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Kenya's Elections – No News is Good News!

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Bonn, 25 March 2013. Kenya's 4 March 2013 elections received minimal coverage by the world media. As readers may recall, Kenya's last elections in 2007 drew noticeably more attention. Back then, the race was close, results were conspicuously delayed, and incumbent President Mwai Kibaki was declared winner and hastily sworn in. His opponent, Raila Odinga, lamented irregularities and called for street protests. Violence and looting erupted, police reactions were ruthless, and in parts of the country, seemingly pre-meditated ethnic 'cleansing' sprees were followed by revenge attacks. Two long months of post-election violence in early 2008 left more than a thousand people dead and several hundred thousands displaced.

This time around, the race was close again, and after another conspicuous five-day delay in the tallying process (due to 'technical difficulties'), Uhuru Kenyatta was declared the winner. The opposition leader, again Raila Odinga, lamented irregularities – again. But this time, Kenya remained peaceful.

What drives election related violence in the first place? Elections are usually peaceful in countries with large and diversified private sectors and time-honoured democratic institutions – i.e. rich countries. There, established institutions like the media and the judiciary guide free and fair elections. Should these fail (as some argue they did in the 2000 US elections), structural factors cushion the blow: a private sector that is large and independent from the political elite provides the greatest disincentives for a costly civil war over rigged elections, since, who wins or loses an election makes little economic difference to the lives of citizens.

It is much more difficult, of course, to hold peaceful elections in a country where 46% of the population lives on less than a dollar-twenty-five a day,

where formal jobs grow at a fraction of the working age population, where democratic institutions are younger and often less binding than personal ties between powerful individuals, and where several ethnic and language groups co-exist like separate nations within a common territory, doubling as separate patronage networks. In addition, Kenya's independence constitution (1963-2010) facilitated a winner-takes-all presidential system that bestowed the president with enormous powers over the distribution of wealth. Most ordinary Kenyans thus saw their economic situations (personally getting a job in the city, or collectively getting a clinic for the home village) linked to the presidency. This combination of weak institutions and high stakes makes elections so explosive.

How, then, was violence avoided in 2013 if the race was similarly close and the tallying process was again marred with inconsistencies? A number of intended and unintended factors contributed. Among the most important intended factors were the creation of a national watchdog commission that monitored hate-speech, and the media's resolve to prioritize peace at the expense of more critical election coverage. Unintentional, or 'chance' factors included the involvement of the International Criminal Court (ICC) that led politicians to phrase their campaigns in the name of peace, and that may also have helped forge the coalition between the two ethnic groups with the most dangerous cleavage between them (Kikuyu and Kalenjin).

Above all, however, Kenya's 2010 Constitution kept the elections peaceful. Two crucial aspects of the new constitution are a devolved system of government (to 47 newly created counties), and a strengthened judiciary. The new devolved system provided serious consolation to electoral losers. Odinga's party coalition, CORD, lost the presiden-

cy, but gained important other positions by securing its home turf, by making unexpected inroads into a neighbouring province, and by winning the all-important governorship in Nairobi. Meanwhile, two of President-elect Kenyatta's most senior associates lost their senatorial bids to less established aspirants. This promised to reduce the winner-takes-all nature of Kenyan politics. Secondly, great headway had been made over the past two years in reforming the judiciary toward a strong and independent arm of government; so much so, that this time, Odinga chose to lay his trust in the courts by filing a petition instead of calling for protests. He further publically pledged that he would accept and abide by the Supreme Court's ruling.

These are great achievements in making Kenya's institutions more democratic and inclusive. But some of the trust placed in the new constitution may be premature. It remains a serious risk that the powers of the status quo (who enjoy the benefits of Kenya's old, extractive institutions) are too entrenched and may yet succeed in blocking the reform process before the constitution is fully implemented. For example, the high hopes placed in the devolution process have yet to be fulfilled. According to the World Bank "current funding for functions likely to be devolved is well in excess of 15% [of the budget]" (the proportion stipulated for county governments). Opposition-led counties

may face particular difficulties. For its part, the new judiciary is led by competent and reform-minded judges, who enjoy great legitimacy among the population. But when confronting the most powerful individuals in the country, the judiciary still faces severe challenges, including credible death threats to the Chief Justice. The pending Supreme Court verdict over Odinga's election petition is thus a big hurdle for Kenya's reform process and for peace. Once all sides have accepted the Court's decision, and the country has remained peaceful, Kenya will have regained investor confidence and can continue forward on its promising course away from the 2007/8 catastrophe and toward further institutional reform.

How can the donor community help strengthen the new constitution? Cooperation with the central government should be strictly tied to the acceptance of the Supreme Court verdict over the electoral petition; and to a fair implementation of the devolution process, giving governors of opposing counties a modicum of free reign. Otherwise, Germany may want to use the opportunity to shift the development cooperation focus from the centre to the newly established counties. To strengthen the devolution process would help lead the way toward peaceful elections in 2017, which, in turn, would leave Kenya with another election that receives the desired minimal attention from the world media.