



Observatoire  
**Afrique** de l'**Est**  
Enjeux politiques & sécuritaires

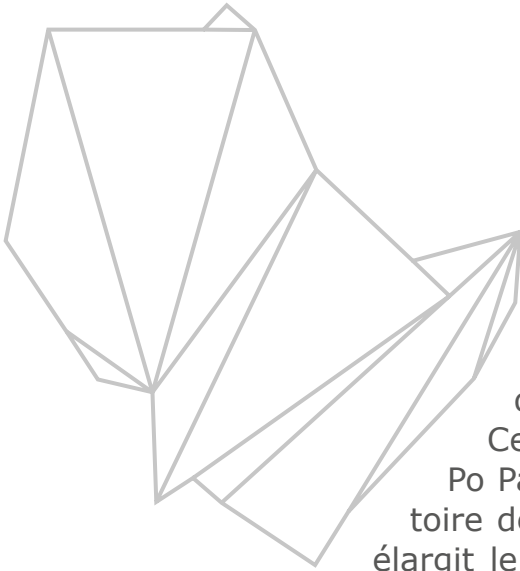
**POLITICAL ECONOMY OF KENYA  
& THE 2017  
GENERAL ELECTIONS**

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NOTE **ANALYSE 9**  
MARS 2019





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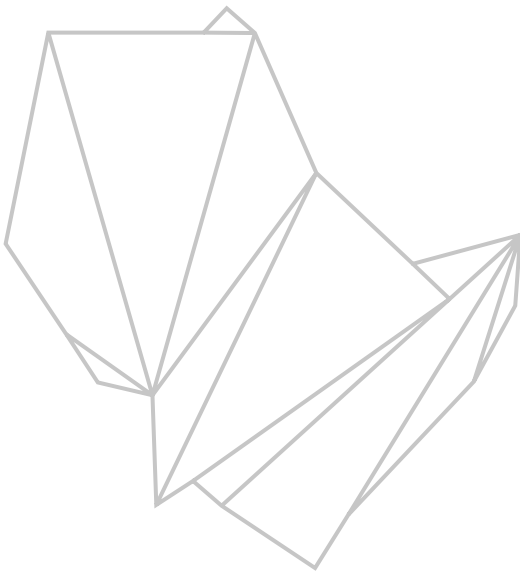
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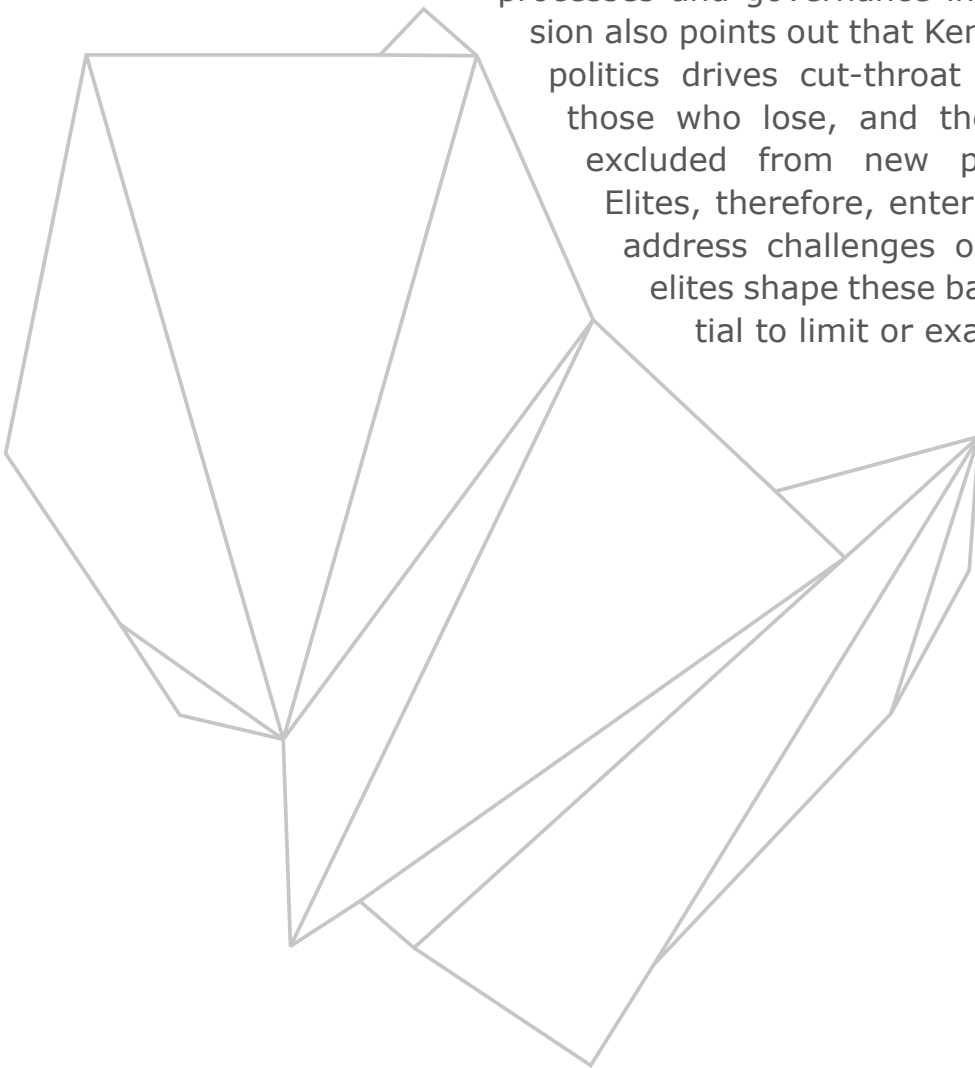
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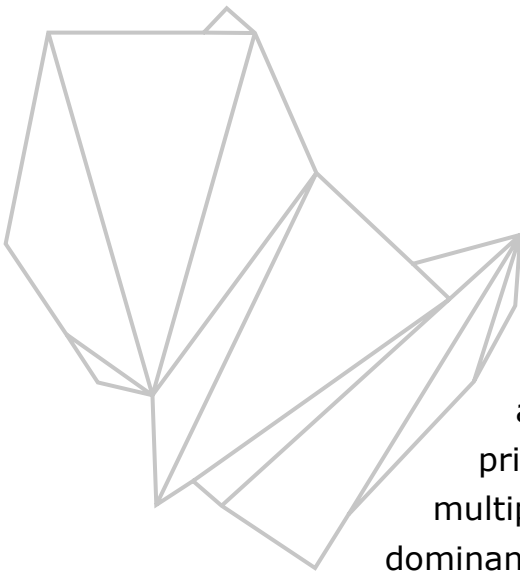
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## Abstract

In 2017, Kenya held two presidential elections in succession after the new apex court, the Supreme Court, annulled the August 2017 presidential results in which the incumbent President Uhuru Kenyatta was declared the winner. The main opponent, Raila Odinga, declined to participate in a fresh poll. Violent protests spread with supporters of Raila Odinga demanding his inauguration. On January 30, 2018, they swore him to 'office' as a 'People's President'. This event deepened the existing ethno-political divisions and aroused more violence. However, on March 9, 2018, both President Kenyatta and Raila Odinga publicly agreed to 'build bridges'. The 'handshake' aroused new dynamics including weakening of their respective political parties. This paper discusses Kenya's political economy and its implications for the 2017 electoral competition. The paper shows the centrality of ethnic based relations and how this

combines with elite bargains to influence major political processes and governance in general. The discussion also points out that Kenya's 'winner takes all' politics drives cut-throat competition because those who lose, and their communities, are excluded from new power arrangements. Elites, therefore, enter into new bargains to address challenges of exclusion. How the elites shape these bargains has the potential to limit or exacerbate violence.





## Introduction

Kenya ascended to independence in 1963 under a Westminster democratic political system, comprising a parliamentary system of government and multiparty political arrangements. There were two dominant political parties, the Kenya African National Union (KANU) and the Kenya African Democratic Union (KADU) and a number of smaller parties. All the parties competed for political power on ethno-regional lines under the leadership of their respective ethnic elites.<sup>1</sup> KANU had the support of two large ethnic groups, the Kikuyu and Luo, while the smaller communities coalesced around KADU. The divisions were as ideological as they were ethnic. The small communities coalesced around KADU to build adequate numbers to fight off the larger ethnic groups. The groups were afraid that these numerically large groups would dominate political power after independence and take away their land.<sup>2</sup> On account of this, the smaller communities preferred a devolved system of government – regional sub-national units - or what was popularly referred to as *majimbo*.<sup>3</sup> However, the numerically larger groups preferred a unitary form of government; a centralized form of government which, it was observed, would particularly help build a nation state.

These divisions informed the organisation of political competition on the eve of independence. KANU won the first election but in order to win the party agreed with KADU to establish a devolved system of government – *majimbo* system. However, after independence, KANU reneged on this promise and dismantled various institutions that checked the executive. The government amended the constitution severally to entrench a dominant executive. From the late 1960s, the government obstructed the practice of multiparty demo-

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1. Cherry Gertzel, *The Politics of Independent Kenya*, Nairobi, East African Publishing House, 1970; see also Keith Kyle, *The Politics of Independence*, London, Palgrave Macmillan, 1999.
  2. See details in John W. Harbeson, *Nation Building in Kenya: The Role of Land Reform*. Evanston, North-Western European Press, 1973.
  3. Yash P. Ghai, and J. W. B. McAuslan, *Public Law and Political Change in Kenya a Study of Legal Framework from the Colonial times to the Present*, Nairobi, Oxford University Press, 1973.

cracy such that up to 1991, a one-party regime was so deeply entrenched that it required a constitutional repeal to allow for competitive political parties once again.

After the return to multiparty politics in November 1991, an election was held in December 1992. Ethnic violence both before and after elections continued to be experienced. Indeed violence has continued to recur around election time and driven by ethnic elites who fear exclusion from emerging power arrangements. The most pronounced and widespread violence accompanied a dispute over the 2007 presidential election results.<sup>4</sup> The violence only ended following international mediation under the leadership of the African Union, which outlined a road map for comprehensive constitutional and other reforms.<sup>5</sup> A new constitutional framework was drafted and promulgated in 2010.

A general election was held in 2013 under the 2010 constitution. Uhuru Kenyatta, and his deputy, William Ruto, won this election even though the International Criminal Court (ICC) had indicted them for crimes committed during the post-2007/08 election violence.<sup>6</sup> With Uhuru leading his Kikuyu community and Ruto leading the Kalenjin, the two formed the Jubilee Alliance and campaigned on a narrative of victimhood. They mobilised ethnic nationalism among their respective communities and won the election.<sup>7</sup> The opposition under former Prime Minister, Raila Odinga, and a former Vice President, Kalonzo Musyoka, insisted that the March 2013 election had been rigged. A second election was held in August 2017 and again, the President and his deputy won the election. They also won more seats than the opposition, National Super Alliance (NASA), in lower level seats. The Supreme Court, however, annulled the 2017 presidential election on the argument that the election was not carried out in accordance with the constitution and the laws.<sup>8</sup> The Court directed the electoral management body to conduct a fresh election, in line with the law. The fresh poll was conducted on October 26, 2017.

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4. Karuti Kanyinga, "The Legacy of the White Highlands: land rights, ethnicity, and post-2007 election violence in Kenya", *Journal of Contemporary African Studies*, 27: 3, 2009.

5. Gilbert Khadiagala, "Political parties and electoral violence in Africa." Paper presented at West Africa Institute, IDEA, AU, and Organisation de la Francophonie, Praia, Cape Verde, September 22, 2016; African Union (2014). *Back from the Brink: The 2008 Mediation Process and Reforms in Kenya*. Nairobi: Office of the AU Panel of Eminent African Personalities, 2014; Karuti Kanyinga and James D. Long. 2012, "The Political Economy of Reforms in Kenya: The Post-2007 Election Violence and a New Constitution", *African Studies Review*, 55:1 2009.

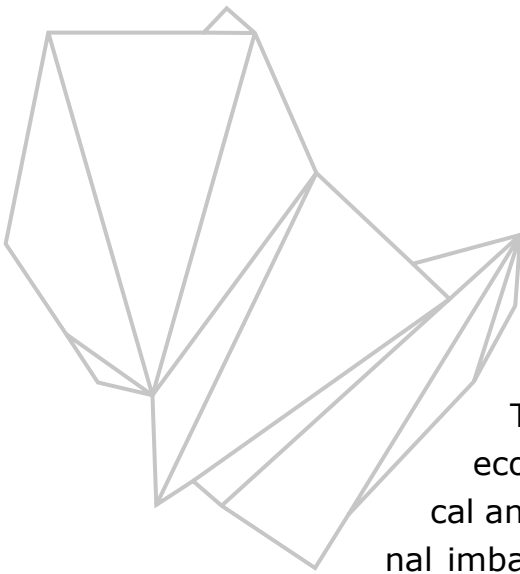
6. Susanne Mueller, "Dying to win: Elections, Political Violence, and Institutional Decay in Kenya", *Journal of Contemporary African Studies*, 29:1, 2011.

7. Karuti Kanyinga and James D. Long. *op. cit.*, 2009.

8. Supreme Court of Kenya became the first court in Africa to annul a presidential election. It was also the fourth in the World to do so after Austria, Maldives, and Ukraine.

This paper discusses the key political economy issues arising from the 2017 presidential elections. The discussion indicates the centrality of ethnic based relations in Kenya's political economy and also observes that this alone is not sufficient to understand Kenya's politics. Elite bargains are an important driver especially because, ethnic elites exert overwhelming influence on the governance of public institutions. The bargains have consequences on the operations of public institutions especially because the elites are interlinked to one another through business; elites' economic interests are intertwined with political interests thus making it easy to pursue bargains. A 'winner takes all' politics also drives cut-throat competition among elites because those who lose, and their communities, are excluded from new power arrangements. On the whole, a history of inequalities in the distribution of political power and attendant disparities in development, continue to reinforce the significance of ethnic based politics. All these factors combine to create conditions for the recurrence of violence, at election time.

The paper is organised as follows. The following section discusses the main features of Kenya's political economy and identifies the chief drivers of key political trends. The third section discusses Kenya's Constitution, 2010, and the extent to which it addresses the foundational challenges of Kenya's political economy. The fourth section focuses on the 2017 elections and the evolving dynamics. The discussion under this section also examines the new elite bargains and their consequences on politics. It also pays attention to the economy and the challenges of development after the elections. The last section is a conclusion of the discussion.



## The political economy of Kenya: key features

There are several features of Kenya's political economy that continue to affect major socio-political and economic events in the country. First is regional imbalances and ethnic inequalities in development.

These disparities have their origins in the colonial situation. The colonial administration concentrated development and specifically the spread of basic services in certain parts of the country, in order to attract investments by the settlers. The government identified and scheduled the Whites Highlands (regions around central Kenya and Central Rift Valley) for the white settler economy. After independence, the successive governments did not address inequalities in development but rather, continued with development policies that exacerbated imbalances in development.<sup>9</sup> Some regions therefore have better basic services than others and poverty levels are higher in some regions than others.<sup>10</sup> These inequalities have an ethnic dimension because regional boundaries are coterminous with ethnic settlement patterns. Some ethnic regions, therefore, are poorer than others.<sup>11</sup>

Secondly, ethnicity and political patronage provide a framework for the practice of electoral politics and power arrangements. The country's ethnic structure comprises at least 42 groups but only five communities are numerically significant. These include the Kikuyu (17%); the Luhya (14%); Luo (12%); Kamba (12%), and the Kalenjin (12%). These groups are almost equal in size. None of them however, is large enough to dominate the others. Kenya's electoral system of "First Past the Post" continues to reinforce these numbers because political parties and alliances not only form along ethnic lines but, also, the people vote along ethnic lines. The candidate who mobilises a rela-

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9. The Sessional Paper No. 10, 1965, on African Socialism and its application to planning in Kenya argued for investment in areas that would bring quick return on investment. This meant concentrating resources in developed areas.

10. See Raymond Muhula, "Horizontal Inequalities and Ethno-Regional Politics in Kenya." *Kenya Studies Review*, 1:1, 2009.

11. Society for International Development (SID, *Exploring Kenya's inequality: Pulling apart or pulling together?*, 2013, available at <https://www.sidint.net/content/inequalities-kenya>.



tively large share of votes – largely ethnic – thus wins the election. Those who win also exclude from power the political elite from the opposing side.

Those who win elections hold on to power by all means. Thus, after the return to multiparty in the early 1990s, the ruling party, KANU, won both the 1992 and 1997 elections. The party lost in 2002 to a new opposition alliance, the National Rainbow Alliance (NARC), but the membership of the alliance fragmented and the incumbent President Kibaki formed the Party of National Unity (PNU) which won the 2007 elections. The 2013 and the 2017 election were won by the Jubilee alliance. This suggests that the ruling parties and incumbent Presidents win elections at the end of each of two terms of office. There is fierce competition at every election whether it is after the first term of five years or the second term office. However, each victory arouses disputes; the opposition always dispute the results citing fraud. The victory by incumbents is often disputed because extensive use of state resources by the ruling party and the government. Any party in power uses the advantage of incumbency to mobilise campaign finances through corrupt practices including raising finances from those contracted by the governments to carry out projects. Of note here, however, is that in 2017 elections both sides had elites who were carrying out business with the government or had done so but were now no longer part of crony capitalism networks under Jubilee. For example, the opposition had on its side some elites who were central in raising campaign finances for Jubilee's 2013 elections but were locked out by allies of both president Uhuru and his Deputy, William Ruto, once they consolidated political power.<sup>12</sup>

Further, the government tends to constrict the space for the opposition political parties and manipulates the election management body to favour the ruling party. In all campaigns therefore, the ruling party is advantaged to win the election. But the manipulation of election results in favour of the government and the ruling party continues to undermine legitimacy of presidential election results. This was found to be the case in the 2007 election where the commission appointed to investigate the electoral dispute concluded that the results were so polluted that it was difficult to know who won the election.<sup>13</sup> Similarly, in the 2017 elections as argued later, the Supreme Court annulled

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12. One of these elites was Jimmy Wanjigi. He had supported Jubilee in 2013 but had strained relationship with President and his Deputy allegedly over the failure contracts for infrastructure projects. He shifted his supported to the opposition during the 2017 elections.

13. The Kriegler commission – named so after Justice Kriegler who chaired the commission. Details are in Republic of Kenya, *Report of the Independent Review Commission on the General Elections Held in Kenya on 27 December 2007*, Nairobi, Government Printers, 2008.

the election on the basis of the argument that the election management body had not conducted the election in line with the law.<sup>14</sup>

Politics of exclusion and fears of marginalisation from power contribute to cycles of violence at every election because winning an election becomes a life and death issue for elites representing these groups. Indeed, ethnic elites make their groups believe that if they win, then their groups have the opportunity for greater development of their regions. “Jobs for the youth”, “resources for regions”, as well as other patronage slogans become selling points for many, during campaign times. These are incentives for mobilisation of voters, along ethnic lines and to support the ethnic elites.

Ethnic-based politics and the attendant patronage combine to weaken the system of accountability and governance in institutions. Patronage undermines meritocracy in appointments and erodes the culture of adherence to the rule of law because enforcing the law and punishing ethnic elites usually comes with political consequences, including the possibility of losing the support they give at elections. This often emboldens the elites to mobilise along ethnic lines and to turn public resources into personal resources for buying loyalty. In the end, this results in abuse of office by elites, thereby exacerbating corruption.

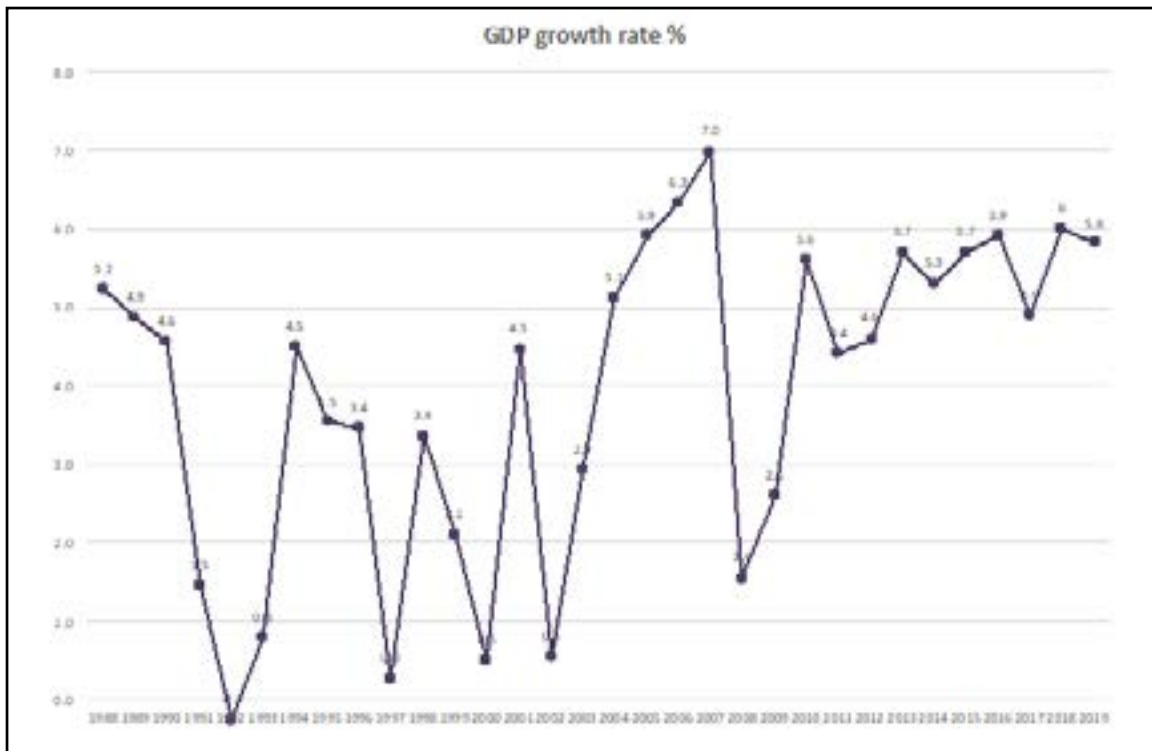
Finally, Kenya has an agrarian economy, in which agriculture directly contributes about 32 per cent to GDP and another over 25 per cent indirectly through linkages to other sectors.<sup>15</sup> The growth of the agricultural sector, however, is periodically affected by electoral politics and the attendant anxieties over violence. The growth of the economy and the agricultural sector have continued to drop to significant levels every election year and/or when there is an important political event. Figure 1 below indicates the overall pattern of growth and political developments in Kenya. The growth dropped in 1992, 1997, 2002 and 2007, years during which there was a general election. Growth also dropped in 2000 when there was political contestation over the constitution review process.

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14. The courts turned out to play an important role that the election management body because there was limited trust in the latter see Karuti Kanyinga and Collins Odote, “Judicialization politics and Kenya’s 2017 elections”, *Journal of Eastern African Studies*, 13:2, 2019.

15. Republic of Kenya, *Economic Survey*, Nairobi, Kenya National Bureau of Statistics, 2018.

Figure 1: GDP Growth Rate 1990-2017



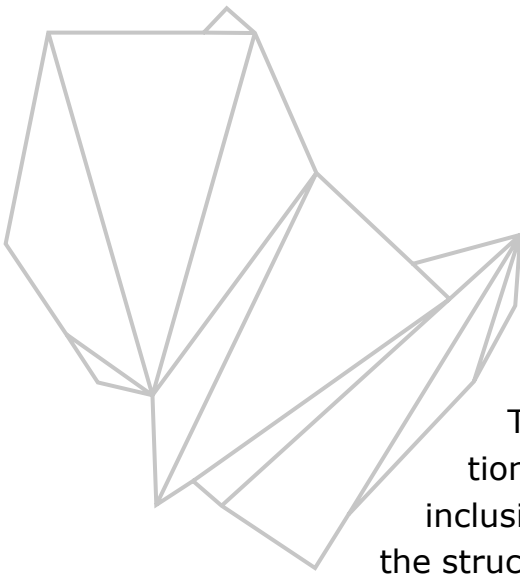
Source: Economic Survey reports, various issues.

Though ethnic-based relations are central to the operations of Kenya's political system, and are the key drivers of the country's major political events, ethnic-based relations are not sufficient to understand the drivers or governance in Kenya. Ethnic elites, whether in appointed or elective positions, exercise overwhelming influence in the governance of institutions. The elites also connect to each other through political and economic interests through jobs as well as patronage and cronyism, specifically by doing business with government.

This emerging relationship has other consequences including undermining the operations of formal institutions. Formal institutions for instance, have to operate within informal rules and specifically values prescribed by ethnic and patronage ties. In the end, this influences how the political elites implement the constitution, what policies they develop and implement, as well as how institutions operate.

Tied to this is the significance of ethnicity from below. Communities place pressure on the elites in order to gain advantage of their position; they demand preferential treatment by their elites in government. This is also because political elites make ordinary citizens believe that the government exists to provide development and that the government provides development resources through influential elites. During elections, therefore, elites mobilize these narratives to influence voters; they make ordinary citizens believe that power is based on “the pork barrel” and procured through patronage. Voters also demand benefits from the leaders and insist on getting material benefits as compensation for the support they gave them. Further, the leaders trade ethnic votes with political benefits including enriching themselves and/or acquire wealth in preparation for another election. In so doing, the incentive for accountability reduces and they become less answerable to the voters.

This practice of politics has reproduced imbalances in regional and ethnic development and deepened political patronage. Although policies are developed, their implementation only takes place on the basis of political considerations. Furthermore, influential elites also make promises to their electorates without reference to policies. They do so to respond to demands from the electorate, and/or to assuage the fears of important constituencies.



## The 2010 Constitution and response to key challenges

The drafting of the 2010 Constitution paid attention to grievances over development and need for inclusive power. The constitution thus radically altered the structure of government by introducing two levels of government: national and county governments. It provides for a winning presidential candidate to win by 50 per cent plus one vote and win by over 25 per cent of votes cast, in at least half of the 47 counties.

The powers of the executive were reduced. The constitution dispersed power to several constitutional commissions and independent bodies.<sup>16</sup> The new bodies were vested with powers to check on the excesses of the executive and other bodies and assumed some of the responsibilities, hitherto, performed by executive. With regard to elective seats, the constitution introduced Senate as another house of parliament, in addition to the national assembly. It also provided for the representation of women with each of the 47 counties voting for a woman representative in the national assembly. These, added to the Members of Parliament at the national level and the Members of the County Assemblies at the Counties.

The constitution also addresses the challenge of ethnic and regional inequalities in development by providing for devolution of power and resources. It establishes a devolved system of government comprising 47 county governments with powers and resources to deliver resources to the counties. To do so, the constitution identifies distinct functions to be carried out by both national and the county governments. The devolved functions include health, agriculture, early child education, and water, among other services.<sup>17</sup>

The constitution gives attention to the grievances of marginalisation; the counties bypassed by development in the past are provided with additional grants to help them 'catch up' with the rest of the country. It provides for not

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16. This is provided for under Chapter 15 on constitutional commissions.

17. Schedule 4 of the Constitution.

less than 15 per cent of national revenue to the 47 counties every year, and another for 0.5 per cent of the Equalization Fund to help formerly marginalised counties. From 2013, when the devolved system of government was inaugurated allocations to the county governments have increased by 95 per cent. In FY 2013/14 for instance, the national government allocated USD 2.1 billion (Ksh. 210 billion), this increased to USD 4.1 billion (Ksh. 410 billion) in FY 2018/19.<sup>18</sup> The counties receive their share based on a formula established by the Commission on Revenue Allocation (CRA). The formulae comprise indicators such as population size, poverty factor, and the equally sharable revenue, among others.

The 47 counties elect their own governments here, the voters in each county elect a governor, alongside members of the county assemblies. The governor is also required to establish a county executive or a cabinet to help in the running of the county affairs. The county assemblies play an oversight role and have a responsibility to vet the members nominated for appointment to these offices. The counties have both resources and political power to help the various communities address the development distortions and imbalances of the past.

The elections held in March 2013 ushered in the first county governments. From then on, the county governments began providing basic services such as health, supporting agricultural production support programmes, and providing and/or improving local road networks with some making rural roads relatively more accessible, compared to the past.<sup>19</sup> Evidently, some county governments, such as those in the marginalised northern part of Kenya, have filled important gaps in service delivery.<sup>20</sup>

These achievements have occurred against a backdrop of high levels of corruption. Reports by various agencies indicate increasing cases of corruption in service delivery. The Ethics and Anti-Corruption Commission 2017 report, for instances, reveals that as many as 44 per cent of citizens identify corruption as the major challenge facing their counties.<sup>21</sup> Other reports, including those submitted by the Controller of Budgets; and the Auditor General have continually identified corruption as a growing phenomenon within the counties.

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18. Controller of Budget reports, Various Issues.

19. *Myths and Facts about devolution*, Council of Governors Report at [https://cog.go.ke/phocadownload/reports/THE\\_4TH\\_ANNUAL\\_DEVOLUTION\\_CONFERENCE\\_MYTHS\\_&\\_FACTS\\_SHEET.pdf](https://cog.go.ke/phocadownload/reports/THE_4TH_ANNUAL_DEVOLUTION_CONFERENCE_MYTHS_&_FACTS_SHEET.pdf) .

20. Ibid.

21. Ethics and anti-Corruption Commission, *National Ethics and Corruption Survey 2017*, EACC Research Report, n° 6, May 2018.

It is worth noting here that corruption in the counties takes various forms. For instance, county governors award contracts to friends at highly inflated prices and/or use friends and family members to award themselves contracts, especially for big infrastructural projects.<sup>22</sup> In some of the infrastructure projects, funds are disbursed to these friendly contractors but the projects are either not started or are left incomplete.<sup>23</sup> Members of County Assemblies also neglect their oversight roles and begin implementing development projects. This provides an opportunity for “rents” as they award the contracts to implement these projects to themselves or close allies. Further, sometimes the MCAs compel the county governors to allocate development funds to projects of their choice. They then turn a blind eye to issues that require deeper scrutiny by the assemblies.

There is increased conflict over power and mandates between various units as well as conflicts between the county government executives and their county assemblies. Furthermore, the Controller of Budget and the Auditor General’s reports reveal increasing misuse of funds by both the county assemblies and the executive. Indeed, the amount of funds that the national and county governments fail to account for, has rapidly increased after the introduction of devolution.<sup>24</sup>

The elections held in August 2017 also resulted in establishing the second generation of county governments. 22 governors were re-elected while 25 lost their seats. Local level political dynamics played a role in how some governors were re-elected or voted out of office. The national alliances had influence in their strongholds and therefore those who won in party primaries easily won their seats. Outside the strongholds of the parties, the competition, again, between Jubilee and NASA was intense. Jubilee’s huge resources from both the state and private businesses, who had benefited from government contracts, advantaged the party. However, performance in delivery of devolved services played an important role in influencing voters to make their choices in some of the counties.

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22. see Carol Maina, “Ojamong, 9 others in court over corruption charges”, *The Star*, 4 July 2018, available at <https://www.the-star.co.ke/news/2018-07-04-ojaamong-nine-others-in-court-on-corruption-charges/>; Felix Olicki and Susan Muhindi, 2018, “Obado’s proxy’s receive 2.5 billion in tender scams”, *The Star*, 25 September 2018, available at <https://www.the-star.co.ke/news/2018-09-25-obados-proxies-received-sh25bn-in-tender-scams/>.

23. Ruth Mbula, 2019. “Auditor Report unearths massive corruption in western counties”. *Daily Nation*, 5 January 2019, available at <https://www.nation.co.ke/news/Audit-report-unearths-massive-corruption-in-western-counties/1056-4921910-rpg1hj/index.html>.

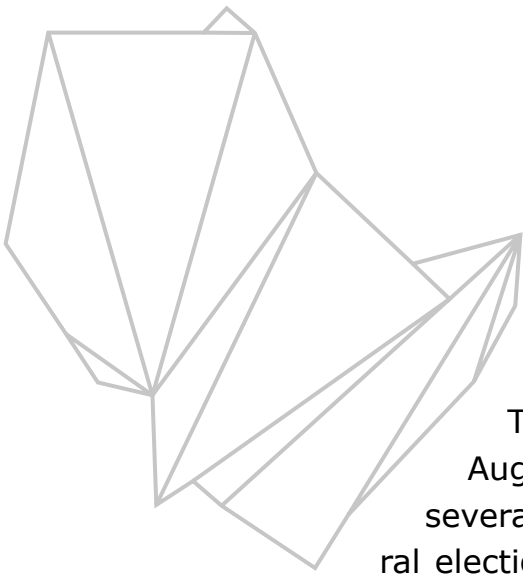
24. Social-Economic Audit of the Constitution.

The second generation of county governments were elected at a time of prolonged electoral conflict owing to the fact that the presidential election held in August was annulled with a fresh election held in October 2017. This distracted many of the governors – and the nation in general – away from development. The electoral campaigns for 2017, therefore, affected service delivery in the counties in numerous ways. In some instances, county officials would participate in electoral campaigns to support incumbent governors. After the elections, the new governors restructured departments and hired new staff. Some of them sacked some of the senior staff hired by the previous governors.<sup>25</sup> Political considerations, cognisant by voting in the 2017 elections, informed the staffing of county government offices. This tendency, somehow, reflected what happens at the national level where the president awards his political support with appointments to public posts. The newly elected governors did the same; they turned to county appointments to reward friends who had supported their campaigns. We now turn to the issue of the political implications of the 2017 election.

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25. Mathew Ndanyi, "Mandago threatens to "sack" lazy cabinet members, staff in Uasin Gishu", *The Star*, 15 August 2018, available at [https://www.the-star.co.ke/news/2017/08/15/mandago-to-sack-lazy-cabinet-members-staff-in-uasin-gishu\\_c1616604](https://www.the-star.co.ke/news/2017/08/15/mandago-to-sack-lazy-cabinet-members-staff-in-uasin-gishu_c1616604) .





## The 2017 elections: new political dynamics

The 2017 elections and the annulment of the August 8, 2017 presidential election results had several other consequences. First, like the 2013 general election, this second election under a new constitution was an intense competition between ethno-regional alliances. The two political alliances, Jubilee and NASA, mobilised support from the ethnic regions of the leaders forming the alliances. The alliances were formed by a small group of elites, mobilising and trading their ethnic communities. The opposition, in particular, comprised a group of elites who had served in government together. Some of them had previously served in the same party while others were in parties opposed to each other. Others had been together before but fell out as each searched for a viable political alliance to win political power. These now joined efforts to form a new 'vehicle' in 2017. The two alliances had almost equal size of 'vote blocs' because their membership reflected Kenya's ethnic structure, in which no group among the 'big five communities' is large enough, to dominate another. This perception of 'equal numbers' had the effect of making each alliance believe it would win the election, except, if there was rigging. A narrative of "fraud" and the view that none could win without manipulating the numbers led to each group claiming that the opponents were planning to rig the election.

Both alliances campaigned using radically different messages and approaches. Jubilee, for instance, mobilised on the advantage of incumbency; pointing the mega infrastructural development programmes as a major achievement by the national government. Jubilee argued that the government had delivered on the promise of broad-based development and that roads and a new railway line from Mombasa to Nairobi were good examples of what they had delivered. On the other hand, the opposition NASA, argued that Jubilee had failed on governance; it had failed to provide for inclusive power. In their view, Jubilee had presided over the spread of corruption and politics of exclusion by marginalizing, in terms of development and appointment to public posts, areas that did not support jubilee.

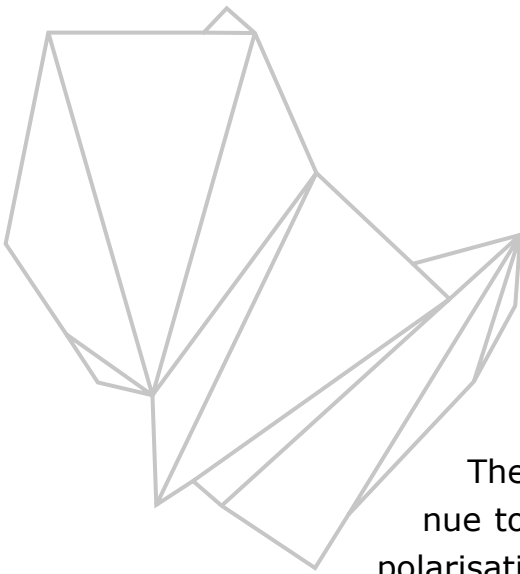
NASA argued that the government had deepened ethnic divisions by excluding other groups from power, apart from those to which the president and his deputy belong. The party also had different messages for different regions of the country which were meant to solidify support from different constituencies. At the coast and several parts of the Rift Valley, NASA picked up on the 'land question' and argued that inequalities in land ownership was the result of land grabbing during the first decade of independence when Uhuru Kenyatta's father was the president. The party would point at large tracts of land owned by the Kenyatta family at the Coast and the dominance of 'immigrant kikuyu' communities in the Rift Valley to demonstrate the extent of historical injustice suffered by other groups. The party also picked on land grabbing by the deputy President to demonstrate that Jubilee would not pursue any land reforms if returned back to power. On account of these claims, the land question rapidly became an important campaign issue as Jubilee sought to demonstrate to voters that it had a solution: expedited titling programme. The government began to fast track giving of title deeds in different parts of the country but there was no clear policy guideline on how some of the outstanding issues would be addressed. Landlessness and grabbing of land by influential elites from the colonial period, and throughout the post-colonial period were not addressed in this attempt to silence NASA on the land question.

These radically opposed views and contestations had the effect of polarising the country; ethno-regional divisions widened and the election results reflected an ethnic settlement pattern. Subsequently, when President Uhuru Kenyatta won the election, the opposition challenged the results in court. NASA declined to accept the presidential results citing anomalies in the tallying and transmission of results from the polling centres. The party argued that the IEBC, together with Jubilee, and the government had manipulated the technology for the transmission of results in order to advantage Jubilee. The party challenged the election and the Supreme Court annulled the election. A fresh election was held on October 26 2017 but the opposition NASA declined to participate in the election arguing that no reforms had been effected to provide for the better conduct of the elections. Among the issues that NASA wanted addressed, before participating in the elections, was the removal of the commissioners and staff of IEBC, who had presided over the August election. The party also demanded the cleaning and scrutiny of electronic equipment used in the August 2017 election. They argued that these had been manipulated to favour Jubilee. The ruling party, Jubilee and the government opposed these demands, and supported the IEBC. This deepened the divi-

sions and further polarised the electoral environment, reducing further, the confidence and trust in IEBC especially in the areas where the opposition enjoyed political support.

The opposition party opted for nation-wide protests to compel the IEBC to defer the poll date and to carry out reforms. The police responded to these protests violently and it is alleged that many people died, or sustained injuries. This only intensified the protests and demonstrations in the hope that the IEBC would call off the poll and undertake the required changes. On their part, the IEBC and the government hardened their position arguing that the election would go on as planned. This caused more protests by the opposition. Everyone held to their argument without relenting, convinced that they had won the August poll.

IEBC conducted the fresh election as per the order by the court. In the fresh election held on October 26, more than 70 per cent of registered voters did not turn up for the fresh election. To NASA, the low voter turnout was evidence that the government did not have the support of the voters it claimed voted in favour of Jubilee in the August 2017 poll. The opposition maintained the claim that Jubilee won as a result of tampering with the computer tallying system. The party leader, Raila Odinga, went further to label jubilee elected leaders 'computer generated', a sobriquet that attracted more conflicts. Jubilee leaders in turn urged the president to form a government to take charge because, to them, the party won the presidential seats and the many seats won by the ruling party in lower level elections vindicated this argument. Claims and counter-claims and the narrative of stolen election and 'computer generated leaders' resulted in violence and confrontation between the opposition and the police in major urban areas that supported the opposition



## Electoral violence and emergence of new power arrangements

The electoral dispute had consequences that continue to impact on Kenya in many ways. One, political polarisation and a deepening of ethno-regional divisions concretised after the elections. Two, although Jubilee President Uhuru Kenyatta won the fresh presidential election, the low voter turnout for that election delegitimised this election and the final result. The absence of the opposition in the fresh poll and the low voter turnout further impacted the credibility of the results. The poor voter turnout also discredited the opposition. The failure of the opposition to participate in the fresh poll dented the reputation of the opposition because its leadership was viewed as giving up too early in the electoral process. Each bloc therefore continued to view the other as illegitimate. Three, the elections led to a reduction of public confidence in institutions such as the IEBC. Public trust and confidence in IEBC declined from a high of 74 per cent in July 2017, one month before the poll, to 40 percent in October 2017, a few weeks short of the fresh presidential election.<sup>26</sup>

The dispute over the 2017 election continued to shape major events even after the “fresh” presidential election held in October 2017. The repeat presidential election did not conclusively settle the dispute on who won the August 2017 election and therefore continued to arouse conflicts. Jubilee or NASA, hardened their positions about the election. NASA continued to argue that the election was a fraud and the new leadership was not legitimate. On their part, Jubilee maintained that they had won the election and they would not compromise on that stance at all.

Amidst these conflicts, President Kenyatta formed a government whose composition was skewed in favour of the President’s Kikuyu community and the

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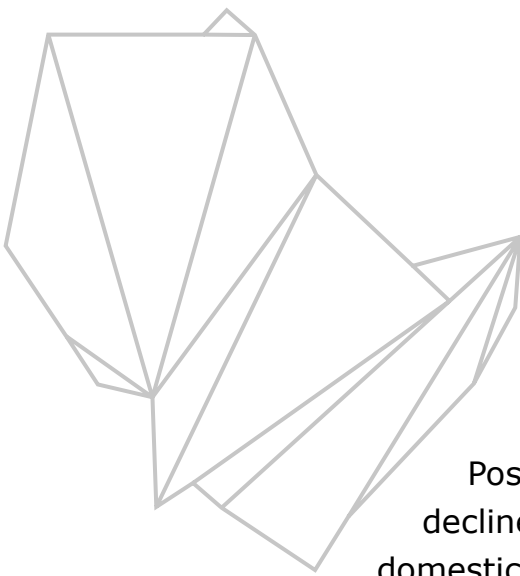
26. Ipsos survey available at [https://www.ipsos.com/sites/default/files/ct/news/documents/2017-09/Ipsos\\_KE\\_SPEC%20Poll\\_Press%20Release%20Presentation\\_%201st%20August%202017.pdf](https://www.ipsos.com/sites/default/files/ct/news/documents/2017-09/Ipsos_KE_SPEC%20Poll_Press%20Release%20Presentation_%201st%20August%202017.pdf) .

Kalenjin, William Ruto's community. Out of 22 Cabinet posts, the Kikuyu had five and the Kalenjin had four posts. Combined the two communities had 41 percent share of cabinet posts against their population share of 29 percent. Groups that supported the opposition were poorly represented in the new cabinet. The national population share of the Luo is about 13 percent but they had only one cabinet secretary in the new government.<sup>27</sup> The Kamba were similarly underrepresented; their share of population is 12 percent but they had only one person in the cabinet. The Luhya had two members. Evidently, three communities with a numeric size of 39 percent of the population had only 19 percent total cabinet posts while two communities with a population share of 29 percent had 41.5 percent of the posts.

This composition of cabinet posts added to the growing tensions between the opposition and the government. Appointing members of cabinet from largely the communities that supported jubilee added to the conflicts because it appeared as if the government had closed out other communities. Although done to demonstrate that President Uhuru Kenyatta and his deputy were now in power, and that there was no room for the opposition to get to power or to negotiate inclusion in government, the appointments caused more anger among supporters of the opposition. This development aroused narratives of political exclusion, and helped trigger violence, which spread rapidly in areas supporting the opposition.

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27. Although the Jubilee Secretary General is Luo and was listed as a Cabinet member but this post is not recognised in the structure of government as a cabinet secretary; indeed, the national parliament did not vet the Secretary General alongside nominees for the post.



## The Big Cross Over: opposition embraces government

Post-poll violence spread fast but both parties declined to accepted mediation by both external and domestic players. The diplomatic community and the business elites tried to mediate but both Jubilee and the opposition NASA declined their assistance.<sup>28</sup> The opposition continued to argue that their candidate, Raila Odinga, had won the election and urged him to form his own “parallel” government.<sup>29</sup> The pressure from below continued to build alongside increased violent confrontation with the police. In the end, on January 30, 2018, the opposition mobilised supporters to witness a ‘swearing in’ – inauguration ceremony – of their leader, Raila Odinga, whom they now referred to as ‘People’s President’. The country was now divided into two blocs radically opposed to one another and characterised by a clear ethnic dimension. The government had on its side the majority Kikuyu and the Kalenjin communities, the home communities of both the President and his deputy. On the other hand, the opposition had on its side other numerically large groups including the Luo, Luhya and the Kamba.

The divisions did not remain for long. No sooner had the opposition ‘inaugurated’ the people’s president, Raila Odinga, then the two leaders – the President and Raila - met to discuss how to address the crisis facing the country. They held a discreet meeting after which they publicly shook hands and embraced one another to symbolise the end of conflict. The meeting held on March 9, 2018, and the “handshake” by the two leaders surprised many of their supporters because both had taken hard-line positions and viciously attacked each other before and after the elections.

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28. [https://www.the-star.co.ke/news/2017/12/08/after-rebuking-us-raila-meets-envoys-on-nasas-position\\_c1682130](https://www.the-star.co.ke/news/2017/12/08/after-rebuking-us-raila-meets-envoys-on-nasas-position_c1682130) .

29. See for instance, Charles Hornsby, *A History of Kenya since Independence*, New York, I.B. Tauris & Co. Ltd, 2012.

The “handshake”, however, is not a new phenomenon with regard to Kenya’s politics and relationships among elites. It is very much in line with the dynamics of Kenya’s political settlements over the years.<sup>30</sup> In particular, political elites switch parties and/or change alliances with ease after every election.<sup>31</sup> Alliances are formed before elections and fragment after an election as elites look for new partners to form alliances with. Parties become fluid and less institutionalised.<sup>32</sup>

This “handshake”, as is popularly known, resulted in the President and the leaders of the opposition developing a framework for ‘unity of purpose’. First, the President and the leader of the opposition developed a unified approach to reforms that would prevent the recurrence of violence and inclusive development. This framework, the Building Bridges Initiative (BBI), identified challenges such as ethnic antagonism, the fight against corruption, national ethos, inclusive development, and security as issues to address to lay a foundation for sustainable political and economic development. The BBI evolved a new opportunity for inclusive politics by providing for appointment to public posts of supporters of the Raila Odinga. Thus, following this development, some of the key supporters of Raila Odinga were appointed to key public posts<sup>33</sup> the presence and inclusion in government and attendant access to patronage that such inclusion brings, reduced the tensions between the government and the opposition. The elite bargain, leading to the handshake therefore had consequences beyond the relations between the two leaders. It had effects on a broad range of spheres.

The “handshake” aroused new dynamics in all political parties. It created new factions within the ruling party, Jubilee alliance. Those supporting the Deputy President, William Ruto, argued that a working relationship with the leader of the opposition, Raila Odinga, and the president was meant to undermine the position of the Deputy President so as to prevent him from winning the presidential election in 2022. They saw this development as planned to prevent

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30. Both President Uhuru Kenyatta and his deputy, William Ruto, were in different political parties in the 2007; they were indicated by the ICC for financing violence against each others’ supporters during the post-2007 election violence. Raila Odinga was in the same party with William Ruto at this time.

31. If ethnic elites leave one party, their communities leave the party too. For this reason, many parties lose influence after one election; they remain on paper without a huge membership.

32. CharlesHornsby, *op. cit.*, 2012.

33. Standard Team, “Handshake pays off as Uhuru hands Raila allies plum jobs”, *The Standard*, 23 September 2018, available at <https://www.standardmedia.co.ke/article/2001296574/handshake-pays-off-as-uhuru-hands-raila-allies-plum-jobs> ; Felix Olick, “Raila’s hand in appointment of new envoys, PS”, *The Star*, 14 July 2018, available at <https://www.the-star.co.ke/news/2018-07-14-railas-hand-in-uhurus-new-appointment-of-envoys-ps/> .

him from acceding to power.<sup>34</sup> To some, this new relationship had the aim of advantaging Raila Odinga against the Deputy President; it was meant to prepare for his presidency in 2022.<sup>35</sup> On the other hand, those allied to the President and the leader of the opposition interpreted this as an innovative approach towards inclusive politics. In their view, the 'handshake' was meant to address the grievances of those excluded from power. Furthermore, this had the effect of ensuring that leaders from groups that win elections do not dominate executive power. All the same, the new approach to inclusive politics and power resulted in deepening divisions within Jubilee.

This "handshake" also weakened the opposition especially because the opposition would not effectively check the government. While in the past the opposition would check on the government and critique government business in parliament and critique development policies, the "handshake" neutered the extent to which opposition leaders could play this role. The leadership in parliament remained less critical of government programmes and would mobilise opposition members in support of the government. This reduced vigilance on the part of the opposition and helped cease hostilities towards government. The opposition generally became less critical of government policies even in instances where the public required the opposition to check on the excess of the government.<sup>36</sup>

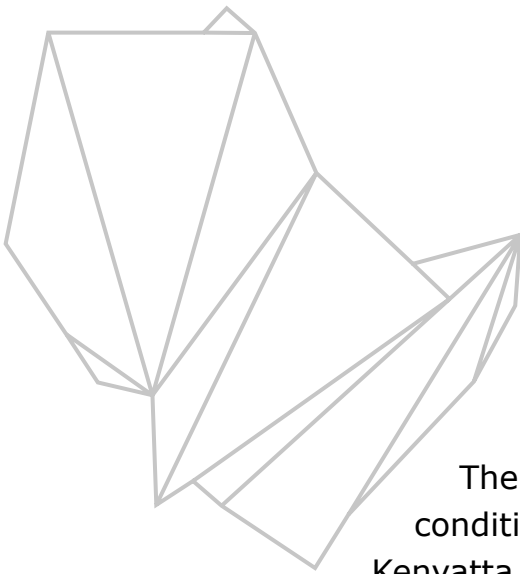
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34. see Mwangi et al, 2018, "Raila, Ruto clash over handshake" at <http://www.mediamaxnetwork.co.ke/473357/ruto-raila-clash-over-handshake/>.

35. Robert Wangui, "Jubilee leaders differ over claims of rift after handshake" *Sunday Nation*, 15 July 2015, available at <https://www.nation.co.ke/counties/nyeri/Jubilee-Party-leaders-differ-rift-claims/1954190-4664680-pn0gdb/index.html>.

36. Business Daily, "Opposition chief under fire for supporting VAT on fuel," *Business Daily*, 18 September 2018.





## Post-election dynamics and implications for development

The new relationship with the opposition created conditions under which the government and President Kenyatta could implement programmes with limited check. Having made peace with the leader of the opposition, President Kenyatta announced the fight against corruption as his priority. This meant investigating and prosecuting senior government officials who had enriched by use of public resources including diverting funds meant for public development programmes. And given that many of those involved in corruption scandals are politically powerful, the fight against corruption immediately assumed a political dimension, as argued earlier.

President Kenyatta also identified four development priorities that he would embark on as “legacy projects” for his last term of office. The projects, the Big Four as they are popularly known, include: promoting manufacturing to enhance contributions of the sector to GDP; improving food security; providing universal health care; and providing housing for low income earners. At the time of introducing the Big Four, the government had advanced the drafting of the third Medium Term Plan for 2018-2022. The Big Four had also not been publicly discussed and endorsed. Neither were government departments sensitized on how they would identify priorities for implementation but both Jubilee and the leader of the opposition supported them as a priority. The opposition did not raise any concern on these projects because of the new relationship with the government. However, civil society groups began raising questions on financing of these projects because of increasing public debts. There was concern that repayment of debts would crowd out resources for development or lead to the government introducing new taxes to raise revenue.<sup>37</sup> While in the past the opposition would have been critical of how the government introduced these policies, the new relationship saw the government pass the policies without resistance.

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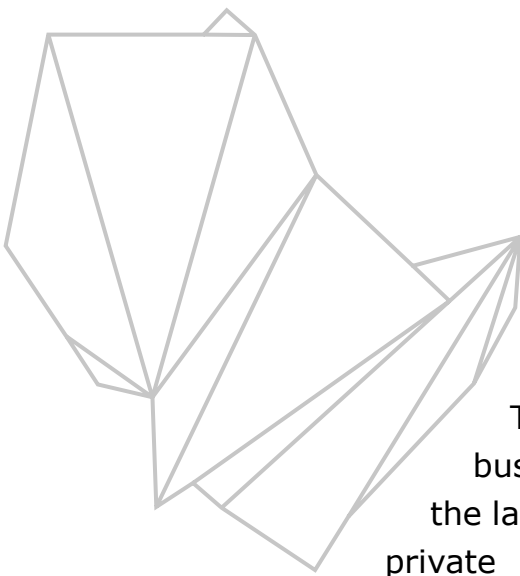
37. Emmanuel Wanjala and Lewis Nyaundi, “Knut rejects Uhuru’s Big 4 housing levy”, *The Star*, 14 December 2018, available at [https://www.the-star.co.ke/news/2018/12/14/knut-rejects-uhurus-big-4-housing-levy\\_c1865754](https://www.the-star.co.ke/news/2018/12/14/knut-rejects-uhurus-big-4-housing-levy_c1865754) .

The introduction of the Big Four legacy agenda, whether deliberately designed or by accident, took place in tandem with a new approach to the fight against corruption. To create a new momentum, the president re-organized the departments responsible for investigations and public prosecution. He appointed new officers in these departments and directed them to investigate cases of corruption and begin prosecutions. A new momentum in the fight against corruption picked pace but with mixed results and contradictory tendencies. A number of senior government officials and politicians were arrested. These included sitting governors; and one Permanent Secretary. Again, the improved relationship with the opposition helped to create this momentum because the leader of the opposition and opposition MPs in parliament publicly supported the efforts by the president. Indeed, the first sitting governor arrested and charged with corruption offences belonged to the opposition party but the opposition leaders publicly supported the drive to arrest and prosecute. This support by the opposition became important in one important respect. While in the past these officials would have mobilised ethnic communities for support, the new relationship between the government and the opposition made it difficult to organise against their arrest.

These developments notwithstanding, there were doubts whether the government was committed to the fight against corruption especially because past efforts lacked political support. Furthermore, the constitutional body charged with the responsibility of fighting corruption, the Ethics and Anti-Corruption Commission (EACC) had been weakened by political interference on its operations. Related, there were those who argued that the government was selective in this fight against corruption because a majority of those arrested and charged were allies of the Deputy President. This then contributed to rapid politicisation of the fight against corruption. Those allied to the Deputy president interpreted the fight as aimed against one of their own.<sup>38</sup>

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38. Rawlings Otieno and Allen Mungai, "Opposition MPs turn heat on Ruto's allies in war against corruption", *The Standard*, 11 June 2018, available at <https://www.standardmedia.co.ke/article/2001283678/opposition-mps-turn-heat-on-ruto-s-allies-in-war-against-corruption>; Imende Benjamin, "Ruto allies frustrating Uhuru, Raila in war on corruption - Meru leaders" *The Star*, 14 August 2018, available at [https://www.the-star.co.ke/news/2018/08/14/ruto-allies-frustrating-uhuru-raila-in-war-on-corruption-meru-leaders\\_c1802647](https://www.the-star.co.ke/news/2018/08/14/ruto-allies-frustrating-uhuru-raila-in-war-on-corruption-meru-leaders_c1802647).



## The economic challenges and relations with donors

The election had an impact on the conduct of business and the economy in general. Throughout the last quarter of 2017 and the first quarter of 2018, private businesses complained that political violence had constrained the business environment, disrupting businesses in towns where the violence was spreading. The result was evident in the growth figures. In 2017, for instance, the economy grew at 4.9 per cent. This was a decline in growth from about 6.0 per cent reported in 2016.<sup>39</sup> Recovery began in the first quarter of 2018, especially after the handshake and subsequent reduction of political tension. Growth accelerated from 5.6 per cent in the first quarter, to 6.2 per cent in Q2.<sup>40</sup> By the end of 2018, the economy was projected to grow at a growth rate of 5.7 per cent.<sup>41</sup>

These figures masked a number of economic challenges the country was experiencing throughout 2018, some of which had resulted from the electoral conflicts. The government introduced a new tax regime under the Finance Act, 2018, leading to an increase in the costs of petroleum products, among others, which in turn increased the prices of essential commodities.<sup>42</sup> The businesses passed these costs on to the consumers.<sup>43</sup> The government introduced these taxes with little or no resistance by opposition because the government had co-opted the opposition. There were no other strong organised groups to prevent the government from doing so.

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39. Republic of Kenya, *Economy Survey 2017*, Nairobi, Kenya National Bureau of Statistics, 2018.

40. Ibid, *Central Bank of Kenya Report, 2017*.

41. The World Bank, *Kenya Economic Update*, October 2018, available at <https://openknowledge.worldbank.org/handle/10986/30597?show=full>

42. Dominic Omondi, "New taxes on petrol will raise cost of living: CEOs", *The Standard*, 5 July 2018, available at <https://www.standardmedia.co.ke/business/article/2001286823/new-taxes-on-petrol-will-raise-cost-of-living-ceos>.

43. Edwin Okoth, "Confusion, pain as hefty fuel taxes kick in, driving up cost of living", *Daily Nation*, 2 September 2018.

The government also introduced the Big Four development programme alongside many incomplete infrastructure projects many of which the government had started before the 2017 campaigns, as evidence of achievements in terms of the spread of development. Many of these were undertaken with loans from China. The continued borrowing – from China - to finance such expenditure realised a rapid increase in public debts. This became an issue of public concern immediately after the elections, especially because by the end of 2018, public debt was at 57 percent of GDP.<sup>44</sup> This rose from a low of 38.2 per cent in 2012 and 39.8 per cent in 2013 and has continuously increased by over 4 per cent points year-on-year.<sup>45</sup>

The increase of public debt became an issue of great public concern for a number of reasons.<sup>46</sup> First the public debt was crowding out resources for development and, in particular, resources to support devolution and service delivery in the counties.<sup>47</sup> Secondly, there was no accountability in the use of public funds including loans borrowed from external sources; corruption was increasing without any efforts to arrest and prosecute senior officials.<sup>48</sup> Furthermore, crony capitalism became embedded in the operations of the Jubilee administration right from the time Jubilee came into power. The mega projects became the source of “rents” for elites associated with the President and his deputy.<sup>49</sup> Infrastructure projects such as construction of roads, the Standard Gauge Railway itself, dams in various parts of the country were argued to have had benefited powerful elites in government in business and particular elites who had provided finances for campaigns. Corruption appeared an institutionalised behaviour for which the government lacked any credible commitment to effectively address.

These developments took place against another important dynamic in Kenya’s development: the government moved to the east, China, from the very early days when Jubilee came to power in 2013. The “move east” development

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44. See The World Bank, *Kenya Economic Update*, October 2018; see also Institute of Economic Affairs, “Trends in the public debt of Kenya” 14 September 2018 that shows the debt at 59% of GDP - [http://www.ieakenya.or.ke/number\\_of\\_the\\_week/trends-of-the-public-debt-in-kenya](http://www.ieakenya.or.ke/number_of_the_week/trends-of-the-public-debt-in-kenya) .

45. World Bank, *op. cit.*, 2018.

46. David Ndi, “Why IMF, CBK haven’t been telling Kenyans the truth about public debts”, *Daily Nation*, 24 September 2018.

47. Odongo Kodongo, “Kenya’s public debt is rising to dangerous levels”, *The Conversation*, 5 August 2018, available at <http://theconversation.com/kenyas-public-debt-is-rising-to-dangerous-levels-100790> .

48. This also showed in many interviews conducted between August and December 2018. Many of those interviewed were of the view that loans to the government were benefiting individuals because of corruption.

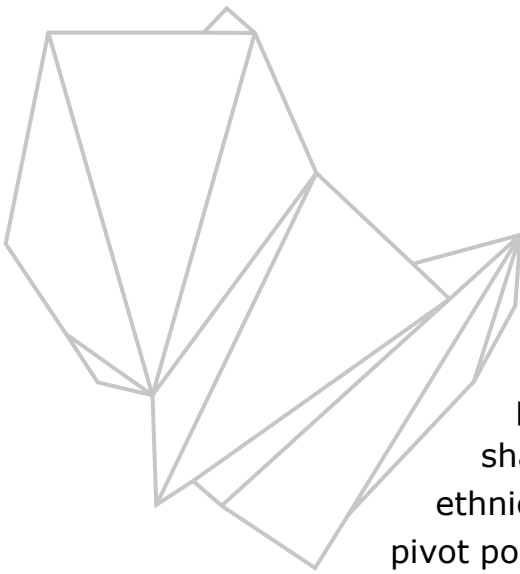
49. See David Booth, Brian Cooksey, Frederick Golooba-Mutebi and Karuti Kanyinga, *East African prospects. An update on the political economy of Kenya, Rwanda, Tanzania and Uganda*, ODI Report, May 2014, available at <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/8945.pdf> .

started way back during President Kibaki's tenure after the political elites around him sought the assistance of China for loans to help in infrastructure projects.<sup>50</sup> They were unhappy with the demands for accountability by western donors especially after the donors began questioning the government's commitment to fighting corruption. Moreover, western donors tended to play more vigilance on corruption in their projects compared to China. After Kibaki, the influence of China in Kenya's development continued to grow and increased rapidly after Jubilee came into power in 2013. Kenyatta and his Deputy opted to "move east" because they already had sour relationship with the west over the ICC indictment. Once they took office, they adopted an anti-West stance which they demonstrated by making many trips to China and Russia. They also lobbied other African governments to steer away from the West with the argument that the West was entrenching neo-colonial approaches in Africa.

At the time of the 2017 elections, the relationship with the West had considerably improved. The government and Jubilee leaders were no longer attacking western governments. However, their previous attacks had the effect of 'silencing' the West. Western governments were no longer regularly issuing statements critical of the government compared to the past. Moreover, in addition to receiving loans and grants and completing the first flagship project, the Standard Gauge Railway, with the assistance of the Chinese government, the government sent Jubilee party officials to study China's communist party approach to politics and the economy. All this took place as new debate on public debts was building up. While this debate would have split the opposition and the government, surprisingly it did not. The opposition was certainly opposed to borrowing to support huge infrastructure projects during the campaigns but the new relationship with the government led to the leader of the opposition taking a less radical position on loans and debts.

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50. David Booth & alii, *op.cit.*, 2014.

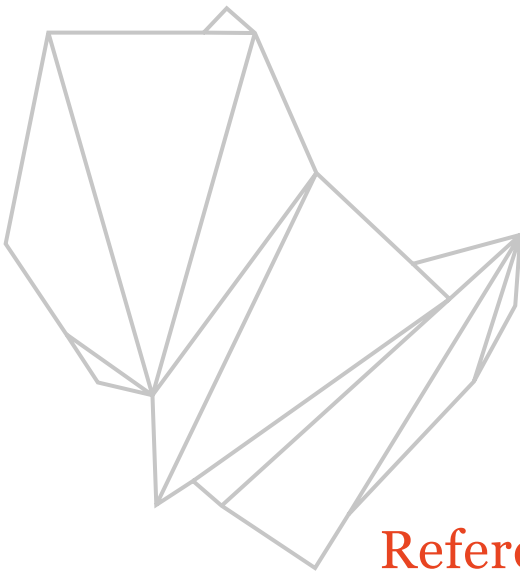


## Conclusion

The discussion has underlined the fact that particular features of Kenya's political economy, shape the electoral process and outcome. Kenya's ethnic structure and the politics of exclusion are the pivot point around which elections revolve. Importantly, election outcomes do not produce inclusive results; there are groups and leading elites who are excluded from new power arrangements. And when excluded, conflicts between them and those in power intensify. This results in new elite bargains, which begin to shape new political developments.

The 2017 elections were not different from the previous elections. The narrative of exclusion was a running theme throughout and this contributed to violence. Violence ended after a new "elite bargain" that saw "semi-co-optation" of the opposition by the government. This, again, is an important feature of Kenya's political economy. Elites are able to form and break alliances with great ease as they seek to promote and protect their interests. Self-interests, rather than public interests, inform the forming of parties and alliances and explains some of the policies and processes that elites in Kenya promote.

Elite bargains are at the centre of many political developments. The handshake that followed the 2017 post-election violence reduced tensions in the country and enabled the opposition and the government to begin working together. These dynamics, however, fractured the opposition and deepened the divisions within the ruling party. The handshake thus had two contradictory outcomes. On the one hand, it created a firm foundation for the government to begin carrying out important reforms. On the other hand, it weakened or even removed altogether the checks associated with opposition parties. The government's business in parliament and outside parliament has proceeded on with limited check by the opposition because of these new-found relations.



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