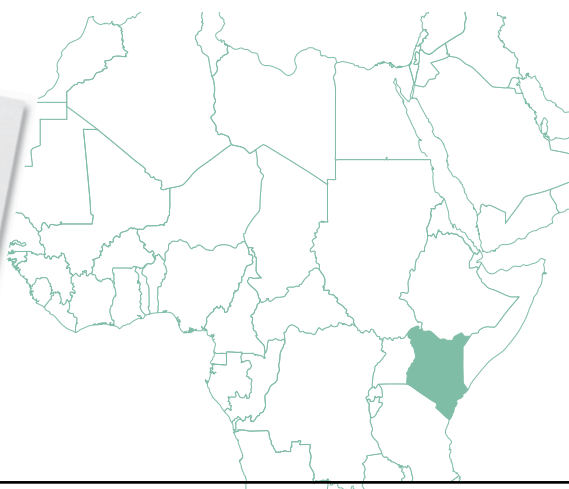


Elections in Kenya in 2007



Introduction¹

The closely contested Kenyan elections in 2007 were based upon a flawed election process, and led to a deepening of ethnic divisions and serious post-election violence lasting well into 2008.

Kenya has experienced election violence since the introduction of multi-party politics. However, the 2007 election was unique because the political history of constitutional reform and the 2005 referendum set the scene for conflict and because the visibility of apparent election fraud triggered widespread public anger. These two factors resulted in post-election violence that exceeded the scale of 1992 and 1997 clashes.

Background

From 1965 to 1990, a monolithic, one-party system of government became entrenched in Kenya, characterised by a 'presidential authoritarianism' and the curtailment of fundamental rights. The repeal of part of the constitution in 1991 and the subsequent reintroduction of multi-party politics, although hailed as a major political landmark, were regrettably not accompanied by other constitutional, legal, and administrative reforms, resulting in a weak legal and institutional framework for elections.

Following the introduction of multi-party elections in 1991, and in the absence of an effective and organised opposition, President Moi (a Kalenjin) won the 1992 and 1997 elections, both marred by violence. However, in 2002, the opposition finally won by uniting around Mwai Kibaki, a former Vice President and Kikuyu. The 2002 government of Mwai Kibaki promised a new constitution that would help to deal with Kenya's many governance problems – an overly powerful presidency with a weak legislature and judiciary, a centralised

¹ This brief is adapted from 'The Political and Institutional Context of the 2007 Kenya Elections and Reforms Needed for the Future' by David K. Leonard and Felix Odhiambo Owuor. 8 March 2009

state, disputes around land, a history of impunity for violence and corruption, inequalities between ethnic groups, and poverty and unemployment. However, large parts of the population felt that these promises were betrayed. This was the backdrop against which the 2007 elections occurred.

Elections

The Election Commission of Kenya (ECK) managed the key components of voter registration, election-day mechanics and certification of the results of the vote. It had performed very well in 2002 and 2005, was thought to be robust and had a highly respected chair. However, confidence in the ECK and in the integrity of the 2007 general elections was greatly undermined by Kibaki's last minute appointment of 18 out of 21 new Commissioners without consulting the opposition (as he had formerly agreed), and the refusal of the ECK to carry out a number of technical improvements recommended by the donor-provided experts assisting it. ECK training was inadequate to avert inconsistencies in the ways in which staff operated polling stations.

The Kriegler Commission² found that electoral fraud began at the polling station level and was rampant. It determined that the errors made in the various stages of the tallying process were so great and widespread that it is impossible to reconstruct from the formal record who in fact won the presidential contest.

The courts in Kenya, emerging from a long period of authoritarian rule, do not yet play fully the roles of protecting human and minority rights and of enforcing the integrity of the electoral process. Hence they were not trusted during the post-election crisis, contributing to its escalation.

The Kenyan media played a mixed role in the election violence. On the whole, Kenya's print media are among the best in Africa. Nonetheless, the major media were biased in favour of the government, especially the government-owned Kenya Broadcasting Corporation. Talk shows on some of the small, vernacular FM stations also became vehicles for hate speech (although others became vehicles for peace).

Civil society organizations (CSOs) that had been highly effective in voter education and electoral observation over the previous 15 years did not perform as well in 2007, perhaps because they now found themselves divided in their political loyalties.

The role of the army and police in the election violence differed considerably. During the post-election violence the generals made it clear to the President that they were not willing to be called out, that they had seen in their peace-keeping work that military involvement could make domestic conflicts worse, and that political problems needed political, not military solutions. Such conclusions bode well for the future of democracy in Kenya. The assessment of the police is much less positive, responding to the violence with more force rather than containing or de-escalating it.

Breakdown into violence

The pattern of election violence following the 2007 elections occurred in three discernable waves. First, there was spontaneous looting by youths in the slums of Nairobi and Kisumu of government buildings and of the shops and houses of Kikuyu families and Party of National Unity (PNU) supporters after the announcement of the election results. Second, violence

² Judge Johan Kriegler, et al., *Report of the Independent Review Commission on the General Elections held in Kenya on 27th December, 2007* (Nairobi: Government Printer, Government of Kenya, 17 September 2008).

organised in part before the election by opposition and tribal leaders as a response in the event of Kibaki's winning the election. Third, reprisal attacks, organised by government supporters and Kikuyu militias that mainly targeted migrant workers thought to be opposition supporters in parts of the Rift Valley Province, Central Province, and Nairobi slums. The police also were responsible for much of the violence, either by using excessive force to deal with protesters or choosing not to prevent violence.

Over 1,200 people were killed in the election violence and as many as 350,000 people displaced. The violence disrupted crop production and transport, resulted in a sharp economic downturn, an 80% reduction in tourism revenue, and a rise in the price of basic goods. The violence also entrenched social fragmentation between ethnic groups in the areas hardest hit by the violence.

In Kenya, as on the rest of the continent, voting is largely determined by ethnicity, kinship and neighbourhood, and political parties are organised along ethnic lines. In the rural areas, where all three tend to coincide, the result is that voting at the polling station level generally will be in favour of one particular candidate, with the decision effectively a collective one, often enforced by violence. Only in the major urban areas is the coincidence of family and neighbourhood broken.

International donor action and lessons learnt

Donors supporting democratization work in Kenya supplied joint programme funds (which paid for full-time election expertise) to a UNDP basket fund. Donors were generally well-coordinated, held meetings monthly, and had very good interpersonal relations. The lead donor was the USA, deputized by the Danish embassy.

However, despite these promising circumstances, the full significance of institutional weaknesses in the ECK were not fully appreciated by the donor community until after the failure of the elections. Early danger signals about the performance of the ECK were not well communicated within the donor group and therefore neither it nor the diplomats were mobilised into precautionary activity. The international community over-estimated respected commissioners' ability to organise a complex process and to stand-up to intense pressures in a very high stakes election. In effect, at both the international and the ECK level, too much faith was placed in too few people. The case underlines the lesson that when the stakes are high, it can be helpful to ensure that responsibilities amongst donors are duplicated or overlap.

Although donors' strategic conflict assessments and risk analysis flagged the risk of post election violence (highlighting the importance of systematic scenario planning and risk analysis), getting the government of Kenya to agree to certain donor-driven risk mitigation initiatives was not always possible (e.g. support to district peace committees and police training). Demonstrating the limitations of the international community's leverage in being able to change the course of elections, there is an important lesson to be learnt about the difficulty of transforming political risk analysis into policy interventions. Whereas a lot of these discussions took place at the technical level, it has been suggested that in the future there should be a forum of ambassadors and heads of missions that can engage with government when such obstacles arise.

More successfully, in the aftermath of the elections, as the conflict and disputation of results continued to gather pace, the international community played an important role in supporting a panel of eminent African personalities, led by former United Nations Secretary

General Kofi Annan, to mediate and find a solution. After several weeks of negotiations, the two political parties involved agreed to a power-sharing agreement on 28 February 2008.

Looking ahead

Failures of governance were at the core of the violence that followed Kenya's 2007 national elections. The immediate and intermediate causes of the election violence in Kenya (which are the usual subjects of donor democratization initiatives) were driven by the underlying causes. There were technical problems with the Kenyan elections and they contributed to the violence. But at the most basic level, they were symptoms of deeper problems and not the basic causes. What is crucially important is that the underlying dimensions of Kenya's recurring electoral violence now be addressed.

Any democratisation programme designed for Kenya will have to be highly flexible in order to keep up with the rapidly shifting nature of the country's day-to-day politics. The conflicts and displacements unleashed by the election violence will fester and grow if nothing is done about them. Kenya has been host to several innovative and effective conflict mediation and reconciliation projects. Modest amounts of donor support could expand these efforts quite dramatically. There is also a need for more adequate programmes to respond to the needs of the internally displaced persons created in the several episodes of election violence.