



By **Dalle Abraham**



The speed with which negotiated democracy has spread in Northern Kenya since 2013 has seen others calling for it to be embraced at the national level as an antidote to the fractious and fraught national politics. Its opponents call the formula a disguised form of dictatorship. However, two events two months apart, the coronation of Abdul Haji in Garissa, and the impeachment of Wajir Governor Mohamed Abdi, reveal both the promise and the peril of uncritically embracing negotiated democracy. Eight years since its adoption, has [negotiated democracy](#) delivered goods in northern Kenya?

The coronation

In March 2021, Abdul Haji was (s)elected “unopposed” as the Garissa County Senator, by communal consensus. The seat, which fell vacant following the death of veteran politician Yusuf Haji, attracted 16 candidates in the by-election.

In an ethnically diverse county with competing clan interests and political balancing at play, pulling off such a consensus required solid back-room negotiations. At the party level, the Sultans (clan leaders) and the council of elders prevailed, ending with a single unopposed candidate.

In one fell swoop, campaign finance was made redundant. Polarising debates were done away with; in this time of the coronavirus pandemic, large gatherings became unnecessary. The drama of national party politics was effectively brought to an end.

But even with the above benefits, consensus voting took away the necessary public scrutiny of the

candidate—a central consideration in electoral democracies. So, Abdul Haji was sworn in as the Garissa Senator without giving the public a chance to scrutinise his policies, personality, ideologies, and experience.

Pulling off such a feat is an arduous task that harkens back to the old KANU days. At the height of KANU's power, party mandarins got 14 candidates to stand unopposed in 1988 and 8 in the 1997 elections.

Abdul Haji was (s)elected unopposed, not because there were no other contestants—there were 16 others interested in the same seat—but because of the intervention of the council of elders.

The two major points that are taken into consideration in settling on a candidate in negotiated democracy are their experience and their public standing, a euphemism for whether enough people know them. Abdul Hajj ticked both boxes; he comes from an influential and moneyed family.

An impeachment

Two months later, news of the successful impeachment of Wajir Governor Mohamed Abdi on grounds of “gross misconduct” dominated the political landscape in the north. Mohamed Abdi was a career civil servant. He went from being a teacher, to an education officer, a member of parliament, an assistant minister, a cabinet minister, and an ambassador, before finally becoming governor.

Before his impeachment, Mohamed Abdi had narrowly survived an attempt to nullify his election through a court case on the grounds that he lacked the requisite academic qualifications, and accusations of gross misconduct and poor service delivery. Abdi convinced the court of appeal that not having academic papers did not impede his service delivery, but he was unable to save himself from an ignominious end.

The impeachment ended the messy political life of Mohammed Abdi and revealed disgraceful details—his wife was allegedly the one running the county government and he was just the puppet of her whims.

If they were to be judged by similar rigorous standards, most northern Kenya governors would be impeached. However, most of them are protected by negotiated democracy. Mohamed Abdi's election followed the negotiated democracy model and was thus part of a complex ethnopolitical calculation.

Abdi's impeachment was followed by utter silence except from his lawyers and a few sub-clan elders. His censure and the silence that followed vindicates those who complain that negotiated democracy sacrifices merit and conflates power with good leadership.

Negotiated democracy

Consensus voting has been effectively used in the teachers' union elections in Marsabit County. An alliance of teachers from the Rendille, Gabra and Burji communities (REGABU) have effectively rotated the teacher's union leadership among themselves since 1998. During the union's elections held on 17 February 2016, no ballot was cast for the more than 10 positions. It was a curious sight; one teacher proposed, another seconded and a third confirmed. There was no opposition at all.

The same REGABU model was used in the 2013 general elections and proved effective. Ambassador Ukur Yatani, the then Marsabit Governor and current Finance Cabinet Secretary stood before the REGABU teachers and proclaimed that he was the primary beneficiary of the REGABU alliance.

His censure and the silence that followed vindicates those who complain that negotiated democracy sacrifices merit and conflates power with good leadership.

Yatani extolled the virtues of the alliance, terming it the best model of a modern democracy with an unwritten constitution that has stood the test of time. He described the coalition as “an incubator of democracy” and “a laboratory of African democracy”.

Its adoption in the political arena was received with uncritical admiration since it came at a time of democratic reversals globally; negotiated democracy sounded like the antidote. The concept was novel to many; media personalities even asked if it could be applied in other counties or even at the national level.

Ukur’s assessment of REGABU as a laboratory or an incubator was apt. It was experimental at the electoral politics level. The 20-year consistency and effectiveness in Marsabit’s Kenya National Union of Teachers (KNUT) elections could not be reproduced with the same efficiency in the more aggressive electoral politics, especially considering the power and resources that came with those positions. Haji’s unopposed (s)election was thus a rare, near-perfect actualisation of the intention of negotiated democracy.

But lurking behind this was a transactional dynamic tended by elite capture and sanitised by the council of elders. Abdul Haji’s unopposed selection was not an anomaly but an accepted and central condition of this elite capture.

Negotiated democracy has prevailed in the last two general elections in northern Kenya. Its proponents and supporters regard it as a pragmatic association of local interests. At the same time, its strongest critics argue that negotiated democracy is a sanitised system of impunity, with no foundational democratic ethos or ideological framework.

Negotiated democracy is similar in design to popular democracy or the one-party democracy that characterised the quasi-authoritarian military and one-party regimes of the 70s and 80s.

To call what is happening “democracy” is to elevate it to a higher plane of transactions, to cloak it in an acceptable robe. A better term for what is happening would be “mediated elections”; the elites mediate, and the elders are just a prop in the mediation. There is no term for an electoral process that commingles selection and elections; the elders select, and the masses elect the candidate.

The arguments of those who support negotiated democracy

There is no doubt about the effective contribution of negotiated democracy in reducing the high stakes that make the contest for parliamentary seats a zero-sum game. Everyone goes home with something, but merit and individual agency are sacrificed.

Speaking about [Ali Roba’s defiance](#) of the Garri council of elders Billow Kerrow said,

“He also knows that they plucked him out of nowhere in 2013 and gave him that opportunity against some very serious candidates who had experience, who had a name in the society. . . In fact, one of them could not take it, and he ran against him, and he lost.”

The genesis of negotiated democracy in Mandera harkens back to 2010 where a community charter was drawn to put a stop to the divisions among Garri’s 20 clans so as not to lose electoral posts to other communities.

Since then, negotiated democracy, like a genie out of the bottle, is sweeping across the north.

As one of the most prominent supporters of negotiated democracy, Billow Kerrow mentions how it did away with campaign expenditure, giving the example of a constituency in Mandera where two “families” spent over KSh200 million in electoral campaigns. He also argues that negotiated democracy limits frictions and tensions between and within the clans. That it ensures everyone is brought on board and thus encourages harmony, cohesion, and unity.

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It has been said that negotiated democracy makes it easier for communities to engage with political parties. “In 2013, Jubilee negotiated with the council of elders directly as a bloc. It’s easier for the party, and it’s easier for the clan since their power of negotiation is stronger than when an individual goes to a party.”

Some have also argued that negotiated democracy is important if considered alongside communities’ brief lifetime under a self-governing state. According to Ahmed Ibrahim Abass, Ijara MP, “Our democracy is not mature enough for one to be elected based on policies and ideologies.” This point is echoed by Wajir South MP [Dr Omar Mahmud](#), “You are expecting me to stand up when I am baby, I need to crawl first. [Since] 53 years of Kenya’s independence is just about a year ago for us, allow the people to reach a level [where they can choose wisely].”

[Negotiated democracy](#) assumes that each clan will give their best after reviewing the lists of names submitted to them. Despite the length of negotiations, this is a naïve and wishful assumption.

The critics of negotiated democracy

Perhaps the strongest critic of negotiated democracy is Dr Salah Abdi Sheikh, who says that the model does not allow people to express themselves as [individuals but only as a group](#), and that it has created a situation where there is intimidation of entire groups, including women, who are put in a box and forced to take a predetermined position.

For Salah Abdi Sheikh this is not democracy but clan consensus. “Kenya is a constitutional democracy yet northern Kenya is pretending to be a failed state, pretending that the Independent Electoral and Boundaries Commission (IEBC) does not exist or that there are no political parties”. Abdi Sheikh says that negotiated democracy is the worst form of dictatorship that has created automatons out of voters who go to the voting booth without thinking about the ability of the person they are going to vote for.

Women and youth, who make up 75 per cent of the population, are left out by a system of patronage where a few people with money and coming from big clans impose their interests on the community. This “disenfranchises everybody else; the youth, the minorities and the women.”

Negotiated democracy, it has been observed, does not bring about the expected harmony. This is a crucial point to note as in Marsabit alone, and despite its version of negotiated democracy, almost 250 people have died following clan conflicts over the past five years.

No doubt negotiated democracy can be a stabilising factor when it is tweaked and institutionalised. But as it is, cohesion and harmony, its central *raison d’être*, were just good intentions. Still, the real intention lurking in the background is the quick, cheap, and easy entry of moneyed interests into

political office by removing competition from elections and making the returns on political investment a sure bet.

The pastoralist region

By increasing the currency of subnational politics, especially in northern Kenya, which was only nominally under the central government's control, devolution has fundamentally altered how politics is conducted. The level of participation in the electoral process in northern Kenya shows a heightened civic interest in Kenya's politics, a move away from the political disillusionment and apathy that characterised the pre-devolution days.

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Apart from breaking the region's old political autonomy imposed by distance from the centre and national policy that marginalized the region, a major political reorganization is happening.

At the Pastoralist Leadership Summit held in Garissa in 2018, the enormity of the political change in post-devolution northern Kenya was on full display. The Frontier Counties Development Council had “15 Governors, 84 MPs, 21 Senators, 15 Deputy Governors, 15 County Assembly Speakers, 500 MCAs” at the summit. Apart from raising the political stakes, these numbers have significant material consequences.

Love or despair?

Those who stepped aside, like Senator Billow Kerrow, claimed that negotiated democracy “enhances that internal equity within our community, which has encouraged the unity of the community, and it is through this unity that we were able to move from one parliamentary seat in 2017 to 8 parliamentary seats in 2013.”

This was an important point to note. Since negotiated democracy only made elections a mere formality, votes could be transferred to constituencies like Mandera North that did not have majority Garre clan votes. Through this transfer of votes, more and more parliamentary seats were captured. By transferring votes from other regions, Garre could keep Degodia in check. Do minorities have any place in this expansionist clan vision? The question has been deliberately left unanswered.

[“Many of those not selected by the elders – including five incumbent MPs – duly stood down to allow other clan-mates to replace them, rather than risking splitting the clan vote and allowing the “other side in.”](#)

In 2016, the Garre council of elders shocked all political incumbents by asking them not to seek re-election in the 2017 general elections. With this declaration the council of elders had punched way above their station. It immediately sparked controversy. Another set of elders emerged and dismissed the council of elders. [Most of the incumbents ganged up](#) against the council of elders save politicians like Senator Billow Kerrow, who stepped down.

These events made the 2017 general election in Mandera an interesting inflection point for negotiated democracy since it put on trial the two core principles at the heart of negotiated democracy, which are a pledge to abide by the council of elders' decision and penalties for defying it.

When the council of elders asked all the thirty-plus office bearers in Mandera not to seek re-election. The elders' intention was to reduce electoral offices to one-term affairs so as to reduce the waiting time for all the clans to occupy the office. But those in office thought otherwise, Ali Roba said.

"The elders have no say now that we as the leaders of Mandera are together." He went on to demonstrate the elders' reduced role by winning the 2017 Mandera gubernatorial seat. Others also went all the way to the ballot box in defiance of the elders, with some losing and others successful.

Reduced cultural and political esteem

Like other councils of elders elsewhere across northern Kenya, the Garre council of elders had come down in esteem. The levels of corruption witnessed across the region in the first five years of devolution had tainted them.

It would seem that the legitimacy of the councils of elders and the initial euphoria of the early days has been almost worn out.

The council of elders drew much of their authority from the political class through elaborate tactics; clan elders were summoned to the governors' residences and given allowances even as certain caveats were whispered in their ears. Some rebranded as contractors who, instead of safeguarding their traditional systems, followed self-seeking ends. With the billions of new county money, nothing is sacred; everything can be and is roped into the transactional dynamics of local politics.

The new political class resurrected age-old customs and edited their operational DNA by bending the traditional processes to the whims of their political objectives.

The council of elders resorted to overbearing means like uttering traditional curses or citing Quranic verses like Al Fatiha to quell the dissatisfaction of those who were forced to withdraw their candidacies. Others even ex-communicated their subjects in a bid to maintain a semblance of control.

In Marsabit, the Burji elders excommunicated at least 100 people saying they had not voted for a candidate of the elders' choice in 2013, causing severe fissures in Burji unity. Democratic independence in voting was presented as competition against communal interests. Internally factions emerged, externally lines hardened.

Service delivery

Considerations about which clan gets elected are cascaded into considerations about the appointment of County Executive Committee members, Chief Officers and even directors within the departments. It takes very long to sack or replace an incompetent CEC, CO or Director because of a reluctance to ruffle the feathers and interests of clan X or Y. When the clans have no qualified person for the position the post remains vacant, as is the case with the Marsabit Public Service Board Secretary who has been in an acting capacity for almost three years. It took several years to appoint CECs and COs in the Isiolo County Government.

Coupled with this, negotiated democracy merges all the different office bearers into one team held together by their inter-linked, clan-based elections or appointments. The line between county executive and county assembly is indecipherable. The scrutiny needed from the county assembly is no longer possible; Members of Parliament, Senators and Women representatives are all in the same team. They rose to power together and it seems they are committed to going down together. This is partly why the council of elders in Mandera wanted to send home before the 2017 election all those they had selected as nominees and later elected to power in 2013; their failure was collective. In

Wajir, the Members of Parliament, Members of the County Assembly, the Senator, the Speaker of the County Assembly and even the Deputy Governor withdrew their support for the Governor only five months to the last general elections, citing service delivery. This last-ditch effort was a political move.

The new political class resurrected age-old customs and edited their operational DNA by bending the traditional processes to the whims of their political objectives.

In most northern Kenya counties that have embraced negotiated democracy, opposition politics is practically non-existent, especially where ethnic alliances failed to secure seats; they disintegrated faster than they were constituted. In Marsabit for example, the REGABU alliance was a formidable political force that could easily counter the excesses of the political class, and whose 20-year dominance over the politics of the teacher's union could provide a counterbalance to the excesses of the Marsabit Governor. But after failing to secure a second term in office, the REGABU alliance disintegrated leaving a political vacuum in its wake. Groups which come together to achieve common goals easily become disenfranchised when their goals are not reached.

In Mandera, immediately after the council of elders lost to Ali Roba, the opposition disbanded and vanished into thin air, giving the governor free reign in how he conducts his politics.

The past eight years have revealed that the negotiated democracy model is deeply and inherently flawed. Opposition politics that provide the controls needed to curtail the wanton corruption and sleaze in public service seem to have vanished. ([See here the EACC statistics for corruption levels in the north.](#))

Yet, the role played by elders in upholding poor service delivery has not been questioned. The traditional council of elders did not understand the inner workings of the county, and hence their post-election role has been reduced to one of spectators who are used to prop up the legitimacy of the governor. If they put the politicians in office by endorsing them, it was only logical that they also played some scrutinizing role, but this has not been undertaken effectively.

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In the Borana traditional system, two institutions are involved in the Gada separation of powers; one is a ritual office and the other a political one. "The ritual is led by men who have authority to bless (*Ebba*). They are distinguished from political leaders who have the power to decide (*Mura*), to punish, or to curse (*Abarsa*)."

In his book [Oromo Democracy: An Indigenous African Political System](#), Asmarom Legesse says the Oromo constitution has "fundamental ideas that are not fully developed in Western democratic traditions. They include the period of testing of elected leaders, the methods of distributing power across generations, the alliance of alternate groups, the method of staggering succession that reduces the convergence of destabilising events, and the conversion of hierarchies into balanced oppositions."

Yet the traditional institution of the Aba Gada seems to have bestowed powers and traditional legitimacy on a politician operating in a political system that does not have any of these controls. The elders have been left without the civic responsibility of keeping the politician in check by

demanding transparency and accountability while the endorsement of the Gada has imbued the leader with a traditional and mystical legitimacy.

The impeachment of the Wajir governor was thus an essential political development in northern Kenya.

The perceived reduction of ethnic contest and conflict as a benefit resulting from negotiated democracy seems to override, in some places, the danger of its inefficiency in transparent service delivery.

In Wajir, the arrangement has been so effective that the impeachment of a Degodia governor and his replacement with his deputy, an Ogaden, took place with the full support of all others, including the Degodia. This shows that if well executed and practiced, negotiated democracy can also work. Incompetent leaders can be removed from the ethnic equations with little consequence.

But in Marsabit this level of confidence has not been achieved, as the negotiated democracy pendulum seems to swing between a Gabra-led REGABU alliance and a Borana-led alliance.

The role of women

Negotiated democracy's most significant flaw has so far been its architects' deliberate efforts to leave women out of the decision-making process. In Mandera, women have a committee whose role has so far been to rally support for the council of elders' decisions even though these decisions cut them out and receive minimal input from the women.

No woman has been elected as governor in northern Kenya. The absence of women is a big flaw that weakens the structural legitimacy of negotiated democracy.

Women's role in the north has been boldly experimental and progressive. In Wajir for example, women's groups in the 1990s initiated a major peace process that ended major clan conflicts and brought lasting peace. Professionals, elders, and the local administration later supported the efforts of Wajir Women for Peace until, in the end, the Wajir Peace Group was formed, and their efforts culminated in the Al Fatah Declaration. Many women have been instrumental in fighting for peace and other important societal issues in the north.

In Marsabit, the ideologues and organisers of the four major cultural festivals are women's groups. Merry-go-rounds, table banking, and other financial access schemes have become essential in giving women a more important economic role in their households. Their organisational abilities are transforming entire neighbourhoods, yet negotiated democracy, the biggest political reorganisation scheme since the onset of devolution, seems to wilfully ignore this formidable demographic.

An outlier

Ali Roba won the election despite his defiance of the council of elders, but Ali Roba's defiance created a vast rift in Mandera. As the council of elders desperately tried to unseat the "unfit" Ali Roba, his opponent seemed to emphasise the elders' blessings as his sole campaign agenda. The council of elders eventually closed ranks and shook hands with Ali Roba.

But there was something more insidious at play, the aligning of the council of elders—with their old and accepted traditional ethos—to the cutthroat machinations of electoral politics means that their own legitimacy has been eroded in significant ways.

Negotiated democracy's most significant flaw has so far been its architects' deliberate efforts to leave the women of the north out of the decision-making process.

In northern Kenya, the traditional centres of power and decision-making that thrived in the absence of state power are undergoing a contemporary revival. They occupy a central position as players and brokers in the new local realities. Through these political trade-offs between politicians and elders we see the wholesome delivery of traditional systems to a dirty political altar.

With devolution, the more resourced governors, who now reside at the local level and not in Nairobi, are altering intractably the existing local political culture. They praised and elevated the traditional systems and portrayed themselves as woke cultural agents, then manipulated the elders and exposed them to ridicule.

The governors manipulated the outcome of their deliberations by handpicking elders and thus subverted the democratic ethos that guaranteed the survival of the culture.

A new social class

The new political offices have increased the number of political players and political contestation leading to hardened lines between clans. The Rendille community who are divided into two broad *moieties-belel* (West and East), only had one member of parliament. Now under devolution they have a senator under the negotiated alliance. The MP comes from the western bloc and the senator from the eastern bloc. Each pulled their bloc—*Belel*, the two moieties—in opposing directions. Where there were partnerships now political divisions simmer. For example, in 2019 the *Herr* generational transition ceremony was not held centrally, as is normally the case, because of these new political power changes.

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Devolution has also made positions in the elders' institutions lucrative in other ways. A senior county official and former community elder from Moyale stood up to share his frustrations with community elders at an event in Marsabit saying, "in the years before devolution, to be an elder was not viewed as a good thing. It was hard even to get village elders and community elders. Now though, everyone wants to be a community elder. We have two or more people fighting for elders' positions."

To be an elder is to be in a position where one can issue a political endorsement. To be a member of a council of elders is to be in the place where one can be accorded quasi-monarchical prerogatives and status by the electorate and the elected. The council of elders now comprises retired civil servants, robbing the actual traditional elders of their legitimacy.

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