Rethinking peace processes

Preventing electoral crisis in Kenya

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Kenya's recent political history challenges conventional understanding of peace processes prevalent since the 1990s as linear and sequenced, and occurring in set phases – pre-negotiation, negotiation and implementation. Peace processes are complex, circular, uncertain and disorderly. Transition out of violent conflict encounters recurrent resistance by people invested in the status quo and requires ongoing efforts to (re-)negotiate the social and political contract. Opportunities for change often happen in bursts during 'critical junctures', as identified in the seminal 2017 United Nations and World Bank report, *Pathways for Peace*.

Kenya has experienced recurrent election-related violence since the mid-1990s. A key driver of conflict and violence has been a deep-rooted fear among Kenya's largest ethnic groups of exclusion from influence and power, and thus from access to resources. Exclusion is exacerbated by politicised ethnicity, corruption and clientelism, which undermine issue-based politics and leave peace and reform processes open to elite capture. Drivers of peace involve an active civil society, including women's groups, activist movements, a strong legal and democratic foundation, a vibrant economy, and a supportive international environment – as well as Kenyan elites' ability to negotiate deals.

Building peace demands fluid and adaptive processes. We advocate a paradigm shift in peace process support and mediation towards creating pathways to inclusive societies. Applying an implicit 'sustaining peace' lens means supporting locally owned formal and informal processes that reduce or prevent violence by simultaneously tackling the drivers of conflict, promoting the drivers of peace and addressing resistance to change as it arises.

This article reflects on the periods before and after the 2017 general election. These illustrate how iterative peace initiatives and processes of negotiation can forge pathways towards a just, peaceful and inclusive society, and provide insights into the current process to prevent violence in Kenya's next general election in 2022.

Critical junctures for peace and change

Independence

A multi-ethnic society with a population of 52 million, Kenya has 42 tribes, but the six largest make up almost 80 per cent of the population – Kikuyu 22 per cent, Luhya 14 per cent, Luo 13 per cent, Kalenjin 12 per cent, Kamba 11 per cent and Kisii 6 per cent. Kenya is a majority Christian country with around 10 per cent Muslims and other faiths.

The country's independence in 1963 following a rebellion against British colonial rule was a major step for sovereign emancipation, but also a missed opportunity. Little was done to change the abiding colonial system of divide and rule that privileged some ethnic groups over others, creating the conditions for politicised ethnicity. Up until 1991 Kenya was a single-party state.

Multiparty system

In the early 1990s, sustained pressure by an active civil society succeeded in replacing the one-party system with a multiparty system. Nevertheless, it took more than a decade for the opposition to unite and defeat the incumbent party, the Kenya African National Union, in the 2002 general elections.

2002 elections

Longstanding and controversial president Daniel arap Moi retired ahead of the 2002 elections and introduced Uhuru Kenyatta as his successor. Opposition leader Mwai Kibaki won the elections and was widely perceived as a symbol of inclusion and change. This was a time of great optimism for many Kenyans. Yet politics continued to pivot on power-plays, corruption and ethnic status, combining to undermine reform efforts. Critics of Moi believed he should have been held accountable for human rights abuses and saw the failure to prosecute him as a significant flaw in the transition.

Other efforts sought to address needs for justice and related drivers of conflict. These included reparations programmes for victims and survivors of torture and detention, the start of the constitutional review process, the establishment of national human rights and anti-corruption commissions, and follow-up on recommendations made under the civil society initiative 'Bring Our Money Back'. The decision not to set up a Truth Commission or prosecute the outgoing regime, and instead prioritise securing compromise, highlights the mix of formal and informal initiatives that avoided acrimonious prosecutions and the granting of amnesty to people who returned money stolen from government coffers.

2007–08 post-election violence crisis

Kenya experienced its most intense election-related violence following the December 2007 elections in which more than 1,000 people were killed and 600,000 displaced, as well as many instances of sexual and gender-based violence such as rape and forced male circumcision. Former UN Secretary-General Kofi Annan led an African Union-mandated initiative, the Kenya National Dialogue and Reconciliation (KNDR), to facilitate dialogue between incumbent President Kibaki and opposition leader Raila Odinga.

Informal, civil society-driven initiatives already launched prior to the KNDR, including the Concerned Citizens for Peace, Kenyans for Peace with Truth and Justice, and a Women's Alliance, all helped pave the way for formal negotiations and promoted substantial agenda points, data on human rights violations and public campaigning. In six weeks a peace deal was reached that brought about a government of national unity and a complex peace architecture that included commitments to establish four commissions: the Independent Review Commission on the 2007 elections; the Commission of Inquiry into the Post-Election Violence; the Truth, Justice and Reconciliation Commission; and the National Integration and Cohesion Commission, which was introduced as a permanent government body to inculcate a culture of inclusion into Kenyan institutions and society.

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2010 constitution

In 2010 a new constitution was promulgated, anchoring most of the reforms of the KNDR process, including decentralising power and resources to devolved governance units. The constitution further provided for the election of six elective positions, five of which were at the county level and one of which, at the very least, must be held by a woman – Governor, Senator, Member of Parliament, County Woman Member of National Assembly, and Member of County Assembly. Competition for the positions stimulated the practice of 'negotiated democracy' or informal negotiations between community leaders on how to share the seats. Informal agreements to apportion these county-level positions – and modalities for rotation – began to diffuse contestation over access to power and minimise ethnopolitical hostility and the risk of election violence.

Negotiated democracy and elite bargains at the national and sub-national level have since led to the formation of inclusive political coalitions and representation of Kenyans in both the incumbent and opposition political parties, assuaging grievances over political marginalisation. At the same time, however, negotiated elite deals on power sharing have undermined the fight against corruption and entrenched identity as the main factor for political mobilisation, as positions are linked and ascribed to identity groups.

A key principle of Kenya's devolution is fiscal decentralisation or revenue sharing between national and devolved units to promote equitable access to national revenues and address regional development imbalances. While the constitution provides for a 15 per cent total revenue share to counties, political parties began renegotiations for constitutional amendments to provide for 45 per cent and for increased civil society oversight of devolved units.

2013 elections
The Uwiano Platform for Peace was launched in 2010 to prevent conditions that led to the 2007 post-election violence and mend relations between communities. Comprising 12 lead state institutions, NGOs and donors, it intended to enhance formal and informal violence prevention processes. However, opportunities for institutional reform and reconciliation were missed. Key political figures feared prosecution by the International Criminal Court (ICC) for their role in the 2007–08 violence, which would have hampered their running for the highest offices in the 2013 elections. This resulted in their resistance to further implementation of key elements of the constitution, notably on dealing with the past, and on Chapter 6 of the statute on Leadership and Integrity.

Revised political coalitions succeeded in diluting reform commitments or capturing institutions that had been set up to advance political and social inclusion. The Truth Commission report was not adopted, and major recommendations of the National Human Rights Commission and other independent bodies were not implemented. While specialised bodies and oversight mechanisms were set up to address agenda item four of the 2008 agreement on 'Long-term issues and solutions', no substantial changes have been undertaken to date.

2017 elections and beyond
The 2017 election was marred by irregularities. The results of the presidential election were annulled by the Supreme Court – a first in African history – and there was a call for new elections. Opposition leader Raila Odinga boycotted the second presidential election round and was later sworn in by his supporters as the 'People's President' on 30 January 2018.

These developments led to a tense situation in the country and brought the economy almost to a standstill. Informal dialogue processes started at the national and sub-national level to address the crisis. Religious leaders, peace groups, human rights activists, women's coalitions, youth groups, academics, former politicians and elders, the private sector and institutions related to political parties all held separate deliberations about addressing the immediate crisis and the long-standing issues. The religious leaders of Kenya united under the 'Dialogue Reference Group' to consolidate the various initiatives and coordinate one national dialogue process. The diplomatic community provided political support to the various mediation and negotiation efforts throughout the crisis. What started as crisis management developed into a renegotiation of major reforms that had been set in motion after the 2008 peace deal and the 2010 constitution.

Building Bridges for a New Kenya
The immediate crisis came to an end with a conciliatory handshake in March 2018 between Kenyatta and Odinga. The handshake was symbolic and took place at the site of the 2008 peace agreement. This signalled the end of the highly divisive political stalemate and a new deal to work together to unite the country.

The two leaders agreed on a formal political reform process, the Building Bridges for a New Kenya Initiative (BBI). The BBI outlined nine underlying issues to address and prevent recurrent election-related crisis and violence, including ethnic antagonism and competition, a lack of national ethos, inclusivity, devolution, divisive elections, safety and security, corruption, shared prosperity, and responsibilities and rights. A 14-member taskforce was appointed comprising 10 men and four women from different ethnic groups to steer a process of nationwide consultations, which made proposals for reform in a report released in December 2019.

Dialogue ecosystem
In parallel to the BBI, a dialogue 'ecosystem' generated reform proposals that overlap with and add different dimensions to the BBI, while some even oppose it. This has created an environment in which the nation is in a (at times tense) dialogue process on how to address the causes of crisis in Kenya in a sustainable way. Proposals vary from executive power sharing, to political, security and social reforms, to everyday inclusion through education. The discussion oscillates between substantial proposals for transformative change and politicised statements to position for the 2022 elections with. Examples of key initiatives are listed below:

» The Punguza Mzigo Initiative is an informal, popular campaign led by one of the opposition parties, the Third

Way Alliance Kenya. It proposes to amend the 2010 constitution to reduce the cost of running parliament, address political over-representation by reducing the number of elective positions and representatives, end historical gender inequality and strengthen efforts to address corruption. Proposals from the initiative were debated in County Assemblies, helping to build substantial public support. However, the initiative has been fiercely resisted by many politicians who fear 'cost cutting' will abolish their positions.

» Religious actors have also been active. Protestant, Catholic, Muslim and Hindu faiths have come together in a remarkable attempt to unite to prevent election violence. The Dialogue Reference Group (DRG) takes stock of the state of the nation and engages citizens and the political class in peaceful resolution of crisis. The DRG built on 2016 achievements when religious leaders mediated in the conflict over electoral body reform. The DRG launched a national dialogue process inviting other civil society groups to participate. Country-wide dialogues resulted in a package of reform proposals. The DRG aims to mediate a national consensus agreement to bring the proposals from the BBI, the religious actors and others together.

» Many women's organisations and networks have been instrumental in contributing to conflict prevention and resolution in both formal and informal spaces. Kenyan women provided informal mediation during pre-negotiations to reach the 2018 'handshake'. Different civil society and political women's platforms have been formed and have grappled with how to meaningfully engage as a collective and leave political differences aside. While some see the BBI as a timely political settlement to improve inclusion and unite the country, others see it as a strategic renegotiation of the pre-2017 political deal to the disadvantage of some political leaders over others. Some women feel strongly that the same political group that is promoting the BBI is also undermining the implementation of the two-thirds gender rule, and that this negates any genuine reforms. As stipulated by the 2010 constitution, composition of all elective bodies, including the national assembly and senate, is limited to no more than two-thirds of members from one gender. At the end of 2019 the various groups came together to agree on a minimum consensus under the umbrella of 'Kenyan Women's Agenda' in order to continue dialogue and engagement on national issues with concrete actions to promote women's and youth inclusion in decision-making spaces.

» Civil society initiatives including youth organisations have informed the BBI process. For example, the National Mediation Forum brings professional peace NGOs together. Many initiatives meet as part of the Hekima Process, run by the Institute of Peace Studies at the Jesuit University in Nairobi, which provides a platform and safe space to talk.

» The Kenya Tuitakayo Movement (KTM) is opposed to the BBI and has developed a 10-point agenda to focus on human rights, poverty, corruption and social service delivery. Unlike most other initiatives, the KTM does not want to collaborate with government agencies or the political establishment but aims to build a citizens' movement for change.

» The international community has played a constructive supporting role since the 2017 election crisis. A group of Western Ambassadors, the EU and the UN came together to coordinate their support and provide behind-the-scenes facilitation of dialogue. Donors support various aforementioned initiatives, albeit not in a coordinated fashion. The Swiss think-tank 'InclusivePeace' is accompanying civil society, governmental and international actors by providing comparative expertise on both process and substance, facilitating between and within actor groups, helping individual actors to strategise, and providing neutral spaces for joint dialogue in cooperation with the Kenyan and international actors involved.

" Drivers of change vary from juncture to juncture. "

Lessons learned and looking ahead

Dialogue processes for peace in Kenya involve continuous renegotiation of formal and informal governance, responding to the ever-evolving political environment. Agreements between political actors in formal and informal processes serve as both destinations and points of departure for discourse and change. Transition processes are precipitated at critical junctures and challenge a straightforward logic of success and failure in achieving desired reform, as the realities of change are entangled in the fluctuating push-and-pull of different interests that support and resist it.

Exclusion and power both drive and control processes of change, which evolve according to how much compromise groups are prepared to make to advance inclusion, democratic values and justice. Drivers of change vary from juncture to juncture – the religious actors who were at the forefront of the democratisation movement in the 1990s lobbied against the new constitution in 2010 and became politically divided. Since 2016 they have once again formed a united front, as has the women's movement since the end of 2019.

Each epoch has brought some progress. The 1990s saw the democratisation process set in motion. The change

in power in 2003 started the anti-corruption movement. The 2008 peace process fundamentally advanced the institutional set up for reconciliation and inclusion. And the current, post-2017 environment has shown Kenyans that sustainable conflict prevention is essential, that devolution is here to stay, and that essential international support must remain 'light touch' to enable and maintain national ownership. The politicisation of the reform process for the 2022 elections is a significant challenge as Kenya reaches its next major point in the long pathway to peace.

The Kenyan case clearly demonstrates that pathways to peace involve massive efforts by a diversity of actors and are not linear. Phases of peace processes are indefinite.

'Pre-negotiations' that nominally precede formal peace talks are in fact often a permanent feature and become interchangeable with 're-negotiations'.

This has implications for the way peace processes are supported. Our understanding of peace processes needs to be changed from the linear model to a more adaptive fluid model to operationalise the sustaining peace agenda. This means not only identifying and supporting change agents, but also facilitating or counteracting the conditions under which they can operate. It is essential to work with a 'prevention lens' today to prepare for times of critical juncture that can enable key elements for pathways for inclusive societies.