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### Abstract

*Ghana and Kenya have similar socio-political and economic conditions. Ethnicity has been a prominent feature of electoral politics in both countries. Despite the simultaneous democratic reforms, Ghana is classified as a consolidating democracy, while Kenya is labelled a hybrid regime. In Ghana, ethnicity is only a factor in the electoral process; in Kenya, ethnicity has polarised electoral politics and ethnic-based violence has come to characterise elections. Ghana's democratic success has been attributed in part to the leadership role of the Electoral Commission. On the other hand, Kenya's electoral management body has recently been plagued with allegations of bias and calls for the resignation of the Commissioners sparked violent demonstrations. Concern remains that many of the issues that ignited electoral violence in 2007 remain unresolved after a decade. This chapter discusses the role of Ghana's institutions, its voting dynamic, and the impact of ethnicity on electoral processes, the role of electoral assistance and the peace narrative to draw lessons for Kenya on consolidating and deepening democracy.*

## 1 Introduction

Deepening democracy refers to the participation by citizens in local political processes. This concept shifts the focus from elections to citizen empowerment by transforming the relationship between politicians and citizens from passive dependency to an active relationship; thus empowering citizens to demand the provision of public goods from the state.<sup>1</sup> This accords with the global recognition that holding regular elections is insufficient to address the deeper political and social challenges present in developing countries. Kivuva highlights the tension between progress and regression in Africa, characterised by frequent elections and consolidation of multi-partyism on one hand and a reversal of democratic

1 B Goldfrank 'Deepening local democracy in Latin America: Participation, decentralization, and the left' (2011) 13, cited in F Otieno 'Deepening democracy at the grassroots level: Citizen participation in state devolved funds (CDF) in Kenya' (2013) Syracuse Pan African Studies – Theses Paper 1 2.

gains and entrenchment of electoral violence on the other.<sup>2</sup> Where citizens are unable to meet their basic needs, in spite of holding regular elections, and economic development is not progressive, then the 'nature, quality, efficiency and sustainability' of democracy over time is questioned.<sup>3</sup>

Held asserts that democracy's challenge is the implementation of procedures that would allow the people's will to be reflected and provide a basis for 'sound and reasonable political judgment'.<sup>4</sup> To hold elected representatives accountable, citizens need to be better informed about their rights and obligations and policies and decisions that affect them and be more active in political processes. Where citizens are so empowered, it is argued that the quality of governance and the nature of state-citizen relations improve, thereby promoting greater human development.<sup>5</sup> This is what some authors have referred to as 'the power of the thumb'.<sup>6</sup> According to Khobe, a sustainable democracy must deliver – or at least be seen to deliver – beyond the ballot box and be part of the lived experience of citizens who experience better lives and are more meaningfully integrated into national development.<sup>7</sup>

This chapter uses Ghana's model to examine the link between political voice and the promotion of well-being of citizens in a country. While democracy is not synonymous with elections, many indicators on democratisation in Africa are based on the outcomes of elections. This chapter will therefore focus largely on electoral democracy. While electoral democracy is intended to offer citizens a voice and a choice,<sup>8</sup> and citizen participation is central to the success of democratisation, in many African countries voting does not offer the citizens any meaningful choices, because the exercise of the franchise does not allow access to economic and social rights.<sup>9</sup> Consequently, rather than empower people, the policies adopted by successive governments further disempower the people and alienate them from those in power, with the only differences between regimes being the style and intensity with which the disempowerment is achieved.<sup>10</sup>

2 J Kivuva 'Democratization in Kenya: Public dissatisfied with the benefit-less transition' Afrobarometer Briefing Paper No 152 (2015) 1.

3 AR Menocal *et al* 'Hybrid regimes and the challenges of deepening and sustaining democracy in developing countries' (2008) 15 *South African Journal of International Affairs* 31.

4 D Held *Models of democracy* (2006) 233.

5 Overseas Development Institute (ODI) 'Ghana, the rising star: Progress in political voice, health and education' (2015) 8.

6 S Lindberg 'What accountability pressures do MPs in Africa face and how do they respond? Evidence from Ghana' (2010) 48 *Journal of Modern African Studies* 117.

7 OW Khobe, 'The quest for a more perfect democracy: Is mixed member proportional representation the answer?' in MK Mbondenyei *et al* (eds) *Human rights and democratic governance in Kenya: A post-2007 appraisal* (2015) 121 123.

8 ODI (n 5 above) 8.

9 C Obi 'No choice, but democracy: Prising the people out of politics in Africa?' Claude Ake Memorial Papers No 2 Department of Peace and Conflict Research Uppsala University & Nordic Africa Institute Uppsala (2008) 16.

10 As above, 17.

Owusu highlights that periodic elections are not sufficiently deterrent of exploitative and corrupt leadership in fledgling democracies,<sup>11</sup> and multi-partyism may be unsustainable in Africa due to its continued exclusion of people from the process.<sup>12</sup> Dean further asserts that democracy fuels inequality.<sup>13</sup> Rather than ending social inequality and producing mutual gain, '[r]eal existing constitutional democracies privilege the wealthy. As they install, extend, and protect neoliberal capitalism, they exclude, exploit, and oppress the poor, all the while promising that everybody wins'.<sup>14</sup>

Ghana's democratisation process is therefore unique in Africa. Beyond the electoral process, Ghanaians have succeeded in holding their representatives accountable due to an increase in political voice. Political voice refers to activity, whether carried out by individuals or organisations whose intent or effect is to influence government action either directly i.e. participating in policymaking or implementation or influencing the selection of those responsible for policy-making.<sup>15</sup> Beyond elections, the concept extends to other modes of influencing government action, including use of the media, political parties, the work of civil society organisations, think-tanks, community-based organisations as well as individual action.<sup>16</sup> Political voice is central to democracy and it is critical to enhancing the quality of governance in a country.<sup>17</sup> As Schlozman *et al* point out, '[t]he exercise of political voice goes to the heart of democracy. In fact, it is difficult to imagine democracy on a national scale without the right of citizens to take part freely in politics'.<sup>18</sup>

Ghana's progress from a dictatorship to a multi-party democracy is considered one of the success stories of democratisation in Africa today.<sup>19</sup> Ghana has been classified as a 'functioning, multi-ethnic democracy' and its human development progress considered remarkable.<sup>20</sup> Despite a rocky

11 M Owusu 'Democracy without development: The perils of plutocracy in Ghana' in K Ninsin (ed) *Issues in Ghana's electoral politics* (2016) 163 182.

12 As above.

13 J Dean *Democracy and other neoliberal fantasies* (2009) 76 cited in S Marks 'What has become of the emerging right to democratic governance?' (2011) 22 *European Journal of International Law* 507 517.

14 Dean, as above. Dean's sentiments in this regard are not novel. In 1946, George Orwell decried democracy as being meaningless, an amorphous term, used by 'defenders of every kind of regime', and who 'fear that they might have to using the word if it were tied down to any one meaning'. He further asserted that '[W]ords of this kind are often used in a consciously dishonest way ... the person who uses them has his own private definition, but allows his hearer to think he means something quite different.' See 'Politics and the English language' on [http://www.orwell.ru/library/essays/politics/english/e\\_polit/](http://www.orwell.ru/library/essays/politics/english/e_polit/) (accessed 20 November 2016).

15 ODI (n 5 above) 8.

16 See S Verba *et al* *Voice and equality: Civic voluntarism in American politics* (1995) 38 cited in ODI, as above.

17 ODI (n 5 above) 8.

18 KL Schlozman *et al* 'Inequalities of political voice' (2007) 2 <http://www.apsanet.org/portals/54/Files/Memos/voicememo.pdf> (accessed 20 November 2016).

19 ODI (n 5 above) 6.

20 ODI (n 5 above) 7.

start, Ghana has managed to shake off the shackles of autocratic rule to become the ‘leader of the African democratic renaissance’,<sup>21</sup> demonstrated by the peaceful handover of power from one regime to another and the increase in popular participation in decision-making.<sup>22</sup>

While democratic developments within the developing world vary, Ghana has been identified as better positioned than countries like Kenya to address the challenges faced in the establishment of formalised democratic institutions.<sup>23</sup> Its commitment to the provision of social services has been said to surpass that of a middle-income country.<sup>24</sup> It therefore offers a good model for countries like Kenya seeking to create the link between citizen participation and provision of public goods and services. The next section reviews points of convergence and divergence between Ghana and Kenya’s systems.

## 2 Electoral democracy in Ghana and Kenya juxtaposed

Ghana is considered the epitome of political stability in West Africa. Like Kenya,<sup>25</sup> multi-party democracy was restored in Ghana in the early 1990s. Ghana and Kenya also have similar socio-political and economic conditions. Ethnicity is also a prominent feature of electoral politics in both countries. Both Ghana and Kenya were also once one-party states. In Ghana, President Nkrumah declared himself ‘President for Life’ both of the Convention People’s Party (CPP) and the country.<sup>26</sup> The dictatorial nature of the regime allowed the president to detain people without trial, to appoint and sack judges at will and to nullify court decisions,<sup>27</sup> much akin to the situation in Kenya. Prior to the 2010 Kenyan Constitution, which provides for greater institutional accountability and citizen participation through devolved governments, it is said that governance

21 E Gyimah-Boadi ‘Ghana’s Fourth Republic: Championing the African democratic renaissance?’ Briefing Paper, Center for Democratic Development (2008) 5 [https://www.files.ethz.ch/isn/92064/2008-01-25\\_Briefing\\_Vol8-No4.pdf](https://www.files.ethz.ch/isn/92064/2008-01-25_Briefing_Vol8-No4.pdf) (accessed 21 November 2016).

22 ODI (n 5 above) 7.

23 Menocal *et al* (n 3 above) 31.

24 ODI (n 5 above) 7.

25 Via constitutional amendment in 1991, sec 2A, which had made Kenya a one-party state was repealed, opening up the space to multiple political parties. This was motivated largely by international pressure and withdrawal of support by Bretton Woods institutions, thus crippling the economy. See African Peer Review Mechanism ‘Country Review Report of the Republic of Kenya’ (2014) 41 [http://us-cdn.creamermedia.co.za/assets/articles/attachments/03703\\_aprmkenyareport.pdf](http://us-cdn.creamermedia.co.za/assets/articles/attachments/03703_aprmkenyareport.pdf) (accessed 16 November 2016); Menocal *et al* (n 3 above) 30.

26 Gyimah-Boadi (n 21 above) 1; ODI (n 5 above) 19.

27 Gyimah-Boadi (n 21 above) 1.

took place in the context of violence, intimidation, corruption and a general lack of transparency and accountability.<sup>28</sup>

Despite simultaneous democratic reforms, Ghana is classified as a consolidating democracy, while Kenya has been classified as a hybrid regime – one whose democratic processes are stuck in transition.<sup>29</sup> According to Ottaway,<sup>30</sup> hybrid regimes constitute:

ambiguous systems that combine rhetorical acceptance of liberal democracy, the existence of some formal democratic institutions and respect for a limited sphere of civil and political liberties with essentially illiberal or even authoritarian traits.

In such countries, the ‘culture and patterns of patrimonialism’ function alongside modern state features,<sup>31</sup> with a ‘rhetorical acceptance of liberal democracy’ combined with ‘essentially illiberal and or authoritarian traits’.<sup>32</sup> Such a system has a democratic exterior but little change takes place in terms of the norms, values and power relations.<sup>33</sup> Obi refers to these ‘façade democracies’ as ‘anocracies’.<sup>34</sup>

In both Ghana and Kenya, the opposition and civil society played a crucial role in transitioning to multi-party democracy.<sup>35</sup> However, while Ghana is said to be enjoying a ‘prolonged honeymoon of democratic development as well as economic growth and poverty reduction’,<sup>36</sup> the expectations of Kenyans that democracy would reverse decades of poverty, corruption and underdevelopment have not been met. There has been a shrinking of the democratic space, with increased regulation of civil society organisations

Moreover, while in Ghana ethnicity is only a factor in the electoral process, ethnicity has polarised politics and ethnic-based violence has come to characterise Kenyan elections.<sup>37</sup> It appears that in Ghana, ethnicity is not always determinative of the electoral success of a candidate or political party; rather, the extent to which elected officials deliver on issues that are important to citizens carries greater weight.<sup>38</sup> Ghana’s voter

28 See Standard Team ‘It’s up to you, Annan tells House members’ <http://www.eastandard.net> cited in M Mbondenyi ‘Human rights and democratic governance in post-2007 Kenya: An introductory appraisal’ in MK Mbondenyi *et al* (eds) *Human rights and democratic governance in Kenya: A post-2007 appraisal* (2015) 3.

29 Menocal *et al* (n 3 above) 29.

30 M Ottaway *Democracy challenged: The rise of semi-authoritarianism* (2003) cited in Menocal *et al* (n 3 above) 30.

31 Obi (n 9 above) 6.

32 Menocal *et al* (n 3 above) 29.

33 Obi (n 9 above) 6.

34 As above.

35 Obi (n 9 above) 6; APRM Report Kenya (n 25 above) 41.

36 Gyimah-Boadi (n 21 above) 4.

37 S Elischer ‘Ethnic coalitions of convenience and commitment: Political parties and party systems in Kenya’ (2008) 24.

38 ODI (n 5 above) 29.

turnout, which is higher than some established democracies such as the UK and the US,<sup>39</sup> appears indicative of citizens' faith in the democratic system.

Kenya on the other hand has continued to experience a growing loss of faith in democracy, attributable in part to the fact that it does not appear to have yielded tangible economic benefits for the majority of the citizens.<sup>40</sup> Afrobarometer surveys indicate that 80 percent of those interviewed in 2002, when President Moi's 24-year reign ended, believed that the future would be better with the new government; this figure dropped to 33 percent in 2011.<sup>41</sup> This growing loss of faith in democracy, together with alienation and apathy, contributes to a 'non-transition to democracy'.<sup>42</sup>

So what accounts for the differences in democratisation levels between Ghana and Kenya?

### 3 Drivers of Ghana's progress: Increasing citizens' political voice

Obi questions whether multi-party democracies in Africa are inclusive or do in fact give people real choices.<sup>43</sup> He refers to such democracies as 'tyrannies of choice' where people do not fully understand the form of democracy, and are plagued by economic reform programmes that deepen the levels of poverty and have a debilitating effect on the middle class.<sup>44</sup> Therefore, while they vote, they have little impact on political processes beyond elections.<sup>45</sup> He argues that in most African countries, whereas people have a choice as to the political parties that come to power, they have little influence over the economic policies that are adopted by the parties once they form the government.<sup>46</sup>

Menocal *et al* refer to this as 'shallow political participation',<sup>47</sup> and highlight its contribution to citizens' frustration with the functioning of democratic institutions.<sup>48</sup> This is especially so where key institutions such as the judiciary and political parties do not perform as they should or

39 In 2012, voter turnout was at 84 percent compared to 61 percent in the UK in 2010 and 54 percent in the US in 2012 respectively. See IDEA's Voting Age Population (VAP) voter turnout analyser on [www.idea.int](http://www.idea.int) (accessed 21 November 2016).

40 Kivuva (n 2 above) 6-7.

41 Kivuva (n 2 above) 4.

42 J Ihonvbere 'Where is the third wave? A critical evaluation of Africa's non-transition to democracy' (1996) 43 *Africa Today* 4, cited in Obi (n 9 above) 11.

43 n 9 above, 9.

44 As above.

45 As above, 10.

46 Obi (n 9 above) 10.

47 As above, 34.

48 As above, 34.

where they are not representative.<sup>49</sup> This creates a danger of citizens pursuing political participation outside formal channels. For example, rather than political interest manifesting in institutional participation, such as elections, many youth channel their participation through 'street democracy' including through protests.<sup>50</sup> Gyimah-Boadi concurs and adds that such democracies aggravate ethnic cleavages and tensions, breed social and political division, might inflame social and political instability and prevent national cohesion.<sup>51</sup> The 2016 Mo Ibrahim Index of African Governance (IIAG) noted with concern that Kenya had demonstrated a decline in all three indicators of political participation: civil society participation, freedom of expression and freedom of association and assembly over the last 10 years.<sup>52</sup>

Political voice proffers a solution to some of the weaknesses of the neo-liberalist democracy project in Africa. Drawing from Ghana's experience, increase in political voice opens up multiple avenues for participation in decision-making. Ghana has made one of the most remarkable changes in relation to political voice. Whereas it was ranked in the bottom 40 percentile in 1996, it ranked in the top 40 percentile in 2013.<sup>53</sup> Research by ODI has lauded the responsiveness of elected officials to the citizens through the electoral process, primarily in relation to the provision of health and education services,<sup>54</sup> at a time when there is scepticism within the developing world as to whether elections can go beyond clientelism and narrow, short-term interests.<sup>55</sup> Lindberg and Weghorst laud this as a 'pattern of 'mature' democratic accountability', which not only serves to gradually entrench long-term accountability mechanisms but also encourages concern for the public good among politicians.<sup>56</sup>

In addition, Ghana has welcomed external accountability measures in the form of the African Peer Review Mechanism (APRM) process. Despite not being among the mechanism's pioneers, it has taken a lead in elaborating on and implementing the mechanism domestically.<sup>57</sup> By

49 As above. Elder *et al* highlight the frustrations of many Kenyans with the highly nepotistic practices of political parties during the nomination process, with nominations often being awarded to 'the highest bidder', while those who received the highest number of votes are undemocratically removed from nomination lists. See Elder *et al* 'Elections and violent conflict in Kenya: Making prevention stick' (2014) 12.

50 A Ellis 'Tuning into democracy: Challenges of young people's participation' (2007) 8.

51 n 21 above, 5.

52 IIAG Index Report 2016, 43. The index is the first of its kind in Africa, providing an annual assessment of the quality of governance in every African country under 4 main conceptual categories: safety and rule of law, participation and human rights, sustainable economic opportunity and human development. It is available on <http://mo.ibrahim.foundation/iiag/downloads/> (accessed 22 November 2016).

53 ODI (n 5 above) 18.

54 ODI (n 5 above) 28.

55 ODI, as above.

56 S Lindberg & K Weghorst 'Are swing voters instruments of democracy or farmers of clientelism? Evidence from Ghana' QoG Working Paper (2010) cited in ODI (n 5 above) 29.

57 Gyimah-Boadi (n 21 above) 6.

allowing independent think tanks and an independent presidential council to lead the process, it opened itself up to scrutiny by its citizens of government and its institutions outside the electoral process.<sup>58</sup>

Kenya's trajectory has not been similar. Even after more than two decades of multi-party democracy, the adoption of the 2010 Constitution, an increase in political parties, media enterprises and greater freedoms, political voice is buffeted by rigging of elections, electoral violence, corruption and the limitation of political space for certain groups,<sup>59</sup> all of which contribute to the regression to anti-democracy. This has the effect of nullifying the impact of institutional changes wrought by the Constitution, thus diminishing their impact on socio-economic and security interests of Kenyan citizens.<sup>60</sup>

Oloo decries the lack of equity of voice in the legislature and local government. He highlights that marginalised communities – women, persons with disabilities, racial and ethnic groups – have either weak representation or none at all in representative bodies.<sup>61</sup> He further asserts that while descriptive representation – the idea that the outward, physical representation of a government official represents that of his constituents<sup>62</sup> – does not guarantee adequate representation, full access to participation in the political sphere, public life and the relevant areas of decision-making allows their voices to be heard and their rights to be more respected.<sup>63</sup> Mechanisms such as the Kenyan Constituency Development Fund (CDF), which allow for participation on developmental issues at the grassroots level, are also a useful avenue for increasing political voice, when properly managed.<sup>64</sup>

The 2016 spate of riots against the Independent Electoral and Boundaries Commission (IEBC) Commissioners in Kenya is considered by Lynch as a symptom of underlying lack of confidence in institutions.<sup>65</sup> She asserts that the level of activism, despite police brutality and therefore full awareness of possible consequences, demonstrates a lack of confidence in the electoral process and the IEBC. Citing Cooper, she opines that the level of violence and disruption witnessed during the protests is a reflection of people's perception that 'the demonstration of destructive potential

58 Gyimah-Boadi, as above.

59 Kivuva (n 2 above) 1.

60 As above.

61 A Oloo 'Elections, representations and the new constitution' Society for International Development Constitution Working Paper No 7, (2011) 1.

62 DJ Fowler *et al*, 'The effects of descriptive representation on political attitudes and behaviours' (2011) 3.

63 Oloo (n 61 above) 11.

64 Otieno (n 1 above) 11.

65 See G Lynch 'Beating protesters by police in IEBC saga a recipe for more violence' <http://www.nation.co.ke/oped/Opinion/Beating--protesters-by-police-in-IEBC-saga/440808-322228-a7ngmd/index.html> (accessed 30 November 2016).



works', especially where the concerns of a group are 'neglected until they pose direct threats to public peace and financing'.<sup>66</sup>

An unhealthy party system poses a challenge to the consolidation of democracy. Ghana has a *de facto* two-party political tradition. Research by ODI indicates that motivation to vote for a party is driven by the party's responsiveness in terms of basic delivery of services.<sup>67</sup> Whereas there is little difference in ideology between the National Democratic Congress (NDC) and the New Patriotic Party (NPP), electoral competition between the two parties is credited with the reduction of school fees, greater accessibility to education and greater focus on health, resulting in the creation of Ghana's National Health Insurance Scheme (NHIS).<sup>68</sup>

Conversely, the party system in Kenya is nebulous. Rather than being strong institutions that transcend regimes, Kenyan political parties are ethnic-based, personalised, and often take the character of the presidential flagbearer or main funder.<sup>69</sup> With little ideological difference between political parties, it is hardly remarkable that party ideologies are hardly translated into policies.<sup>70</sup> Moreover, the Political Parties Act allows for the formation of coalitions between parties.<sup>71</sup> Whereas the Constitution requires all political parties to have a national outlook,<sup>72</sup> many parties and coalitions are considered 'ethnic coalitions of convenience and commitment, and thus, ethnic parties'.<sup>73</sup> The weak institutionalisation of these parties and lack of organisational capacity precludes them from having a national impact, making many of the parties dormant between elections.<sup>74</sup> Party coalitions are intended to demonstrate that they can overcome the divisive ethnic logic.<sup>75</sup> However, since they are formed primarily with the aim of winning parliamentary majority, their propensity to fragment before and after elections make them fragile alliances.<sup>76</sup> It therefore appears that in Kenya ethnicity is a stronger rallying point than party organisation for political participation.<sup>77</sup> Since post-election violence has heavy ethnic undertones, the ethnic dominance over party politics makes the feasibility of future peaceful elections doubtful.<sup>78</sup>

66 E Cooper 'Students, arson, and protest politics in Kenya: School fires as political action' (2014) *African Affairs* 583.

67 ODI (n 5 above) 5.

68 ODI (n 5 above) 29. See also G Carbone 'Do new democracies deliver social welfare? Political regimes and health policy in Ghana and Cameroon' (2012) 19 *Democratization* 19 157-183, cited in ODI (n 5 above) 30.

69 Friedrich Ebert Stiftung (FES) 'Institutionalizing political parties in Kenya' (2010) 22.

70 As above.

71 Sec 10.

72 Art 91(1)(a).

73 Elischer (n 37 above).

74 Menocal *et al* (n 3 above) 34.

75 Elischer (n 37 above) 9.

76 As above.

77 Elischer (n 37 above) 24.

78 As above.

On electoral democracy and socio-economic transformation, the modernisation approach posited that economic development is an essential element of democratisation; that in countries where democracy is well-formed, economic progress preceded political and civil rights.<sup>79</sup> This link has been disputed, particularly because many countries that transitioned to democracy at the end of the 20th Century fell in the bottom half of the Human Development Index.<sup>80</sup> Nevertheless, Przeworski and Limongi argue that while no minimum level of economic development is necessary to transition to democracy, economic development is key to sustaining democracy.<sup>81</sup> Conversely, democratic regimes that do not sustain economic growth are more likely to break down, or at the very least are more fragile and unstable.<sup>82</sup>

When Ghana attained independence in 1957, 'freedom, prosperity and national unity' were the dreams espoused for the Ghanaian people.<sup>83</sup> However, within a few years, corruption and financial mismanagement, broken down infrastructure, inadequate foreign exchange and a succession of coups and counter-coups turned these dreams into a nightmare.<sup>84</sup> This affected crucial areas of the economy such as health and education as trained personnel left the country for better opportunities. This decrepit nature of the state led to Ghana being referred to as 'a poster child of a failing African state, cursed with incompetent, corrupt and repressive governments presiding over instability, a stagnant economy, broken down infrastructure and a decaying society'.<sup>85</sup>

In stark contrast to the situation in the 1980s and 1990s, Ghana has recently managed to improve citizens' lives by prioritising economic growth over economic, religious and class differences.<sup>86</sup> Increased access to socio-economic rights – fuelled by electoral competition between the two main parties – propelled the democratisation process forward, transformed the class culture and resulted in the growth of a middle class which is organised and at the forefront of political participation.<sup>87</sup> This middle class is credited with compelling Rawlings to open up the political space which resulted in formal democracy.<sup>88</sup> Their demand for increased services and state responsiveness has been key to the deepening of democracy in Ghana and the growth in education has enabled the coming

79 Owusu (n 11 above) 171; GA Almond & S Verba *The civic culture: Political attitudes and democracy in five nations* (1963), cited in Menocal *et al* (n 3 above) 29.

80 Menocal *et al* (n 3 above) 30.

81 A Przeworski & F Limongi, 'Modernization: theories and facts', (1997) 49 *World Politics* 155-83, cited in Menocal *et al* (n 3 above) 32.

82 Menocal *et al* (n 3 above) 33.

83 Gyimah-Boadi (n 21 above) 1.

84 As above.

85 Gyimah-Boadi (n 21 above) 1.

86 CC Venton & KS Milway 'Growing democracy: Lessons from Ghana' [http://www.huffingtonpost.com/courtenay-cabot-venton/growing-democracy-lessons\\_b\\_4174840.html](http://www.huffingtonpost.com/courtenay-cabot-venton/growing-democracy-lessons_b_4174840.html) (accessed 6 November 2016).

87 ODI (n 5 above) 23.

88 As above.

together of Ghanaians of different backgrounds and fostered a joint commitment to nation-building.<sup>89</sup>

Kenya's on the other hand has been described as an 'economy of affection'.<sup>90</sup> Constitutional reforms in Kenya in 1991 were insufficient to entrench democracy because they neither altered the legal framework nor changed the existing undemocratic political culture.<sup>91</sup> In the post-independent state, the extent of development of a region or access to public goods was dependent largely on the level of support that the region demonstrated for the presidency. As aptly pointed out by the APRM Report<sup>92</sup> and Otieno,<sup>93</sup> socio-economic development did not take place in regions that were opposed to the ruling party, with the phrase '*siasa mbaya, maisha mbaya*'<sup>94</sup> being used to express this basis of exclusion.<sup>95</sup> Otieno highlights the marked difference in development levels between the regions that supported the President and those that supported the opposition.<sup>96</sup>

While the exclusion of certain ethnic groups as a punitive measure was strengthened during President Moi's rule, the seeds of exclusion had been planted by the first post-colonial government.<sup>97</sup> The post-election violence of 2007/8 has been attributed in part to the ethnic exclusions and resultant political and economic discrimination of some citizens perpetrated by the political elite in the post-independent state.<sup>98</sup> This has been exacerbated by a deliberate government policy, which spilled over from colonial rule, of investing only in the regions that were productive and therefore guaranteed the highest returns.<sup>99</sup>

This led to the personalisation of the presidency, the perpetual exclusion of certain groups from governance and the belief that access to presidential power was the only way to secure access to state resources and services. This made the presidency highly coveted by every ethnic community, and its loss almost unbearable.<sup>100</sup> Multi-party democracy therefore had little impact on the power relations between citizens and the state as political parties were, and continue to be, predominantly 'regional,

89 ODI (n 5 above).

90 AH Francisco 'Neopatrimonialism in contemporary African politics' <http://www.e-ir.info/2010/01/24/to-what-extent-can-neopatrimonialism-be-considered-significant-in-contemporary-african-politics/> (accessed 13 November 2016).

91 M Mutua *Kenya's quest for democracy: Taming the Leviathan* (2008) 26.

92 n 25 above.

93 Otieno (n 1 above) 35.

94 A Swahili phrase which may be translated to mean that bad political decisions would result in poor living or material conditions for the people of a particular region.

95 Otieno (n 1 above) 35.

96 Otieno (n 1 above) 35.

97 As above.

98 Mbondenyi (n 28 above) 4.

99 See 'African socialism and its application to planning in Kenya' Sessional Paper No 10 (1965) para 133 available on [http://siteresources.worldbank.org/INTAFRICA/Resources/257994-1335471959878/Sessional-Paper-No-10-\(1965\).pdf](http://siteresources.worldbank.org/INTAFRICA/Resources/257994-1335471959878/Sessional-Paper-No-10-(1965).pdf) (accessed 16 November 2016).

100 Mbondenyi (n 28 above) 5.

ethnically based and poorly institutionalised'.<sup>101</sup> Even with the promulgation of the 2010 Constitution and the establishment of devolved governments, the presidency has remained the coveted prize. Concern remains that rather than eradicate ethnicity and clientelism, devolved governments have continued to promote ethnicity and the formation of ethnic cleavages, much to the detriment of the minorities who were intended beneficiaries of the devolved system of government.<sup>102</sup>

Owusu, reflecting on the democratic experience in Ghana, asserts that the realisation of the democratic promise depends largely on ensuring that majority of the citizens have access to 'full participation, that is, including and beyond regular elections, the political system at all levels (centre and periphery) and access to the channels and opportunities for social and economic improvement and welfare'.<sup>103</sup> He further asserts, citing Jennings, that in the few places where democracy has succeeded, it is because it is inseparably linked to the culture of the people.<sup>104</sup>

Beyond the democratic transition processes, the entrenchment of democratic institutions is critical to sustaining democracy. Mass media serve as a watchdog, protector of the public interest and a crucial link between rulers and the ruled.<sup>105</sup> Independence in the appointment of heads of state-owned media, a vibrant and independent media commission and constitutional and legislative protection of freedom of the press are among some of the measures that enable the media play its role as an institution of democratic governance. In particular, investigative journalism creates a culture of openness and makes democratically elected governments more accountable.<sup>106</sup> By informing, educating and mobilising the public, citizens are better equipped for active participation.<sup>107</sup>

In Ghana, the media began to blossom with the transition to democracy in 1992, which Gyimah-Boadi describes as transition from 'a culture of silence to a culture of public disputation and active civic engagement'.<sup>108</sup> There are now numerous newspapers and private radio stations with the freedom to cover political content.<sup>109</sup> According to Reporters without Borders 2016 World Press Freedom Index, Ghana is

101 As above.

102 Elder *et al* (n 49 above) 16.

103 Owusu (n 11 above) 164.

104 As above.

105 S Coronel 'The role of the media in deepening democracy' (2003) 4.

106 As above.

107 As above, 1.

108 n 3 above, 5.

109 ODI (n 5 above) 13.

ranked 26th in the world, only second to Namibia in Africa which is ranked 17th.<sup>110</sup>

Article 35 of Kenya's Constitution protects access to information. Nevertheless, Kenya ranks poorly in press freedom, coming in at 95th out of the 180 countries surveyed.<sup>111</sup> The recent increase in the spate of terrorist attacks has been used as a pretext for limiting media freedom, especially where the media coverage concerns security-related stories.<sup>112</sup> While Kenya has moved up 5 slots since 2015, RSF expresses concern about the dramatic decline in press freedom since the enactment of the Kenya Information and Communication (Amendment) Act<sup>113</sup> and the Media Council Act in 2013.<sup>114</sup> The Media Council and the Communications and Multimedia Appeals Tribunal are now empowered to receive complaints against journalists and media enterprises,<sup>115</sup> and can impose a fine of up to Kshs 500 000 for a journalist and up to Kshs 20 million for each media enterprise that is found to be in violation of the Act or the Code of Conduct.<sup>116</sup> While it is appreciated that these laws were passed in a context of global terrorism and national security concerns,<sup>117</sup> the stiff penalties make it difficult, if not impossible, for the media to demand accountability and responsiveness from public officials in the interests of self-preservation. The restriction of media freedom is evidence of the regression that is characteristic of hybrid regimes.<sup>118</sup>

Despite this blight on media freedom, social media platforms and the blogosphere have gained prominence, particularly among millennials, and are now a significant platform for addressing social justice issues.<sup>119</sup> These platforms are referred to as a 'third space' and their users as 'citizen journalists'. Although citizen journalists wear many hats – including activists, bloggers and political commentators – they wield a lot of

110 Reporters Without Borders (RSF) is the world's largest NGO which focuses on defending media freedom. See <https://rsf.org/en/ranking?#> (accessed 25 November 2016).

111 As above.

112 'Reporters Without Borders "Kenya"' <https://rsf.org/en/kenya> (accessed 25 November 2016).

113 The 2013 Act amended the Act 2 of 1998 legislation of the same name (cap 411A of the Laws of Kenya).

114 Act 46 of 2013. It repealed the Media Act of 2007 which established the Media Council of Kenya.

115 See Kenya Information and Communication (Amendment) Act 2013, sec 102. Available on [http://kenyalaw.org/kl/fileadmin/pdfdownloads/AmendmentActs/2013/KenyaInformationandCommunications\\_Amendment\\_Act2013.pdf](http://kenyalaw.org/kl/fileadmin/pdfdownloads/AmendmentActs/2013/KenyaInformationandCommunications_Amendment_Act2013.pdf) (accessed 25 November 2016).

116 As above, sec 102E(1)(f); Media Council Act, sec 48.

117 RSF (n 116 above); see also Association of Women in Media in Kenya *Laws governing media practice in Kenya: A journalists' handbook* (2014) iii.

118 Kivuva (n 2 above).

119 See G Ogola & M Owuor 'Citizen journalism in Kenya as a contested "third space"' in Bruce Mutsaers (ed) *Participatory politics and citizen journalism in a networked Africa: A connected continent* 229.

influence and have successfully rallied public support and protests on issues of corruption, land grabbing and abuse of state power.<sup>120</sup>

Vernacular radio stations have also gained prominence in recent years. Despite concern about the potential use of these stations to spread ethnic hatred as in 2007,<sup>121</sup> they have filled an existing gap in political voice by providing a platform for civic education and holding local leaders accountable by allowing residents to air their grievances.<sup>122</sup>

#### 4 Shared identity and common developmental leadership

It is said that ‘Ghanaians share an identity that has helped to foster unity across an otherwise diverse nation’.<sup>123</sup> Where leaders and the political elite see beyond identity politics and focus rather on the shared vision of nation building, there develops a social cohesion which underpins, sustains and strengthens a democratic system.<sup>124</sup> Both the 2008 and 2012 elections were closely contested and the death of President John Atta Mills in office and allegations of electoral fraud that followed posed a challenge to the electoral commission.<sup>125</sup> Nevertheless, because the existing democratic channels and mechanisms were used to address electoral grievances, there was peaceful resolution of all these challenges.<sup>126</sup>

Political parties in Ghana are required to have a national presence before being allowed to contest an election. Whereas this has strengthened the *de facto* two-party political tradition, making it harder for smaller political parties to compete, being compelled to secure countrywide support created a deep-rooted sense of Ghanaian identity, which is credited with the restraint demonstrated in response to the flawed 1992 elections, as well as the decision by John Atta Mills to concede defeat in 2000.<sup>127</sup>

Moreover, while the 2012 decision of the Ghanaian Supreme Court highlighted serious administrative and legislative shortcomings within Ghana’s electoral system, no significant conflict or political violence was

120 Ogola and Owuor highlight specific instances where social media was successfully used to rally public demonstrations to challenge illegal land grabbing and illegal transfer of land; as above, 234 ff.

121 E Okoth ‘The emergence and growth of vernacular radio in Kenya’ (2015) Reuters Institute Fellowship Paper, 26.

122 As above, 16.

123 ODI (n 5 above) 8.

124 ODI (n 5 above) 21.

125 ODI (n 5 above).

126 As above.

127 As above.

recorded during that process.<sup>128</sup> The judiciary was lauded for its independence in addressing the claims of voter fraud.<sup>129</sup> In addition, the Electoral Commission, labouring under a dented image, invited stakeholders, in a participatory process, to contribute proposal reforms which were forwarded to the President. Despite the process of implementation being stalled by a court decision,<sup>130</sup> there is a demonstrable commitment by electoral officials and the Executive to ensuring credibility of the electoral process.

On the contrary, the level of satisfaction with institutions in Kenya is low, as poignantly demonstrated in 2007.<sup>131</sup> The post-election violence was attributed to lack of confidence in the judiciary. The intensity of the violence and the brutal reaction by the police were unprecedented and may have contributed to the low incidence of violence during the 2013 elections.<sup>132</sup> Nevertheless, concern abounds that many of the issues that ignited the 2007 violence remain unresolved. While the International Criminal Court (ICC) provided a pacifying presence in 2013, the termination of the cases in 2016 removed this buffer.<sup>133</sup> The lack of domestic prosecution for other perpetrators of violence has left many disillusioned and prone to mobilisation.<sup>134</sup> While fear or deterrence of memory can preclude people from mobilising, perpetrating or retaliating against mass violence, Elder *et al* caution that 'a recent history of violent conflict serves as a broadly accepted risk indicator for future violence'.<sup>135</sup>

Mbondenyi proposes that in the wake of the 2007/8 violence, watertight mechanisms should be developed to facilitate citizen participation and increase accountability and transparency in public affairs. Such a system is one that would extend equal opportunities to participate in governance to all citizens, thus allowing them to contribute to the governance of the country.<sup>136</sup>

On one hand, it is asserted that Ghana has 'a distinctive tradition of ideology-based political parties not evident in many other African countries'.<sup>137</sup> Ghana has not experienced the divisive ethnicity that has fragmented many post-colonial African states.<sup>138</sup> Despite ethnic tensions and communal conflicts, the country has remained relatively united.<sup>139</sup>

128 United Nations Development Programme (UNDP) 'Consolidating representation and participation in Ghana' Work Plan 2015-2016 3.

129 ODI (n 5 above) 12.

130 UNDP (n 128 above) 3.

131 Kivuva (n 2 above) 1; Lynch (n 65 above).

132 Elder *et al* (n 49 above) 10.

133 <https://www.icc-cpi.int/kenya> (accessed 3 December 2016).

134 Elder *et al* (n 49 above).

135 As above, citing J Dixon 'What causes civil wars? Integrating quantitative research findings' (2009) 11 *International Studies Review* 707.

136 Mbondenyi (n 28 above) 2.

137 UNDP (n 128 above) 2.

138 ODI (n 5 above) 8.

139 Gyimah-Boadi (n 21 above) 4.

While ethnicity features in the electoral process, and studies highlight the importance of a balanced presidential candidature between the north and the south to securing wide electoral support,<sup>140</sup> there is no conclusive evidence that Ghanaians only vote along ethnic lines. Research by Lindberg and Morrison showed that ethnicity influences the voting choices of only 1 out of 10 Ghanaians.<sup>141</sup> Ethnicity and family ties, while important, are therefore not determinative of voting patterns.<sup>142</sup> On the other hand, the colonial vestige of forcing communities that had no previous interaction to coexist fuelled ethnic polarisation in Kenya.<sup>143</sup> Rather than being uprooted by post-colonial governments, ethnicity was used for a two-fold purpose: as a means of strengthening political power and as a strategy for locking out political opponents.<sup>144</sup>

Citizenship in Kenya has therefore become synonymous with ethnic belonging.<sup>145</sup> This stunts democratisation as it is difficult to integrate the various communities into the democratic state without appearing to compromise the dearly held ethnic identities.<sup>146</sup> Ethnicity's impact on democratisation has either been dismissed by observers as a thing of the past or downplayed.<sup>147</sup> Any measures directed at consolidating democracy are therefore ineffective as they fail to address the impact of ethnicity in governance processes.<sup>148</sup> Unfortunately, despite the outcry for an overhaul of the electoral system that encouraged a 'winner take all' approach, the single member plurality (SMP) system has been retained. This system does not encourage inclusiveness, but rather promotes ethnic polarisation.<sup>149</sup>

## 5 Role of institutions in deepening and sustaining electoral democracy

### 5.1 Electoral Commission (EC)

An independent and impartial electoral commission is an indispensable institution in the entrenchment of electoral democracy. Ghana's EC was not always an independent body, having previously been a department

140 Z Iddi 'The regional balance of presidential tickets in Ghanaian elections: Analysis of the 2008 general elections' in K Ninsin (ed) *Issues in Ghana's electoral politics* (2016) 64.

141 S Lindberg & M Morrison 'Are African voters really ethnic or clientelistic? Survey evidence from Ghana' (2008) 1 *Political Science Quarterly* 95 96.

142 Lindberg & Morrison (as above) 121. See also Iddi (n 144 above) 72.

143 Mbondenyei (n 28 above) 4.

144 Mbondenyei (n 28 above) 4.

145 Mbondenyei (n 28 above) 4.

146 Mbondenyei (as above).

147 Mbondenyei (n 28 above) 5.

148 D Rothchild 'Ethnic insecurity, peace agreements and state building' in R Joseph (ed) *State, conflict and democracy in Africa* (1999) 320 cited in Mbondenyei (n 28 above) 5.

149 Khobe (n 7 above) 134.



under the Ministry of Local Government.<sup>150</sup> Despite a rocky start to the management of elections, with the return to multi-party democracy in 1992, the EC is now regarded as independent, neutral and competent to hold credible elections.<sup>151</sup> Some Ghanaians rated the EC as the most trusted governance institution in Ghana.<sup>152</sup> The credibility is attributed to its institutional autonomy, the professional competence of the members, its financial independence, its diverse professional, gender and regional representation, its track record of competence in handling elections and elections related disputes, constant dialogue with the Inter-Party Advisory Committee (IPAC), and the competency of its staff.<sup>153</sup> The EC's leaders have had long experiences of elections management.<sup>154</sup> Consequently, while the EC has laboured under a crisis of confidence at various times in its tenure, it is largely considered independent and enjoys the support of the public, political parties and donors.

Kenya's electoral management body has long laboured under low public confidence. Following the botched 2007 elections, the Kenya National Dialogue and Reconciliation (KNDR) process resulted in the establishment of an independent commission to audit the 2007 General Elections.<sup>155</sup> The Independent Review Commission (IREC) was tasked with reviewing all aspects of the 2007 elections and recommending reforms.<sup>156</sup> The IREC found that the effectiveness of the then Electoral Commission of Kenya (ECK) was undermined by lack of transparency, incompetence of staff, bias and a poor communication strategy, which culminated in the hurried declaration of electoral results and swearing in of the incumbent President under unusual circumstances.<sup>157</sup>

IREC made extensive recommendations on the structure and composition of the new election management body, appointment, tenure and remuneration of members of the Commission, transparent recruitment and professional competence of staff, accountability to Parliament and consolidation of the various election laws, many of which have been included in the Constitution and the Independent Electoral and Boundaries Commission (IEBC) Act.<sup>158</sup> These included the establishment of the Interim Independent Electoral Commission (IIEC) as well as the Political Parties Liaison Committee (PPLC) which brings together the

150 E Debrah *et al* 'A study of Ghana's electoral system' (2010) 1.

151 E Gyimah-Boadi 'Modelling success: Governance and institution-building in Africa: The case of Ghana's electoral commission' 1.

152 Debrah *et al* (n 150 above) 4.

153 Debrah *et al* (n 150 above) 2-4.

154 Debrah *et al* (n 150 above) 11.

155 Transparency International (TI) 'Review of the implementation of the Kriegler Commission report' 9, <http://tikenya.org/phocadownload/kriegler%20commission%20report%20an%20audit%20of%20its%20implementation.pdf> (accessed 30 November 2016).

156 TI (n 155 above) 8.

157 Report of the Independent Review Commission on the General Elections held in Kenya on the 27 December 2007, (2008) 10.

158 Act 9 of 2011.

Registrar of Political Parties, the IEBC and political parties to dialogue over the electoral process and share information in order to build confidence in the electoral process both at the national and county levels.<sup>159</sup> The IIEC was replaced by the Independent Electoral and Boundaries Commission (IEBC) in 2011.<sup>160</sup>

Notwithstanding wide public support in the pre-election process, the effectiveness of the IEBC in handling the first elections under the 2010 Constitution was undermined by irregularities. Late amendments to the nomination rules, inconsistent decision-making mechanisms, the late introduction of and consequent failure of electoral technology, insufficient time for voter registration, lack of transparency in processing results as well as lack of a complete unified voter register all undermined the credibility of the IEBC.<sup>161</sup> The widespread irregularities that characterised the 2013 elections were acknowledged by the Supreme Court in *Raila Odinga & Others v IEBC & Others*.<sup>162</sup> These challenges were exacerbated by the complexity of holding elections for six different electoral positions on the same day.<sup>163</sup>

Moreover, the IEBC battled a dented image in 2016, created by the refusal of the Commissioners to leave office to pave the way for the next team, amidst opposition-led protests calling for their removal on allegations of bias. The tug of war with the opposition was exacerbated by in-fighting, with some Commissioners expressing a desire to leave, while others determined to remain in office pending a formal Presidential directive.<sup>164</sup> Calls for the resignation of the Commissioners sparked violent demonstrations, and police brutality in quelling the demonstrations was reminiscent of the pre-multi-party era.<sup>165</sup> Both the decision to remove the Commissioners in the year preceding the election and the prolonged battle over tenure served to poke a hole in an already leaking ship.<sup>166</sup>

Lynch cautions that the boldness of the protesters, despite evidence of police brutality, is a warning bell of a new culture of engagement premised on the idea that government only responds to its citizens when they pose a threat by destroying public property.<sup>167</sup> Moreover, the police brutality not only smirked of impunity – a belief that it was acceptable to mete that level

159 The PPLC is established under sec 38 of the Political Parties Act 11 of 2011.

160 See IEBC Act, n 158 above.

161 European Union Election Observation Mission to Kenya (EU EOM) 'Final report' (2013) 1-2.

162 SCEP 5 of 2013 [2013] eKLR.

163 Kenyans vote for the president, county governor, senator, member of the National Assembly, woman representative to the National Assembly and county assembly representative simultaneously.

164 <http://www.nation.co.ke/news/four-iebc-bosses-said-to-be-ready-to-resign/1056-3264068-mmlx9kz/index.html> (accessed 30 November 2016).

165 Lynch (n 65 above).

166 IREC recommended that there be no changes in the membership of the Commission within 2 years of a general election. See TI (n 155 above) 28.

167 n 65 above.

of violence on protesters instead of arresting them and arraigning them in court – Lynch cautions that the protests may be a sign of more violence to come if the grievances of a disgruntled and idle Kenyan youth are not addressed by the government.<sup>168</sup> It is incumbent upon the Kenyan government and policy makers to comprehensively consider these warning signs and adopt measures to address the needs of the youth and platforms for their meaningful participation in decision-making. The APRM Youth Kenya initiative offers one such platform.<sup>169</sup>

## **5.2 Other actors: Inter-Party Advisory Committee and donors**

Following the flawed 1992 elections and the decision by the opposition to boycott parliamentary elections in Ghana, there was a concern that the 1996 elections would suffer the same fate if the electoral system were not reformed. The boycott threat sparked electoral reforms in 1994.<sup>170</sup> Among these was the decision by the EC to bring together representatives of political parties and donors to consult on the management of critical aspects of the election under the aegis of the Inter-Party Advisory Committee (IPAC). The platform was devolved to the regions and districts and it allowed for dialogue on contentious issues in the electoral process. The cooperation and participation of parties in the reform process served to mend the relationship and forestalled another boycott of the elections.<sup>171</sup> The PPLC in Kenya, established in 2009,<sup>172</sup> is modelled along the lines of IPAC, but is not credited with a similar role in the 2013 elections.

Donors are uniquely placed to facilitate the entrenchment of democracy through democracy assistance by requiring greater inclusion of marginalised groups,<sup>173</sup> and financially supporting key channels for political participation by civil society and the media. Democracy assistance is considered to have played an indirect catalytic role in the transition to and it is credited with keeping Ghana's democracy progressing on the right path, particularly where political voice is concerned.<sup>174</sup>

168 As above.

169 <https://aprm-youthke.wordpress.com/2016/06/21/aprm-youth-kenya/> (accessed 3 December 2016).

170 Gyimah-Boadi 'Modelling success' 3.

171 As above.

172 Office of the Registrar of Political Parties 'Political Parties Liaison Committee' <http://www.orpp.or.ke/index.php/en/extract-of-the-report-on-the-analysis-of-the-okoa-kenya-initiative> (accessed 30 November 2016).

173 International Institute for Democracy and Electoral Assistance (IDEA) 'Journeys from exclusion to inclusion: Marginalised women's successes in overcoming political exclusion' (2013) 258.

174 E Gyimah-Boadi & T Yakah 'Ghana: The Limits of External Democracy Assistance' Working Paper No 2012/40 (2012) 4.

### 5.3 The role of the peace narrative

Beyond shared identity, Ghana has made deliberate efforts to ensure peace and stability irrespective of electoral outcomes. In 1992, Jerry Rawlings, via constitutional amendment, retained some autocratic powers and as chair of the ruling Provisional National Defence Council (PNDC) military junta, was elected president on the ticket of the newly formed NDC and retained many of the members of the previous PNDC cabinet. Parliament became a *de facto* one-party legislature when the opposition boycotted the elections, and the former deputy chair of the NDC became speaker of the National Assembly, thereby ostensibly making the legislature a puppet of the government.<sup>175</sup> Despite the opposition's disenchantment with the transitional elections, which they alleged were openly rigged, they chose to peacefully engage in civil disobedience and document their grievances rather than take up arms as has happened in Côte d'Ivoire, Sierra Leone and Kenya.<sup>176</sup>

In the 2012-2013 electoral process, 'peace councils' brought together politicians from the two major political parties, religious leaders, chiefs and civil society organisations.<sup>177</sup> Their joint appeals for peace were instrumental in tackling possible conflicts and promoting peace and stability.<sup>178</sup>

In Kenya, the relative calm experienced during the 2013 general elections was a welcome relief to many. The peace narrative may have had some measure of success in the short term, but it has been criticised for ignoring intractable differences such as persistent land disputes, corruption and lack of accountability for crimes committed in the past.<sup>179</sup> These peace campaigns were short-term (they ceased after the elections) and focused largely on the urban areas, thereby overlooking the rural areas.<sup>180</sup> It is also argued that the relative peace witnessed in 2013 was a factor of the fear and the memory of 2007/8, and the calls for peace and respect for institutions by influential candidates.<sup>181</sup> This tenuous peace was achieved under duress, rather than a wilful decision not to take up arms.<sup>182</sup> The European Union's Electoral Observation Mission (EU EOM) noted self-censorship by the media as many media messages that did not conform to the calls for calm and peace, were filtered by the broadcast media.<sup>183</sup>

175 Gyimah-Boadi (n 21 above) 2.

176 See Gyimah-Boadi (n 21 above) 5.

177 ODI (n 5 above) 13.

178 ODI, as above.

179 Elder *et al* (n 49 above) 13.

180 Elder *et al* (as above).

181 Elder *et al* reported the impact of former Prime Minister Raila's call for peace and respect for the rule of law and the courts in quelling discontent with flawed nomination processes, particularly in low-income areas where he enjoyed wide support and loyalty; n 49 above 13.

182 Elder *et al*, as above.

183 n 160 above, 27.

Elder *et al* caution that these efforts neither addressed the deep divisions among ethnic communities nor the new triggers of conflict that have arisen since then.<sup>184</sup> Taken together with the recent anti-IEBC protests, it is widely acknowledged that violence could erupt even prior to the 2017 elections due to these unresolved issues, particularly in Mombasa, Marsabit and Bungoma counties.<sup>185</sup> It is therefore recommended that there be technical assistance towards mitigating triggers for election violence and factors fuelling mass political violence.<sup>186</sup> Gyimah-Boadi has also credited the relative peace in Ghana to the success of the National Reconciliation Commission, modelled after the South African Truth, Justice and Reconciliation Commission (TJRC).<sup>187</sup> He asserts that through public hearings and related processes, the National Reconciliation Commission provided some relief and closure to the victims of past human rights abuses and wrongs perpetrated by the state without a hostile response from the alleged perpetrators.<sup>188</sup>

In Kenya, proposals for a transitional justice mechanism were first put forward during the regime change in 2002. However, due to disagreements among the political elite as to the form the mechanism would take, the proposals for such a mechanism were shelved.<sup>189</sup> It was not until the 2007/8 post-election violence that calls for the mechanism were revived under the aegis of the KNDR, the mechanism through which the government and the opposition explored solutions to the political crisis. In addition to institutional reforms, constitutional review, the establishment of the Waki-led Commission of Inquiry into Post-Election Violence and the Truth, Justice and Reconciliation Commission (TJRC) were some of the positive outcomes of the negotiations.<sup>190</sup>

Nevertheless, the success of the TJRC is difficult to assess. Public confidence in the mechanism waned as it was plagued by allegations of corruption, serious concerns about the human rights record of the Chairperson, significant delays and political interference as well as lack of political will for the mechanism.<sup>191</sup> The success of the mechanism is heavily dependent on the extent of the implementation of the report, which is still pending.

184 As above, 14.

185 Elder *et al* (n 49 above) 19.

186 As above.

187 Gyimah-Boadi (n 21 above) 5.

188 As above.

189 E Asaala 'Exploring transitional justice as a vehicle for social and political transformation in Kenya' (2010) 10 *African Human Rights Law Journal* 377.

190 Asaala, as above.

191 E Asaala & N Dicker 'Truth-seeking in Kenya: Assessing the effectiveness of the Truth, Justice and Reconciliation Commission of Kenya' (2013) 1 *Africa Nazarene University Law Journal* 133.

## 6 Toward deepening and sustaining electoral democracies in Ghana and Kenya: Opportunities for experience sharing

Despite Ghana's much-lauded democratisation success, research indicates that governance in Ghana has not been on an upward trajectory in the last decade. Beyond the high ranking of Ghana in overall governance performance by the IIAG, it is also said to have registered the 8th largest deterioration on the continent in the last ten years.<sup>192</sup> Although it has registered great improvements in the provision of healthcare and education,<sup>193</sup> Gyimah-Boadi asserts that Ghana still has a long way to go in addressing the delivery of key public services including water, sanitation and environmental management, corruption and political patronage.<sup>194</sup> Inequities exist across regions and income groups.<sup>195</sup>

On the other hand, while Kenya has progressively improved over the last ten years,<sup>196</sup> many excluded groups are worse off than they were before devolution, a factor made worse by tax increases on basic commodities.<sup>197</sup> Socio-economic inequality persists.<sup>198</sup> Together with high youth unemployment rates and urban poverty, these inequalities fuel the capacity of the youth to be mobilised and given the ethnic nature of the exclusion, further exacerbate ethnic tensions and polarisation.<sup>199</sup> It is imperative that specific policy measures are taken to address the needs of the disadvantaged groups.<sup>200</sup>

In 2006 and 2016, Ghana ranked number seven on the IIAG.<sup>201</sup> On participation and human rights, it ranked number three on the continent; Kenya was ranked at number 12.<sup>202</sup> Despite this high rating, the participation of women, youth, religious and other minorities in governance and decision-making in both countries remains alarmingly low.<sup>203</sup> Gyimah-Boadi decries Ghana's political culture, which remains intolerant towards certain identity groups.<sup>204</sup> In Kenya, despite a constitutional dictate for inclusion,<sup>205</sup> marginalised groups do not have meaningful opportunities to participate in political and public life. The EU

192 IIAG Index Report (n 52 above) 18.

193 For example in education; see ODI (n 5 above) 6.

194 As above.

195 ODI (n 5 above) 32.

196 As above.

197 Elder *et al* (n 49 above) 17.

198 As above.

199 As above.

200 As above.

201 n 191 above.

202 As above.

203 UNDP (n 128 above) 2.

204 n 21 above, 4.

205 Art 100.

EOM considered women's candidature in the 2013 elections 'disappointingly low'.<sup>206</sup> Two attempts to pass affirmative action legislation to increase women's participation in public life in line with article 100 of the 2010 Constitution failed to muster sufficient support in Parliament,<sup>207</sup> demonstrating that lawmakers are yet to internalise the constitutional values of inclusiveness, non-discrimination and protection of the marginalised.<sup>208</sup> For democracy to achieve 'true and dynamic significance', implementation of states policies and development programmes must be deliberated upon jointly by men and women, having equitable regard for the interests and aptitudes of both sexes.<sup>209</sup>

Since citizenship demands 'an equal distribution of entitlements, equal recognition of standing and protection of rights and interests of all citizens',<sup>210</sup> minimal participation turns marginalised groups into absent citizens and precludes them from articulating interests peculiar to that group, such as eradication of poverty.<sup>211</sup> They are prised from democracy and relegated to spectatorship, or worse, victimhood.<sup>212</sup> Moreover, by failing to ensure gender equity, women are impeded from contributing to development and consequently making it impossible to achieve the development goals.<sup>213</sup>

Addressing gender inequality in the labour markets, education, health and related areas will result in the eradication of poverty and hunger.<sup>214</sup> While reform of the electoral system to a mixed member representation system has been proposed to secure greater participation of women and

206 EU EOM report (n 160 above) 2.

207 See the Two-Third Gender Rule Laws (Amendment) Bill, 2015 [http://kenyalaw.org/kl/fileadmin/pdfdownloads/bills/2015/Two-ThirdGenderRuleLaws\\_\\_Amendment\\_Bill2015.pdf](http://kenyalaw.org/kl/fileadmin/pdfdownloads/bills/2015/Two-ThirdGenderRuleLaws__Amendment_Bill2015.pdf) (accessed 11 October 2016).

208 W Ayaga & J Ng'etich 'Why Kenyan MPs shot down gender bill' <http://www.standardmedia.co.ke/article/2000200820/why-kenyan-mps-shot-down-gender-bill> accessed 14 October 2016.

209 Inter-Parliamentary Council, Resolution on 'Women and Political Power' April 1992, <http://www.ipu.org/wmn-e/planactn.htm#3> (accessed 17 November 2016). See also Art 9 Maputo Protocol on the Rights of Women in Africa, the National Food Policy (Sessional Paper No 4 of 1981) and Population Policy (1984) all requiring the involvement of women in designing and implementing development programmes.

210 L Thuo 'Realising the inclusion of youth with disabilities in political and public life in Kenya' (2016) *Africa Disability Rights Yearbook* 25.

211 The memorandum of objects of the 2000 Affirmative Action Bill tabled by Hon Beth Mugo urged that increasing women's participation in Parliament would contribute to 'redefining political priorities, placing new items on the political agenda that reflect and address women's gender specific concerns.' See WK Ochieng 'Chimera of constitutionally-entrenched gender quotas: The contested judicial enforcement of quotas in Kenya' (2016) 2 *Journal of Law and Ethics* 71.

212 Ōbi (n 9 above) 10.

213 UN Development Programme report, released at the Sixth Tokyo International Conference on African Development (TICAD VI) held in Nairobi, August 2016. See 'Africa losing billions due to gender inequality, UN agency says' <http://www.nation.co.ke/news/Gender-inequality-costing-Africa-billions/1056-3373084-m4deba/index.html> (accessed 25 November 2016).

214 As above.

ethnic minorities in Kenya,<sup>215</sup> electoral reforms would be ineffective without simultaneously addressing the political and socio-economic context within which they operate.<sup>216</sup>

Regarding corruption, in both Ghana and Kenya, corruption continues to pose a big hurdle to the full realisation of the benefits of democracy. Owusu asserts that corruption was fuelled by the colonial legacy and the belief that it was honourable to be convicted of crimes of political and administrative dishonesty and corruption.<sup>217</sup> Ghana, however, is ranked better, with Transparency International Corruption Perception Index ranking it at number 56 in 2015.<sup>218</sup> Its better performance is credited to investigative journalism.<sup>219</sup>

Kenya continues to fare poorly in world rankings on corruption. According to the Index, Kenya was ranked 138 out of 169 countries. It scored a paltry 25 percent in the assessment.<sup>220</sup> Githongo decries the inaction of the current government on eradicating corruption, despite it being the most vocal about ending corruption. This is corroborated by the lack of improvement in Kenya's rating in the last two years.<sup>221</sup> According to Mbondenyi:<sup>222</sup>

Corruption has exacerbated the country's socio-economic crisis to such a magnitude that the rules of fair play are either simply ignored or have been replaced with influence peddling and nepotism. This has eventually affected the competence, integrity and output of government. Moreover, it has entrenched socio-economic inequality as well as inequitable access to public resources and services amongst citizens. Whereas the government has attempted to establish anticorruption commissions and agencies, there has been a general lack of political will to end corruption in all spheres of society.

The concern is often not with corrupt activities, but rather that one's own ethnic group is left out of the opportunities to enrich themselves or as it is referred to informally, 'to eat'. As Githongo points out '... it's not the corruption in itself that people object to but the fact that it is perpetrated

215 Khobe (n 7 above) 121.

216 Obi (n 9 above) 21.

217 n 11 above, 175.

218 <http://www.myjoyonline.com/news/2016/January-27th/ghana-ranks-7th-in-africa-in-latest-corruption-perception-index.php> (accessed 4 December 2016).

219 As above.

220 <http://www.nation.co.ke/news/Kenya-still-among-most-corrupt-countries/1056-3051138-m30qbpz/index.html> (accessed 4 December 2016).

221 <https://www.theguardian.com/global-development/2015/aug/06/kenya-barack-obama-visit-anti-corruption-plan-democracy> (accessed 4 December 2016); TI (as above).

222 n 28 above, 6.



predominantly by elite from one ethnic group to the exclusion of others, especially theirs'.<sup>223</sup>

Furthermore, devolution has resulted in disillusionment; instead of county governments addressing historical grievances and local problems, corruption, inequality and tribalism appear to have worsened.<sup>224</sup> It is asserted that the only way to effectively fight corruption is to pursue political initiatives.<sup>225</sup> Given the potential of inequality to fuel mass violence as was seen in 2007/8, and the recent spate of riots, Kenya's situation is perhaps more urgent and volatile, especially in light of the forthcoming 2017 elections.

## 7 Conclusion

While the process of consolidating democracy is formidable, it is one well worth pursuing.<sup>226</sup> Ghana's progress since 1992 has demonstrated that democracy can work in Africa,<sup>227</sup> and citizens can use their political voice to make demands that go beyond voting in elections.<sup>228</sup> Ghana was once described as 'a poster child of a failing African state'.<sup>229</sup> Today it is hailed as the leader of the African democratic renaissance. This provides hope for hybrid democracies like Kenya whose trajectory has not been direct. As Menocal *et al* assert, democratisation processes are often not linear,<sup>230</sup> and a country can, over time, experience progress and reversals.<sup>231</sup> Bratton and Mattes assert that 'all regimes have been considered, at one point or another, as patrimonial or neopatrimonial in nature'.<sup>232</sup>

While Ghana represents a good model from which to borrow lessons, Kenya still needs to own and sustain its own democracy project to ensure that it meets the peculiar needs of its people. As urged by Obi:<sup>233</sup>

... it should be recognised that local conditions and realities have a place in modifying, contextualizing and particularising the universal ... The real challenge lies in returning power and ensuring social justice, and equitable redistribution of resources to the people, through a transformatory process

223 J Githongo 'Inequality, ethnicity, and the fight against corruption in Africa: A Kenyan perspective (2006) 26 *Economic Affairs* 20-21, cited in E Uslaner 'Corruption and the inequality trap in Africa' (2007), Working Paper no. 69, 2007 Afrobarometer, available on <http://afrobarometer.org/sites/default/files/publications/Working%20paper/AfropaperNo69.pdf> (accessed 27 November 2016).

224 Elder *et al* (n 49 above) 17.

225 A Mungiu 'Corruption: Diagnosis and treatment' (2006) 17 *Journal of Democracy* 86.

226 Menocal *et al* (n 3 above) 36.

227 Gyimah-Boadi (n 21 above) 6.

228 ODI (n 5 above) 30.

229 Gyimah-Boadi (n 21 above) 1.

230 n 3 above, 30.

231 Menocal *et al*, as above, 31.

232 M Bratton & R Mattes 'Neither consolidating nor fully democratic: The evolution of African political regimes 1999-2008' Afrobarometer Briefing Paper, No 67, May 2009.

233 n 11 above, 30.

that would empower the masses to take control of the democratic project in the real sense of freely creating a government of the people, for the people, by the people.

Without strong political organisation, with grassroots presence, as well as efficient and honest leadership, there cannot be consolidation of democracy.<sup>234</sup> If Kenya continues to invest in citizen participation at the local level as urged by Otieno, there will be a significant impact on the national democratic culture.<sup>235</sup> This means that an audit of the challenges facing and weakening devolution is necessary. Such a bottoms-up approach, with citizens being empowered to participate locally, through such mechanisms as the Kenyan Constituency Development Fund (CDF), can complement the mainstream democratisation strategies, and make democratisation more robust. As opined by Ake<sup>236</sup>

[t]he absence of enabling conditions for democratic participation at the grassroots is the greatest obstacle to democracy in Africa, just as the transformation of the society for the empowerment of ordinary people is the greatest challenge of democratisation.

When power is restored to the citizens, the patron-client relationship that has defined elections and governance in Kenya will be eroded. Until then, the Kenyan government must utilise all necessary legislative, policy and practical measures to ensure ethnic cohesion and consolidation of democracy in Kenya. Ghana has shown that this is an achievable African dream.

234 I Jennings *Democracy in Africa* (1963) 68-69, cited in Owusu (n 11 above) 165.

235 Otieno (n 1 above) 11.

236 C Ake 'The unique case of African democracy' (1993) 69 *International Affairs* 243 cited in Obi (n 9 above) 12.