

The Rule of Law and Free Elections in Africa; Going
Beyond rhetoric
Regional trends on elections and democracy; Kenya

Role of elections in a democracy

Elections are at the heart of democracy. Elections offer the citizen an opportunity to evaluate, assess and scrutinize leaders for their ability to offer guidance in the social and economic spheres. To reflect the will of the voters, elections must be free and fair. If elections are not free; if they are not based on a political philosophy offering a defined political direction or if the management of elections is not focused, elections become a curse and not a cure for social ills. They produce hate, violence and collective disintegration.

It is now a mantra to say that democracy is about more than the holding of elections. Democracy looks at good governance, rule of law, accountability and transparency in the conduct of state affairs. Democracy requires that elected leaders utilize state resources efficiently and transparently so as to realize social development. Inevitably then, elections do not of necessity and on their own guarantee democratic progress. You may have elections, which do not produce a democracy. In this paper I argue that in Kenya, elections have not stimulated a full growth to democracy. They have not produced the power that propels the government to good governance principles. Elections have however facilitated the realization of a strong and vibrant liberal wing of government offering protection of fundamental liberties essential in political organizing. Freedom of assembly, expression and association are

liberally practiced unlike the situation in the Moi era. It is hoped that this may lead to further democratization and a realization of full democracy.

Elections in Kenya

Since independence in 1963, Kenya has consistently held periodic elections. Kenya's elections are severely competitive. A combination of factors informs the voting pattern and shapes the resultant character of the government. The antagonism which characterize our elections are reflected in many instances; the first being in the establishment of the structures which manage the elections. Often, the nomination and selection of the persons who oversee the electoral processes is contentious with each political party striving to infiltrate and influence the eventual nominees. Parties are of the unfortunate belief that their nominees can sway the precepts and procedures of the elections in favor of the nominating entities. The fear and possibility of rigging is a permanent feature of Kenya's elections; pointing out the absence of a commitment to a fair process by all political parties. Parties proclaim the virtues of independent political organs but desire to have a control over the electoral process. This trend has been evident since the resumption of multi party democracy and reflects the suspicions preceding the 2007 elections, endangering the gains made in the transition from ECK to IEBC.

The trend in Kenya's politics mirrors a strong reliance on ethnic identity. Political leaders appeal to sentimental ethnicity as a tool for mobilizing their core support. The overarching theme in all

election campaigns is the appeal to exclusive ethnic capture of the state apparatus. Rivalry for control of the state dominates the political environment and dwarfs any coherent discussions on social enhancement, the economy or general development. In election campaigns, candidates only make a passing reference to improvement of health care, education, taxation or the provision of social amenities including improvement of the infrastructure.

In Kenya, ethnicity as a basis for political support presents a setback to good governance and the fight against corruption. Government efforts to prosecute persons suspected of corruption are viewed as an affront against the communities where the suspects hail from. In today's coalition government, either side of the government throws a shield of protective rhetoric on behalf of any of its members facing either investigation or prosecution for abuse of office, malpractice and corruption. Elections have therefor not produced a system of government blind to ethnic affiliation and committed to the rule of law. The result is a climate of tolerance for venality for fear of losing political support.

Kenya's present segmented democracy is characterized by forceful rivalry. The Coalition government has existed in a climate of suspicion, sabotage, witch-hunt, corruption, political insecurities and deleterious competition. This combination of elements assails the integrity of the fledging democracy making it difficult to find common ground for growth and stability. These same components rear suspicion and conflict giving rise to violence on issues that would otherwise be resolved.

The political history of the country shows a past where leaders leveraged on accumulation of power and resources and played on discretion in rewarding potential voting blocks. The 2010 constitution has whittled this down but has not entirely stripped the executive of the exercise of preference and favoritism in the positioning of public capital ventures, particularly those borne out of direct donor or foreign government investment. An elected leader, though constrained by constitutional dictates on state capital expenditure retains a measure of choice permitting discretion that bypasses accountability mechanisms, flouting the essence of democracy which requires transparent conduct on the part of leaders.

Perhaps as the country goes through more participatory and legitimate elections, the quality of elected leaders will improve permitting the government to operate in an environment of fairness, allowing voters to have regard to party ideology, principles and manifestos. Unfortunately, the prevailing atmosphere does not inspire confidence that this desirable position will soon be achieved. Party leaders have positioned their cronies close to the inner cycles of decision making, ignoring merit and rewarding sycophancy to the exclusion of alternative thought. Parties therefore do not benefit from critical thinking, as the party leaders prefer to be surrounded by party functionaries who voice their own views. This concubinage of opinions does not engender progressive modeling of ideas.

This is not to say that all is lost. It is recognized that the basic elements of a democracy are now well grounded in Kenya; equal participation and free competition in the electoral process. There is however great concern on the skewed political party spread based on ethnic prevalence for a party led by an individual from the region. In real terms, there are places in Kenya where the politics of the community is mono party based. However popular or industrious an elected representative, he will fall by the wayside unless he supports the regional kingpin. This has been confirmed by this week's parliamentary By-elections. The results have been singularly regional party based.

There have been, nevertheless, glimpses of political party organizing across communities. In the 2002 General election the opposition put together a formidable force composed of many ethnic groups against Moi's government. Moi shifted his axis to the youth vote, promising generational change. The more attractive discourse on a transfer of power to the post independence Kenyans as a procedure for introduction of a more transparent and accountable system of government did not carry much appeal. Even then, the entreaty to youth was only a manipulation of the voters, working on the instrumentalisation of age and playing it as one would ethnicity. There was never a willful and deliberate desire to cede power to young people. Kenya is yet to experience the politics of class, gender or even religion. The reform agenda, which currently dominates political discourse in the country, may provide a footstool for institutional changes necessary for the transformation of the

dialogue that informs the voting patterns and the resultant democracy.

Finally, a consideration of whether Kenya's elections have produced a social democracy may be quantified on three key areas: First, whether elections produce a leadership in which citizens have a say in the decision making processes. This has to do with an assertive legislature and powerful decentralized units. Secondly whether elections translate into real tangible gains for the people and not democracy as an abstract concept; do elections produce a leadership that is directed at improving the lives of the people? Thirdly whether elections produce an inclusive government. Do elections produce a stratified government or a unified entity representative of the country as a whole? Answers to these questions do not provide positive indicators that Kenyan elections offer the requisite elements for the growth of democracy. But there is hope. Hope based on the new constitutional dispensation and the reform agenda.

(Remarks by ICJ-K Secretary, Ken
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