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Constitutional reform and new patterns of electoral violence: evidence from Kenya's 2013 elections

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ABSTRACT

In places prone to electoral violence, what effects can constitutional changes have on elites' incentives to organise conflict? This article develops two hypotheses to address the above question. It proposes that in places where national reforms find sub-national resonance, national and local politicians' incentives regarding the electoral utility of conflict will align. However, in places where national-level changes fail to be locally relevant, these incentives will deviate from one another. The research illustrates these logics through a controlled comparison of two Kenyan counties: one that experienced electoral violence and the other that maintained peace around the 2013 elections.

KEYWORDS Electoral Violence; constitutional reform; elites; electoral incentives; Africa; Kenya

Introduction

On April 9, 2013, the leading story in *The Daily Nation* proclaimed, 'Uhuru sworn in as president'. The article went on to laud Kenya for having avoided 'a repeat of the ... widespread violence that followed the 2007 election'. Similarly, a piece in *The Standard* (2013) held that 'peaceful voting ... had helped [to] repair the image of East Africa's largest economy'.

The above headlines highlight some important truths about Kenya's 2013 elections. In stark contrast to the 2007 presidential contest – when over 700 fatalities were recorded in the Rift Valley alone (Republic of Kenya, 2008) – this 'violence-prone' region managed to avoid deadly conflict in 2013. Furthermore, and although presidential hopeful Raila Odinga (who finished in second place in 2013 and who had also lost out in 2007) challenged the election results, this time around, after the Supreme Court upheld the victory of the Jubilee Alliance's Uhuru Kenyatta (an ethnic Kikuyu) and William Ruto (a Kalenjin), Odinga peaceably conceded defeat.

The 2013 elections were also the first contests to be conducted under a new constitution, which had implemented far-reaching reforms in Kenya.

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Collectively, these reforms sought to reduce the dominance of the executive, grant political, fiscal, and administrative power to sub-national units (in the form of 47 newly created counties), and guarantee a range of rights to women and minorities (Kramon & Posner, 2011, p. 89). As a result, some analysts held that Kenya's constitutional changes had crucially contributed to mitigating 'conflict drivers' in 2013 (Elder, Stigant, & Claes, 2014, p. 8). Taken in this light, one could think of the lack of violence in the Rift Valley as suggestive evidence that Kenya's institutional changes had been successful in preventing election-related conflict.

Notably, however, other parts of the country did not fare as well. In fact, in the run-up to the election, 'inter-communal clashes in parts of Kenya claimed more than 477 lives' (Human Rights Watch, 2013, p. 1). The most severe of these clashes occurred in Tana River county in the Coast where over 180 individuals perished (Human Rights Watch, 2013, p. 3). Violence was also reported in some of Nairobi's informal settlements and in the former Northeastern Province's Mandera county. Unfortunately, the conclusion of the elections did not bring about a cessation of violence either, as post-election clashes occurred in the former Western Province's Busia and Bungoma counties and in Marsabit and Isiolo counties in the country's northeast region (Human Rights Watch, 2014). Detailed analyses of these clashes also revealed that elites had hired and paid young men to carry out the attacks, which targeted communities that were either expected to or had apparently 'voted badly' in 2013 (Human Rights Watch, 2013; Human Rights Watch, 2014, p. 14; Kenya National Commission on Human Rights, 2012; Republic of Kenya, 2013).

This mixed record raises a number of important questions about the relationship between constitutional change and politicians' incentives to orchestrate election-related conflict. What motivated elites in places like Tana River, Busia, and Bungoma to pursue violence as an electoral strategy? In contrast, why did power-seeking politicians in the Rift Valley apparently steer clear of instrumentalising conflict in 2013? In addressing the above questions, this paper develops a theory about how different levels of constitutional reform can *interact* with one another to generate or eliminate elites' incentives for instrumentalising electoral violence. Specifically, and drawing on the Kenyan case, it contends that depending on whether local or national-level elections are seen as high stakes, politicians' motivations for using election-time violence will vary considerably. The paper explores this theory through a controlled comparison of two counties – Tana River (in the Coast) and Nakuru (in the Rift Valley). Leveraging original event data and informed by over 90 in-depth elite interviews, it makes the case that the new majority electoral rule around the presidential election significantly reduced politicians' motivations to organise election-related clashes in the Rift Valley in 2013. This is because the threshold rendered the presidential election as the key contest in the region and compelled leading Kikuyu and Kalenjin elites (i.e.

Kenyatta and Ruto) to craft the multi-ethnic Jubilee Alliance. As a result, voters from the two communities came to see their fates as being tied to one another. However, in places like Tana River, where historical and demographic factors had ensured that Raila Odinga would be the preferred candidate, the presidential election was far less important than local county-level contests. Furthermore, the implementation of devolution actually activated some ethnic cleavages in Tana River that had previously been electorally irrelevant and thereby set the stage for election-related conflict to occur.

This article proceeds as follows: I begin by developing the theory outlined above about how different levels of constitutional reforms (national and sub-national) can impact elites' incentives for organising electoral violence. I then review the central findings of existing studies on Kenya's new constitution and situate my work within this burgeoning research agenda. Next, I introduce the data, cases, and evidence that are at the heart of this research. Finally, I conclude with some tentative thoughts on the possibilities for, and the likely future patterns of, election-related conflict under Kenya's new constitution.

Toward a theory of constitutional reform and electoral violence

Constitutional change is frequently prescribed as a solution for managing violent conflict. From changing electoral rules to implementing decentralisation, altering existing institutions is widely understood to be an effective means for reducing conflict in divided societies. The major theories of constitutional design – consociationalism (Lijphart, 1977) and centripetalism (Horowitz, 1985; Reilly, 2001) – have approached the problem of managing violence from two different perspectives. While consociationalism prioritises constraints, centripetalism emphasises providing elites with incentives to change their behaviour and contain conflict.

These pioneering studies have provided numerous recommendations – ranging from segmental autonomy to vote pooling – for managing ethnic conflict, broadly conceived, but they are not specific to electoral violence per se. Nonetheless, scholars of election-related conflict have recently started to consider the ways in which existing 'rules of the game' are associated with patterns of election-time violence. In sub-Saharan Africa, for instance, researchers have found that countries with majoritarian electoral rules experience greater incidences of election-time conflict than those with PR systems (Fjelde & Höglund, 2015). Others who have focused on the risk of electoral violence around different kinds of elections have found that although the difference is not large, presidential elections are more violent than legislative contests on average (Straus & Taylor, 2012, p. 31). Thus, one could conclude that countries with majoritarian

rules and presidential systems are especially vulnerable to election-related conflict.

While valuable in terms of their insights, these works reveal little about how different *levels* of electoral and political institutions affect the risk of election-time violence. This is an important question to consider because in countries where constitutional reform is implemented, the changes are often multiple and wide-ranging. For instance, Côte d'Ivoire's recently approved new constitution will bring several changes to that country including revised eligibility conditions for the presidency, a new Senate, and an enhanced Bill of Rights. Similarly, and as described above, Kenya's 2010 constitution resulted in a number of important local and national-level alterations to the country's political institutions.

In theorising the effects of constitutional change on electoral violence, this research begins with the premise that such conflict does not emerge in a vacuum. Rather, as studies throughout the developing world – from South and Southeast Asia (Brass, 2003; van Klinken, 2007) to sub-Saharan Africa (Klopp, 2001; Straus & Taylor, 2012) to Eastern Europe (Snyder, 2000) – have shown, election-related conflict occurs as a result of elite instrumentalisation, which is also the case in Kenya. Consequently, the current project explicitly focuses on elites as the main actors who drive such violence. In doing so, it posits that when constitutional reforms are passed, they can affect the incentives of politicians at two different levels. With some reforms – such as decentralisation – we should expect that their consequences for political contestation will be largely sub-national. Other changes – like altering the eligibility criteria for the presidency – will be more likely to affect the nature of electoral competition around national-level contests. Still others – such as revising existing electoral rules – could have national or sub-national consequences depending on the elections that they target.

Existing research on constitutional change, especially in the African context, has largely focused on the consequences of political liberalisation on elite behaviour. Some scholars, for instance, have noted that with the reinstatement of multiparty competition and an attendant rise in insecurity, several ruling politicians found themselves relying on extra-constitutional means – such as violence and intimidation – to stay in office (Bates, 2008). Others have suggested that a shift from one-party to multiparty politics altered the effective arena of political competition from the local to the national level (Posner, 2007). Stated concretely, because the results of national elections were predetermined in one-party settings, the locus of political contestation was concentrated at the local level. With the arrival of multiparty elections, however, the relevant arena of competition shifted to the national level.

Building on these insights – and by focusing on both national and sub-national reforms – this research develops an interactive argument about how different levels of constitutional change can impact elites' incentives for organising electoral violence. The logic turns on whether or not national-level reforms find resonance at the local level. The project generates and tests two hypotheses based on this variation. The first hypothesis holds that if national reforms resonate locally, then we should expect to see coordination between local and national-level politicians. Put concretely, in such settings, the conduct of elites around sub-national elections will respond to national-level incentives (to maintain peace or organise violence, as the case may be). This is because in these contexts, the effective arena of competition will be the national one. Second, in places where national reforms are irrelevant at the local level, we should expect to see some deviation from national-level prescriptions. In other words, even if national reforms incentivise containing – rather than generating – electoral violence, elites might still choose to instrumentalise conflict around sub-national elections, as the relevant electoral arena for them would be the local rather than the national.

Stated plainly, this theory gives rise to the following hypotheses about elites' incentives to organise election-related conflict:

H1: In settings where national reforms find resonance at the local level, politicians' incentives regarding the use (or containment) of violence will align with one another. As such, we should expect to see the same outcome – in terms of violence or peace – around both kinds of elections.

H2: In places where national-level constitutional changes are locally irrelevant, politicians' incentives and the expected outcomes (with respect to violence or peace) will deviate from one another around national versus local elections.

This argument has important implications for how scholars and practitioners might approach the challenge of containing electoral violence through constitutional reform. For one, it suggests that even in settings where decentralisation reforms are implemented and where local-level elections are held, if these are the elections that are seen as high stakes, then simply rolling out devolution will be insufficient for ensuring electoral peace. Indeed, cross-national studies on the relationship between decentralisation and conflict have demonstrated that rather than uniformly quelling violence, by giving rise to regional parties, which advocate for narrow regional policies, decentralisation reforms can actually serve to fuel conflict (Brancati, 2006; 2009). In countries that are prone to electoral violence, furthermore, one might expect that in places where national-level reforms find little resonance, by rendering existing cleavages electorally salient, reforms such as decentralisation – which target the local level – could actually generate powerful reasons for organising election-related conflict. These propositions will be tested in subsequent sections of this article.

The path to Kenya's 2010 constitution

Kenya's new constitution was born out of the post-election crisis of 2007–2008. Although demands for constitutional reform in the country had been made for several decades, until 2010, 'power holders successfully blocked all attempts' to bring about such changes (Kasfir, 2015, p. 56). As such, the passing of the 2010 constitution was a landmark event and to date, a number of scholars have produced research about its consequences.

Collectively, these studies have found that 'the more things [have] change[d], the more they [have] remained the same'. Researchers studying the county system, for instance, have noted that rather than bringing a new set of politicians into public office, in 2013, the majority of county-level positions fell to existing political elites (Cornell & D'Arcy, 2014). Similarly, research on the executive has found that 'despite formal constraints' introduced by the new constitution, executive power continues to go largely unchecked in Kenya (Hassan, 2015, p. 18). Finally, analyses of the 2013 elections have shown that in keeping with previous contests, serious procedural flaws diminished the quality of these elections (Long, Kanyinga, Ferree, & Gibson, 2013).

And yet, we know relatively little about how constitutional reform has impacted – and can be expected to impact – motivations for, and patterns of, electoral violence. In addressing this lacuna, this research holds that depending on whether the 2010 institutional changes reoriented the focus of electoral competition to the local or national level, they appear to have generated very different motivations for politicians to mobilise violence. Specifically, the project finds that in places where the presidential election came to be privileged over county-level contests in 2013, changes to the electoral rules – which now require the winning candidate to secure 50 per cent plus 1 votes and at least 25 percent of the votes in 24 of the country's 47 counties – diminished elites' incentives to organise violence around both national and local elections. There are two reasons for these outcomes. First, Kenyan politicians now have an interest in building large winning coalitions – rather than pursuing polarisation and violence – to ascend to the presidency. Second, in places where aspirations to secure presidential office are strong, local-level politicians must coordinate with their national counterparts. However, in places where local elections are more important than national ones, which is to say that the majoritarian electoral rule did not find local resonance, and where inter-communal grievances are available for appropriation, by creating a new arena of *county-level* electoral competition, the 2010 reforms actually seem to have generated incentives for elites to instrumentalise election-related violence.¹ In sum, then, rather than local and national reforms uniformly reinforcing one another and promoting peaceful elections, the broader picture from 2013 suggests that Kenya's constitution has created some new opportunities for the organisation of electoral conflict.

Data sources and case selection

The data for this project come from two main sources – an original event dataset and over ninety elite interviews that were conducted over a five-month period Kenya in 2013. Each of these sources is briefly described below.

The Kenya violent elections dataset (KVED)

To better understand where and when electoral violence has occurred in Kenya, I compiled an original dataset – KVED – with province, district, county, and constituency-level information on events of election-related conflict that occurred in the country between 1991 and 2015.² Although Kenya is recognised as a place that has repeatedly fallen prey to electoral violence, beyond small-n studies, we know surprisingly little about the broader patterns of such conflict. KVED allows researchers to fill this gap.

The primary sources used to build KVED include government commission reports (such as the Akiwumi and Waki Reports), NGO reports (from the Kenya Human Rights Commission, the Kenya National Commission on Human Rights, and Human Rights Watch), and newspaper sources, which were used to corroborate descriptive details. These sources were supplemented by using travel advisory data. Including travel advisory information was necessary because while both government and NGO reports provide much fine-grained data on the conflict-ridden 1992, 1997, and 2007 Kenyan presidential contests, violence – sometimes with an electoral purpose – has also been known to occur between elections.

KVED consists of 454 unique (i.e. non-overlapping) events. The dataset disaggregates the incidents of electoral violence along three key dimensions. Specifically, each event is categorised on the basis of its timing (pre, election day, post, and inter-election clash), nature of the violence (politically instigated, resource-related, partisan, targeted communal, inter-communal, sexual, arson, police brutality, etc.), and levels of conflict (which are measured by using death tolls, injuries, and displacement figures). A close examination of this data reveals several important features about election violence in Kenya.

First, there has been considerable variation in the frequency and intensity of such conflict. Of the 454 unique events in KVED, 443 are associated with one of the five post-1991 elections that were held in the country until 2013. Furthermore, 291 of these have resulted in fatalities. As shown in [Table 1](#) below, the 2007 election had the greatest number of deadly events associated with it while the 2002 contest had the least. Similar variations were uncovered in the intensity of conflict with the 1992 and 1997 elections being the most violent and the 2002 election being the least conflict-ridden.

Table 1. Frequency and proportion of deadly events in Kenya's multiparty elections (1992–2013).

Election year	Number of deadly events	Proportion of deadly events (per cent)
1992	32	10.99
1997	73	25.08
2002	5	1.72
2007	133	45.70
2013	48	16.49
<i>Total</i>	291	

Second, KVED sheds important light on the most common forms of election-related conflict in the country. Across all five elections, targeted communal violence (which is defined as one community attacking another around election time), politically instigated violence (wherein politicians incite conflict), inter-communal clashes (which involves two-sided clashes), and arson were the most frequent manifestations of conflict. However, these trends break down quite differently for each individual election. Around the 1992 contest, targeted communal violence and politically instigated violence were the most common categories. In 1997, inter-communal clashes, resource-related violence, and vigilante violence also became prominent. Finally, in 2007–2008, targeted communal violence, police brutality, inter-communal violence, and sexual violence stood out as the most common forms.

Third, KVED provides crucial insights into the role that politicians have played in inciting election-related conflict in Kenya. Specifically, elites were found to have directly orchestrated conflict in 73 (or 16.47 per cent) of the 443 unique election-related incidents of violence in the data. This finding was made possible because the primary sources used to build KVED actually provide a remarkable amount of detail about elite involvement including, for example, specifics on when and where politically connected individuals made inflammatory speeches in an effort to organise violence.³ According to the existing wisdom on electoral violence – both in Kenya and beyond – elites are central to the instrumentalisation of such conflict (Bates, 2008; Brass, 1997; Klopp, 2001; Snyder, 2000; Wilkinson, 2004). The uncovering of this relationship and its extent in the Kenyan case, therefore, is an important contribution of the dataset.

Elite interviews

Elite interviews are the second major source of data for this project. Despite the prevailing understanding that politicians play a central role in the instrumentalisation of election-related conflict, relatively little research on the subject has come out of in-depth interviews with elites themselves. Rather, extant research has typically 'proxied' political incentives either by using

quantitative data on party competition (Dhattiwala & Biggs, 2012; Wilkinson, 2004) or by conducting interviews with violence participants (Brass, 1997; Cleven, 2013).

But how do politicians themselves think about the relationship between violence and electoral payoffs? And how might elites recalibrate their calculations regarding the use of election-time violence based on new institutional parameters? While quantitative data, as shown previously, can help us uncover broader patterns of electoral violence, in-depth interviews with politicians are crucial for understanding *how*, *why*, and *when* violence makes sense as an electoral strategy. To illuminate these issues in the context of Kenya's new constitution, this project relies on over 90 in-depth interviews, which were conducted in Nairobi, the Rift Valley, and the Coast regions. Given the sensitive nature of the research, however, all interviews are cited anonymously.

The interview respondents for this study belong to two main categories. First, I interviewed 36 politicians and party leaders from across the political spectrum. The purpose of these interviews was to understand political elites' motivations for using violence as an electoral tool and the degree to which these ideas have changed over time. Second, because politicians (especially current MPs) would presumably have vested interests to deny that violence can be electorally beneficial, I also interviewed 62 ethnic and religious elites, political and security sector experts, civil society leaders and human rights activists, electoral officials, police officers, civil servants, academics, and journalists to develop a fuller understanding of the relationship between elections and violence in Kenya.

These interviews revealed three key findings. First, there is a cross-partisan consensus that election violence in the 1990s was organised by the ruling Kenya African National Union (KANU) party (interview with a NARC-Kenya party official, Nairobi, September 16, 2013; interview with a FORD-Kenya party official, Nairobi, September 19, 2013; interview with a URP politician, Mombasa, September 24, 2013; interview with a WDM-K politician, Mombasa, September 27, 2013; interview with a UDF party official, Nairobi, October 18, 2013; interview with a TNA party leader, Nairobi, December 2, 2013; interview with an ODM politician, Nairobi, December 10, 2013). In fact, although they often framed matters in terms of combatting 'threats' (i.e. rival parties), even KANU leaders admitted that election-time violence in 1992 and 1997 was instrumentalised to retain the presidency for Daniel arap Moi (the KANU candidate) (interview with a KANU party official, Nairobi, September 12, 2013; interview with a KANU party leader, Nakuru, October 23, 2013; interview with a KANU party leader, Nakuru, October 24, 2013). The fact that there was agreement on these facts is perhaps not surprising given the time that has passed since the elections of the 1990s.

Second, and with regard to the violence of 2007–2008, however, incumbent and opposition elites' opinions broke down rather differently. Those

who had been aligned with the winning Party of National Unity (PNU), for instance, blamed much of the violence on the opposition party, Orange Democratic Movement (ODM) (interview with a KANU party official, Nairobi, September 12, 2013; interview with a TNA politician, Nairobi, October 17, 2013). For their part, ODM politicians asserted that the post-election clashes had escalated because of actions taken by the PNU regime, which included ordering the police to attack opposition supporters (interview with an ODM party official, Nairobi, October 18, 2013).

Third and finally, when discussing the relative peace that surrounded the 2013 election, ruling elites' and opposition politicians' points of view once again differed. Specifically, opposition elites cast the partnership between Uhuru Kenyatta and William Ruto as a 'marriage of convenience' that had 'nothing to do with ideology' (interview with an ODM politician, Nairobi, December 10, 2013; interview with a FORD-Kenya party official, Nairobi, September 19, 2013). Additionally, they held that it was the institutional changes and/or the International Criminal Court (ICC) indictments against Kenyatta and Ruto that had disincentivised violence in 2013 (interview with an SDP politician, Nairobi, October 14, 2013; interview with a UDF party official, Nairobi, October 18, 2013). On the other hand, members of the winning Jubilee Alliance often presented their coalition as one that had come together to bring peace and development to Kenya (interview with a URP politician, Eldoret, November 4, 2013; interview with a TNA party official, Nairobi, December 2, 2013). In sum, then, and especially with reference to elite motivations, the qualitative data gathered for this project adds vital depth to the trends uncovered by KVED.

Case selection

Despite being momentous for many reasons, the 2013 elections were not entirely peaceful. In fact, election-related conflict broke out in several places where such violence has not been a regular phenomenon. Perhaps equally puzzling is the fact that a number of 'violence-prone' sites succeeded in avoiding electoral clashes. I now turn my attention to comparing two such places – Tana River (which experienced violence) and Nakuru (which maintained peace). I show that the reforms passed by Kenya's new constitution resulted in different electoral domains being privileged in these places, and that this variation, in turn, generated very different elite calculations regarding the electoral utility of violence.

Violence in Tana River

In the run-up to the 2013 election, the first fatal attack in Tana River occurred in Kilelengwani village on August 14, 2012. This clash, which involved the pastoral Orma and the agricultural Pokomo communities, claimed the lives of

three people, severely injured six others, and resulted in the destruction of 110 houses (Republic of Kenya, 2013, p. 18).⁴ Subsequently, clashes between the Orma and Pokomo spread to several other villages in the county. According to KVED, this first wave of violence, which lasted from August 14 to September 9, 2012, resulted in 123 fatalities and 58 injuries. On December 21, 2012, a second phase of violence began. This wave lasted until January 10, 2013 and resulted in a total of 62 fatalities and 24 injuries.

Periodic clashes – over land, cattle, and water – have been reported between the agricultural (Pokomo) and pastoral (Orma and Wardei) communities in Tana River since the late 1940s (Kirchner, 2013, pp. 53–56; Martin, 2012, p. 173). However, the area is not understood to be prone to *election-time clashes* per se. In 2007–2008, for instance, Tana River only experienced a ‘peaceful demonstration during the counting of the presidential election results at Garsen [town]’ (Mghanga, 2010, p. 73). In fact, of 184 unique instances of electoral violence detailed in KVED around the 2007 election – 23 of which occurred in the Coast – none pertained to this district (now county).⁵

In 2012–2013, however, the county’s violence was directly attributed to ‘incitement ... by politicians’ (Republic of Kenya, 2013, p. 164). As one interviewee stated, the clashes were purposively ‘used to create a false sense of unity among the pastoralist groups [namely, the Orma and the Wardei] and to remove the agricultural Pokomos from power’ (interview with a TNA politician, Nairobi, October 17, 2013). Another put it even more strongly and noted, ‘this violence was clearly linked to the election ... It [the violence] was all about making sure that the pastoral communities could come to power at the county level’ (interview with a religious leader, Mombasa, October 4, 2013). In addition, several respondents held that the clashes had been organised in response to the perceived high stakes of the county election (interview with an RC politician, Mombasa, 27 September 2013; interview with an academic, Nairobi, 12 December 2013).

In order to ascertain precisely why the county-level election in Tana River took precedence over the presidential contest, demographic factors and voting patterns in the Coast have to be taken into consideration. The ethnic communities that reside in the Coast – including the Mijikenda, Pokomo, Orma, and Wardei – have historically voted in favour of non-Kikuyu candidates for the presidency. Consequently, ‘Uhuru’s candidacy [in 2013] pulled at long-standing anxieties [that Coastal voters have had] about having a Kikuyu in power’ (interview with a WDM-K politician, Mombasa, September 27, 2013).⁶ These anxieties manifested themselves in the ways that Coastal residents voted, as 75.68 per cent of the region’s valid votes were cast in favour of Odinga’s presidential candidacy.⁷ While somewhat lower in Tana River, Odinga won 61.90 per cent of the votes in this county as well. In other words, even with the new majoritarian threshold, the presidential election

in the Coast was relatively less important than county-level elections, as indigenous coastal communities have long been predisposed to voting against Kikuyu candidates.

Lack of violence in Nakuru

Despite precipitating conflict in some unexpected places, the 2013 Kenyan elections were peaceful in several 'violence-prone' sites. Especially important among such areas is the former Rift Valley province. Widely understood to be the epicentre of election-related conflict in Kenya, in 2013, the Rift Valley managed to steer clear of violence.

Located in the central part of the province, Nakuru county has a lengthy history of election-time conflict. In fact, around each of Kenya's violence-ridden elections, Nakuru has fallen prey to deadly ethnic clashes. Between January 1992 and January 1993, for example, over 239 individuals perished here in incidents of election-related conflict. Similarly, following the 1997 election, Nakuru experienced significant post-election violence between Kalenjins and Kikuyus, which claimed over 80 lives. Finally, in 2007–2008, 213 of 744 deaths in the Rift Valley came from Nakuru alone (Republic of Kenya, 2008, p. 308).

A Kikuyu-majority county in a largely Kalenjin province, Nakuru also has a long history of inter-communal grievances between the two communities, much of which pertains to the distribution of land or what is colloquially referred to as the 'land question'. In Nakuru, the narrative around this issue holds that the financially better-off Kikuyus (illegally) acquired Kalenjin (and Maasai) land and 'rendered these [indigenous] groups squatters in their home areas' (interview with a civil society leader, Nakuru, October 23, 2013). Given such sentiments, the land question and narratives about autochthony have repeatedly been deployed as means to instrumentalise electoral violence in the area (Klopp, 2001; interview with a human rights activist, Eldoret, November 1, 2013).

Interestingly, however, in the run-up to the 2013 election, the land question did not make an appearance in the Rift Valley (interview with a civil society leader, Nakuru, October 21, 2013; interview with a retired police officer, Eldoret, November 7, 2013). Furthermore, no outright violence broke out in Nakuru county. In fact, of 53 unique events of election-related violence that occurred between July 2012 and July 2013, none of them took place in the Rift Valley.

In explaining the lack of violence in Nakuru in 2013, this research holds that peace in the county emerged out of the relative privileging of the presidential contest over the county-level election. Specifically, the new majoritarian electoral rule favoured uniting (rather than dividing) Kikuyus and Kalenjins around both the national and local elections here. In sum, contrary to Tana River, Kenya's new constitution generated similar incentives around the presidential

and local elections in Nakuru and thereby crucially contributed to the maintenance of peace in the county in 2013.

The mixed effects of Kenya's new constitution on elites' incentives for violence

Tana River

In order to account for the privileging of Tana River's county election over the presidential contest, this research holds that the *fiscal* component of devolution – specifically the allocation of developmental funds to county governments – made the county-level contest a key focal point for accessing the state.⁸ By doing so, devolution also generated new incentives for violence, which proved especially powerful in underdeveloped places such as Tana River, where ample exploitable grievances exist. As one interviewee explained,

In the future, given the way the county governments are moving, we are likely to see a more diluted role for the national state. [This is] because the counties have grants [that they can use] for the development of their own areas [and so] people have realised that the counties are the main avenues [for] development now. So we will see people minimising the role of the president and they will start voting very strongly for the governor (interview with an academic, Nairobi, December 12, 2013).

This logic appears to have played out in Tana River in 2012–2013. Under the provincial, albeit the largely de-facto unitary system that existed previously, and to the detriment of the pastoral groups, the agricultural Pokomo community had come to dominate electoral politics and had routinely won the majority of MP positions (Kirchner, 2013; Pattison, 2011). Nevertheless, given the centralised nature of the Kenyan state, voters from Tana River and elsewhere tended to be more concerned with the identity of the president than those of individual MPs.

With the implementation of the county system, however – which promised unconditional grants for development to county governments – these expectations seem to have changed considerably. In the 2015–2016 fiscal year, for instance, Kenya's 47 counties received 259 billion shillings for developmental purposes from the national government (Mathenge, 2016). The disbursement of these funds appears to have contributed to voters in Tana River prioritising the ethnic identities of county-level officials over that of the president and other national politicians. Stated differently, given the general consensus in the Coast against a Kenyatta presidency, the effective competitive domain in this region was reduced to the local level. As one interviewee stated, 'at the local level, people want to vote for their own man [i.e. a co-ethnic] now' (interview with an electoral official, Mombasa, October 2, 2013).

In 2013, then, by making salient the issue of local development, Tana River politicians were able to successfully cast the county election as a zero-sum

Table 2. 2013 Election results from Tana River.

Name	Position	Ethnic group
Tuneya Hussein Dado	Governor	Orma
Ali Abdi Bule	Senator	Wardei
Halima Ware Duri	Women's Representative	Orma
Ibrahim Ahmed Sane	MP (Garsen Constituency)	Wardei
Hassan Abdi Dukicha	MP (Galole Constituency)	Wardei
Ali Wario	MP (Bura Constituency)	Orma

game (interview with an academic, Nairobi, December 12, 2013). As one interviewee stated, the violence was simply a means to resolve the question of 'who [i.e. which ethnic group(s) got to] take up governance in the county' (interview with an academic, Nairobi, January 29, 2013). Ultimately, the pastoral communities (namely, the Orma and Wardei) prevailed in their efforts to remove Pokomos from political office. To quote one respondent, 'The clashes ensured that they [Pokomos] could not vote for their preferred candidate[s] because many of them were displaced from their homes' (interview with a civil society leader, Mombasa, September 25, 2013). Tana River's 2013 election results lend support to these claims. As shown below, in 2013, key county-level and MP positions from this region fell to Orma and Wardei candidates. (Table 2)

In sum, then, the case of Tana River illustrates how constitutional reforms – specifically devolution – reoriented voters' priorities to the county level and towards ensuring that their co-ethnics won control of the prized fiscal resources disbursed by the national government. Furthermore, given the irrelevance of the new majority rule here, rather than keeping violence at bay, Kenya's new constitution crucially set the stage for election-related conflict in Tana River.

Nakuru

With respect to the lack of violence in Nakuru – and the Rift Valley more generally in 2013 – this project holds that the consolidation of Kikuyu and Kalenjin support behind the Jubilee Alliance crucially paved the way for peace. The research also finds that rather than stemming from any desires to maintain peace, Kenyatta and Ruto joined hands for entirely strategic reasons, which centred on winning the presidency. Put simply, the new electoral rule, which stipulated that 50 per cent plus 1 votes and 25 percent of the votes in 24 or more counties must be won to secure this national office made a cross-ethnic alliance between their historically rival communities particularly attractive. As one respondent put it, following the promulgation of the new constitution, elites came to realise that perhaps more than ever before, the 2013 election would turn on 'the mathematics of combining [the right] ethnic groups' (interview with an SDP politician, Nairobi, October 14, 2013).

Given the importance of the Jubilee Alliance in contributing to peace in the Rift Valley in 2013, the uniqueness of this coalition is worth considering. After all, an ethnic arithmetic has been part and parcel of Kenyan elections since the restoration of multiparty competition in the country. Prior to the 2010 constitution, winning a presidential election required securing 25 per cent of the votes in at least five of the country's eight provinces. Thus, even then, elites had strong incentives to appeal to non-co-ethnic voters, and several multi-ethnic alliances – including the 2002 National Alliance of Rainbow Coalition (NARC) – have been created around past elections as well.

The uniqueness of the Jubilee Alliance, then, does not lie in its multi-ethnic character per se but in its attempt to, and its ultimate success in, uniting *Kikuyus and Kalenjins*. Given the longstanding grievances and the considerable history of violence between the two communities, consolidating their support behind Jubilee was no easy task. Political elites, for their part, frequently pointed this out during interviews (interview with a UDF party official, Nairobi, October 18, 2013; interview with a DP party official, Nairobi, October 18, 2013). Nonetheless, they also noted that due to the sheer demographic might of the two groups – which account for approximately 30 per cent of Kenya's total population – creating an alliance between them was a prudent electoral strategy (International Crisis Group, 2013, p. 13; interview with an SDP politician, Nairobi, October 14, 2013).⁹ To put it in the words of one interviewee,

[E]lections have long involved a game of numbers in Kenya. But with the new rules of 2010, this was truer than ever ... Every party knew that it would have to create alliances if it wanted to have any shot at winning in 2013. And that is how Jubilee was born too (interview with a NARC party official, Nairobi, December 5, 2013).

Furthermore, unlike the Coast, where county-level elections had high stakes, the key locus of political competition in the Rift Valley was located at the national level and was centred on winning the presidency. The ICC indictments against Uhuru Kenyatta and William Ruto – a Kikuyu and a Kalenjin, respectively – added to this mix, especially since their rival Raila Odinga (a Luo) was not charged. Consequently, Jubilee was able to frame the entire ICC matter in terms of securing the future of the Kikuyu and Kalenjin *communities* (Malik, 2016).

Given the decision to consolidate Kikuyu and Kalenjin support for the presidency, Jubilee politicians followed a similar strategy at the county level. There were good reasons to adopt such a stance. After all, if the coalition had tried to divide these communities to win county-level positions, consolidating their support behind the presidential alliance would have been virtually impossible. Consequently, Jubilee elites devised a pact whereby the county nominations for governor and senator were split between the

alliance's two main parties – TNA and URP, respectively (Wachira, 2012). Consistent with the theoretical argument presented here, then, the Nakuru case illustrates that in this county, where national-level reforms – which favoured peace – found local resonance, not only did the presidential election conclude peacefully but violence was also kept at bay around the county election.

Conclusion and implications

In considering the question of how constitutional changes can impact elites' incentives for organising electoral violence, this article has shown that with respect to Kenya's 2013 elections, the record was a mixed one. The paired comparison of Tana River and Nakuru counties has illustrated that in places where county-level elections became more important than the presidential contest, and where inter-communal grievances could be appropriated to gain votes, violence occurred. However, in places where the presidential election was high stakes, Kenya's new electoral threshold, which favoured inter-ethnic accommodation, contributed to the maintenance of peace.

In August 2017, the country's voters took to the polls again. This was the second election to be held under Kenya's new constitutional dispensation. In an unprecedented decision, the Supreme Court of Kenya subsequently nullified the results of the August election citing procedural irregularities on the part of the Independent Electoral and Boundaries Commission (IEBC). On October 26, a fresh election was held in which Uhuru Kenyatta emerged victorious. Troublingly, however, this time around voter turnout was only 34 per cent – less than half of what it was in August. In light of these extraordinary events, the time is ripe to consider the degree to which the findings of this project extend beyond Tana River and Nakuru. To this end, it is worth noting that in 2013 devolution also seems to have contributed to inter-communal clashes that broke out in Marsabit county. Much like Tana River, Marsabit is an underdeveloped region. The promise of unconditional grants for development, therefore, rendered the county-level elections here more important than the 2013 presidential vote. For their part, presidential candidates recognised this reality and tailored their campaigns to salient local-level issues rather than the other way around (Carrier & Kochore, 2014). At the same time, however, devolution led the county's main ethnic communities – namely, the pastoral Rendille, Gabra, and Borana and the agricultural Burji – to 'rearrange themselves to win the governorship, the senatorship, and so on and so forth' (interview with an RC politician, Mombasa, September 27, 2013). Ultimately, an alliance between the Rendille, Gabra, and Burji (ReGaBu) succeeded in ousting the majority Borana from power. However, the news of this defeat, particularly for the governor's seat, was not well received and 120 individuals were killed in post-election clashes in Marsabit.

Much like Tana River's unexpected violence, Nakuru's surprising peace also manifested itself in other parts of the country. Uasin Gishu county in the North Rift stands out as a strong example. Like Nakuru, this county has a long history of election-related conflict dating back to the early 1990s. In 2007–2008, furthermore, 230 individuals perished here during the post-election crisis (Republic of Kenya, 2008, p. 308). However, like Nakuru, Uasin Gishu managed to avoid election-related conflict in 2013. Here too, it appears that the new electoral threshold played a crucial role in rendering the presidential election as high-stakes, and the birth, and ultimate success, of the Kenyatta-Ruto alliance prevented violence from occurring (interview with a civil society leader, Eldoret, November 6, 2013; interview with a civil society leader, Eldoret, November 10, 2013).

Taken together, then, the evidence from 2013 and more recent events from 2017 suggest that Kenya's new constitution has not been entirely successful in eliminating elites' incentives for violence. More concretely, while it seems that election-time conflict has become more diffuse – and widespread clashes as seen in 2007–2008 are unlikely to recur due to the revised presidential threshold – those on the ground are wary that the county system has generated new drivers of violence. For its part, in late 2016, Kenya's National Cohesion and Integration Commission (NCIC) identified 33 counties as being at risk of experiencing conflict around the August 2017 elections (NTV, 2016). Furthermore, in the year leading up to those elections, several incidents of violence were reported including protests against the Independent Electoral and Boundaries Commission (IEBC), clashes during party primaries, and violence between pastoralists and conservationists in Laikipia county in the Rift Valley (Bekoe, 2017). In addition, election-related clashes broke out in association with the gubernatorial contest Garissa county (News 24, 2017). There was also a dispute over the results of the governor's race in Kirinyaga county where Martha Karua from the NARC-Kenya Party filed a High Court petition challenging the victory of Anne Waiguru from the Jubilee Alliance Party. Finally, police shootings claimed the lives of numerous citizens around both the August and October 2017 elections. In light of the continuing risk and outbreak of electoral clashes in Kenya, this study encourages us to think more deeply about when constitutional re-engineering can reduce election-related conflict and when, sometimes counterintuitively, it can actually contribute to such violence in developing democracies. This will be an important question for future research to consider.

Notes

1. County-level elections in Kenya use a plurality threshold.
2. The dataset is not publicly accessible at the moment but will be made available once all manuscripts whose research it supports have been submitted for peer-review.

3. To be on the cautious side, however, only those events for which explicit links between elite incitement and violence were drawn are counted as such in KVED. Thus, it is possible that elites were involved in orchestrating violence in more than 73 events but one can only be sure of the presence of politicisation for this set of incidents.
4. According to Human Rights Watch (2013, p. 24), violence in Tana River also took place earlier in 2012 between the months of January and July. However, no fatalities are reported for this period.
5. Kenya's new constitution has replaced the administrative units of province and district with counties.
6. Although their analysis is beyond the scope of this paper, these anxieties involve fears of marginalisation and land-grabbing.
7. All election results for 2013 are as reported by the IEBC.
8. Although it was initially decided that Kenya's 47 counties would receive 15 per cent of the national revenue in the form of unconditional grants, which were to be used for developmental purposes, the country's 2014 Public Finance Management Amendment Bill (2014, p. 179) has since stipulated that 'over the medium term, a minimum of 30 per cent of the national and county government's budget shall be allocated to ... development expenditure'.
9. When the Embu and Meru – close historical allies of the Kikuyu – are included in this equation, moreover, a Kikuyu-Kalenjin alliance comes to account for approximately 34 per cent of the country's population.

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