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KENYA 2017: THE INTERIM ELECTIONS?

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Summary / Résumé

The fear of violence hangs over elections in Kenya. The murders and population displacements that followed the disputed elections of 2007 still loom large in the minds of Kenyans, as well as internationally. In advance of the 2017 elections there have been multiple warnings from government agencies of the possibility of violence[1]. But the 2017 elections are unlikely to see conflict on the scale of 2007/8, though there has already been some lethal violence at a local level, and more is likely – particularly if there are significant problems with election processes. At the time of writing (early July), and with a month of campaigning still to go, the race is becoming increasingly close. Nevertheless, it currently seems likely that, unless one side conducts a very good or bad campaign, that incumbent president Uhuru Kenyatta will be returned to power in the first round with a marginal lead, defeating Raila Odinga, who is the candidate for the coalition National Super Alliance (NASA). Although this could still change in the last month of the campaigns as NASA continue to pick up ground and the elections become increasingly close. It also seems likely that Kenyatta's new political vehicle – the Jubilee Party – will have a majority in parliament. Kenyatta is again running with William Ruto as his deputy, with the very explicit understanding that he will have Kenyatta's support in running for the presidency in the next elections scheduled for 2022. The focus of attention has already partly shifted to those polls, and the August elections have often felt like an interim process – with much of the political calculations and manoeuvring revolving around a key question: will the voters and the political/business establishment of central Kenya really give their full support to William Ruto in five years' time? This focus on presidential outcomes, immediate and future, distracts attention from the significance of other contests, especially those for the powerful positions of county governor created by Kenya's 2010 constitution. These are the second national elections under that constitution – the first having been held in 2013. Kenyan voters will cast six ballots on 8 August: for president, member of parliament (MP), county governor, senator, member of county assembly (MCA) and women's representative. Kenya's new constitution, and subsequent legislation, have been explicitly intended to transform politics. That transformation has not realised the ambitions of some of its advocates; but the dynamics of Kenyan politics have changed significantly.

Key Words / Mots-clefs : Kenya,Elections, Violence, Parties, coalitions, election management

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1   'NCIC now warns of poll violence', *Daily Nation*, 4 July 2017 http://www.nation.co.ke/news/NCIC-now-warns-of-poll-violence/1056-3999748-4xfbpm/index.html, viewed 6 July 2017.

1. Background: 'big men' politics and bottom-up demands

Kenya's 2013 elections brought Uhuru Kenyatta – son of Kenya's first president, Jomo Kenyatta – to State House[2]. Kenya's new constitution requires an absolute majority of votes for a first-round presidential win. Kenyatta achieved this by a very narrow margin, after the tallying of presidential votes descended into near-chaos with the failure of an electronic results transmission system[3]. The defeated candidate, Raila Odinga, challenged the result in court; his petition was refused, amid multiple claims and counter-claims about the changing of results[4]. The speed with which the petition had to be submitted and a verdict given (the timetable is set in the constitution) made the presentation and sifting of evidence extremely challenging[5].

Both Kenyatta and Odinga were the candidates of coalitions in 2013. Kenyatta and William Ruto led what was then the Jubilee Alliance, composed of two parties (The National Alliance and the United Republican Party) that drew much of their support from Kikuyu and Kalenjin voters in central Kenya and the Rift Valley, respectively. Their alliance, which seemed unlikely at first, was cemented by a shared status: both had been accused of organizing the violence of 2007/8, when they had been on opposing political sides; both faced the prospect of trial by the International Criminal Court. In the event, Kenyatta's case never went to court, and Ruto's was stopped; but the alliance between the two men has held. The wider accommodation between Kalenjin and Kikuyu has also survived, though it is under constant strain. This is significant. The ownership of land in the Rift Valley was a key issue in the violence of 2007/8; the argument that Kikuyu are occupying what 'should' be Kalenjin land was and is a powerful driver of grievance[6]. The alliance between Kenyatta and Ruto has not resolved that issue, but it has temporarily suspended the open politics of incitement that fed the 2007/8 violence[7]. This alone makes widespread violence less likely in 2017 – though there are

3   Nic Cheeseman, G. Lynch & J. Willis. "Democracy and its Discontents: Understanding Kenya's 2013 elections", *Journal of Eastern African Studies,* 8. 1 (2014): 2-24.

4   Africa Centre for Governance (AFRICOG). *The Election Petition: Petition Number 4 by AFRI-COG Consolidated by the Supreme Court,* (Nairobi: AFRICOG, 2013). http://www.africog.org/category/election-petition/; Yuhniwo Ngenge, 'Kenya 2013 Elections: Reflections on the Supreme Court Ruling and the Role of the Judiciary in Democratisation.' O*pen Democracy*, 18 April 2013. http://www.opendemocracy.net/yuhniwo-ngenge/kenya-2013-elections-reflections-on-supreme-courtruling-and-role-of-judiciary-in-dem viewed September 6, 2013.

5   John Harrington and Ambreena Manji. 'Restoring Leviathan? The Kenyan Supreme Court, constitutional transformation, and the presidential election of 2013', *Journal of Eastern African Studies* 9.2 (2015): 175-192.

6   Nic Cheeseman, "The Kenyan elections of 2007: an introduction", *Journal of Eastern African Studies*, 2 (2008): 166–184; , Jérôme Lafargue and Musambayi Katumanga. 'Élections et violences au Kenya.', *Politique africaine,* 109 (2008): 107-121; Gabrielle Lynch, I *say to You:Ethnic Politics and the Kalenjin in Kenya*. (Chicago: University of Chicago Press), 2011.

7   Mathieu Mérino, 'Les élections générales du 4 mars 2013 au Kenya', *Afrique contemporaine* 2013/3 (No 247), 73-86; Gabrielle Lynch, 'Electing the "alliance of the accused": the success of the Jubilee Alliance in Kenya's Rift Valley', *Journal of Eastern African Studies* 8.1 (2014): 93-114.

also other factors which reduce that likelihood.

By contrast, the main leaders in Odinga's 2013 coalition (the Coalition for Reform and Democracy, or CORD) came not from central Kenya or from the central Rift Valley, but from other parts of the country; the strongest party in that coalition was the Orange Democratic Movement (ODM), led by Odinga. The Luo leader and his supporters felt – and feel – that they have been cheated of power repeatedly. They look back to the 1960s, when Odinga's father, Oginga Odinga, gave his support to Jomo Kenyatta, only to find himself driven out from the ruling party; to 2002, when Odinga endorsed Mwai Kibaki's bid for the presidency in return for a promise of power-sharing as prime minister, which was not fulfilled; and, of course, to 2007, when Kibaki was declared winner against Odinga in deeply flawed elections. In 2013, Odinga did not call for mass protests, but neither did he accept the verdict of the court, which has become part of the narrative of exclusion.

Some believe that Odinga is unlikely to accept defeat as this may be his last bid for the president[8]. He has promised to respect the outcome, but in practice this may depend on whether problems in process create any room for doubt over the result[9]. If that happens, protests are likely, especially in areas where Odinga has strong support – especially Nyanza region, and Nairobi, but also on the coast. Should such protests occur, they may be violent – if only because they will be forcefully suppressed by the security forces. There may also be localised clashes as communities with a range of grievances respond to the election results. The other principal members of the NASA coalition have less ability to mobilise protest than Odinga, and may have fewer motivations for doing so. The long-term future for the coalition that supports Odinga is distinctly uncertain. It is overtly ethnic in nature, bringing together a number of ethnic/regional leaders, each with ambitions of their own; in some ways, its very existence is predicated on the assumption that if Odinga were to win, he would serve only one term. But unlike the Kenyatta-William Ruto team, there is no explicit deal on the 2022 election: more than one of the other four principal members of NASA hopes to be a future presidential candidate. The immediate arrangement is that if Odinga wins new high-level posts will be created, outside the existing constitutional structures, to make space for all the principals.

It is not yet clear how convincing voters will find that deal. Kenya's politics are publicly dominated by ethnic big men[10]. But it would be a mistake to assume that these big men simply command the unwavering support of the members of their ethnic groups. In almost every region, there are multiple aspiring big men, who are at the same time rivals and possible collaborators, forming hierarchical networks of local and regional influence. Working up

8   'Fear Raila Odinga will not accept defeat', *Weekly Citizen*, 29 June 2017, https://weeklycitizen.co.ke/fear-raila-odinga-not-accept-defeat/.

9   'Raila promises to accept defeat if he fairly loses election", *The Star* 4 July 2017, http://www.the-star.co.ke/news/2017/07/04/raila-promises-to-accept-defeat-if-he-fairly-loses-election_c1590550.

10   Daniel Branch, *Kenya: Between Hope and Despair* (Cambridge: Cambridge University Press, 2011).

the levels of these unstable networks is a perilous, if attractive pursuit, and requires constant negotiation, for ethnic politics are driven by bottom-up demands and expectations as well as by elite deals[11].

For many voters, everyday experience encourages a sense of the importance of claims of ethnicity[12]. It teaches them that access to government services and resources is not defined solely by formal rules and bureaucracy. Claims, and demands for accountability, are routinely made through personal ties, which draw on kinship or ethnicity; and these ties structure a political economy in which clientelism – vertical ties of expectation and reciprocity – is profoundly important. Campaigns for office revolve around development, and elections constantly reassert the idea that the purpose of the state is to bring material development, whether in the form of shared goods such as roads, clinics or land, or individual benefits such as jobs or school places. Voters therefore look to politicians who they believe they can rely on to deliver these rewards[13]. At every level, from the presidency to the members of county assembly – who represent a ward of a few thousand people in the devolved county assemblies – candidates have to persuade voters that they can do this. No candidate can campaign simply on ethnic solidarity; either they will face challenges from others of the same ethnic group (as is often the case for MP or MCA candidates) or they need to win votes from people who belong to a number of ethnic groups, as the president or many governors must do. Yet all candidates must play to some extent on the idea that, directly or through intermediaries, voters can make a claim on them through some shared sense of ethnicity or kinship.

Demonstrating solidarity and financial liquidity tends to be easier for incumbents who – unless they have miscalculated badly – can point to a record of schools built, roads tarmacked, and bursaries provided[14]. Incumbents will usually also have used their office to build up their campaign funds; using their position as gatekeepers – of contracts, licences, land allocation, or permits – to acquire illicit wealth. This is needed for formal campaign expenses – printing posters, fuel for vehicles, hiring helicopters and the other costly paraphernalia that have become standard – but also for the distribution of gifts of cash, food, drink or other items. These are the illegal but expected stuff of everyday campaigning for most candidates[15]. Jubilee candidates are determinedly exploiting the benefits of incumbency: in defiance of the constitution, government cabinet secretaries (who are supposed to be executive technocrats, above party politics) are campaigning openly for the govern-

11   John Lonsdale, 'The Political Culture of Kenya'. Occasional Paper 37, Centre of African Studies Edinburgh University (1992).

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

13   Eric Kramon, 'Vote buying and accountability in democratic Africa', PhD thesis, UCLA, 2013.

14   Nic Cheeseman, *Democracy in Africa* (Cambridge: Cambridge University Press, 2015).

15   Dominique Connanand Chloé Josse-Durand, 'Le Pays du miel et du lait. Ethnographie de la campagne électorale d'un professional au Kenya', *Cahiers d'Etudes Africaines*, LVII (1), 225, (2017), 89-119.

ment[16]. Devolution means that incumbency may also benefit the opposition:[17] at a county level, incumbent governors who support NASA are also trading on their record of development, and sending county government staff out to campaign for their re-election. But overall, the national government – and those who have held office in it – have more to spend.

Incumbency, and the ability to spend, do not in themselves guarantee victory; voters may expect more of incumbents than they do of aspirants – since they know incumbents will have had time to 'eat'. There is a kind of moral economy to this electoral politics: it involves a sense of right and of propriety, and candidates must show virtue, not just wealth. An incumbent who is seen to have failed to deliver development cannot buy their way to success at the last minute with grand promises or cash – for they will not be seen as trustworthy. In Odinga's home region of Nyanza, and among his ethnic group, the Luo, neither new projects nor lavish campaign spending will win many votes for Kenyatta, because the majority of voters believe that they have been excluded from development and prosperity over many years, and blame the government for high food prices and other problems. There is no rival to Odinga for the position of regional big man in Nyanza, in part because he has deliberately consolidated his economic and political domination of the region over the past twenty years.

By contrast, NASA's other principals – Musalia Mudavadi and Moses Wetang'ula (in western Kenya), Kalonzo Musyoka (in the eastern region), and Isaac Ruto (in the Rift Valley) – all face regional rivals, who are aligned to Kenyatta and Jubilee (though that alignment may be recent, and temporary). These rivalries may have little to do with presidential politics – sometimes they are based in very local contests over power and status. But those who have aligned themselves with Jubilee will claim credit for government projects – roads, electrification, the new standard gauge railway – and their campaign generosity will likely be taken by at least some voters as evidence of their commitment to deliver more 'development'. However, they also face the challenge of persuading voters that they are not "sell-outs" who support the government purely for personal gain, and cannot be relied upon to represent the interests of the community. In many opposition and swing areas the election hinges on this tension: Jubilee-aligned candidates struggle to demonstrate solidarity, while NASA's leaders are selling the promise of jobs that do not yet exist. As a result, both sides face constraints on their capacity to mobilize.

For now, this political context favours a marginal Kenyatta victory. Kenyan voters may have many reasons to be dissatisfied with the current government: inflation is high, some basic foodstuffs have been in short supply, the more extravagant promises made by Kenyatta in 2013 have not been rea-

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16   'Civil servants still engage in politics despite warnings', *Daily Nation*, 3 July 2017 http://www.nation.co.ke/news/politics/Civil-servants-defy-Ombudsman-s-warnings-on-politics/1064-3997186-gds1v4z/index.html, viewed 6 July 2017.
17   Nic Cheeseman, Gabrielle Lynch, and Justin Willis, 'Decentralisation in Kenya: the governance of governors', *The Journal of Modern African Studies,* 54.1 (2016): 1-35.

lised.[18] But none of the NASA principals – apart from Odinga – seems to offer enough, in terms of their track record or the possible rewards of victory, to be able to dominate the swing communities as they need to in order to outmanoeuvre a government that is backed by the majority of two of the country's largest ethnic groups. The challenge for the opposition is even greater that it might first appear because the election is not really played on a level playing field; the government has significantly greater resources at its disposal.

The cumulative impact of these factors means that, at the time of writing in early July, the outcome the outcome of the 2017 polls is likely to mirror those of 2013. In those elections, Kenyatta won because he and Ruto were each able to mobilise their particular constituencies – particularly in central Kenya, the vote for Kenyatta was overwhelming, and turnout was very high[19]. At the same time, alliances with rival local big men elsewhere in the country delivered a significant proportion of the vote in some of those areas. They are likely to repeat this pattern this time. Published opinion polls have consistently given Kenyatta a slight lead; though they have tightened in recent weeks[20]. Registration rates have improved a little since 2013 in Odinga's strongholds, but are still below the rates in areas likely to support Kenyatta. As a result, Kenyatta seems likely to secure a narrow win in the first round - unless there is an unprecedentedly high turnout in NASA areas, or the campaigns sway significant numbers of voters.

In 2013, the effect of presidential defeat was mitigated by multiple successes for Odinga's supporters at the county level in the new devolved constitution; this was part of the reason for the relatively peaceful aftermath of those elections. That may well be the case again in many areas in 2017, though the opposition may lose the strategically important position of governor of Nairobi. While the presidential race remains the most important in most people's eyes, county level positions command significant patronage. County governors have substantial executive powers and budgets; and even members of county assembly (MCAs) have mostly acquired control of bursary funds, which combine with their influence over licensing and contracts to give them significant local influence. Competition for these posts is intense: the number of candidates contesting MCA positions has increased significantly since 2013. There has been, and will be, local violence around these contests, but much of this follows very local fault lines[21]. A repeat of the 2007/8 "Kenya

18   'Before you vote: the truth about electricity in schools, laptops and teacher pay', *Daily Nation*, 10 June 2017 http://www.nation.co.ke/newsplex/teacher-pay-laptops-schools/2718262-3965136-7tok1nz/index.html, viewed 6 July 2017.
19   Cheeseman *et.al*, 'Democracy and its discontents'.
20   'IPSOS poll shows Uhuru more popular than Raila', *Daily Nation*, 20 Feb. 2017, http://www.nation.co.ke/news/politics/Uhuru-ahead-of-Raila-in-new-poll/1064-3820378-mki7ssz/index.html;   'Uhuru Kenyatta leads Raila Odinga with 5 points', *Daily Nation*, 30 June 2017, http://www.nation.co.ke/news/politics/Uhuru-leads-Raila-in-new-poll/1064-3993848-xgr7lg/index.html, viewed 6 July 2017; also Charles Hornsby, 'The numbers game: predicting winners and losers in the August 2017 poll', *The Elephant*, 28 June 2017, https://www.theelephant.info/future/2017/06/28/the-numbers-game-predicting-winners-and-losers-in-the-august-2017-poll/ viewed 11 July 2017; but cf 'Kenya: Closer and closer', *Africa Confidential*, 7 July 2017.
21   'IEBC helpless as party polls breed violence and death', *Daily Nation*, 27 April 2017 http://www.nation.co.ke/election2017/agenda/IEBC-helpless-as-PRIMARIES-breed-violence/3797778-3906124-ldh8tu/in-

crisis" seems unlikely at present.

2. Parties: a failed project?

Somewhat surprisingly, given that Kenya was for many years a one-party state, there is no tradition of strong or well-organized political parties. The Kenya African National Union (KANU), the single party for many years, was always structurally weak, chronically subordinate to Kenya's powerful provincial administration. The new parties created after the return to multi-party rule in 1992 soon fell into a pattern: they were almost all ephemeral, associated with particular individuals and – for that reason – strongly ethnic in their support[22]. Once KANU had lost power in 2002, it too became an individual, and largely ethnic party (currently closely associated with the children of former president Moi). 'Party-hopping' by individuals has been common since 1992; and no party could claim a really distinctive ideological platform – with the partial exception of Odinga's current party, the Orange Democratic Movement (ODM), whose name reveals its origin in the devolution referendum of 2005[23]. ODM has – more or less consistently – advocated greater devolution, and the one really major policy difference highlighted in this year's campaign is the NASA promise to greatly increase the funds allocated to county governments.

The process of constitutional reform since 2008 has sought to address multiple, chronic problems which lay behind the violence[24]. The weakness of parties was one of those problems, and the constitution, and subsequent legislation, have sought to create a new kind of political party system in Kenya. Requirements for national support, and a ban on ethnic or religious exclusivity, are not new. But both the Elections Act (2011, with amendments in 2012, 2016 and 2017) and the Political Parties Act (2011) have created – nominally, at least –a new degree of scrutiny, which is intended to make their functioning and finances transparent. These laws also seek to force politicians into more enduring relationships with parties, to prevent ethnic politicking by party-hopping, and to impose some kind of programmatic discipline. In theory, at least, influential individuals can no longer move easily from one party to another in pursuit of power; and parties now receive state finance in proportion to electoral success.

Those laws have had limited effect. This is partly because the laws themselves have been changed to vitiate their effect – the campaign finance regulations, which would have limited the amount that candidates could spend on

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dex.html , viewed 6 July 2017.

22   Sebastian Elischer, *Political Partis in Africa: Ethnicity and Party Formation* (Cambridge: Cambridge University Press, 2013).

23   Gabrielle Lynch, 'The fruits of perception: 'ethnic politics' and the case of Kenya's constitutional referendum', African Studies 65, 2 (2006): 233-270.

24   Karuti Kanyinga and James Long, 'The political economy of reforms in Kenya: The post-2007 election violence and a new constitution." *African Studies Review,* 55, 1 (2012): 31–51.

the campaign, were suspended by the National Assembly, in a rare moment of agreement amidst bitter dispute over other aspects of election law[25]. Similarly, attempts to prevent party-hopping have simply led to a proliferation of independent candidates.

In other cases, rules have simply not been enforced, and/or deadlines have been missed[26]. Parties have made financial declarations, as required; and have submitted constitutions, and rules for the nomination of candidates. But much of this seems to have been entirely on paper; at a branch level, parties often remain insubstantial. There is an element of farce to this: the Jubilee Party, newly created (after some false starts) in late 2016 as the vehicle for the ambitions of Kenyatta and Ruto, made much of the party 'smart card', which would be issued to every member as a way of managing membership[27]. A large number of smart cards were sold – many, it seems, to politicians who intended to distribute them to their supporters. But the whole scheme then collapsed[28]. It is not clear whether there ever was any database, nor any other way to manage the cards or their purported holders.

The Jubilee Party has, however, been more successful in its integration of different parties – and hence their leaders, campaign finance, and mobilization efforts – into one political machine. NASA is less cohesive; it is a coalition, not a party, with ODM as the strongest member. Because much political activity is about local rivalries and status, in many places, ODM candidates are standing against others who are running on the tickets of nominally allied parties – as well as facing multiple independent candidates. Like Jubilee, ODM submitted nomination rules which relied on the existence of a party membership register; only registered members would be allowed to vote in primaries to select candidates for nomination. But it became apparent during the primaries that ODM – like Jubilee – had no members' register – or at least, not one that was available for the purpose of managing the vote. Both parties ended up holding extremely chaotic primaries, marked by violence and epidemic levels of malpractice[29]. Meanwhile, the office of the Registrar of Political Parties, and the Independent Elections and Boundaries Commission, whose task it is to enforce the rules, have not done so consistently. They have fined some politicians for breach of the Electoral Code of Conduct, which has statutory force, in some cases where violence has occurred[30]. But

25   'Cord legislators delay special House session to protest changes to election law', *Daily Nation*, 20 Dec. 2016, http://www.nation.co.ke/news/politics/cord-delay-house-session-protest-changes-election-law/1064-3493316-g72ct0z/index.html, viewed 6 July 2017.

26   'All political parties fail to comply with nominations rules', *Daily Nation,* 25 Mar 2017 http://www.nation.co.ke/news/politics/all-political-parties-fail-to-comply-with-nominations-rules/1064-3864858-2knnyxz/index.html, viewed 6 July 2017.

27   'How Jubilee Party smart card will work', *The Star*, 13 Jan. 2017 http://www.the-star.co.ke/news/2017/01/13/how-jubilee-party-smart-card-will-work_c1487044 , viewed 6 July 2017.

28   'Jubilee drops plan to use smart cards in party nominations', *The Standard*, 18 Mar. 2017, https://www.standardmedia.co.ke/article/2001233103/jubilee-drops-plan-to-use-smart-cards-in-party-nominations , viewed 6 July 2017.

29   'Shambolic nominations undermine democracy', *Daily Nation,* 30 Apr. 2017 http://www.nation.co.ke/oped/Opinion/Shambolic-nominations-undermine-democracy/440808-3908268-10t7ceoz/index.html, viewed 6 July 2017.

30   'Lusaka, Wangamati slapped with Sh1m fine each over Bungoma chaos', *The Star*, 22 June

this has been inconsistent and they have not taken any action over the parties' blatant organizational failures – presumably because it would be politically impossible to do so.

In the wake of those chaotic primaries, large numbers of people who had unsuccessfully sought nominations from either Jubilee or ODM decided to run as independents – particularly for the governor, MP and MCA positions[31]. Almost without exception, such candidates claim that their failure in the primaries was the result of malpractice. Some of those who were unsuccessful in the Jubilee primaries have – explicitly or implicitly – accused William Ruto of engineering their defeat[32]. Both parties face a significant challenge from these independents – who have all stressed their allegiance to either Odinga or Kenyatta, but insist on running against the party of their chosen presidential candidate. The presidential rivals themselves have added to the confusion by equivocating. Each has, at some point, insisted that their supporters should vote 'six piece' – that is, should cast their ballots for the party candidate at each of the six levels of election[33]. But each is also aware that some of these independent candidates, especially at governor or parliamentary level, may command significant support, and they are loath to risk alienating those voters; so they have hinted – or even said explicitly – that these independent candidates may indeed have their endorsement[34].

In the event, it is likely that most of the independent candidates will lose; but some will win, and this may provide a further challenge to the efforts to consolidate parties. Current legislation would force those elected as independents to resign their positions if they join a party, so they will have a strong incentive to stay outside the party structure, even if closely aligned to the party leader as an individual. Whether this will matter very much to the individuals is uncertain: governors have no formal need for a party affiliation, and this has mattered very little indeed in county assemblies. In the National Assembly, party discipline has been poor, and MPs have anyway had difficulty adjusting to the new constitution – both committee work and legislation have seen little party management. But the presence of independents at national and county levels will weaken party institutions further.

2017 , http://www.the-star.co.ke/news/2017/06/22/lusaka-wangamati-slapped-with-sh1m-fine-each-over-bungoma-chaos_c1584902 viewed 6 July 2017.

31 'Independents bracing themselves for major contests', *Daily Nation*, 1 June 2017 http://www.nation.co.ke/news/politics/independents-bracing-themselves-for-major-contests/1064-3952392-yaq9g5/index.html, viewed 6 July 2017.

32 'Unease in Jubilee as William Ruto hand seen in nominations', *Daily Nation*, 21 May 2017 http://www.nation.co.ke/news/politics/Unease-in-Jubilee-William-Ruto-hand-seen-in-nominations/1064-3935156-15rtfo4/index.html, viewed 6 July 2017; 'Ruto rigged me out of Jubilee, says Kenneth', Daily Nation, 20 June 2017 http://www.nation.co.ke/counties/nairobi/Ruto-rigged-me-out-of-Jubilee/1954174-3979370-10rs89t/index.html, viewed 6 July 2017.

33 'Disquiet lingers despite Uhuru and Ruto's tour of North Rift', *Daily Nation* 17 June 2017 http://www.nation.co.ke/news/politics/disquiet-lingers-despite-uhuru-ruto-tour-north-rift-valley/1064-3975240-xx41j/index.html, viewed 6 July 2017.

34 'Raila's view on ex-ODM members running as independent candidates', *Daily Nation*, 5 May 2017 http://www.nation.co.ke/news/politics/Raila-view-on-independent-candidates/1064-3915824-ku2n4kz/index.html, viewed 6 July 2017.

The attempt to create a new kind of party through legislation has evidently not yet succeeded. But the Jubilee Party, in particular, may prove more enduring than some of its predecessors. William Ruto has been working to create a more integrated political organization in the hope that this will better enable him to bend the party to support his candidate in 2022. However, formal institutional rules are unlikely to generate the backing that he needs to replace Kenyatta if the latter ends up serving two terms in office. Instead, if Jubilee win the elections in August, Ruto will also need to persuade other leaders that he is credible and that he can be trusted. To do this, he would have to demonstrate his dominance of the Rift Valley by ensuring that his allies win the majority of MP seats and governorships. Anything short of an overwhelming vote for Kenyatta from Ruto's Kalenjin community in 2017 will be seen as a sign of weakness and could be fatal to his presidential ambitions. Given this, the Deputy President will be especially keen to see the defeat of Isaac Ruto, the NASA principal who is standing again as governor of Bomet county, and of former president Moi's two sons, who hold seats as an MP and a senator. All are rivals for the role of Kalenjin big man.

If Kenyatta does win the presidency, it is likely that there will be a struggle for control of Jubilee in the aftermath of the elections, especially as 2022 draws nearer. If Ruto is successful in that struggle, Jubilee will become the vehicle for his ambitions, and may endure. If not, it is unlikely that the party will last long, at least in its current form. ODM may well survive to another election as a major party, but remains vulnerable to Odinga's retirement, whenever it comes. Since its inception, ODM has derived its main strength from Odinga's personal position and there may be no one who could effectively replace him. Hassan Joho, the governor of Mombasa county, aspires to be the ODM presidential candidate in 2022. It is not impossible that he will get that wish, but at the cost of reducing ODM to a minor party; there would be considerable hostility to a Muslim presidential candidate from many Christian Kenyans, and Joho is further encumbered by multiple accusations of illegal business activities. The long-term future of both main parties appears uncertain.

3. Election management and mismanagement

In recent months, Odinga and his supporters have repeatedly and explicitly accused the government of planning to cheat in the elections; accusations which included the suggestion that members of the security forces were being recruited as election officials to facilitate rigging[35]. These allegations reflect unhappy experience. Kenya has a sorry history of election management, in which incompetence and intentional malpractice have not been readily distinguishable. In the long years of single-party rule, elections were always vulnerable to officially-driven malpractice to manage outcomes. The 1992 elections saw substantial malpractice on and after polling day, while the 1997 elections may have seen less intentional rigging but were very poorly orga-

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35   'Police recruited as poll officials, claim Nasa officials', *Daily Nation,* 3 July 2017 http://www.na-tion.co.ke/news/politics/Police-recruited-as-poll-officials--claim-Nasa-officials-/1064-3997076-14f1ig8z/index.html, viewed 6 July 2017.

nized. Problems with process in the 2002 elections were largely forgotten in the euphoria of a result which saw the defeat of the ruling party; in 2007, the counting and tally processes broke down so completely that an accurate result for the presidential election will never be known. In 2013, electronic technology, introduced specifically to prevent the kinds of malpractice that had occurred previously, failed in multiple ways[36]. Biometric voter identification devices which were designed to prevent fraud by checking voter fingerprints and displaying their photographs broke down in many polling stations, often because there was no power supply, after which the results transmission system failed entirely. Those dramatic failures raised the possibility that there had been multiple voting or ballot box stuffing, and/or that some results had been changed in the tallying process, and consequently cast doubt on the final result of the presidential race, which was extremely close in terms of whether Kenyatta achieved the absolute majority required for a first round victory[37]. The failures obscured some of the successes of 2013 – notably the more-or-less accurate printing and distribution of an unprecedented number of ballot papers and ballot boxes for the six races – and raised serious questions about the capacity of the electoral framework to deliver a credible process.

These failures have – as is often the case in Kenya – led to repeated attempts to legislate a better outcome. The former election management body, the Electoral Commission of Kenya, was dissolved after the 2008 debacle and the Independent Elections and Boundaries Commission (IEBC) was created in its place. After a promising early start, confidence in the IEBC was eroded by the events of 2013 and, in 2016, a political deal was struck which allowed for the resignation of the existing commissioners (in return for a handsome pay-off) and the appointment of new ones. A new law set out requirements and a timetable for the acquisition and testing of an 'integrated' technological system which would register, identify, track and tally, preventing multiple voting, ballot box stuffing or counting and tally fraud.

The opposition have been significantly more committed to this than the government, arguing that only digital technology can bring to an end a history of election rigging. For that reason, they determinedly but unsuccessfully opposed a legal amendment that allowed the use of a manual register at the polling station if the identification technology fails. This might seem like a prudent fallback, but the opposition suspected that it was intended to allow the kind of rigging that they believe occurred in 2013. Other legislative checks proved less than reassuring: a statutory 'audit' of the electoral register suggested that over one million dead people may still be on it, and found that hundreds of thousands of records contained inaccuracies[38]. This raises serious questions as to whether the IEBC can manage the complex process that it needs to roll out on polling day. Some 45,000 devices for

36   Joel Barkan, 'Technology is not democracy', *Journal of Democracy,* 24.3 (2013): 156-165

37   James Long, Karuti Kanyinga and Karen Ferree, 'Choosing peace over democracy', *Journal of Democracy,* 24.3 (2013): 140-155.

38   'Names of the dead to remain in electoral register after audit', *Daily Nation,* 5 July 2017, http://www.nation.co.ke/news/politics/dead-voters-the-hard-questions-for-iebc/1064-4002336-uvlvg9/index.html viewed 6 July 2017.

running an integrated biometric electoral system have been acquired, and – in contrast to the 2013 elections – are in the country in time to be properly distributed. However, the IEBC is still behind schedule and many questions remain: neither acquisition nor testing of the devices met the statutory time-table, and the technical report on the testing, required by regulations devised by the IEBC itself, has not been released. A system intended to allow voters to check on the registration status by SMS was temporarily suspended because it was not working properly; on the other hand, when voters were invited to verify their registration physically, the identification devices seem to have worked well, though few voters took up the opportunity.

The combination of historical experience and accusations by the opposition has undermined confidence in the IEBC. The IEBC itself has not helped. In the few months since new and inexperienced commissioners took up their posts in January, there have been evident conflicts between these political appointments and the permanent staff of the commission, and repeated fai-lures to properly explain decisions to a sceptical public. The handling of the contract for printing ballot papers was woefully inadequate, which opened the IEBC to a legal challenge (curiously, from a company that did not ac-tually bid for the contract). Having lost the challenge, the IEBC announced that there was no time for a second tender process, and single-sourced the ballot papers from a supplier which was subsequently alleged to be close to members of the Kenyatta family. The process reportedly meant that Kenya bought unusually expensive ballot papers[39]. At the time of writing, a court ruling has nullified the contract for printing presidential ballot papers, but the IEBC is appealing against that decision[40]. In regions where the opposition has strong support, levels of trust in the IEBC appear to be low.

This creates a potentially difficult situation. If the new technology works smoothly on election day, it will bring substantial benefits: identifying voters more quickly will reduce the long queues which have often been a feature of Kenyan elections; multiple voting or personation (that is, people assuming the identity of other voters) will be impossible; there will be an exact record of votes cast at each polling station that will prevent 'over-voting' (where more votes are cast than there are registered voters); and, the electronic transmission of results from every polling station will prevent fraud at the tallying stage. But if one or more aspects of this integrated system fail, there will be instant suspicions that the failure is intentional, even if it is not[41].

Of course, it is entirely possibly that there will be attempts at rigging – at-tempts that may well be driven by contests over county level seats, as well as by the presidential contest. NASA – and some civil society organisations –

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39   'Kenya to pay Sh20 for each ballot paper, others paid Sh10', *The Standard*, 20 June 2017, https://www.standardmedia.co.ke/business/article/2001244173/kenya-to-pay-sh20-for-each-ballot-paper-others-paid-sh10 viewed 6 July 2017.
40   'Electoral agency appeals ruling halting ballot printing', *Daily Nation,* 11 July 2017, http://www.nation.co.ke/news/politics/IEBC-appeals-ruling-halting-ballot-printing/1064-4009212-t30jxl/index.html viewed 11 July 2017.
41   Nic Cheeseman, 'How to make electoral technology work', *Democracy in Africa*, 23 May 2013, http://democracyinafrica.org/how-to-make-electoral-technology-work/.

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have sought to guard against one kind of fraud by securing a court ruling that the results declared at a parliamentary constituency level should be considered final for the presidential race – overturning the statutory position, which is that the final result of the presidential poll can only be announced nationally, by the IEBC[42]. This has been seen as a victory for NASA, because it prevents the subsequent changing of results. It also, of course, makes constituency returning officers potentially very influential. This is likely to lead to some highly-charged scenes at constituency-level tallying centres if there is any suspicion at all of cheating. Absolutely credible results would require the parties to position well trained and loyal agents in each and every polling station, but this is unlikely given the infrastructural weakness of parties described above. The weakness of parties cannot be compensated for by the presence of domestic and international monitors; neither will be able to cover 41,000 polling stations. As a result, the election remains potentially vulnerable to manipulation, and – just as importantly - the suspicion of manipulation, even as the technical capacity of the IEBC increases.

Conclusion

Kenyan politics are always full of surprises, and no prediction is really safe. Opinion polls are not an exact science, and people can change their minds about whether to vote, and who to vote for, on the basis of a good or bad campaign[43]. The elections are also becoming increasingly close, as the NASA campaign picks up speed. Raila Odinga and NASA could still win the presidency, and the outcome will probably be determined by turnout in the NASA and Jubilee strongholds. Nevertheless, with a month of campaigns still to go, it currently looks as though Uhuru Kenyatta will probably be returned to office by a narrow margin. If this ends up being the result, opposition leaders are likely to be extremely suspicious, but whether they reject the results will depend on how credible the process is seen to be both domestically and internationally. The longer-term consequences are more uncertain. The background story to these elections is about the rise of William Ruto: will he go on to win the presidency in 2022? If his allies do well in the elections, in parliament and at county level, this will strengthen his hand. The defeat of most or all of the independents who have expressed hostility to him would also put him in a stronger position. But even if things go his way in 2017, Ruto faces an uphill struggle, which will first take the form of a contest for control of Jubilee. Who succeeds Kenyatta as the leader of Jubilee will shape the party's fate, as only Ruto has a strong incentive to invest in the current party structures, but will not determine whether or not the Deputy President will run for the presidency. Instead, he is likely to throw his hat into the ring come what may.

42   'Can't vary presidential votes, court bars IEBC', *The Star*, 8 Apr. 2017, http://www.the-star.co.ke/news/2017/04/08/cant-vary-presidential-votes-court-bars-iebc_c1540096 viewed 6 July 2017.
43   *Africa Confidential*, 'Opinion polls in question', 23 June 2017, https://www.africa-confidential.com/article-preview/id/12032/Opinion_polls_in_question.

In turn, Ruto's candidacy will significantly raise the political stakes in 2022. In addition to being a highly effective mobilizer, he is one of the least liked candidates among communities that do not back him – and even within some of those that are currently aligned to Jubilee. Moreover, if he does run in 2022, Ruto is likely to face at least one Kikuyu contender. If that leader commands widespread support in central Kenya, wider tensions over Rift Valley land will be revived, and a new pattern of popular demand and elite alliance-building will begin. At present, it seems quite possible that the 2022 elections will be significantly more unpredictable, and potentially violent, than those of 2017. If problems with the 2017 elections once again damage the credibility of the IEBC, that will be a potent combination, generating inter-communal tensions that it will require significant political will and planning to diffuse.

The 2022 elections may well also be more expensive. The performances of wealth and power that have become a standard part of any election campaign become more lavish in each election year: the convoys of vehicles that accompany candidates when they submit their nominations become longer; helicopters become the must-have transport for national figures; and, huge advertising billboards proliferate. The distribution of cash and other gifts, while hard to quantify, may also be on the increase – if only because there are ever more voters. One consequence of the rising cost of electoral politics is that politicians assume office with multiple debts, some of which are owed to the 'tenderpreneurs' who deal in government contracts and to business-people who need other kinds of favour – licences, land, permits. Thus, while elections offer a kind of accountability – voters judge candidates, often in a very parochial way, on whether they seem likely to deliver the rewards of development – they may also undermine transparency and fuel corruption.

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