, *Electing to fight: why emerging democracies go to war*, Cambridge, Mass. London, MIT, 2005.

² D. PORTER, B.J. ALLEN, G. THOMPSON, *Development in practice: paved with good intentions*, London, New York, Routledge, 1991, p. 25; R. SOUTHALL, *The Ndungu Report: Land & Graft in Kenya*, in 'Review of African Political Economy', vol. 32, no. 103, 2005, pp. 142-151, cit. p. 144.

³ S. DERCON and R. GUTIERREZ-ROMERO, *Triggers and Characteristics of the 2007 Kenyan Electoral Violence*, in 'World Development', vol. 40, no. 4, 2012, pp. 731-744, cit. p. 742

⁴ *Ibidem*, p. 732.

The Kenya African National Union (KANU) ruled the country for almost 40 years from independence in 1963 until its electoral defeat in 2002, and was the only party in the single-party system in place from 1982 to 1991. When Kenya became independent, Kenyatta, the first president and a Kikuyu himself, created a one-party state in 1969 to curb dissent. Following his death, his Kalenjin successor, Moi – after a failed *coup d'état* in 1982 – changed the constitution to legally ban opposing political parties. Popular mobilisation for constitutional reforms began in 1990, in an attempt to obtain multiparty elections and greater political freedom. Under strong foreign and domestic pressure, Moi allowed the necessary constitutional changes to make the first multiparty elections possible in 1992, and in 1995 announced that foreign legal experts would help to draw up a new constitution.

Despite the emergence of new parties, the political use of violence, intimidation and irregularities, as well as opposition fragmentation and strategic errors, contributed to Moi's victory in 1992 and 1997. The multi-ethnic opposition front that struggled in unison against the Moi regime, demanding free democratic elections, rapidly collapsed along ethnic divisions at the moment of constituting an electoral alliance. In this ethnically fragmented political context, Moi – who still controlled state resources and thus could easily buy votes and fund political intimidation – won both elections without difficulty. In 1992, Moi used his young Kalenjin lieutenant, William Ruto, to conduct a campaign of intimidation in the Rift Valley (which accounted for roughly 30% of total voters). Pre-electoral violence was concentrated in Western Kenya and the Rift Valley. The Rift Valley had also been the epicentre of the 2007-2008 ethnic violence. There, land disputes originated in pre-independence land allocation by the colonial government. It had tried to weaken the Mau Mau rebels by buying the support of Kikuyu's members by offering them land in the Rift Valley, displacing the local Masai and Kalenjin. In the 1990s, the Kenyan ruling class recruited ethnic gangs to carry out political intimidation. Ethnic clashes were not spontaneous manifestations, but rather were orchestrated and used as powerful political tools. An independent NGO, the Kenya Human Rights Commission⁵, estimates that there were over 4,000 deaths and 600,000 displaced people caused by state-sponsored political violence in the 1991-2001 period. Finally, ahead of the new elections, Moi made the mistake of unilaterally putting forward Uhuru Kenyatta as his successor, thus frustrating political allies and favouring for the first time a united opposition, which managed to win the 2002 elections. A key element of this successful alliance was the agreement that, if elected president, Mwai Kibaki, a Kikuyu who had been Moi's vice-president for 11 years, would nominate the Luo leader

Popular mobilisation for constitutional reforms began in 1990, in an attempt to obtain multiparty elections and greater political freedom

The multi-ethnic opposition front that struggled in unison against the Moi regime, demanding free democratic elections, rapidly collapsed along ethnic divisions at the moment of constituting an electoral alliance

⁵ Cited in S. DERCON and R. GUTIERREZ-ROMERO, *op. cit.*

Raila Odinga to the new position of prime minister. This was a position that Kibaki pledged to create by promulgating a new constitution within the first 100 days of his mandate to limit presidential powers⁶. Kibaki did not maintain his promise and offered Odinga only a ministerial position. Odinga boycotted the process of drafting a new constitution and led a coalition of actors to successfully reject the proposed new constitution in a popular referendum in 2005. The winning coalition formed the Orange Democratic Movement which, despite internal heterogeneity, agreed to support Odinga against Kibaki in the 2007 presidential race.

To understand the events so far, it is important to highlight again that Kibaki is a Kikuyu, the main Kenyan ethnic group, and the same ethnicity as the first president. Since independence, Kenyatta's patronage politics favoured the Kikuyus, who still occupy the majority of political and economically powerful positions. Raila Odinga is a Luo and his father, Oginga Odinga, was the main representative of the Luos in the nationalist movement and also Kenyatta's first vice-president. However, when he disagreed with the president and resigned, he was jailed. When Odinga tried to constitute a new party, while under Moi, he was confined to house arrest. The public agreement between Kibaki and Odinga reconciled the two parties and led to the electoral victory of 2002, but Kibaki's refusal to respect the agreement and nominate Odinga as prime minister was perceived by the Luo as a further frustration to their ambitions after what they perceived as 40 years of Kikuyu dominance.

In 2007, the opinion polls and early counting indicated Odinga to be the winner. Raila's ODM party also won 99 seats against the 43 won by MPs of Kibaki's PNU party⁷. Nevertheless, the election commission declared that Kibaki had won. Amid serious accusations that the elections had been rigged, violence allegedly promoted by the political leadership exploded. There were two major streams of violence: in the Rift Valley (primarily Kalenjin vs. Kikuyu) and in Nairobi informal settlements (mostly Luo and Kalenjin vs. Kikuyu but also many confrontations with the police). The violence emerged as the result of a polarisation of the voting blocs pro and against the Kikuyus, built during a campaign that largely focused on the issue of devolution and regionalism. Over 400 of the 1,133 victims reported in the official figures were killed by police bullets⁸. Peace was restored with a power sharing agreement brokered by Kofi Annan, which created a government of national unity. In 2010, a referendum passed a

it is important to highlight again that Kibaki is a Kikuyu, the main Kenyan ethnic group, and the same ethnicity as the first president. Since independence, Kenyatta's patronage politics favoured the Kikuyus, who still occupy the majority of political and economically powerful positions

⁶ A. RIGON, *20 years of 'sweat and blood': lessons from the constitutional review process in Kenya*, ISPI, Policy Brief no. 188. Retrieved from http://www.ispionline.it/it/documents/PB_188_2010.pdf.

⁷ Research demonstrates that there is no evidence of people voting differently in the parliamentary and presidential elections, which took place simultaneously (S. DERCON and R. GUTIERREZ-ROMERO, *op. cit.*).

⁸ Commission of Inquiry into the Post Election Violence (CIPEV), *Final Report*, 2008.

new constitution, which has become fully effective only after the recent March elections.

As mentioned at the beginning, Uhuru Kenyatta, allied with the Kalenjin leader William Ruto, won the 2013 elections by a tiny margin. As in 2007, Odinga refused to recognise his defeat but this time he took the issue to court rather than mobilising street protests. He also understood that whether or not Kenyatta had won the absolute majority in the first round, Kenyatta would have certainly won a run-off between the two of them. Therefore, Odinga conceded defeat when the court rejected his claim of irregularities and argued that elections were fair and transparent.

Elite and cleavages

The article will now provide different keys to interpret these events. A first point is to avoid ethnic determinism and rather, as suggested by Omolo, analyse the relationship between ethnicity and democratisation as the result of history, agency and contingency⁹. It is important to highlight that under Moi, before and after the reintroduction of a multiparty system, ethnic politics was the main expression of opposition politics¹⁰. Considering the brief experience in competitive politics, Ajulu argues that ethnicity rather than class is the key source of political contestation in Kenya¹¹. However, according to him the political violence of the 1990s cannot be directly linked to ethnic hatred, but rather to a conscious mobilisation of ethnic sentiments by the political elite to achieve political gains. In other words, political pluralism has intensified elite fragmentation and their internal struggles. It is from this perspective that the last elections can be understood to be the victory of Moi. Uhuru Kenyatta was Moi's designated successor in 2002 and William Ruto, Moi's fellow Kalenjin, was his former lieutenant in the Rift Valley. Kenyatta and Ruto were on opposite sides in 2007, when Kenyatta backed Kibaki's re-election. The recent victory is certainly due to this particular alliance, which brought together two of the largest ethnic groups at the centre of the 2007-2008 post-election violence. This violence also provides another important connection between Kenyatta and Ruto, who share ICC accusations of crimes against humanity for their role in the violence of 2007-2008.

Additional evidence of the fact that political competition is largely a matter of elite struggle is that the key actors have not changed. Most

A first point is to avoid ethnic determinism and rather, as suggested by Omolo, analyse the relationship between ethnicity and democratisation as the result of history, agency and contingency

⁹ K. OMOLO, *Political Ethnicity in the Democratisation Process in Kenya*, in 'African Studies', vol. 61, no. 2, 2002, p. 212.

¹⁰ J. OGUDE, *Ethnicity, Nationalism and the Making of Democracy in Kenya: An Introduction*, in 'African Studies', vol. 6, no. 2, 2002, pp. 205-207.

¹¹ R. AJULU, *Politicised Ethnicity, Competitive Politics and Conflict in Kenya: A Historical Perspective*, in 'African Studies', vol. 61, no. 2, 2002, pp. 251-268.

actors have been in place since independence and, where dead, have been replaced by their children. The past elections were also another episode in the struggle between two specific families. Four decades after the political fight between Jomo Kenyatta and Oginga Odinga, which ended with the imprisonment of the latter, their sons contested for the presidency. However, this time there were some differences. The Kenyattas won again but were legitimated by the votes of the Kenyans this time, and Odinga was free to complain without being arrested.

The question of land

An appreciation of the connections between politics and ethnic conflict in Kenya would need an analysis of colonial land policies and the related processes of dispossession and forced resettlement, which cannot be fully undertaken in this space.¹² Therefore, this paper considers only the current situation, which clearly summarised in the *Guardian* during the 2007-2008 post-elections¹³. “The largest landowners in Kenya today are the families of the only three presidents the country has had since independence – the Kenyattas, the family of his successor, Daniel arap Moi, and the present president, Mwai Kibaki, who served in the Kenyatta and Moi administrations. A little further down the scale are a residual group of white settlers, senior politicians and businessmen with political connections”.

One of the promises of the Kibaki-led coalition that defeated Moi in 2002 was to address the issue of land; a politically impossible promise because it would inevitably have highlighted the misconduct of previous administrations in which Kibaki himself was involved. Nevertheless, he was pushed to nominate a Commission of Inquiry into the Illegal/Irregular Allocation of Public Land. At the end of 2004, the committee’s report, also called the Ndungu Report, was released to the public. The centrality and implications of the issue of land are clearly highlighted: “Land retains a focal point in Kenya’s history. It was the basis upon which the struggle for independence was waged. It has traditionally dictated the pulse of our nationhood. It continues to command a pivotal position in the country’s social, economic, political and legal relations”¹⁴.

¹² I refer the reader to W. ODHIAMBO and H. NYANGITO, *Land Laws and Land Use in Kenya: Implications for Agricultural Development*, KIPPRA Discussion Paper, vol. 15, Nairobi, Kenya Institute for Public Policy Research and Analysis; O.A. K’AKUMU and W.H.A. OLIMA, *The dynamics and implications of residential segregation in Nairobi*, in ‘Habitat International’, vol. 31, no. 1, 2007, pp. 87-99.

¹³ C. MCGREAL, *Who’s to blame? It depends where you begin the story*, in ‘The Guardian’, 7 February 2008, Retrieved from <http://www.guardian.co.uk/world/2008/feb/07/kenya.chrismcgreal>.

¹⁴ P. NDUNGU, *Report of the Commission of Inquiry into the Illegal/Irregular*

Additional evidence of the fact that political competition is largely a matter of elite struggle is that the key actors have not changed. Most actors have been in place since independence and, where dead, have been replaced by their children

The report demonstrates the many ways in which so-called land grabbing had occurred and emphasises how, particularly from the end of the 1980s onwards, “Land was no longer allocated for development purposes but as political reward and for speculation purposes”¹⁵. A very significant finding for this analysis is that “[m]ost illegal allocations of public land took place before or soon after the multiparty general elections of 1992, 1997 and 2002 [...] as political reward or patronage”¹⁶. This illegal land-allocation took place just after the end of the single-party era. The report provides details of the illegality of over 200,000 title deeds and recommends revoking many of them.

In the short term, political pluralism in Kenya seems to have generated two very negative outcomes: the intensification of politically-motivated ethnic violence, and illegal allocations of a substantial section of valuable public land and other assets. In a previous contribution¹⁷, the author argued that the implications of Kenyan constitutional reforms could not be fully appreciated without acknowledging the 20 year process leading up to the new constitution. Likewise, a proper assessment of the introduction of political pluralism requires a long-term approach. If history has taught us anything, it is that the process of building democratic institutions takes time. Patronage politics is still at the heart of Kenyan politics; nevertheless, there are positive signs in terms of democratic progress.

political pluralism in Kenya seems to have generated two very negative outcomes: the intensification of politically-motivated ethnic violence, and illegal allocations of a substantial section of valuable public land and other assets

The March 2013 elections

Another way of looking at the recent electoral results is that Kenyatta conducted an excellent campaign, chose the right allies, and was able to present his judicial problems as foreign interference. Odinga, on the other hand, was unable to convince non-Luo voters. He was also unable to create a wider coalition and, as had happened in 2007, the powerful Luhya leader, Musalia Mudavadi, ran alone for president and collected roughly half a million votes. Moreover, Odinga was criticised for the lack of significant change in his constituency which comprises Kibera, still one of the largest African informal settlements, despite his prominent government positions and the over 20 years he has served as the local MP. Considering the very low number of votes that the other presidential candidates received (excluding Mudavadi), it is a very positive sign that the Kenyan media gave them space in national newspapers in various attempts to compare the candidates' views. All candidates also had equal space in what the international media considered to be the first African

Allocation of Public Land, Nairobi, Government of Kenya, 2004, cit. p. XVII

¹⁵ *Ibidem*, p. 8. A detailed review of the different methods employed for land grabbing exposed by the Ndungu report is provided by R. SOUTHALL, *op. cit.*

¹⁶ P. NDUNGU, *op. cit.*, p. 83.

¹⁷ A. RIGON, *op. cit.*

televised presidential debate, when the eight candidates responded to key questions for three and a half hours – an event which most Kenyans followed closely. It provided a truly fair opportunity to compare and assess candidates for their words and policies, and a great democratic demonstration. Kenyatta did a great job and won the debate. In more mature democracies, secondary presidential candidates barely get any media coverage, and in some there are no televised debates with key candidates – not to mention the recent Green Party presidential candidate in the US, who was arrested during her attempt to participate in the debate¹⁸.

What a Western audience still finds difficult to understand about this more positive interpretation is how two politicians allegedly responsible for the worst ethnic violence in the country's history could win the elections. Has political pluralism effectively rewarded ethnic violence? Kenyans are very much aware that Ruto, Kenyatta and the other four people on trial in The Hague are being used as scapegoats for ethnic violence that implicated many more politicians, because political violence has been used as a widespread political tool. However, the operations of the ICC were in many ways constrained, and could not involve certain people without compromising political stability. A less hypocritical stance would imply the following question: how many other presidents and political leaders have a poor human rights record? Some democracies do not recognise the ICC at all and/or selectively ignore UN resolutions.

Conclusions

Following Kenyatta's peaceful swearing-in ceremony, there are positive elements leading one to expect the continuation of reforms and economic growth. The relatively fair, open and transparent elections last March saw a new president, new MPs, and local administrators elected. We are only in the first weeks of full operation of the new Constitution that was approved in 2010, which created a different institutional set-up, devolving power to newly introduced county administrations. It would be a serious mistake to dismiss the past elections as a triumph of primordial ethnic identity and a step backwards for the Kenyan democracy. Those who expected rapid transformation probably did not take on board the lessons from the history of institutions.

This paper argues that it is highly unrealistic to think that political patronage can be suddenly overcome. In Kenya, political patronage in its ethnic form has penetrated the forms of democracy. The political use of ethnic identity is still a tool employed by a fragmented and competing elite.

¹⁸ See for instance, <http://www.guardian.co.uk/commentisfree/2012/oct/18/jill-stein-arrest-green-party-presidential-debate>.

As argued by, ethnic identification becomes important because it embodies “other societal divisions, such as regional inequalities, control over land, and access to political opportunities. The increased salience of ethnicity is better understood as the outcome of changes in institutional context and the decision-making matrix facing political leaders, rather than their cause” . However, processes of change are happening and for many people, particularly in cities, national sentiments are stronger than any other type of ethnic identification. The swearing-in ceremony in April took place in a large stadium in the North East of Nairobi. Many enthusiastic people from neighbouring informal settlements, including Luos, proudly attended the event and came back with a positive feeling for the future of their country.

Newly elected MPs rushed to challenge the decision of an ad hoc committee to reduce the lavish salaries their colleagues enjoyed during the previous mandate. Moreover, a central political figure strongly re-entered political competition and won the elections also as a way to protect himself from judiciary problems. All in all, the political situation today in Kenya is not too far off from that of more ‘mature’ Western democracies. The fact that there are several parallels must be a good sign. Kenyan writer, Nanjala Nyabola, in the ‘Guardian’ concluded an article by admitting that Kenyan democracy has demonstrated significant maturity in the days and weeks following March’s vote, and writing that “communitarian voting is more similar to established democracies than we’d like” . What is not yet happening, however, is the emergence of new outsiders in the political game who are able to break the equilibrium of the traditional actors.