Tensions and Reversals in Democratic Transitions

The Kenya 2007 General Elections

Edited by | **KARUTI KANYINGA**
DUNCAN OKELLO

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Society for International Development (SID)
and
Institute for Development Studies (IDS), University of Nairobi

2010

SID
Society for International Development

Institute for Development Studies
University of Nairobi

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Preface

This book is a product of much reflection thought, and commitment to examine the gaps and gains in Kenya's democratic process. Its very title: *Tensions and Reversals in Democratic Transitions: The Kenya 2007 General Elections*, suggests not only the difficulty of democratic arrival but also the difficulty of its measurement. It reflects on the progress that has been made and the threats inherent therein. By implication, it sits on the side of the debate that takes the view that the democratization process will not necessarily be peaceful, neat, or unilinear.

The book acknowledges that the balance sheet of Kenya's democratization project demonstrates a mixed result. Whereas in the period leading up to December 2007 the 'assets' side of the balance sheet was arguably healthier, the subsequent events, and post-2007 election violence in particular, exposed huge liabilities—mostly hidden in the structural inefficiencies of the Kenyan. This binary or bifurcated reality in Kenya's democratization, and the gains and tensions inherent in it, is evidenced by several developments.

First, whereas the political space has remained highly pluralized since 1991, with the holding of regular and periodic elections following the re-introduction of multi-party politics, there are a number of negative or illiberal tendencies that have accompanied this progress: consolidation of ethnic identities, political conflicts and violence, and rising impunity. These elections often turn out to be tournaments of communal values in which ethnic interests compete in pursuance of centralized political powers in search of the imperial presidency. Essentially, although the space for democracy is enhanced and the authoritarian monster tamed, elections have acted in the main as instruments of social-political exclusion rather than instruments for furthering democratic governance. Second, whereas the legalization of political parties was seen as a necessary part of the democratization process, the political parties themselves are not practising internal democracy. The quality of rules, decisions, and accountability is woefully weak; personal rule and the dominant leader culture is strong; and party institutions generally emasculated. All these account for the remarkably short shelf life of Kenya's political parties, a development that greatly undermines the consolidation and institutionalizing of democratic gains.

Third, whereas the liberal environment has led to plurality of media outlets, the ownership structure, professional conduct, or content of these media houses have not necessarily passed the democratic muster. The emergence of new technologies such as cell phones and e-communication has weakened state control of information; allowed citizens unhindered access to information; and permitted intense, unregulated citizen dialogue. However, the emergence of these technological choices or opportunities has not necessarily improved the quality of the democratic discourses, even though the space for engagement has increased. Fourth, whereas Kenya's disciplined forces have maintained a fairly respectable distance from politics, generally, and Kenya's

democratization process in particular, this distance was completely eliminated in 2007/2008. The long term political impact of this 'return' to the civilian arena remains unknown, particularly given the ethnicization of politics and by implication security. Fifth, whereas the gender discourses have more or less been settled in favour of the argument for the added value for greater women participation in politics, Kenyan politics remains remarkably 'un-gendered' particularly with respect to representation. This publication shows that culture is a double-edged sword capable of both hindering or facilitating women's access to political power.

The 2007/2008 cataclysmic events provided a fitting context for examining or auditing Kenya's democratization process. This book, therefore, was inspired by the desire to record, archive, analyse, and interpret that sad but immensely significant occurrence in Kenya's democratic, nay, political evolution: the 2007 general elections; the violent social convulsions it subsequently generated; the deeply hidden social-political divisions it brought to the fore; and the resultant constitutional and institutional architecture of governance it created—the Grand Coalition Government. However, because of the contaminated and disputed nature of the results of that election, as affirmed by the Independent Review Commission of Kenya (IREC) or the Kriegler Commission, this publication has used the ECK data mainly to assist in scholarly inquiry. Its use in this volume should by no means be read as a validation of the figures, but rather as reference data (of whatever remains of the 'official results' of the 2007 general elections) to assist in analyzing that indelible mark in Kenya's political life.

The sheer size and length of this publication speaks to its own scholarly ambition: to undertake and provide, all under one roof, a scholarly inquiry into all the key elements, issues and driving forces in the 2007 general elections and its aftermath. We are under no illusion that this is a 'catch-all' publication and, quite importantly, are acutely aware that there are issues that should have merited attention here but which, for various reasons, have not. However, we remain confident that this publication sets the stage as a veritable volume of reference for future work on the 2007/2008 political events in Kenya.

In undertaking this project, we were persuaded that it is important for scholarship, policy, and advocacy to provide and benefit from local perspectives to the 2007/2008 political events. This is because much of the scholarship on Kenya's democratic transition is foreign in character and, while useful, some miss out on the nuances and hidden meanings that characterize local political experience. This publication attempts to cure that problem.

In this volume, we have largely assembled a team of nearlly all Kenyan academics and writers whose analyses and perspectives, we hope, will provide considerable information and illumination on the various dimensions of the democratic accident that was Kenya's 2007 general elections. We would like to thank all the contributors for the effort, patience, and commitment in producing these chapters.

The final responsibility for whatever limitations in the pages and chapters that follow, however, is that of the individual contributors–the authors. We only hope that the issues raised in this volume will spur debate on the type of institutional arrangements required to promote political inclusion and improve democratic governance in Kenya.

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Abbreviations and Acronyms

ACEG   African Centre for Economic Growth
ACK   Anglican Church of Kenya
AIC   African Independent Church
AIPCA   African Independent Pentecostal Church of Africa
ANC   African National Congress
AP   Administration Police
APP   African Peoples Party
APRM   African Peer Review Mechanism
AU   African Union
BBC   British Broadcasting Corporation
CAPF   Coalition for Accountable Political Financing
CBD   Central Business District
CCU   Chama Cha Umma
CCK   Communications Commission of Kenya
CDF   Constituency Development Fund
CEDAW   Convention on Elimination of All Forms of Discrimination
            Against Women
CGD   Commission on Gender and Development
CID   Criminal Investigations Department
CIPEV   Commission of Inquiry into Post-Election Violence
CIR   Centre for Independent Research
CJPC   Catholic Justice and Peace Commission
CKRC   Constitution of Kenya Review Commission
CMD   Centre for Multi-party Democracy
CNN   Cable News Network
COTU   Central Organization of Trade Unions
CPK   Church of the Province of Kenya
CSOs   Civil Society Organizations
DfID   Department for International Development
DFRD   District Focus for Rural Development
DP   Democratic Party
EAC   East African Community
ECK   Electoral Commission of Kenya
EMU   Efficiency Monitoring Unit
ERS   Economic Recovery Strategy
ESOMAR   Association of Market Research Professionals
ET   Expression Today
EU   European Union
FORD   Forum for Restoration of Democracy
FORD-A   Forum for Restoration of Democracy-Asili
FORD-K   Forum for Restoration of Democracy-Kenya
FORD-P   Forum for Restoration of Democracy-People
FPE   Free Primary Education
FSE   Free Secondary Education
GEMA   Gikuyu, Embu, Meru Association
GIS   Geographic Information System
GJLOS   Governance, Justice, Law and Order Sector
GNU   Government of National Unity

GSU	General Service Unit
ICAD	Institute of Civic Education in Democracy
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICT	Information and Communication Technology
IDS	Institute for Development Studies
IED	Institute of Education in Democracy
IIEC	Independent Interim Electoral Commission
IFJ	International Federation of Journalists
IPAR	Institute of Policy Analysis and Research
IPPG	Inter-Parties Parliamentary Group
IPU	Inter-Parliamentary Union
IREC	Independent Review Commission
IRI	International Republican Institute
JIAM	Jesus is Alive Ministries
KACC	Kenya Anti-Corruption Commission
KADU	Kenya African Democratic Union
KANU	Kenya African National Union
KAU	Kenya African Union
KBC	Kenya Broadcasting Corporation
KDHS	Kenya Demographic and Health Survey
KDOP	Kenya Domestic Observation Programme
KEC	Kenya Episcopal Conference
KEDOF	Kenya Democratic Election Observation Forum
KENDA	Kenya National Democratic Alliance
KESDEMO	Kenya Socialist Democratic Movement
KHRC	Kenya Human Rights Commission
KICC	Kenyatta International Conference Centre
KIPPRA	Kenya Institute for Public Policy Research and Analysis
KNA	Kenya News Agency
KNBS	Kenya National Bureau of Statistics
KNC	Kenya National Congress
KNCHR	Kenya National Commission on Human Rights
KNDR	Kenya National Dialogue and Reconciliation
KPP	Kenya Peoples Party
KPTJ	Kenyans for Peace, Truth and Justice
KPU	Kenya People's Union
KRA	Kenya Revenue Authority
KSC	Kenya Social Congress
KSDA	Kenya Socialist Democratic Alliance
KTN	Kenya Television Network
LATF	Local Authority Transfer Fund
LDP	Liberal Democratic Party
LPK	Labour Party of Kenya
LRF	Legal Resource Foundation
LSK	Law Society of Kenya
MDAs	Ministries, Departments and Agencies
MDGs	Millennium Development Goals

MI	Media Institute
MMPR	Mixed Member Proportionate Representation
MoU	Memorandum of Understanding
MP	Member of Parliament
MYWO	Maendeleo ya Wanawake Organization
NAC	National Alliance for Change
NAK	National Alliance (Party) of Kenya
NAMLEF	National Muslim Leaders Forum
NAP	National Policy and Action Plan (on Human Rights)
NARC	National Rainbow Coalition
NARC-K	National Rainbow Coalition-Kenya
NCBD	Nairobi Central Business District
NCCK	National Council of Churches of Kenya
NDC	National Delegates Convention
NDP	National Development Party
NEC	National Executive Committee
NEMU	National Election Monitoring Unit
NEPAD	New Partnership for Africa's Development
NERRC	National Ethic and Race Relations Commission
NIC	National Intelligence Council
NGO	Non-Governmental Organization
NMG	Nation Media Group
NPK	National Party of Kenya
NSIS	National Security Intelligence Service
NTV	Nation Television
ODM	Orange Democratic Party
ODM-Kenya	Orange Democratic Party-Kenya
OHCHR	Office of High Commissioner for Human Rights
PAP	Pan-African Parliament
PC	Provincial Commissioner
PCEA	Presbyterian Church of East Africa
PICK	Party of Independent Candidates of Kenya
PG	Parliamentary Group
PNU	Party of National Unity
PRSP	Poverty Reduction Strategy Paper
PURT	Public Universities Research Team
RDU	Rapid Deployment Unit
RI	Research International
RMG	Royal Media Group
RRC	Revolutionary Republican Council
SACCOs	Savings and Credit Cooperative Societies
SDP	Social Democratic Party
SID	Society for International Development
SIDA	Swedish International Development Agency
SMS	Short Message Services
SPRR	Strategic Public Relations snd Research
SUPKEM	Supreme Council of Kenya Muslims
TJRC	Truth, Justice and Reconciliation Commission
UDM	United Democratic Movement

UN	United Nations
UNDP	United Nations Development Programme
UNIFEM	United Nations Development Fund for Women
WAPOR	World Association for Public Opinion Research

1 Contradictions of Transition to Democracy in Fragmented Societies: The Kenya 2007 General Elections in Perspective

Karuti Kanyinga, Duncan Okello and Akoko Akech

In April 2008, following the political violence that engulfed Kenya after the disputed and flawed December 2007 presidential election, Thandika Mkandawire wrote that 'African leaders exhibit a wide array of unethical ways when it comes to the capturing, retention and exercising of political power, the long-term result being the tendency by a people denied the right to a free choice of their leaders to write electoral lists in blood'. Mkandawire pointed out that 'around election time, one of the problems we are faced with in Africa is that many leaders seem to think the issue is not voters choosing leaders, but rather leaders choosing voters' (Mkandawire, 2008). Indeed, the one party and military regimes that dominated Africa from the 1960s to the 1980s were so allergic to votes and electorates that they transformed elections into scheduled calendar rituals, performed to satisfy the curiosity of critics in the West. The ritual was so effective that it, along with other factors, produced 'presidents for life', a breed of 'indomitable' leaders across Africa whose rapacity and ruthlessness permanently scarred Africa's democracy and development. Through domination and manipulation of political processes and institutions, the 'life presidents' turned elections into an instrument for punishing dissent and critics and rewarding loyalists. Ruling parties blended into governments and/or transformed into state parties. The line between the two blurred. Through repression and co-optation, citizen participation in the political process was frowned upon, and any claim to commitment to democracy was largely perfunctory.

There were expectations that the introduction of plural politics in the 1990s would fundamentally change this electoral and political culture and lay a framework for democracy in which leaders would be selected through free, fair, and honest elections, and one in which there is existence of civil and political freedoms and other rights. Whereas pluralism engendered an environment of competitive elections and other democratic ornaments such as limitation of tenure, the electoral culture

has remained largely the same, a few successful regime changes notwithstanding. Writing on performance of African political parties after the 'Third Wave', Carrie Manning (2005) noted that since the early 1990s, many countries in Africa embraced multiparty democracy. However, few of the elections conducted during the period were successfully democratic. The incumbent executives returned to power after extensively manipulating the electoral process and the vote itself. There were only a few cases of successful competitive electoral democracies. These included countries such as Botwana, Senegal and Mauritius, which had held competitive elections before the opening of democratic space in the early 1990s. The list also includes countries such as Benin, Malawi and Zambia, which had successful transitions through elections (Manning, 2005: 709).

Africa's democratization path has exhibited a contradictory character. Alongside participation by more parties, plurality of media outlets, and an emergence of some strong policy differences, the fusion (though more muted) of state and party, violence, bribery, and rigging, have remained constant features of Africa's elections. Thus, tensions between progress and regression have always existed at the heart of Africa's electoral and democratic transition, further proving the point that when democracy is embryonic, it is also fragile. As the chapters in this volume will demonstrate, Kenya is a prime example of the existences of these tensions. Kenya evidences the fact that democratic gains are not only contradictory but also extremely fragile, particularly in societies that are ethnically fragmented and which also have a long history of centralized executive power and an electoral system that promotes exclusionary or zero-sum political contests. The movement from political liberalization to democratic consolidation, desirable as it is, is neither teleological nor unilinear.

In many instances where the electoral process is truncated, violent conflicts have followed. Sierra Leone, Guinea Bissau, and Central African Republic succumbed to civil conflict in the 1990s because of election-related factors. Elections-induced conflicts have threatened the very survival of nation-states. Even where the nation-state remains 'together', conflicts around elections tend to leave behind indelible marks as a reference pointer to a society in an unending tension, as has been demonstrated in Cote d'Voire, Ethiopia, Nigeria, Uganda, Tanzania, Kenya and Zimbabwe in the last decade.

Clearly, therefore, African elections are heavily bloodstained and destabilizing. Why are elections such an increasingly destabilizing force in Africa? Are elections, regarded as a key marker of democracy undermining the democratic project? Do we need to add elections to poverty, ignorance and disease as a major factor that imperil Africa's future? These are not easy questions. However, the rising number of failed elections and the resultant conflicts is a manifestation of acute institutional failure and the inability of political forces on the continent to reform the state through democratic constitutions. Political liberalization did not substantially transform the institutional bases of African states; however, it engendered regime insecurity. While

states have continued to dominate societies that are ethnicised, unequal, and poor, they have failed to develop the guile necessary to manage the new political and social relations demands that have been generated by the mere fact of pluralism.

Notwithstanding the disappointing practice of multiparty politics in Africa, there is consensus that democratic elections provide an opportunity of fostering change in Africa's society. Political theory points to the centrality of free and fair elections in the construction of the modern democratic state. Elections are the instruments with which citizens exercise their sovereign will. Ideally, elections are a special moment in a democracy when citizens are expected to evaluate regimes, sanction or reward leadership based on performance and policy. Elections not only foster leadership transformation but also provide a bridge between citizens and the state, and a mechanism for them to dialogue and communicate. Consequently, the manner in which elections are conducted, and the integrity associated with both its process and outcomes has a direct bearing on state legitimacy. Regimes that are constructed through electoral manipulations or those borne out of violent conflicts arising from a disputed electoral contest, therefore, by their very nature undercut the legitimacy of the state and its institutions.

Neo-Liberal Democracy on Trial

The reintroduction of plural politics in Africa since the early 1990s has centred both on liberalizing and democratizing the African states and societies, particularly by expanding the space for the logic and language of markets in both the economy and politics. This focus evolved trends towards deregulation of markets and a deepening of democratization through increased political competition. Essentially, the focus has been two aspects of the neo-liberal democratic philosophy. One, the focus has been on the rights, freedoms and equality of individuals. Struggles for return of competitive politics sought to deepen enjoyment of rights and freedoms and to promote social justice. A rights discourse was embedded in many of these struggles to the extent that the campaign for multiparty democracy became synonymous with campaigns for enhancement of civil, political and social-economic rights. Two, there have been struggles to deepen the practice of democracy and pluralizing the society itself. Neo-liberalism in this context favoured an institutional arrangement where plural institutions–parties, media, and civil society–would compete and input into the democratic-building enterprise. In electoral terms, it placed a premium on plurality of parties and regularity of elections as indicators of a functioning democratic society.

Almost two decades later, the limits of the neo-liberal democratic framework have begun to show across Africa. As a political and economic culture characterized by competitive pluralism both in the political and economic arena, studies from the early 1990s to the mid-2000s have revealed the failures and the trials of neo-liberal

democracy in Africa. Olukoshi (1998), Cowen and Laakso (2002), and Matthijas Bogaard (2007), using different sets, draw the conclusion that electoral outcomes and democracy do not correlate strongly in Africa. They show that multiparty politics is an insufficient basis for safeguarding democracy in sub-Saharan Africa. Multiparty politics has facilitated the forging of new and sometimes competing identities. Where advancement of these identities is constrained, it reproduces tensions in the nation-state. These identities and their competitive nature have at times demonstrated the potential to siege the nation and threaten its existence.

Africa's experience with transition from one party and military regimes to multiparty democracy suggests that electoral moments have become perilous liminal moments of transition that comprise two competing possibilities: a consolidation of democratic gain, or reversal of democratic gains. The space for democratic participation is argued to have expanded and pluralized, consistent with the neo-liberal precepts. However, alongside this pluralism and competition between parties is a trend towards re-composition of new forms of popular identities, including ethnic and religious, which have continually threatened the process of democratic change by their very illiberal nature. In some instances, competitive forms of popular identities have tempted democratic gains and left some gaps in the processes that seek to consolidate democratic governance. There is resurgence of negative popular struggles, including struggles to erode citizenship rights. Politics of rights and politics of marginalized groups excluded from power and politics by ethnic majorities have fed into the discourse of politics and power more than ever before. Politics of inclusion versus exclusion continue to dominate themes in African studies today, just like in the past. The democratic gains brought about by re-introduction of multiparty politics continue to experience a great deal of reversal. Across the continent, one witnesses a gradual erosion of gains and a reversal of democratic processes. It is a challenge to foster peaceful transitions, enhance wider political space, promote increased citizens participation, and embed new forms of issue-based politics that accompanied the opening of the political space.

Reversals in democratic transitions are not a new or unexpected phenomenon. At least this is shown in studies on the 'Third Wave' of democratization, focusing on over eighty countries that have attempted transitions from authoritarianism to democratic rule from the mid 1970s (Huntington, 1991a). If reversals are potentially inherent in any democratic transition, the question for any society interested in change is how to limit or manage the reversals to prevent erosion of the gains already made. Significant also is why the reversals take place, in the first instance. Studies suggest that reversals take place when nations experience crises that pave way to authoritarian governments (Huntington, 1991b: 12-34). The weakness of democratic values among key elite groups and polarization among elites that result from the major reforms also tend to cause reversals (*ibid*). The one thing that is certain is that democracy cannot be defined in terms of election only. Election as a definition of democracy is minimal. Furthermore, those chosen to govern sometimes may be acting as front or

puppets of some other groups in the society, thereby making institutionalizations of democracy difficult (Huntington, 1991b). The failure to share power with other groups in the society may be accounting for these reversals, as each group seeks to turn elections into contests for accessing political power. Nonetheless, there are no ready answers on why elections have not deepened democracy in Africa and why reversals appear to be on the increase, experience in the last one and half decades in Africa provides important insights into this discussion.

Firstly, democratization in Africa has taken place without a concomitant process of change in the institutions of governance or even the state itself. Some countries adopted multiparty politics in the early 1990s without comprehensive adjustment of their constitutions and the institutional framework on which politics is practiced. In Kenya and Zimbabwe, for instance, the descent into electoral-induced violence occurred in the aftermath of failed national constitutional review projects. Institutions essentially retained their one-party legal and operational character, yet they shouldered the burden to oversee the transition process. The legislature and the judiciary, for example, remained unreformed and subordinated to the executive, which retained its imperial character supported by a slew of retrogressive laws and an unreconstructed patronage system, economic liberalization notwithstanding.[1] We had liberal politics, though in a minimalist sense, practised in illiberal constitutional and institutional territories.

Multiparty politics was fallaciously equated with democracy, in spite of lack of a strong relationship between the two. Most political parties had originated as constellations of variegated but convenient interests; individuals who had fallen foul of the *ancien regime*, brought together more by their common history of victimhood rather than shared vision for the future. Subsequently, most political parties have failed the democratic test; they have become fractious and personalized, thus undermining their growth as proper and effective institutions. Consequently, many have floundered and withered away. Debate still rages as to whether African political parties qualify as political parties properly so-called. The political party purists argue that they are not; that they have remained mere electoral vehicles for delivering leaders from one election to another; that most of them lack internal democracy; that they are ideology-poor; that they are predominantly ethnic in character; and that, in many respects, they are the mirror images of the state and governance systems they loathe. The political party pragmatists, on the other hand, argue that Africa cannot be wedded to the philosophical and ideological moorings of the 18th-19th century, whose class conflict at the height of the industrial revolution provided a different environment for party formation and evaluation. They argue that Africa's social milieu is different, and what may sometimes pass as ethnic-based politics is

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[1] Whereas the privatization process of state parastatals was supposed to be a key successful marker of the state retreat process, it ended up benefitting the state elite more. State assets were systematically transferred into private hands, and it is no wonder that the state actively resisted the enactment of a privatization law that would have made the process more transparent and competitive.

frequently undergirded by genuine ideological or policy preference. In other words, ethnicity in certain situations is conterminous or coextensive with an ideological or policy position. Both arguments are valid, which is why the democratic project is characterized by contradictions and tensions. In the pages of this book, you will find this conceptual struggle and evidence of the 'definitional straddling' of Kenya's political parties.

Secondly, the executive presidential system of government, coupled with the 'first-past-the-post' electoral system, has evolved adversarial politics. Under the first-past-the-post' system, electoral politics is a zero sum game, which institutionalizes the 'winner-take-all' electoral and governance culture (Bangura, 2006). In ethnically divided societies, where sometimes the aspirations of the community repose in an individual, an electoral loss has the effect of alienating large communities. The competition is even more adversarial where the state is projected as the single most important institution upon which the destinies of individual politicians and their communities depend. And because the state can be used to reward, punish, undertake restitution and retribution and promote sectional interests, communities end up tying their destiny with that of their leaders. Communities are made to believe that they would rise and fall with the leaders who appear to represent their interests. Communities become voting machines for use by competing elites, who are only keen to advance their self interests. They only turn to their communities when their individual interests as leaders are under threat, but remain non-accountable to the community when their relation with other competitors is cordial. First-past-the -post is less amenable to accountability; it fosters adversarial politics and disconnects the leaders from their electorate. Access to the state and its patronage resources, on basis of this electoral system, intensifies the competition and electoral conflicts.

Thirdly, and related to this, is that electoral moments are also moments akin to Arjun Appandurai's tournaments of value (Geschiere, 2007: 49-50). Electoral moments are occasions around which groups struggle over hierarchy of values. Also, elections are moments of contest in which loss or gain is not only measurable in concrete material terms but also in symbolic terms. The latter is what we shall call 'esteem goods'. There is the 'feel good factor' about having 'one of our own' in charge of the state apparatus or a public office—it is a psychological status symbol. This 'feel good factor' is enhanced when it acquires a collective meaning—when a group sharing basic characteristics 'feel good' about having one of their own in office. This feeling unifies communities against others and transforms elections not into an instrument for consolidating democracy but an instrument for enhancing their esteem as a group. This, on its own, weakens democratic values, including among the general public. Elections are not defined in relation to how they can further democracy, but rather how they promote the 'feel good factor'.

The fourth insight and perhaps an important lesson so far is that the claims of rights in transition to democracy have aroused new demands and new forms of competing identities. The pre-eminence of identities in the practice of politics in many countries in Africa is properly affirmed through the pattern of voting from the early 1990s. However, consolidation of competing identities is taking place without a corresponding effect on 'civic culture'. In many respects, participant political culture is very much in place but with little effect on state accountability. Furthermore, identities that are forming through the practice of politics and operation of an electoral system that privileges numeric strength of groups or regions tend to compete and, therefore, make the state and its institutions fragile. Ethnic and nation-state identities tend to conflict rather than reinforce each other. In particular, what Lonsdale (1994: 141) refers to as political tribalism is embedded in competitions over power–political elites appropriate ethnic identities to reinforce competition over state power. This in turn deepens social economic inequalities, which feed into evolving political differentiations and inequalities in accessing state power. Fissures in this competing logic provide a firm grounding for electoral conflicts. The question then is how can ethnic identity be accommodated within the nation-state framework without provoking illiberal tendencies? That is, what policy prerequisites are necessary to manage the negative ethnicity? Or how can illiberal tendencies emanating from conflicting ethnic identities be prevented from challenging the nation-state project?

Fifth, ethnicity and ethnic pattern of voting has revealed a new form of relationship between ethnic interests and policy considerations. Ethnicity and interests around it are increasingly expressed in a policy language; however, discussions on elections in Africa continue to gloss over ethnic and policy nexus. Infatuation with understandings of 'negative ethnicity' gloss over the fact that ethnic behaviour could be a response to policies of exclusion from the centre of power, especially when groups are excluded from state power and national development processes on account of their identity. The failure of Africa's developmental state in the 1960s to address imbalances in development and the quest to divide groups on basis of voters and 'opposers' or critics has had its toll on the continent's politics. The result is that mobilization around ethnicity coincides with certain policy interests. In the 2007 elections in Kenya, this point was driven home more poignantly by the *majimbo* (regionalism/devolution) debate where ethnic groups made policy and political choices on the matter based on their historical experiences with the centre and their current circumstances. Groups may express choice of policies using their ethnic view point, which underscores the nexus between ethnicity and policies. Ethnicity and policies, therefore, need not be seen as contradictory. A first understanding of their interconnection reveals the shortcomings of the majoritarian electoral system and the danger in which groups find themselves, especially where there is no alternative institutional arrangement such as devolution through which they can effectively articulate and promote their interests.

Finally, reversals in transitional democracies are occasioned by the unsettled and troubled notions of citizenship and the liberal rights that flow from it in an electoral context. Studies on citizenship and rights continue to emphasize the interrelations between issues of settlement and rights. The right of settlement in territorial terms is increasingly co-joined to the right of participation in politics. The politics of what Mamdani (2001) calls 'indigenes' and 'settlers' is shaping into an important explanatory variable in politics of inclusion and exclusion. Elections appear to largely determine the extent to which citizenship is co-joined to enjoyment of rights in the nation-state. Indeterminate nature of elections is increasingly eroded by a tendency among ruling elites to mobilize support from those with whom they share common language, culture, and imagined ancestry. It is ironical that it is these aspects that ruling elites also mobilize to create political walls between themselves and the elites from the communities they compete against. Thus, ethnic and nation-state citizenship appear to coexist but not to necessarily complement one another. What Peter Eke (1975) refers to as the 'two publics' is very much played out using multiparty politics as the main theatre. The tension between these two forms of citizenship and attendant rights is responsible for violent conflicts around elections in many parts of Africa, including Kenya. Again, the conflict is the result of how the elites conceptualize the space around which these two are embedded; the nation is projected as a site of patronage while the ethnic is projected as a site of promoting elite interests. Interestingly, there are no mechanisms of enforcing or eliciting accountability at either level.

The politics of belonging or 'insiders' and 'outsiders' of a particular group in power is central in defining moments of exclusion or inclusion in many countries. Thus, citizenship and other identities have come to occupy a central place in electoral politics. The question of who is and who is not a member of an ethnic group plays a major role or is the most important determinant of voter behaviour and the type of rights one can claim. Competing elites demarcate rights on the basis of who should belong and who should not belong to a particular community or locality. The result has been vertical form of inequality based on ethnic discrimination. Groups whose elites are in power dominate senior positions in the public sector and remain influential in making and implementing public policies. Those who lose are marginalized and have limited or no access to political power.

Erosion of citizenship continues even though the constitution provides for equal rights of all citizens. The discrimination on ethnic grounds that permeates politics in Kenya is reflected in and perhaps finds endorsement from discrimination practised at the national level. Though the constitution does not provide for citizenship to be granted or withheld on the basis of ethnicity, in practice, citizenship discrimination on ethnic grounds is widespread.

Studies are increasingly showing the tension between not only the two publics, but also within the ethnic citizenship where identities are seeking to outcompete

one another. Francis Nyamnjoh's (2006) study on 'insiders and outsiders' and Michael Neocosmos' (2006) study on 'natives and settlers', both undertaken in the Southern Africa region, reinforce this growing concern about rights of insiders and outsiders–indigenous and settler communities. Xenophobic violence in South Africa's urban areas in 2008 was a manifestation of this tension. Similarly, Said Adejumobi's (2001, 2004) work on Africa, and particularly in Nigeria, shows similar tension. Other regions of Africa continue to experience these challenges and Kenya is not exempt from these tensions. In some parts of Kenya, for instance, members of communities that are perceived as 'settlers' in territories of 'other' communities may have economic power but not political power; as settlers they cannot claim the right to compete and win an election–whether local or national–because control of politics is synonymous with accumulation of and control of both wealth and power. Violent conflicts thus erupt in such areas to prevent the 'settlers' from using their economic power to accumulate political wealth (Kanyinga, 2009a). And when the state attempts to impose conditions suitable to the settlers, social cohesion is terminated and its effects transform into a major challenge to the nation-state. Violence against settlers, therefore, is an expression of resentment against trends towards domination by settler communities and at the same time a rebellion against the state's actions to impose conditions for domination by settlers.

The Setting of the Kenya 2007 General Elections

Until the end of December 2007, Kenya had been looked at as a politically and economically success story.[2] The ruling party, the National Rainbow Coalition (NARC) had been elected in 2002 on the promise of both economic and political reforms. Part of the political reforms included a new constitution with dispersed executive powers,[3] redressing historical injustices, and the introduction of new politics that was nationalistic, collegiate and inclusive. Politically, it is significant that all ethnic groups voted for the two leading presidential candidates, Uhuru Kenyatta and Mwai Kibaki, notwithstanding the fact that they were both from the same

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[2] The reasons were to be found in the successful regime transition in 2003, which saw a peaceful handover of power from KANU to the National Rainbow Coalition (NARC), and the leap in the GDP growth rate to about 7 per cent towards the end of 2007, up from a growth rate of under 2 per cent that had been inherited from KANU. However, this growth itself was a subject of great controversy, partly because of how the government readjusted and recalculated its statistical and measurement methods, and partly because it did not significantly impact on unemployment or poverty–poverty levels reduced from about 56 to 46 per cent, while inflation increased from 2 per cent in 2002 to 14.5 per cent in 2006. However, with clear trends of recovery in the services and the construction sectors, among others, there was optimism that at long last the economy had resuscitated. This optimism gave hope and created an environment for investments, with the country getting favourable international investment ratings.

[3] It should be noted that a draft constitution had already been released by the statutory Constitution of Kenya Review Commission (CKRC), outlining the nature of these power relations and this draft had obtained the input and imprimatur of the two leading party leaders ahead of the elections.

Gikuyu ethnic community.[4] Economically, the electoral mandate was based on the revival of the economy, introduction of free primary education, and zero-tolerance to corruption. These were the twin platforms that formed the basis of founding of NARC—an amalgam of two parties, National Alliance Party of Kenya (NAK) and the Liberal Democratic Party (LDP), as was encapsulated on a signed Memorandum of Understanding (MoU).

As Kenya approached the 2007 general elections, it was increasingly clear that the many significant promises that were left unaddressed over the previous five years had merged into social tension, political polarization and democratic reversals. The constitution review process had been frustrated largely by the machinations of Kibaki's NAK, the anti-corruption agenda had collapsed, the push to form the Truth and Justice Commission to address historical injustices had been obstructed, nationalistic politics and leadership had collapsed, as tribalism dominated appointments in the public sector.[5]

The relative optimism regarding economic recovery ran counter to a growing disillusionment with political developments. One faction of the ruling coalition, President Mwai Kibaki's National Alliance Party of Kenya (NAK), sought to consolidate power and fenced off its coalition partner, Raila Odinga's Liberal Democratic Party (LDP). Kibaki's faction disregarded the MoU, arguing it was unconstitutional and proceeded to undermine the Bomas Constitutional Conference that would have had the effect of 'constitutionalizing' it. This caused tension and conflicts within the ruling party NARC and, therefore, within the government that had been formed on the principle of coalition. The government abandoned political reforms because of internal conflicts in the ruling party generated by general disagreement on sharing of political power among the various groups comprising NARC. Powerful groups in the government isolated the Liberal Democratic Party (LDP) faction of NARC and began to accumulate power and wealth for the purpose of effectively outcompeting its critics in LDP. Grand corruption re-emerged in different forms involving senior ministers and other government officials and influential politicians in government.[6]

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[4] This point is significant in view of impressions and latter day writings on the post-election crisis (popularly but misleadingly labelled as 41-1, to depict an uprising of Kenya's 41 ethnic groups against 1 ethnic community), which suggest that Kenyan ethnic groups suddenly reached to their primordial instincts and out of sheer jealously of 'the most successful Gikuyu' unleashed a torrent of violence against them.

[5] Increasing ethnicisation of the top echelons of key institutions of state was always an object of open and quiet resentment. For example, members of the Gikuyu/GEMA community dominated the security, finance, and justice and law institutions—ministries where real state power is domiciled. In the ministries of finance, and security, both the Minister and the Permanent secretary were from one community, as was most of the heads of departments and directorates. In the justice sector, the Minister and the Chief Justice were also from the same community, and a purge of the judiciary that saw many judges removed from office was seen as an 'ethnic cleansing' move in the judiciary, even though there were legitimate concerns about the integrity of that institution.

[6] For an insider account of this development, see John Githongo's account as told in Michela Wrong (2009). John Githongo was appointed Permanent Secretary in charge of Governance and Ethics in 2003 by President Kibaki. He had to flee to exile two years later when he exposed the emerging corruption

The NAK faction of government reneged on anti-corruption and other important governance reforms, which threatened individual and corporate interests of elites that the government was courting for support to wade off internal opposition by LDP, especially within parliament where passing important bills or defending the government was important. On the other hand, marginalization of the LDP faction from the centre of power and the skewed nature of appointments in favour of individuals who came from the President's Gikuyu ethnic community and related groups provided evidence that the government was keen to exclude many groups from power. This feeling of a conspiracy to keep power within the Gikuyu community resonated strongly across the country, partly because President Kibaki's ascendancy to power had been a nationalist electoral moment driven by leaders from virtually all ethnic groups. Kibaki's retreat into his ethnic group and his attempt to monopolize power ethnically to the exclusion of those who propelled him to power while on a wheelchair was regarded as being distasteful, ungrateful, and politically selfish.[7] It pointed to an insidious intention and it is for this reason that even the hitherto non-LDP members in the Kalenjin Rift Valley eventually supported LDP's opposition to Kibaki.

The Bomas Constitutional Conference provided the theatre for the ventilation of some of these frustrations and an opportunity to cure their future recurrence through a stronger constitutional architecture. Given that the draft constitution had benefited from wide and extensive consultations, and had been endorsed by the political elite before the elections, there was a veritable expectation that a successful constitutional process would conclusively address the outstanding structural issues in Kenya's governance arena. But with the appetite for structural reforms receding from Kibaki's NAK upon ascension to power, even this opportunity was lost. The frustrations mounted and the perception that a selfish and powerful ethnic cabal wanted to monopolize power and resources solidified.

In the ensuing referendum in 2005 on a draft constitution that had been substantially revised by Kibaki's NAK and his new found allies, such Simeon Nyachae's FORD-People party, from the original Bomas version the government (NAK side) lost to a coalition of LDP, KANU, and civil society. The defeat of the government on an important matter such as a constitutional referendum, which did not cause any dramatic social or political convulsion, falsely created the impression that Kenya had a stable and democratic political culture. However, to the contrary, a more discerning reading of the referendum campaigns and its outcomes pointed to a very undemocratic and highly

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and involvement of senior government officials and politicians, yet the **Kibaki government had won the election** on a platform and promise to fight corruption. The most famous corruption scandal was the so-called Anglo-Leasing scandal, which involved security contract-related deals. In many of these contracts, the government had paid for non-existent services and to companies or individuals acting as a front for senior politicians and government officials.

[7] Before the December 2002 general election, Kibaki, then the opposition presidential candidate, had a motor accident that took him off the campaign trails. While in hospital, key leaders in the new alliance and comprising those from LDP and NAK joined to campaign for him.

fragmented society. Ordinarily, in functional democracies, a loss in a referendum, much more significantly a constitutional one, should lead to a collapse of government and a round of new elections held to renew regime mandate. However, the government's loss of the referendum vote did not occasion an election but hardened feeling and greatly weakened the legitimacy of the Kibaki regime from 2006 onwards. Secondly, the result of the referendum exposed and deepened ethnic cleavages. Except for Central Kenya, the heartland of the Gikuyu and President Kibaki's home region, other regions and, therefore, most ethnic communities largely voted against the draft constitution. The Gikuyu and related groups were isolated. The conflict around the draft also divided the political elites. Society was deeply divided at both elite and popular levels, but the acceptance of the results of the referendum fostered a false belief that violent political conflict would not occur in the event that the incumbent was defeated in the general elections that was scheduled for 2007.

Its legitimacy having been weakened by the referendum result and its popularity declining in most of the country, the Kibaki government experienced regime insecurity as it faced the 2007 elections. This had several consequences, culminating eventually into the controversial general elections. First, Kibaki sacked all the LDP ministers that had campaigned against the draft. Second, a crackdown on unfriendly media emerged as the state mounted an operation against the Standard Media Group. Third, it tightened its grip on the security forces and slowly built the capacity of the Administration Police (AP). All these were tell-tale signs of a troubled and insecure regime, and helped put the events of 2007/08 in perspective.

The most disturbing development in this range of activities was in 2007 when Kibaki decided to unilaterally appoint members of the Electoral Commission of Kenya. This move flew in the face of the 1997 Inter-Parties Parliamentary Group (IPPG) agreement, which he was a signatory to as Official Leader of the Opposition then, and which required that all political parties nominate their representatives to the electoral commission. It is important to note that Kibaki's longstanding lawyer, Kihara Mutu, became the commission's vice chairman.

When Kibaki launched his re-election party—the Party of National Unity (PNU)—a few months to the elections, it came as a shock to the country that the Official Leader of the Opposition, KANU's Uhuru Kenyatta, announced that he would be supporting Kibaki's re-election whom he had run against in 2002. Besides its unprecedented nature in normal democracies, for an official opposition leader to support the incumbent in an electoral contest, this move fitted into the ethnicization narrative of Kenya's politics. Given that Kibaki and Uhuru are both from the Gikuyu community, and that the rest of the country had voted for each of them in 2002 when they were in different parties, Uhuru's move could only be seen as an ethnic solidarity move. To the rest of the country, it was the ultimate 'confirmation' that some Gikuyu elite were plotting to capture and monopolize power to the exclusion of other ethnic groups and that to them, the niceties of political party democracy did not matter much. This move,

coupled with the increasing ethnicization of some of they key and strategic public sector institutions alluded to above, caused considerable anti-Gikuyu resentment within the country in the run down to the general elections and partly explains the reaction that was witnessed after the disputed 2007 presidential elections.

Thus, with the unilateral appointment of the Electoral Commission and the 'ethnic solidarity' move by Uhuru, against the background of a string of political betrayals by Kibaki, a very thick air of suspicion surrounded the general elections. This was made worse by the politicization of the Administration Police (AP) who, on the eve of the general elections and in clear violation of the law, were reportedly hired as PNU election agents. These APs were sent to 'PNU-hostile' areas and many were killed by members of the public when this fact became public. A casual but curious press conference and statement by the Police Commissioner, Major General Ali, banning rallies and intimating that the general elections results may be announced aboard a warship did little to give confidence to the process. These constituted ring-tones to the troubles that lay ahead.

In conclusion, it is important to note that the dualist tension between economic recovery and political regression was not merely a case of 'politics lagging behind', or the result of unintended but rectifiable neglect. It was the manifestation of conscious decisions by political power holders in tandem with their allies among the business elite to advance a political project that sought to build on rather than to resolve the structural contradictions of Kenya's political economy. This project revolved around the continued concentration of political power and economic resources to a narrow group. In the process, real and perceived ethno-regional, class and gender-based exclusion deepened, something which generated political polarization, mainly along the very same ethno-regional lines. At the same time, levels of violence, as exercised by state agents or by groups in society such as gangs and militias, remained alarmingly high. All these structural problems, by and large ignored between 2003 and 2007, would later be addressed under Agenda Item 4 in the National Accord; only, however, after having contributed to the deepest political crisis ever in independent Kenya.

The toxic context that informed the conditions for the December 2007 general elections was thus caused by deeply divided political elites, caused by the failure of the Kibaki faction to honour the Memorandum of Understanding (MoU) that created the NARC; sharp ethnic cleavages, deepened by the naked ethnic monopolization of state power and the public sector and stirred by the highly ethnicized referendum campaigns; disillusionment with the government's reform agenda, evidenced by creeping mega corruption scandals such as Anglo-Leasing; and, a government with a significant legitimacy deficit, electorally expressed through a constitutional referendum two years prior. The political environment was quite incendiary and any hint of an electoral malpractice was bound to result into a major social convulsion. A confident and organized opposition that had mobilized its base very well both numerically and aspirationally was facing off with a comparatively politically less

organized, insecure, and wounded but nonetheless determined regime, which had also carefully mobilized the instruments of state power to defend its position (Murunga and Nasong'o, 2007; Oloo, 2007). This is why, although the 1992 and 1997 general elections witnessed ethnic violence (Throup and Hornsby, 1998; Kanyinga, 2009a; 2009b; Oyugi, 2003), the magnitude and spread of the violence that followed the 2007 December elections was far much greater than what was experienced in the previous elections. It generally threatened the very existence of Kenya as a nation-state (Anderson and Lochery, 2008).

And although there were credible allegations of electoral fraud in 1992 and 1997, these did not result in such a strong uprising as in 2007. In addition to the toxic environment described above, in the 2007 elections there were smoking guns of evidence of electoral fraud as some chapters in this volume point out. Unlike 1992 and 1997 when even the election observers passed a clean bill of health in spite of managerial inefficiencies in the elections management, in 2007 all the major international, regional and local election observer teams were unanimous that there was a problem.[8]

The process leading to the December 2007 general elections was generally peaceful. The parties campaigned across the country. A distinguishing feature of the campaign were the key messages. ODM had a mobilizing slogan for each region, an approach that reflected the party's policy on regionalism and development. On the other hand, PNU campaigned on the government's success in reviving the economy and numerous infrastructural development projects underway across the country. But these issues appeared non-divisive. The campaign was generally peaceful. There were no major incidents of violence. Notable, however, is that both parties did not successfully campaign in each others' strongholds. PNU did not get a foothold in Luo Nyanza and had difficulties launching campaigns in the Rift Valley Province. On the other hand, ODM had difficulties penetrating Central Province and the Mt Kenya region in general. In both cases, hostile groups prevented the parties from campaigning or addressing rallies. Problems arose during vote count. Complaints of flawed counting and general irregularities in tallying of the presidential vote featured prominently at the central tallying point in Nairobi–the Kenyatta International Conference Centre. Notwithstanding the hotly disputed presidential vote tallying, the Electoral Commission of Kenya (ECK) announced the incumbent, President Mwai Kibaki of PNU, as the winner. No sooner had the announcement been made than violence erupted in at least five of the country's eight provinces. The uprising mutated into an ethnic conflict in a period of about two days. About half a million members of the Gikuyu ethnic community were displaced from their homes in Rift Valley, Western and Nyanza provinces. Displacement of thousands of other ethnic

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[8] Debate is yet to be settled on what exactly happened in 2007. For details on some of these debates, see for instance a Special Issue of the *Journal of Eastern African Studies*: Election Fever: Kenya's Crisis, Vol. 2, No. 2 of 2008. See in particular Cheeserman, Nic (2008); Mueller, Susanne, D. (2008); and Throup, David (2008). On problems around the vote count, see also Gibson, C.C., Long J.D. (2009).

groups in Gikuyu dominated areas also followed as the conflict escalated. By the end of it, no less than 350,000 Kenyans had been internally displaced. Over 1,100 had died, many women raped, and about 3,560 suffered serious injuries.[9] Strikingly, in some ODM strongholds such as Nyanza, over 80 per cent of the deaths reported were from gunshot wounds. Over 36 per cent of the total deaths reported were from gunshot wounds. This suggests that the state was active in the conflict. Indeed, the geographical distribution of deaths tend to indicate that there were more ODM than PNU supporters who died from gunshot wounds.[10]

The Violence and the Mediation

The international community's response was swift. The African Union and the international community constituted a Panel of Eminent African Personalities led by former UN Secretary General, Kofi Annan, to lead the mediation. After about 41 days, Kofi Annan saw the signing of a National Accord and Reconciliation Act on 28 February 2008 as agreed by both parties in the Kenya National Dialogue and Reconciliation (KNDR). A ceasefire arrangement was established. Illegal armed groups that had organized to advance the interests of the various groups retracted. The National Accord underlined power sharing as a device of ending the political crisis. A Grand Coalition government was formed in April 2008 and there was calm. From then on, the country did not witness recurrence of political violence.

The discussions of post-2007 Kenya have tended to focus mostly on the violent conflict that followed the contested presidential results. Yet, exclusively focussing on political violence, deaths and displacement that Kenya witnessed during this period eclipses three key concerns and prevents a full understanding of the democratic process in Kenya. Firstly, and as already mentioned, the reintroduction of multiparty politics and liberalization of the Kenyan economy has wrought several changes such as wider political and economic space, plurality of actors and some degree of competition. However, the process of liberalizing the Kenyan polity has been accompanied less by the competitive markets envisaged in economics of perfect competition. Cartelization of economic and political processes is a chief characteristic of this process of liberalization. In other words, under the neo-liberal and multiparty experiments, Kenya's mostly election-linked quest for democratic transition has not produced a democratic public sphere, inclusive political systems, an accountable leadership and democratic institutions, and civilian-controlled coercive arms of the state, but mostly an exclusionary and ethno-conscious public sphere, predatory elite, militia rule and Praetorian coercive arms of the state.

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[9] *The Commission of Inquiry into the Post-Election Violence-CIPEV* (2008) or the Waki Commission (named after Justice Philip Waki who chaired it) provides details of the pattern of violence in the country. See also the International Criminal Court (ICC) Pre-Trial Chamber II (2010).

10 CIPEV provides details.

Secondly, it ignores the historical specificities of the violence as a plausible outcome of an electoral contest, the comparative meaning and significance of electoral contests in transitional democracies with an executive presidential system, the impact of fraud, real or perceived, in a closely contested election and its consequences for law and order in a state that had neither monopoly of instruments of violence nor legitimate claim to use it in a context of a disputed electoral mandate.

Lastly, a focus on violence stripped of its comparative context ignores the parallels between the experiences of other transitional democracies, especially the experiences of East Europe 'coloured revolutions' that parallel Kenya's experience in the 2007 electoral contests. This book examines the contingent and the systemic factors that locate the post-2007 election violence in relation to the contradictions and tensions of Kenya's politics.

Recording the Experience: Tensions and Reversals in Kenya's Transition to Democracy

This publication, *Tensions and Reversals in Democratic Transitions: The Kenya 2007 General Elections*, is an attempt to illuminate the understanding of the issues that were brought about by Kenya's 2007 elections. The title is suggestive of the main arguments in the book. The publication, by nearly all Kenyan academics from various disciplines, universities, and regions of the country, attempts to deepen our understanding of the above issues by looking specifically at the paradoxes of democracy. The book focuses on democratic transition within the context of an ethnically fragmented, institutionally fragile, and economically weak society. This publication discusses the question, 'is Kenya nurturing the rise of illiberal democracy where plurality does not equal competition or choice and where enjoyment of individual rights in certain geographical spaces is subject to a dominant ethnic identity?' Essentially the publication seeks to improve our understanding of the main contradictions that have characterized Kenya's democratic transitions.

This book is organized into eight parts, each representing one of the book's interrelated themes. It comprises eighteen chapters with each chapter discussing different aspects of the 2007 general elections and showing the main tensions and reversals witnessed in Kenya's transition to democracy. An important tension is one occasioned by competing identities at both the local and the national levels. Ethnicity and politics have continued to intermingle in a way that causes tension in the transition process, essentially because the parties are formed along ethnic lines to advance ethno-elite interests, which are often tenuously conjoined with community interests.

The first part or theme one discusses 'political parties and identity politics' in the 2007 elections. The first two chapters under this theme pay attention to identity politics. Adams Oloo's chapter examines how 'new' identities evolved to compete

with 'old' identities, and the consequence this interlock has had on the elections. An important finding is that while 'new' identities such as gender, religion, and youth made a strong showing in the 2007 elections (at least in decibel terms), 'old' identity–tribe–was still king in mobilizing and organizing the politics. Oloo demonstrates that both the leading parties, particularly ODM and PNU, designed an institutional structure that had their kingpins drawn from the various regions in the country. Both, therefore, tried to create a pan-ethnic alliance. The question is why did one succeed and the other fail to attract support from all the majority of communities? Secondly, why does ethnicity triumph and subsume other social cleavages and forms of organizing?

The answer to this question lies in the fact that ethnicity in and of itself is not a sufficient mobilizing tool; it requires an 'add on' to attain its political potency. The credibility of the message and the messengers matters considerably. Voters will support leaders not merely because they come from their ethnic group, but because they articulate issues that their ethnic groups hold dear. In other words, whereas tribe is a much maligned basis for organizing African politics, it is arguable that there are moments that it seems to be a proxy, or inter-mingles with issues or ideology, even if not of the purist leftist-rightist dichotomy. It helps in promoting certain beliefs and collective communal values. What Lonsdale calls 'political tribalism' or the sense of 'belonging' to outcompete others results in ethnicity becoming the dominant mobilizing agency. As shown in Fredrick Wanyama's chapter, whereas there were areas of considerable ideological convergence between the main parties, there were also issues such as *majimbo*/devolution, corruption, on which the ideological divide was clear. Regional support for the parties correlated strongly with their commitment to some of these issues, which voters considered more important. The fact that one of their own was in that party was not decisive. The 2007 elections was an illustration of the 'ethnicity-plus' theory of political mobilization–a concept which by its very formulation captures the tensions or the gains and reversal in Kenya's democratic transition.

Frederick Wanyama proceeds to discuss political party behaviour and performance in Kenya. He argues that they do not operate as formal institutions; they are formed for political convenience or as temporary tools by which politicians seek access to political power. They are transformed, dissolved and recreated with each successive general election. Because of this, very few parties live beyond one general election. The actors remain the same, but the institutional context for their organizing changes. Furthermore, founding leaders control and dictate the behaviour of political parties. Without internal democracy and institutional culture, Wanyama observes, the parties have significantly altered the democratization process in Kenya. However, significantly, the 2007 also presented the country with competitive presidential and parliamentary nominations, even though much of the parliamentary nominations degenerated into chaos. The ambition and attempt at competitive parliamentary nomination was unprecedented, even though the weak institutional foundations

of the political parties undermined it. The competitive presidential nominations in ODM and ODM-K were also unprecedented as the candidates campaigned throughout the country for almost a year before being nominated at their various delegates conferences.[11] This was a major gain in Kenya's democratic transition and, if sustained, will considerably consolidate the country's democratic evolution.

Religion and politics have always had a confluence in Kenya, even though state and religion are constitutionally separate. A cross-section of the mainstream religious groups played a key role in the struggle for multiparty democracy in the 1980s and 1990s. However, as Babere Chacha shows in chapter 4, the struggle credentials of some of these leading groups were extensively damaged. Chacha's chapter 'Pastors or Bastards?: Religion and Politics in the 2007 General Elections in Kenya' shows how religion was used to mobilize for political advantage. Religious leaders took openly partisan positions and, like with other identities such as gender, youth or class, ethnic loyalty dwarfed religious affiliations. Leaders of selected religious groups used the pulpit to propagate ethnic political position.

How different is the national from the local? Part two of the book is on 'Geo-Politics of Development and Elections in Kenya'. It contains two chapters looking at local level voting patterns using different approaches. In chapter 5, Ngau and Musyimi, using a spatial model or Geographical Information System (GIS), map the pattern of voting in the civic, parliamentary and presidential general elections in 2007. They show that retention rate for MPs was only 31.9 per cent; about 68 percent or 143 of the 210 MPs in the 9th Parliament did not make it back. The findings also reveal that of the 14 million registered voters, nearly 70 per cent were below 40 years; they were youthful. The findings also reveal the following: ODM won over 50 per cent of both the rural and urban constituencies, while PNU won about 20 per cent in both rural and urban constituencies; 60 per cent of the constituencies had women candidates and that there was at least one woman candidate per constituency in Nairobi, while there was only one woman candidate in North Eastern Province where there are 11 constituencies. The findings also show that North Eastern Province elected neither a woman MP nor Councillor. Interestingly, the data shows that whereas Nyanza has no elected woman MP, in absolute and percentage terms, it has the highest number of women councillors. The chapter also points to the diminishing influence of the 'three-piece suit' voting pattern by showing the party divergences in parliamentary and civic elections. In analyzing the link between patronage and electoral outcomes, the authors show that in the 50 new districts created in the run up to the poll, the incumbent did not gain much; he received 38 per cent of the vote from these districts, while the opposition ODM received 41 per cent. This is a modest pointer to the limitations of patronage.

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[11] It should, however, be noted that in 1992, FORD-Asili nominated its presidential candidate through a popular direct vote following a contest between Kenneth Matiba and Martin Shikuku. However, the participation was not really national in character but was confined to the regions where each drew much of his support: Central, Nairobi and Western provinces.

In Chapter 6, Geoffrey Njeru picks up on some of these issues. The discussion, based on findings on use of the Constituency Development Fund (CDF), proceeds to note that prudent use of CDF is emerging as an important factor in re-electing or voting out MPs. It is gradually interlocking with ethnicity, political party affiliation and political patronage to pave way for objective, rational considerations such as performance of individual candidates in local level development. However, use of CDF is yet to be the main determinant of voting patterns at the constituency level. The discussion in these two chapters points to the fact that ethnicity is not the sole determinant of voter choice or behaviour.

The third part is on what we have called the 'Soft Power of Electoral Politics'. The choice of words here is deliberate. The aim of this theme is to tease out how new information communication technologies (ICTs) impact on electoral politics in transition contexts. Indeed, the 2007 general elections saw increased significance of the media and, in particular, the use of new technologies such as cell phones and text messages. The election witnessed increased use of short text messaging through cell phones in mobilizing support or undercutting opponents. It marked the emergence of a new powerful tool in electoral politics at the national and local level. The new tools may be projected as the foundation of 'soft power in electoral politics'. Mbugua wa-Mungai in Chapter 7 has examined how these tools of soft power provided space in which new relations formed and deconstructed. Whether by use of text messaging through Short Message Services (SMS) or through Internet blogs and emails messages, and FM stations, popular cultural media enabled relatively easy and swift information transmission and collaboration between political actors. Surprisingly, neither the civil society nor the political parties utilized the new technologies to provide civic education. Parties and their supporters predominantly used soft power as a stage for political dark arts: to promote certain prejudices and stereotypes that would undermine cohesion and motivate voters to select rather than elect their leaders. Such prejudices certainly have the effect of preventing voters from making democratic and informed choices, because the choices are already predetermined through carefully articulated stereotypes and propaganda. The democratic opportunity (in terms of free speech) and danger (in terms of inciting and hateful speech) sits right at the heart of the contradictions in Kenya's democratic evolution.

The growing allure of new technologies in elections does not threaten traditional media, which has adapted appropriately–it feeds into and borrows from new technologies. Further, new technologies such as cell phones and e-communication have weakened state control of information. They have allowed citizens unhindered access to information. However, the emergence of these technological opportunities and the existence of a pluralized media environment has not necessarily improved the quality of the political discourses. Indeed, long regarded by conventional wisdom/ liberal orthodoxy as the oxygen of democracy, the structure and operations of the media in Kenya demonstrates that it is probably the greatest threat to Kenya's democratic transition. The media is ethnic, corrupt, and evidences a proclivity to

mis-frame important discourses, which ultimately undermine peoples' choices. Kwamchetsi Makokha's Chapter 8 shows that media ownership is not only concentrated in class terms but also in ethnic terms–a rather toxic arrangement in a young and ethnically fragmented society such as ours. Even though the media provided important information and entertainment, Makokha is critical of the robust media environment. The media not only failed to play a watchdog role in the 2007 elections, but also failed to provide analysis of election issues. Whereas all the leading media houses posted reporters to virtually all polling stations, the media houses suddenly stopped relaying the election results and, to date, none has released its own version of the results.

Makokha attributes the inability of the media to rise to the democratic occasion to the tension between media ideals and the political interests that the media houses pursued or sought to promote and protect. Media ownership, arm-twisting and general political patronage undermined the extent to which media would have played a constructive watchdog role that fosters a free and fair democratic transition. These two chapters point to the fact that the media could be growing as the main theatre for waging electoral struggles. They provide the reach and coverage that no conventional mobilization tools can match. As soft power tools, popular culture and media can be used effectively to promote democracy. However, they can also be used to obstruct democratization of the society; they were used to create tension and to undermine rather than nurture conditions for a democratic election.

Part four is on the 'Politics of Numbers'. It is about how the use of numbers shaped the 2007 election process. Indeed, the most striking aspect of the 2007 general election was the numbers. A flawed vote count for the presidential election result caused the dispute that triggered the violence. The two parties in the dispute agreed to constitute an Independent Review Electoral Commission (IREC) on the general elections to ascertain the integrity of the results. This Commission concluded that the entire electoral process was so flawed that the results were irretrievably polluted. Chapter 9 by Odera Kiage and Kwame Owino discusses the politics of numbers from the opinion polls point of view, while Chapter 10 by Karuti Kanyinga, James Long and David Ndii looks at the vote count itself. Kiage and Owino trace the history of polling in Kenya to bring out an important observation: that opinion polling in Kenya is neither less scientific nor more political than elsewhere. They observe that opinion polls are both praised and maligned in the Kenyan political system, and that politicians' responses to the results of polls have become almost predictable. They argue that the quality of polls has improved considerably, and that polls have become good predicators of the outcomes of electoral contests. The presidential election result that the Electoral Commission of Kenya (ECK) announced, notwithstanding the controversy over the utility and authenticity of some of these results,[12] was at variance

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[12] See Report by the *Independent Electoral Review Commission* on the general elections held on 27 December 2007–of the Kriegler Commission, named so after Justice Kriegler who chaired it. The report noted that the electoral process lacked integrity and that the results were irretrievably polluted. Also, since

with what the opinion polls predicted.[13] The chapter concludes that opinion polling is a vital tool for democratic development because it reveals people's perceptions about the government and political institutions. Polling should then be nurtured and deepened. Chapter 10 follows up on the politics of numbers to demonstrate that there were conspicuous variations between the number of voters for civic, parliamentary and presidential elections, even though these three were held at the same space and time. The margin of variation is significant as evidence of vote rigging or flawed vote count. This variation is not evenly spread across the country. It was more visible in certain areas than others. The authors conclude that a close look at these numbers reveals a high level of discrepancy between the official figures and what should have been expected to be the case.

Part five is on 'Governance Reforms and Money in Politics'. The two chapters here, Chapters 11 and 12 discuss the influence of governance reforms and the money element in elections. Underpinning these chapters is the observation that issues of reforms continue to shape electoral politics and that political corruption and campaign financing has grown to undermine the process towards democratic elections and reform. Tom Kagwe tracks the history of reforms from the eve of the 2002 general elections all the way to the 2007 general elections. The discussion observes that 'reform' had become a buzzword, especially after the 1997 general elections and it is on basis of agitation for reforms or change that Kenyans voted in the NARC government. NARC came to power and introduced the Governance, Justice, Law and Order Sector (GJLOS) reform programme. But after a short while, the government abandoned governance and political reforms in general–as elites in NARC sought to access and consolidate political power. It is this failure that spilled over into the constitutional review process, where again the elites holding state power sought to control the constitutional agenda in order to satisfy their greed for raw power. The reform moment evaporated thereafter. The 2007 elections did not reactivate this momentum. The tensions in the electoral process, and in particular the tension between ethnic and national publics prevented the resuscitation of the reform agenda.

Masime and Otieno discuss the influence of political money and campaign financing in Chapter 12. The discussion reveals how much each of the mainstream leading political parties raised from 'donors', who included individuals and corporations, as well as how they spent these monies. Interestingly, construction companies top the list of the main companies that gave out donations to the main political parties. This is not surprising. The economy was growing and the government had ventured into

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early 2010, several Members of Parliament have lost their seats through successful electoral petitions in the High Court. In some of these cases, the High Court found a discrepancy between the ECK results and the total figure after a re-count by the Court. In other instances, the Court faulted the ECK officials for faulty authentication process.

[13] Thomas, P. Wolf (2009) has analysed several lessons learned from the 2007 election polling experience and observes, among others, that poll findings added to the anxieties and expectations that accompanied the electioneering process.

infrastructural development and mass public works in general, including construction of roads. Construction companies must have been strategizing to buy loyalty from the party that would form the government or from individuals who would be at the centre of power in either of the camps. The type of spending witnessed during the period clearly shows that the parties had embedded a patronage culture.

The political economy of violence is covered in part six. The violence witnessed in the 2007 elections is covered, in different ways, in chapters 13 and 14 by John Oucho and Musambayi Katumanga, respectively. A point worth of note is that that this violence comprised different forms and motivations. The first form comprised spontaneous protests in ODM strongholds. Government property and institutions were attacked in this first wave of violence. Organized attacks followed in both ODM and PNU strongholds, with groups allied to either targeting the other as the main opponent. The police reacted by use of excessive force in ODM strongholds, thus adding a new form of violence. Finally, there was retaliatory and organized violence targeting ODM supporters who lived in PNU strongholds. Musambayi's chapter pays attention to the dynamics that informed this pattern of violence, while Oucho's chapter discusses the underlying causes. This chapter, in particular, concludes that the land question, ethnic animosity and other injustices intertwined to cause the violence and that if not addressed, they have the potential to dismember the nation-state. On the other hand, Musambayi examines the political economy of this violence and begins by observing that successive regimes have ethnicised the security sector, thereby weakening the ability of the security forces to deal with violence. Furthermore, the security forces were as divided as the Kenyan society. It was not realistic to expect the police to stop the violence. The chapter presents a regional pattern of the violence, indicating that each region of the country, other than the Mt Kenya stronghold of PNU, was protesting against the government and against ethnicisation of governance. Consequently, it was not possible to stop the violence by force. The violence itself was political and, therefore, the solution had to be political. The security forces had been sucked into ethnic politics, and this weakened their ability to stop the political violence.

In part seven, the new lenses for discussing gender and elections are presented– the book uses relatively new lenses to examine gender and politics in the 2007 general elections. Past studies on gender and electoral politics have concentrated on social-political and cultural hurdles to advancement of women in electoral politics. The discussion in this book raises the need to carefully evaluate the main assumption about why women do not fair well in electoral politics. The discussion also looks at why some regions of the country ended up having more women in parliament than others. Chapter 15 by Winnie Mitullah raises a hard question about why there were generally few women elected into local government and parliament despite the state committing itself to an affirmative action policy in terms of representation of women in key public positions. Mitullah's assessment points out that affirmative action did not bring about the numbers required to have impact on women's representation.

Increasing women's representation requires more than policy and legal provisions. It requires dealing with social issues that prevent inclusion of women in decision making positions. And for women to succeed in electoral politics, repeat runs are critical. Appearing on the ballot in the same constituency several times improves women's chances of being elected to parliament. At the same time, the success rate of women boosts their image and impresses upon the public to vote for women.

The challenges posed by Mitullah appear to have answers in Akoko Akech's Chapter 16 and Susan Choge's Chapter 17. Akech's chapter examines the theories around masculinities and its implications for organizing electoral politics. The chapter examines how President Daniel arap Moi, a Kalenjin, closed the space for organizing by women throughout his 24 years rule and how the region witnessed increased women participation in parliamentary politics after his exit. Susan Choge uses empirical data from several constituencies in Rift Valley to account for a high number of Kalenjin women MPs in the 2007 elections. Both chapters point out that Rift Valley region has six elected women members of parliament. This is the highest number of women elected into parliament and from one region in Kenya's post-colonial history. Susan Choge's chapter also notes that the main campaign agents of these women candidates were men. This, on its own, suggests that patriarchy is not seamless. In fact, the story in Choge's chapter points to important evidence in support of culture. It points to the fact that cultural values and some beliefs could have aided the election of women MPs in Rift Valley Province. This is important evidence that should be used to acquit culture of the charge that it prevents women from winning in electoral politics; culture is not guilty.

Akech's chapter recognizes that President Daniel arap Moi came from the region and he was the main dominant figure in politics in the region. The end of his era, therefore, opened a space on which people would out-compete one another. At the time of the 2007 general elections, the leadership void had not been clearly filled and, therefore, there was still room for free and fair competition. Both chapters point out that this gave room to issue-based politics articulated through the only dominant party in the region—ODM. The women candidates won on account of this relatively free and fair space. How the region will sustain this type of space is an issue of debate. For now, all that is clear is that the Kalenjin's patriarchal society is different from many other societies in the country; it is tolerant to and appreciates women of value. Finally, from these chapters on gender, it is clear that for women to win an election, they must have repeat runs.

Part eight of the book discusses the constitutional politics of mediation: the hands that put out the fire. Chapter 18 by Ben Sihanya and Duncan Okello discusses the politics of mediation and the power sharing arrangement that the parties entered into to end the violence. They argue from the outset that power sharing or formation of a coalition government attenuates the process of democratization in a significant way: incumbents can cling to power by rigging elections knowing very well that they

will share some power. They warn that power sharing is not a solution to political instability; it has not worked well as a peace-building instrument—it is a stop gap device to violent conflicts. Only comprehensive institutional and policy reforms, including enacting a new democratic constitution, can get the country out of the political crisis.

In Lieu of a Conclusion

The contributions to this volume attest to important tensions and reversals in Kenya's democratic transition, and the schema of power and the electoral system are the main culprits. Centralization of state power, especially in the presidency, has resulted in the domination of institutions by groups and individuals. The presidency has inelastic abilities to punish and reward, command and control, and in a poor and fragmented society such as Kenya, electoral contests then tend to have polarizing effects. Similarly, the majoritarian system or the 'first-past-the-post' electoral system results in a zero-sum game. Because competing individuals are 'interlinked' with regional interests, the gains of political elites are considered as community gains; the same applies for losers. We take the view that whereas Kenya is an ethnically conscious country, ethnicity *per se* is not the cause of Kenya's democratic regression, problematic as it may seem. It is the result of centralized powers of the state, reinforced by a majoritarian electoral system. Simply put, ethnicity and how it is expressed in Kenya's electoral politics is the toxic waste from a political economy of inequality, centralized state power and a majoritarian electoral system. Political elites mobilize ethnic groups because the electoral system privileges numbers rather than representation. The losers have no other ways of being represented or accessing state power.

What these findings suggest, therefore, is that ethnicity is a symptom of structural problems in Kenya's politics. It cannot be handled without addressing issues about form and content of the state and the electoral system. But it is also a problem that should be dealt with by policy and law, and particularly constitutional arrangements that recognize its origins and tendencies. It is an issue that requires open public debate; it should be brought to the open for transparent discussion and engagement on how to resolve its negative consequences. Background deal-making on these issues merely postpones the problems and leads to individualization of important ethnic issues; communities resort to individual elites to represent their interests. In turn, ethnic interests become highly personalized and assume newer and complex dynamics.

Addressing the problem of centralization of power will resolve problems around ethnicity. This will resolve long-standing and neglected issues that have not been addressed for long. These issues, which triggered the post-2007 election violence are the result of what we have identified as the cause of tensions and reversals in Kenya's democratization process.

The chapters in this book point to important gains and gaps in the struggle to consolidate democratic values, norms and actual institutions. The return of multiparty democracy has resulted increased political competition and erosion of authoritarianism in different forms. However, it has also demonstrated the limitations of proceduralist democracy. First, democracy and its practice in Kenya, and African in general, cannot be exercised by elections only, especially where there are no sufficient conditions to guarantee independence of voters. Those elected are not independent of groups that seek power to promote ethno-regional and hegemonic political interests. The link between individual interests, ethno-regional interests and elections is indeed responsible for some of the reversals witnessed in recent times.

Second, liberal democracy has important contradictions. On the one hand, it promotes competitive politics, pluralizes, and enriches competition by continually challenging monopoly and domination of traditional political actors. On the other hand, it motivates illiberal behaviour, including tendencies to circumvent reforms ,if such reforms are not in the interest of those in power. Political elites appropriate democratic discourses for personal gains. They turn to ethnicity where they are not able to advance their personal interests. They construct discourses of rights and belonging to plot lines of exclusion or inclusion in political power.

Third, elections have not produced a democratic public sphere. Elections have been regular and periodic, yet they have not produced the desired results and have tended to generate conflicts. The international mediation that followed the post-2007 election violence highlighted why elections raise conflicts and tensions in Kenya. These reasons include the attractive centralized powers of the state, concentrated in the presidency, the electoral system, and ineffective governance institutions. The mediation also brought to the fore issues that should be addressed to end Kenya's continued process of transition and conflicts–constitutional and institutional reforms.

The regularity with which elections are being manipulated in Africa continues to subvert and undermine the peoples' sovereign power, and it is about time that it attracted heavy sanctions. Incumbents and electoral authorities have continued to demonstrate rather casual and cavalier attitudes towards people's right to choose, hence the Mkandawire assertion cited previously. This creeping attitude needs to be checked as it not only viciously dis-empowers the citizenry but also fundamentally undermines the process of democratic development and consolidation. Crimes against the state–of which treason and sedition are–are so elevated because they presuppose the conspiracy or overthrow of the peoples' will as represented by a government already constituted by a credible electoral process. Indeed, electoral abuse, in its various gradations, should rank higher than treason in a country's Penal Code.

Kenya is at an important but fragile stage in its democratic evolution. It is perilous but full of opportunities. The mediation agenda in its entirety provides a platform to address and consolidate the country's democratic future. This future depends on

how the problem of centralization of power is addressed. Establishing mechanisms for inclusive governments and representation of all voices—minority and majority—is critical for the stability and survival of Kenya as a nation-state, as is the creation of strong but accountable institutions.

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PART I:
POLITICAL PARTIES, IDENTITIES, AND ELECTIONS

2 Party Mobilization and Membership: Old and New Identities in Kenyan Politics

Adams Oloo

Abstract

This chapter analyzes party mobilization and membership in the 2007 general elections in Kenya. It argues that political mobilization in Kenya since independence has been hinged on identity as opposed to ideology. The dominant identity has been ethnicity, which is characterized in this chapter as 'old' identity. The chapter argues that during the multiparty era 'new' identities have cropped up in different electoral years. These include gender, youth and religion. The chapter further argues that in spite of the presence of these 'new' identities, the 'old' identity, in this case ethnicity, has triumphed over them in each election year. The chapter concludes that although the main political parties unveil ideological statements in the form of party manifestos, they are all for the most part strikingly similar as they espouse some strand of social democracy. Arising from this fact, party mobilization and membership is driven by ethnicity, and this is unlikely to change in the near future.

Introduction

Political mobilization revolves around a particular ideology, identity, or both. This scenario obtains both in the developed and developing countries. However, in the case of African countries, identities, however defined, seem to take precedence over ideologies. This is despite the fact that all political parties in Africa, Kenya included, have manifestos that espouse a particular ideological leaning.

Political mobilization in Kenya has mainly been along identity lines, with the 'old' identity—ethnicity—being more salient than 'new' identities that include gender, religion and youth. Ethnicity has remained a central element of political parties' mobilization strategy since independence. To this end, electoral politics has come to be viewed as a platform to deliver patronage dividends to one's ethnic group. This has resulted in particular ethnic groups supporting one of their own during elections. This was the situation between 1963 and 1997. However, since 2002, the inability of any single ethnic group to achieve the ultimate prize on its own has forced the various ethnic political elites to build bridges with other ethnic communities in the quest for the presidency. It is as a result of this realization that coalition politics became an in-thing from 2002, and political parties have since then engaged in building pacts and ethnic electoral coalitions in their quest to capture or consolidate power.

This chapter broadly seeks to address the nature of party mobilization and membership in Kenyan politics. It argues that party mobilization and membership has mostly been identified by ethnicity than ideology. In this discussion, the term *ideology* implies any comprehensive and mutually consistent set of ideas by which a social group makes sense of the world. *Identity*, on the other, is used to refer to social groups that share the same characteristics, feelings or beliefs that distinguish them from others. To this end, two broad identities have emerged, which are categorized as 'old' and 'new' identities. Ethnicity is presented as the 'old' identity due to its persistence from the colonial period to the present, while the 'new' identities that emerged during the multiparty period are also identified, in this case gender, youth and religion. The chapter argues that the 'old' identity has remained salient in Kenyan politics despite the emergence of a myriad of 'new' identities. The chapter further argues that in the contest between identity and ideas, the former has easily triumphed.

Old and New Identities: A Conceptual Framework

Contemporary politics is increasingly driven by two concepts, democracy and identity. There is more and more insistence that major decisions be responsive to public views, whether through elections, referenda, or other processes of democratic deliberation and judgement. At the same time, identity has become the focal point of policy disputes over the treatment of differences between people, arising from gender, religion, race, ethnicity and class. Democratic processes are often the key

to advancing claims of identity, since they provide openings for aggrieved groups to mobilize and seek public recognition of their claims.

Group identities are as abundant in democracies as they are controversial. When members of a specific sub-group unite to effect political or social change, the result is often called identity politics. In other words, *identity politics* is basically about mobilization of communal groups based on race, ethnicity, religion, gender, age, among other criteria (Gutmann, 2003). Identity politics claims to represent and seek to advance the interests of particular groups in society, the members of which often share and unite around common experiences of actual or perceived social and economic injustice, relative to the wider society of which they form part of and exist in. In this way, the identity of the oppressed group gives rise to a political basis around which they then unite and begin to assert themselves in society (Scott, 1995; Ruiters, 2008).

Group identification—whether it be focussed on gender, race, religion, sexual orientation, ethnicity, nationality, age, disability, or ideology–provides people with motivating reasons of mutual identification to organize politically. Since mutual identification informs people's sense of their own political interests, group identity and collective interests are often mutually reinforcing in democratic politics.

Identity is not only a possible ground of politics, it also has an effect on politics. People are attached to their race, gender, religion and ethnicity to the extent that the state has inscribed certain referents—such as skin colour, language, beliefs and practices—as important markers of differential access to resources. In post-colonial Africa, identity politics obscures the real reason behind exclusionary practices, namely the struggle for, and access to, resources. Here, kinship, ethnicity, religion and gender, among other identities, formed the basis for collaboration and support in the state. Identity, thus, became a political tool for contesting power and resources rather than a source of differences within the society, and was used to clearly delineate between those who were included and those excluded from state power (Ruiters, 2008). *Identity politics* is thus defined as politics arising out of shared experiences of injustice, but also shared experiences of privilege, where the group with access to power protects its position in the system at all costs.

Consequently, it is important to note that a political identity does not arise spontaneously. Instead, by using categories of race, gender, and class to define unequal distribution of rights and privileges, liberal democratic societies compel some of their members to identify with others of a similar ethnic, sexual or economic character. Class, race, ethnicity, age and gender originate in the ways that states organize access to power. In general, only those group definitions that have been used to restrict access to power will become self-conscious and gain salience in the act of contesting—or protecting—the exclusions that constitute them (Courtney, 2006). In 19th century British democracy, for example, as E. P. Thomas has argued, the working class consciousness did not arise simply from the fact that millions of

people were suddenly working together in the factory floor. Rather, working-class identity developed in tension with the limits of the then British democracy, which used class as a boundary of citizenship (Thomas, 1963).

Thus, movements form around issues of gender, race, religion, youth, or class not because people feel a need to express a primary commitment to such shared identities, but rather because these categories have regulated the distribution of the goods of a liberal society. The emergence of 'new' political identities, therefore, signals some shortcomings of the democratic system (de Leon and Naff, 2004). These 'new' political identities arise as a result of exclusion and seek to acquire cognisant political weight so as to force some sort of inclusion.

In efforts to accommodate the various evolving identities in the political arena, the political elite have sought to develop political parties that appeal to most, if not all, of the existing identities. In African countries, this quest to accommodate the diverse identities that litter the continent has resulted in political parties not only losing their ideological leaning, but also mobilizing along identity lines as opposed to ideological lines. As a result, party identification in the developing world and in parts of the developed world is increasingly based on voters' social identities rather than on a rational assessment of the parties' policies or performance in office.

Politics in Kenya, just like in most countries in Africa, has tended to take the fashionable identity route as opposed to the thematic ideological line. Most, if not all, political parties in Kenya subscribe to one of the many variants of social democracy. Therefore, during elections, mobilizing the citizens along identity lines is more appealing than along ideological lines, which are more or less the same. Group identity is thus 'constructed' by political leaders, who find group cohesion and mobilization a powerful mechanism in their competition for power and resources. They, to this end, adopt a strategy of 'reworking of historical memories' to engender group identity.

In Kenya, political mobilization initially took ideological lines in the countdown to independence and the immediate post-independence period. The contest between Kenya African National Union (KANU) and Kenya African Democratic Union (KADU) and later between KANU and Kenya Peoples Union (KPU), although having some ethnic tilt, was also largely along ideological lines. The banning of KPU in 1969 brought to a halt the mobilization along ideological lines as the country reverted to a *de facto* one party system and later from 1982 a *de jure* one party system until 1991 when Kenya reverted back to a multiparty system. During this period, there was no contest for the presidency by virtue of the fact that the country was under a one-party system and the president of the country, who also doubled as the president of the party, went in unopposed in every election year. The electoral contest was confined to parliamentary constituencies and local authority wards. Because most constituencies are drawn and coincide with ethnic boundaries, political mobilization during the one-party period was along ethnic and clan lines. The return to multiparty

politics in 1992 was not accompanied by ideological contestation between parties; rather, most parties went either regional or ethnic. In sum, between 1963 and 1992, identities such as gender, youth and religion were not used to mobilize the populace. We label these identities 'new' because it is only in recent times that they have been tapped by political elites.

Since 1997, these 'new' identities have attempted to curve a niche for themselves in the political arena by developing a requisite political weight in order to challenge the ethnic identity. The 'new' group identities in the Kenyan politics have a growing and significant influence on political beliefs as evidenced by media coverage of elections that now almost invariably report which candidate won the 'women's vote,' the 'youth's vote,' or the 'religious vote.'

As Jung Courtney has aptly observed, one's ability to get oneself heard in a democratic system crucially depends on whether one can claim membership in a group with pre-existing political weight, or forge a group identity with new political weight (Courtney, 2006). Building political identity has, thus, become an important precondition of political engagement, democratic or otherwise. In the field of political competition, identity politics remains the fulcrum around which politics and political mobilization in Kenya gravitates or oscillates.

Old Identities in the One-Party Era

Identities are constructed with the aim of accruing certain benefits in a group's interactions with other divergent groups in particular settings. In the political arena, the end product is state power. It is against this background that the formation of KANU and KADU ought to be understood. It is during this crucial period of imminent transfer of state power into the hands of indigenous classes that ethnic identities appear to have been instrumental in negotiating access to political power. Between 1955 and 1960—a key period in Kenya's political history—colonial administrators permitted the formation of African political associations along district lines only. The associations were basically ethnic and later provided the personnel and organizational bases for the two 'nationalist' parties—KANU and KADU—established in 1960.

Right from the beginning of multiparty politics in Kenya, ethnicity proved to be more powerful than ideology in determining political loyalties. KANU was the party of the majority ethnic groups and KADU the party of the minority ethnic groups. Concurrently, the colonial logic of culturally and territorially distinct ethnic groups shaped local understandings of interests, rights and best strategy, and in turn affected the political rhetoric and action of elites as they sought to represent and mobilize local constituents. As a result, key political figures became associated in the popular public psyche with the ethnic community that they were believed to represent, and which they in part represent (Throup and Hornsby, 1998; Muigai, 1995; Lynch, 2006; Oyugi, 1994; Ajulu, 2002). Both political parties that oversaw the birth of the

independent Kenyan state reflected ethnicism. Each party was essentially an alliance of ethnic groups, and that is what gave them their national character.

KANU's support came largely from several ethnic groups that were also numerically the larger ones: the Gikuyu, Embu and Meru, the Kamba, the Luo and the Kisii. KADU, on the other hand, represented ethnic communities that felt threatened by an alliance of the Gikuyu and the Luo, the two most numerous and politically aggressive groups. The regional (ethnic) political organizations that came together to form KADU were the Kalenjin Political Alliance of Daniel arap Moi and Taita Towett, the Coast African People Union of Ronald Ngala and Francis Khamisi, the Maasai United Front of Justus ole Tipis, and Muliro's Kenya African Peoples Party.

The culture of ethnic politics continued in the 1970s despite Kenya being a *de facto* one-party state. In the early 1970s, ethnic-based associations, especially the Gikuyu, Embu, Meru Association (GEMA), started to challenge and undermine the standing of the sole political party, KANU, in the society. GEMA emerged as a major formation around which pro-regime politicians among the Gikuyu-Embu-Meru groups organized political support. Actually, during the 1970s, KANU was more or less moribund and in its place ethnic associations were formed to champion the interest of various ethnic groups. The active nature of GEMA and its eclipse of KANU as a forum for political mobilization forced other ethnic groups to either revive their ethnic associations (as was the case of the Luo Union) or reconstitute them (as was the case of the New Kamba Union and the Abaluhya Association, etc) in the struggle for the control of state power. Powerful politicians began to use these associations for manifestly political ends (Widner, 1992; Oyugi, 1994).

By 1976, GEMA had seized complete political initiative as exemplified by the public rallies it organized in the Rift Valley, Central and Eastern Provinces for the *Change the Constitution Movement*. This move was aimed at blocking Moi's assumption into the presidency upon Kenyatta's death by seeking an amendment to the Constitution to prevent the automatic ascendance of the vice president to the presidency. However this manoeuvre never materialized as a result of divisions among the Gikuyu elite.

The trend of ethnicized politics that dominated the Kenyatta era continued during the Moi era in the 1980s. Moi's first move upon ascending to power was to neutralize the Gikuyu hegemony in the system by shaking the foundation of Gikuyu unity–GEMA. Moi eliminated ethnic associations as a basis for political mobilization and embarked on the immediate rehabilitation of KANU as the only platform within which identity groups were to mobilize for engagement with the state. His concern with ethnic balance as a way of broadening his own base of support forced him to adopt a *majimbo* formula in the allocation of party posts. This system remained a permanent feature of party elections throughout the lifetime of the one-party state.

Old Identities in the Multiparty Era

The transformation from the one-party system to a multiparty system was anticipated to bring in the politics of ideological contestation at the expense of identity politics, because different parties would have competing ideologies and policies. This, however, turned out not to be the case as identity politics and especially ethnicity continued to hold sway. In the 1992, 1997, 2002 and 2007 elections, ethnicity remained the dominant identity around which political parties were not only formed, but also through which they sought membership and mobilized supporters.

With the shift to multiparty competition in 1992, the relevant lines of ethnic cleavages changed. Whereas local cleavages had been central in one-party context (electoral competition revolved around locally-defined ethnic communities), the transition to multiparty rule brought a shift to a regional pattern of ethnic voting and alliance building. The return to multiparty politics did nothing to change Kenyans' assumptions that patronage distribution would follow ethnic lines; it continued to assume that it would. Nor did it alter Kenyans beliefs that they needed to support candidates from their own groups (Posner, 2007). As Throup and Hornsby summarize: 'neo-patrimonialism shifted from the micro- to the macro-level' (Hornsby and Throup, 1998).

Between 1991 and 1997, the national and multi-ethnic movement, Forum for Restoration of Democracy (FORD) and other largely bi-ethnic parties collapsed, which resulted in the appearance of mono-ethnic ones. During this period, the politically significant parties included the Forum for the Restoration of Democracy-Kenya (FORD-K), Forum for the Restoration of Democracy-Asili (FORD-A), Democratic Party (DP), KANU and after the 1997 elections, National Development Party (NDP) and Social Democratic Party (SDP).

The ethnic tilt in these parties was evident in both the 1992 and 1997 elections, where party support followed distinct ethno-regional patterns. Candidates and parties mostly won in their home districts, and this was basically on the basis of their ethnic affiliation. Due to its long stay in power and its self-prophesied claim to the protection of minority tribes, the ruling party KANU was the only party that remained national and had its votes evenly spread in most of the regions outside its Kalenjin stronghold, but it still found itself totally locked out in two populous communities in Kenya, namely the Luo and the Gikuyu (Oloo, 2007).

The post-1997 period saw the transformation of 'old' identities in the political arena in the form of coalition of parties. The realization by opposition parties that singularly they could not dethrone KANU forced them to enter into a coalition. KANU's Daniel arap Moi had been returned to power in both the 1992 and 1997 presidential elections by just one-third of the votes. This showed that the aggregated opposition votes amounted to two-thirds of the votes on both occasions. It is out of this realization that various political parties that constituted the National Rainbow

Alliance (NARC) closed ranks and formed a national coalition to defeat KANU. Although the coalition was formalized between various parties, it was more or less an ethnic coalition. This was much the case because the leadership and support bases of the political parties of the multiparty era were in most cases associated with particular ethnic groups. In the NARC case, DP headed by Mwai Kibaki was commonly identified with the Gikuyu community, the LDP predominantly with the Luo and Kamba, FORD-K with the Luhya, and NPK with the Kamba.

Despite the formation of a coalition, ethnicity remained salient albeit with a different tilt. NARC provided a framework within which ethnic-based parties bargained for power-sharing, which led to the signing of a Memorandum of Understanding (MoU) between the coalition parties. On the basis of the agreements reached between leaders of the various ethnic-based political parties and spelt out in the MoU, the electorate was willing to vote for the presidential candidate irrespective of the candidate's ethnic background (Wanyande, 2006). The National Rainbow Coalition (NARC), as it was called, mostly drew its support from Nairobi (which is heavily populated by the Gikuyu, Luo, Luhya and Kamba), Coast, Eastern, Central, Western and Nyanza areas in which the leaders of these communities, who constituted the supreme organ of the party (the Summit) mobilized their respective ethnic communities in anticipation of the agreed power-sharing formula.

KANU, though national, also played the ethnic card. It relied mostly on the smaller communities while at the same time getting a share of its support from some of the big communities, especially the Gikuyu since their presidential candidate was a Gikuyu. In fact, it was the choice of a Gikuyu as a KANU candidate that forced NARC to also front a Gikuyu candidate to mobilize and split the Gikuyu vote. Consequently, the bulk of KANU's support was in North Eastern, Rift Valley and other areas populated by the smaller tribes, which were whipped under the guise that they stood to be marginalized by the larger communities. Ethnicity was also evident in the fringe third alternative, FORD-P, as it delivered most of the Kisii MPs since one of their own, Simeon Nyachae, was a presidential candidate.

Ethnic voting was also evident during the 2005 referendum on the constitution. In this instance, the Gikuyu and kindred groups with pockets of support from Western, Coast, Eastern and Nairobi were pitted against the 'No' brigade, which enjoyed support from seven of the eight provinces of Kenya. President Kibaki led Central Province and satellite tribes in voting for the proposed new constitution while Raila Odinga, Musalia Mudavadi, Kalonzo Musyoka, William ole Ntimama, William Ruto and Najib Balala led their communities in a vote against the constitution.

Table 2.1 shows that the Orange (No) side carried all but one province. The clearest results were in Central and Nyanza Provinces where the Yes and No sides mustered 92 and 87 per cent, respectively. Other clear majority provinces included Coast with 80 per cent, and North Eastern and Rift Valley with 75 per cent each. In the context of contemporary ethnic politics, the Gikuyu community, along with its associate Mount

Kenya groups of Embu and Meru, overwhelmingly voted for the constitution as the rest of the country ganged up against the Draft Constitution (Chitere *et al.*, 2006). The 'Yes' side were joined by a huge chunk of the Bukusu, and sections of Kisii and Coastal tribes who heeded the word of their respective leaders, Musikari Kombo and Simeon Nyachae, and a host of coastal parliamentarians.

Table 2.1: 2005 referendum results by province

	% Yes	% No
Nairobi	42	56
Central	92	7
Eastern	49	50
North Eastern	24	75
Coast	19	80
Rift Valley	24	75
Western	39	59
Nyanza	12	87
Total	43	57

Source: Electoral Commission of Kenya

The rejection of the draft *ipso facto* confirmed the extent of ethnic divisions in Kenya. But even more revealing was the highly contentious debate that preceded the referendum. The debate generated a lot of ethnic heat as the political elite that had been excluded from power saw the draft constitution as an avenue through which those in power intended to retain immense power in the presidency. The ethnic tilt of the debate was reflected in the voting patterns during the referendum; arguably those who voted against the constitutional draft did so not because of the myriad inherent weaknesses within it, but because the draft appeared to be promoted by an ethnic group or a cluster of ethnic groups that they were opposed to. On the other hand, those who supported the draft did so not because it did not contain major weaknesses, but because it offered the possibility for guaranteeing their interests, including control of political power.

The key constitution contesters appealed heavily to primordial ethnic sentiments. Therefore, politicians fanned ethnic hostility against each other using ethnicity as a platform for securing support. At the end of the day, daggers were drawn between mainly the GEMA community on one side and the majority of Kenyans on the other (Maina *et al.*, 2005). The referendum, instead of being a vote on whether the Draft Constitution was ideal or not, ended up being a vote as to which side of the political divides one's political leaders and ethnic group was aligned to. Evidently, the ethnic identity ended up shaping the contours that political mobilization for or against the Draft Constitution took and the eventual voting pattern during the referendum.

New Identities in the Multiparty Era

Gender, religion and youth identities have emerged in the multiparty era as the 'new' identities to challenge the 'old' ethnic identity that dominates the Kenyan political arena. These new identities have in different years endeavoured to gain saliency since the re-introduction of multiparty politics. They have grown in importance over the last decade-and-a half, partly due to the strategic roles played by religious leaders, women and youth in the democratization struggles, and partly due to the expansion of political space. However, a large part of the emergent religious, gender and youth identities are conflated with ethnicity and rarely mature into distinct character of their own (Osaghae and Suberu, 2005).

The gender identity was the first 'new' identity on the scene when the Social Democratic Party (SDP) fielded Charity Ngilu as its presidential candidate in 1997. The logic behind her candidature, it appears, was to mobilize women who form the majority of voters behind her across ethnic lines and thus counter ethnicity head on. In 2002, it was the turn of the youth identity to take centre stage. The 'new' identity of youth was propelled on the scene by the then ruling party, KANU, and the outgoing President Moi who chose a youthful presidential candidate in Uhuru Kenyatta and backed him with other youthful politicians, including William Ruto and Musalia Mudavadi. In this chapter, youth refers to any person below the age of 45. Just as the women category, the youth form a huge bulk of the voters and it was assumed that a youthful candidate would cut across ethnic lines and carry the day. The religious identity was the last 'new' identity to attempt to become relevant in the political mobilization of voters by the political elite during the 2007 elections. This became evident as politicians from both sides of the political divide courted both the Christian and Muslim vote, with the contest focusing, to an unusual degree, on Muslim grievances.

Despite the inroads that these 'new' identity groups have registered in the political scene, the analysis in this section shows how and why these identities have been unable to dethrone the salience of the ethnic identity in political competition. One of the key reasons for this state of affairs is that the ethnic identity cuts across all these 'new' identities. Thus, as the 1997 and 2002 election results demonstrated, Charity Ngilu and Uhuru Kenyatta ended up garnering more votes from their ethnic communities than from the women and youth constituencies that was their election platform.

Gender and Elections

In Kenya, women constitute the majority of voters but they are yet to translate this numerical strength into a bargaining tool in politics. Politically, they remain a marginalized majority and tend to trail men in political practice and leadership. In Compared with their male counterparts, more women turn out to vote, although

very few present themselves as candidates for electoral seats. In recent years, the marginal increase in the number of women candidates in Kenyan politics has raised the question whether the presence of these women is a reflection of the gender identity coming of age or is merely a reflection of the peculiarity of local politics that continue to be defined by ethnicity.

There is no doubt that the gender identity has attempted to gain some political weight in its struggle for a political voice in the ethnicized political arena that prevails in Kenya. The gender identity politically reached its peak in the 1997 elections when two women candidates, Charity Ngilu and Wangari Maathai, contested the presidential elections. Of the two, only Ngilu was a strong contender. However, when the final tallying was done, a very low percentage of the total votes went to the two women candidates. Both candidates only obtained 7.98 per cent (492,796) of the total votes. This consisted of Wangari Maathai's 4,196 and Ngilu's 488,600. The male candidates combined together captured 92.02 per cent (IED *et al.*, 1998). More significantly, Ngilu got more votes from her ethnic community than from her women folk. She scored 32 per cent in her native Eastern Province, 10 per cent in Nairobi and Coast provinces, less than 2 per cent in Nyanza Province, 3 per cent in Central Province, and less than 1 per cent in Rift Valley, North Eastern and Western provinces (Grignon, 2001).

In the parliamentary elections, there were 50 women candidates against 882 men. Only four women were elected. SDP had two successful women contestants, while KANU and DP had one each. The number of votes obtained by women in the parliamentary elections was 220,756 (3.78%). This contrasts sharply with the 5,616,600 (96.22%) for the male candidates, an even higher percentage than in the presidential election. A further five women were nominated, bringing the total number of women legislators to 9, which translated to 4 per cent of the 222-member parliament. Overall, as much as Ngilu was expected to harvest from her gender identity and amass votes from her fellow women who constitute 52 per cent of the voters, this was not to be. In the end, the majority of her support came from her Kamba ethnics. Women from other tribes simply voted for the parties that were being fronted by their male co-ethnics. This might be attributed to the fact that in a male-dominated country where close to 75 per cent of the population is still rural, the usual prejudice against women's leadership greatly hampered her presidential bid (Grignon, 2001).

Furthermore, in the 1997 elections, the gender identity failed to bring all women organizations on board. For instance, the then leader of Maendeleo ya Wanawake Organization (MYWO), Zipporah Kittony, campaigned for Moi and mobilized her organization to support KANU in the 1997 elections in spite of the fact that Charity Ngilu was considered a strong candidate for the presidency (Nasong'o and Ayot, 2007). It is reasonable to believe that her decision was guided more by her ethnic background, given that she hailed from the same ethnic group as Moi. The ethnic identity had thus triumphed over the gender identity in her case.

Not only did the gender identity fail to make a mark in the 1997 elections, but it also failed to seize the momentum that it had generated during this election in the subsequent elections of 2002 and 2007. In these two subsequent elections, there was no woman presidential candidate, and the gender identity failed to make a mark as a critical mobilizing factor despite all political parties courting the women's vote. Overall, the performance of women in the multiparty elections of 1992, 1997, 2002 and 2007 was below expectations. The projected critical mass of 30 per cent representation has not been attained. The case of the 1992, 1997, 2002 and 2007 parliamentary elections reveals that more women presented themselves for elections but got very little support and accommodation, and many failed to get nominated. In 1992, 300 women sought nomination for parliamentary seats but only 19 (2.2%) female contestants out of 854 candidates were nominated, with only 6 getting elected. This number of nominated women increased to 50 (5.7%) women out of a total of 882 candidates in 1997, with only 4 getting elected.

In 2002, more than 200 women sought parliamentary nominations but only 44 (22%) went through the nominations, and only 9 of them got elected. In the 2007 elections, 10.6 per cent (269 out of 2,548) of the contestants were women and out of these only 15 were elected, which is 5.6 per cent of the 269 women who were contesting for parliamentary seats. The 2007 elections provide the highest number of women representation in parliament so far at 21 (15 elected and six nominated) but this still constitutes a paltry 9.5 per cent of the overall representation in the August House. This number increased to 22 after the 2008 by-elections in Sotik and Bomet that followed the death of Lorna Laboso and Kipkalya Kones, respectively. They were replaced by their relatives, both women. Lorna was succeeded by her sister Joyce while Kones was succeeded by his eldest wife, Beatrice. Their triumph was a vindication that Kalenjin land was more accommodative of women candidates than the rest of the country. Out of the 15 women elected, six were from Kalenjin land and the by-elections pushed this number to seven. These statistics show that although gender consciousness is slowly beginning to take root in Kenya, women have not done well in electoral politics despite constituting 52 per cent of the population.

Overall, it is party affiliation that has been the main factor that has inhibited the gender identity from taking root in Kenyan politics. This is so because in Kenya's politics, party affiliation is defined by ethnicity. To this end, most Kenyans, including women, are mobilized along ethnic lines rather than any other social categories, gender included.

Youth and Elections

The youth identity is one identity that is yet to come of age in Kenya. Since independence, the youth have remained in the periphery of the political arena and have time and again been referred to as the leaders of tomorrow. This has remained

the case for the last four decades. Within political parties, the main arena for political participation, the youth have been relegated to youth desks, youth leagues and youth wingers. Although the youth have been active in politics in a myriad of roles, the youth as an identity has yet to gel in a meaningful political way. Political mobilization on the youth identity has thus been temporal, if not totally lacking.

Participation of youth in politics started early during the Mau Mau war against British colonialism in the 1950s, where they played a key role in the struggle for political independence. However, with the disintegration of the multi-ethnic nationalist coalitions immediately after independence, the youth identity, just like ethnicity, was instrumentalized and transformed by patrimonial politics into a weapon in the hands of elders (Lonsdale, 1986; Kagwanja, 2005). Since then, youth participation in politics has dwindled, because the successive regimes have kept the youth out of mainstream politics. In the end, the elders took charge of political affairs as the youth retreated to the periphery. It is this retreat that led to the youth forming the core of the KANU youth wingers during the one-party era where they were simply mobilized by the political elite to do dirty political work whenever need arose. With the re-introduction of multiparty politics, the youth have likewise been mobilized to form tribal militias, which are used to wage wars against opposing parties, which in turn have likewise formed their own youthful militias. The Kenyan political space is thus inundated with youthful tribal militia that ply their trade at the behest of political elites and parties. Some of the prominent militias and vigilantes include *Mungiki, Taliban, Jeshi la Mzee, Baghdad Boys, Angola Musumbiji* and *Chinkororo.*

The return of multipartyism in 1991 provided a fresh opportunity for youthful politicians to play a key role in the expanded political space. Referred to as the 'young turks', these young politicians were a driving force in FORD the movement and, later after the split, most of them coalesced around FORD-K. They included Paul Muite, Raila Odinga, Kijana Wamalwa, Kiraitu Murungi, Gitobu Imanyara, Anyang' Nyong'o, James Orengo, among others. They were the think tanks behind the respective parties they joined, as in 1992 the key leadership positions in the parties remained with the old guard. After the 1992 elections, Wamalwa and Raila graduated to lead FORD-K and NDP, respectively, but their political mobilization followed the traditional path of ethnicity rather than the youth identity.

The youth identity attempted to cut its niche forcefully during the 2002 and 2007 elections. This period (2002-2007) coincided with initiatives–such as *Pamoja Youth Initiative* and *Vijana Tugutuke*–geared towards encouraging the youth to take a more proactive role in politics. But it was during the 2002 elections that the youth agenda featured most prominently in Kenyan politics, because Moi showed an inkling to pass the leadership mantle to the youth. Consequently, KANU fronted a youthful candidate, Uhuru Kenyatta; Uhuru's candidature denoted President Moi's twin-strategy of whipping up both ethnic and generational appeal and giving a new youthful psyche to Kenya's body politic. Moi also surrounded Uhuru with

other young politicians, namely William Ruto, Musalia Mudavadi and Gideon Moi, among others. NARC, on the other hand, had veteran older politicians among its ranks who included its presidential candidate Mwai Kibaki, Moody Awori, William ole Ntimama, Raila Odinga, Wamalwa Kijana, Charity Ngilu, George Saitoti, Kalonzo Musyoka, among others. They were all older politicians with ethnic trappings that proved to be overwhelming to the youthful KANU team. But more importantly, the youth agenda propagated by KANU did not materialize into outright votes. Uhuru's core support to this end came from his ethnic tribesmen of Kiambu and Murang'a, as well as the Kalenjin of Rift Valley who were mobilized by former President Moi. Clearly, most Kenyans, the youth included, voted along ethnic lines.

The youth identity again took centre-stage during the 2007 elections. Both the ODM and the PNU camps courted the youth vote and went to the extent of organizing youth groups in both camps. PNU's group was called *Vijana na Kibaki* (Youth for Kibaki) while ODM's was called 'Young Kenyans for Raila'. These groups organized rallies for the youth and attended the main rallies in which the presidential candidates addressed the concerns of the youth. Between ODM and PNU, ODM had among its luminaries more youthful politicians than PNU. Among the youthful politicians in ODM's Pentagon (the big five regional kingpins) were William Ruto and Najib Balala, with Musalia Mudavadi just slightly above the 45 year cut-off mark. However, these politicians never pitched their campaigns on the youth identity. In contrast, PNU had among its regional kingpins only Uhuru below the age of 50. The youth agenda was thus, likewise, missing in their regional strategy. In the final analysis, the 2007 election was not fought along generational lines but along traditional ethnic lines.

Overall, the youth identity failed to be a determining factor in the 2002 and 2007 elections as Kenyans overwhelmingly voted along ethnic lines. The youth identity is thus yet to come of age as a distinct political identity able to gain saliency away from its ethnic counterpart.

Religion and Elections

Religion is another 'new' identity that has occasionally been a factor in the Kenyan electioneering process. The religious identity in Kenya comprises a myriad of religious groups that include Muslims, Catholics, Protestants, Hindu, evangelicals, and several indigenous churches. Although political parties can not be formed along religious lines, as in some parts of Europe, political leaders have time and again sought to appeal to particular religious groupings.

During the one-party era, in both the Kenyatta and Moi regimes, religious groups played a sub-optimal role in politics. For instance, during the immediate post-independence period, indigenous churches were seen as potential opposition groupings to the state. In order to curtail the possibility of them agitating against the state, senior government leaders joined their ranks. Kenyatta became a member

of the African Independent Pentecostal Church of Africa (AIPCA) while his deputy, Oginga Odinga, became a member of the Legio Maria sect, which had political clout in Luoland. Likewise, Moi during his reign courted the evangelicals and more importantly, the African Inland Church (AIC) where he is a member. The AIC would in the 1980s pull out of the National Council of Churches of Kenya (NCCK), which was seen as opposing the state, which Moi headed (Maupeu, 2001).

Overall, during the one-party regime, religion was not a factor in electoral politics but was germane in the governance realm. To this end, religious leaders acted as a conscience of the nation and time and again questioned the one-party rule excesses from the pulpit. The clerics were mostly drawn from the Protestant churches and among the most vocal were Henry Okullu, Alexander Muge, David Gitari and Timothy Njoya. Under the banner of the National Christian Council of Kenya (NCCK), the church was at the forefront in condemning the 1988 queue voting as not only unbiblical but also a travesty to political justice.

Political mobilization along religious identity lines has not been definitive. The results of the successive multiparty elections provide no indication of political mobilization along religious lines. This is in spite of the fact that the Catholic Church, the Anglican Church of Kenya (ACK)—formerly the Church of the Province of Kenya— and the Muslim faith have adherents in numerous parts of the country. Thus, although the mainstream Christian churches were united in condemnations of the excesses of the Moi regime, this never translated into a united and unanimous political mobilization arena for the political parties of the day. In fact, the only time that religion nearly became a direct political mobilization tool was in the countdown to the 1992 election when Sheikh Khalid Balala unveiled the Islamic Party of Kenya (IPK). This party was basically supposed to be used as a platform for mobilizing Muslims. The party was, however, denied registration as the Kenyan Societies Act does not allow the registration of parties along religious lines.

The weakness of the religious identity as a political mobilization tool was even more evident during the 2005 referendum. Christians were united in their opposition to the entrenchment of Kadhi's courts in the constitution, but that is as far as their unity went. When it came to the decision of advising their adherents on how to vote in the upcoming referendum, both the mainstream Catholic Church and the ACK asked their faithful to vote with their conscience. This most likely was out of the realization that their adherents were more likely to follow the guidance of their political and ethnic leaders, which they eventually did, than their religious leaders.

Overall then, although the religious constituency has been a significant actor in the political process, especially in the area of advocacy, it has yet to be used effectively as a political mobilization tool. It is significant to note that no well established religious leader has offered himself or herself for the presidency. The candidature of Pastor Pius Muiru of the Maximum Miracle Centre on the Kenya People's Party in the 2007

elections was insignificant because his religious following is too slim and potentially inconsequential.

The religious identity, however, had its most powerful expression ever in the 2007 elections. This was evident when politicians from both sides of the political divide went out of their way to court the Muslim identity. Key among the reasons why the Muslim vote attained significant attention were: first, the grievances expressed by the Muslim community, especially the under-development of the areas inhabited by their groups; second, concerns about delays and denials of national identity cards to Muslims; third, the implications of the yet to be passed Anti-terrorism Bill; and fourth, complaints of arbitrary harassment and detention of Muslims, or violation of their rights under the pretext of fighting terrorism.

The fight for the Muslim vote became even more evident as both presidential candidates of ODM and PNU tried to endear themselves to the Muslim faithful by dressing in Muslim outfits when they attended *Idd-ul-Fitr* celebrations. This was a clear manifestation of how the two leading contenders valued the Muslim vote. Because of the grievances cited above, and also the experience arising from the mobilization that saw Muslims advocate for the entrenchment of Kadhi's courts in the constitution, it was evident that the Muslim identity was coming of age in Kenya's political arena. President Kibaki further sought to court the Muslim vote when he declared the marking of the Muslim festival of *Eid Ul Hajji* a public holiday. This festival had not been marked as a public holiday in previous years and neither was it celebrated subsequently as a public holiday in 2008. The 2007 designation of the festival as a public holiday was a one-off decision by the president, and was most probably meant to garner support from the Muslim community ahead of the 2007 polls. Raila Odinga of ODM on his part sought and signed an MoU with the National Muslim Leaders Forum (NAMLEF). The MoU understandably had pledged to set up deliberate policies and programmes to redress historical, current and structural marginalization of Muslims in Kenya once he ascended into power. However, this MoU was denounced by the Supreme Council of Kenyan Muslims (SUPKEM) and a section of Christian groups (Catholics, Evangelicals and Protestants) (*Daily Nation*, 21 October 2007).

The Muslim identity, however, was not homogenous as has been the case with some ethnic groups in Kenya. As already observed, NAMLEF and SUPKEM differed over the MoU signed with Raila, exposing the first crack in the Muslim identity, and second was the division of Muslim political leaders into both camps, with Najib Balala and NAMLEF leaders representing the Muslim face in ODM while Yusuf Haji and Sheikh Juma Ngao represented the Muslim face in PNU.

This division was reflected in the election results by the number of votes and parliamentary seats that Kibaki and Raila secured in the two Muslim-dominated areas of North Eastern and Coast provinces. While Raila Odinga scored 59.4 per cent of the Coastal vote, Kibaki scored 33.1 per cent. In the parliamentary results, ODM

managed to secure 12 seats while PNU and allied parties secured 7 seats, ODM-K 1 and KADU-A 1. In North Eastern, Kibaki scored 50.3 per cent while Raila Odinga scored 47.2 per cent. Here, ODM managed 6 parliamentary seats against KANU's 4 and Safina 1. The results show that although the Muslim identity was prominent in the campaign period, it is yet to be energized in the way that the ethnic identity has been in Kenyan politics. This can partly be explained by the fact that none of the two contending parties for the Muslim vote was considered indigenous to the Muslim community, hence the split.

Resilience of Old identities in Kenyan Politics

The summary of Kenyan multiparty elections of 1992, 1997, 2002 and the 2005 referendum has shown that the ethnic identity has remained prevalent over the 'new' identities discussed. There are a number of reasons that account for this. First, ethnic mobilization has remained salient in Kenya due to the Kenyan state's legacy, which has favoured ethnic identity over other identities in resource distribution and/ or allocations. The distribution of both public resources and government positions has always been ethnic-based. The ethnic groups controlling State House have systematically favoured their own ethnic communities. Kenyan governments have consequently taken part in ethnic politics, most likely through ethnically-biased resource distribution and certainly through ethnically-inclined appointment policies. Public resources distribution is thus viewed as a system of ethnic punishment and reward, and politics itself has, due to this government 'bias', been diminished into a game of ethnic patronage (Hulterström, 2007).

Second, ethnic mobilization has remained key as a result of the rise of mono-ethnic parties, or a coalition of ethnic parties. The rise of ethnic parties has been conditioned by a patronage-dominated economy that has resulted into ethnic competition for scarce resources. Elections have, therefore, been seen as an opportunity for a given ethnic community to compete for the control of state largesse.

Third, the salience of ethnicity in political mobilization in Kenya is context specific. The efforts of parties and their candidates to mobilize the electorate are located geographically and socially within the context of particular structural and institutional settings. Most of the ethnic groups inhabit particular regions. The Gikuyu are found in Central Province, the Luo in Nyanza Province, the Kalenjin in Rift Valley Province, the Luhya in Western Province and so on. More importantly, as already noted, these areas are associated with particular political parties that subscribe to the ethnic group that resides therein. In the words of Horowitz, political entrepreneurs organizing ethnic parties find 'a ready-made clientele...waiting to be led' (Horowitz, 1985). Therefore, it is only prudent to mobilize these groups along their ethnic lines, as that is more of a unifying factor in such a context than would be religion, youth or gender.

Fourth, the setting of the tribe within a particular region also leads to the development of social networks and information exchange mechanisms for generating links between masses and elites along ethnic lines (Fearon, 1999). These links are then used to inform potential supporters of the existence of selective material and psychological incentives for joining. The extent to which the mobilizing effort proves successful depends on the density of social networks, the ability of elites to provide selective benefits, and the usefulness of these benefits to members of the target population. The extent of popular support for mobilization is reflected in the attendance at protest events and the extent to which ethnic candidates are supported in local elections (Gorenburg, 2003). Clearly, mobilization, which has taken place in Kenya along the youth, gender or religious identity, has not excited a lot of passion as much as the ethnic identity, since the voters do not perceive these networks as having the capacity to deliver the pork to them. The reason why the ethnic identity remains salient is because it illuminates a strong sense of common identity among the target population, the strength of social ties between individuals within the target population, and the existence of social networks linking movement leaders and potential followers.

Fifth, consistent with a pattern noted by scholars of ethnic politics (e.g. Horowitz, 1985), the targeting of some groups for ethnic mobilization generates a defensive counter-mobilization by others. Electoral competition would appear to give rise to a process of ethnic mobilization and counter-mobilization, which causes ethnicity to become more important for everyone in the political system. In Kenya, the political elite have used symbols to achieve this, and it is this use of ethnic symbols that makes the ethnic identity more appealing than the other identities. The reasons cited above were replicated and reinforced in the 2007 elections.

Salience of Old Identities Over New Identities in the 2007 Elections

The 2007 elections presented a different mix of coalitions from those that developed prior to the 2002 elections. While in 2002 KANU believed that it could still win the elections on its own, in 2007 all political parties, in the countdown to the elections, were aware that no single party was capable of winning the presidency and controlling majority seats in parliament. As a result, the major parties formed alliances and coalitions before the elections hoping that in doing so, they would stand a better chance of winning the election and subsequently constituting a working majority in parliament. Thus, although ODM eventually metamorphosed into a single political party, it was for all purposes and intent an alliance between a large chunk of LDP and KANU, which joined forces and left their mother parties fragile. ODM-K, on the other hand, styled itself as a coalition of parties but ended up with only one constituent party, the Labour Party of Kenya (LPK); this was after its hope of attracting Uhuru Kenyatta's wing of KANU flopped when the latter joined the PNU. ODM-K was,

however, a product of rebel LDP MPs and followers who, following the lead of Kalonzo Musyoka, staked their claim in ODM-K through the LPK.

However, it was PNU that was more ambitious as a coalition of parties. PNU was formed in August 2007, initially as an alliance of seven parties, namely DP, FORD-K, FORD-P, KANU, NARC-K, New FORD-K and Shirikisho. These parties were later joined by others, namely Agano, Community Development Party, FORD-A, Forepa, Kenya Republican Reformation Party, Kenya Union of National Alliance, Mazingira Green Party, National Alliance Party of Kenya, National Renewal People's Party, New Aspirations Party of Kenya, New Generation Party, Republican Liberty Party, Saba Saba Asili, Safina, Sheda Party, Sisi Kwa Sisi, United People's Congress, and Vijana Progressive and Workers Congress. The latter parties seemed to have been attracted by the candidature of President Kibaki but, in all practical purposes, they played a very minimal role in the affairs of PNU. Safina, for example, later backed out of PNU and fielded its own candidates. KANU on its part supported President Kibaki but was allowed to field its own candidates wherever they won in the joint PNU nominations. Overall, although several parties entered both the presidential and parliamentary contests, the battle was expected to revolve around three main parties, namely ODM, PNU and ODM-K. The three parties shared one key feature–they all had an ethnic formula for mobilizing political support.

ODM was a single mass party with a galaxy of luminaries who had decamped from ODM-K. These luminaries were all perceived regional kingpins who were expected to deliver their regions or ethnic groups. Thus, Raila was to deliver the Luo bloc of voters, Ruto together with Henry Kosgey the Kalenjin bloc, Mudavadi the Luhya bloc, Balala the coastal bloc, Ntimama the Maasai bloc while Ngilu was later roped in an attempt to destabilize Kalonzo in Kambaland. Although ODM had Joe Nyagah from the GEMA community, little was expected from him as he hailed from a predominantly PNU territory. Through these luminaries, ODM hoped to amass votes from their respective ethnic groups.

Kalonzo's ODM-K mobilized its supporters on the platform of a 'miracle' that would enable the party to capture power. The party's platform of a miracle was quite opportune given that the party was rather thin on ethnic kingpins who could be relied on to deliver their communities. Apart from Kalonzo, who was primed to deliver the Kamba vote, the other key personalities lacked clout in their regions, with most lacking support even in their respective constituencies. The key personalities included Julia Ojiambo, Samuel Poghisio, Lucas Maitha and Joe Khamisi. Apart from Poghisio, the other three all lost their parliamentary seats. In any case, Poghisio's ethnic community, the Pokot, are limited in population numbers and are thus insignificant politically. ODM-K, therefore, entered the race shorthanded in so far as ethnic arithmetics go.

PNU was more adept at ethnic calculation. Not only were constituent parties region-specific, but it also had potential point men from all over the country.

Although some of them were past their sell-by date, as the results attested, they were part of the ethnic arithmetic all the same. NARC-K and DP were to deliver Central Province and the Rift Valley Diaspora, FORD-P Kisii, FORD-K and New FORD-K Luhyaland, Shirikisho Coast and KANU Rift Valley. In terms of point men, Kibaki was to deliver Central, Kiraitu–Meru, Nyachae–Kisii, Kombo/Awori/Kituyi–Luhyaland, Mwakwere/Mungatana–Coast, Moi–Kalenjin, Tuju–Luoland, Kibwana–Kambaland, and Haji–North Eastern. Thus, just as ODM, PNU expected its luminaries to mobilize their respective ethnic communities.

Overall, both PNU and ODM incorporated influential community leaders from the country's dominant ethnic cleavages into their leadership structure to mobilize votes from their respective ethnic communities. The ploy was to show that each and every community that counted had a stake on the national cake should either of the parties ascend to power. Thus, although all the three main parties had a presence of the 'new' identities in their mobilization calculations, they were not as salient as ethnicity.

Table 2.2: Main alliances in the 2007 elections

Presidential candidate	Kibaki (Gikuyu)	Odinga (Luo)	Kalonzo (Kamba)
Party	PNU	ODM	ODM-K
Main member parties	DP, FORD-K, FORD-P, KANU, NARC-K, Shirikisho	Part of LDP, part of KANU	LPK, disgruntled former LDP members
Ethnic leaders	Awori (Luhya)		
Kombo (Luhya), Nyachae (Kisii), Kenyatta (Gikuyu), Moi (Kalenjin), Mwakwere (Coastal), Kibwana (Kamba), Tuju (Luo)	Mudavadi (Luhya), Ruto (Kalenjin), Ngilu (Kamba), Balala (Coastal)		
Ntimama (Maasai), Nyagah (Embu)	Ojiambo (Luhya) Poghiso (Pokot), Khamisi, Maitha (Coastal)		

Source: Daily newspapers

All the three main parties had women among their luminaries, but there was no concerted effort to mobilize along these lines. ODM had Charity Ngilu, ODM-K had Julia Ojiambo while PNU had Martha Karua as the most visible women leaders. However, none of the parties employed a campaign strategy geared towards forcefully mobilizing the women vote apart from their policy manifestos that remain tacked in the campaign headquarters. More importantly, none of the three parties had a

woman presidential candidate. The youth identity was also present in all the three parties. ODM had among its luminaries youths led by Najib Balala and William Ruto. However, these youthful leaders were banked on to deliver regional and ethnic votes. The party also had youth lobby groups but their pre-eminence was dim compared to the ethnic platform. PNU had several youths among its ranks. They included, among others, **Danson Mungatana, Mwangi Kiunjuri, Asman Kamama** and Mutua Katuku. However, these youthful outgoing MPs did not play a key role in the presidential campaign. Likewise, PNU also had a myriad of youth lobby groups but, just like in ODM, they dimmed in prominence compared to the ethnic card. ODM-K too had its share of youth in its ranks. These included **Daniel Maanzo**, Peris Tobiko and **Lucas Maitha**. But just as in the other two parties, mobilization along youth identity was near non-existent. And just as in the case of women, none of the presidential candidates was youthful. Kibaki was 75 years, **Raila 62 years and Kalonzo 55 years.**

All the three parties also had within their ranks members from all religious denominations. This was meant to show that these parties were inclusive of all religions. ODM went an extra mile when its leader Raila Odinga signed an MoU with NAMLEF. However, this, as already noted, was met by renunciations from rival Muslim groups. The religious identity in the end was not as strong a mobilizing card as the ethnic identity.

In general, the campaign atmosphere was characterized by a strong ethno-political polarization between the communities of the two main contenders—namely ODM and PNU—leading to a hostile atmosphere in their respective strongholds towards the opponents. This resulted in both ODM and PNU candidates avoiding campaigning in the strongholds of their opponent to avoid hostile receptions and embarrassingly low rally turnouts. To this end, Kibaki never campaigned in **Raila's stronghold of Luoland**, while Raila only made a few tactical forays in Kibaki's Gikuyu heartland. **Raila also did not campaign in** Kalonzo's Kambaland, with the latter also not making any forays into Luoland.

As Table 2.3 shows, voting patterns in the 2007 elections suggests that Kibaki's supporters were mainly the Gikuyu, Embu and Meru while Odinga got his main support from the Luo, Kalenjin, and most of the Luhya. This is also reflected in the **number of parliamentary seats won regionally. ODM got the highest number of parliamentary seats in Western (18 out of 24), Nyanza (25 out of 32), and Rift Valley (32 out of 47)** while PNU got the highest numbers in Central (18 while the remaining 11 went to parties affiliated to it) and ODM-K in Eastern Kambaland where it got 14 of its 15 seats.

The results show a broad ethnic trend in the voting patterns. Among the PNU luminaries identified in Table 2.2, it was only Kibaki and **Kiraitu** who delivered the Gikuyu and Meru votes, respectively. The Luhya trio of Awori, Kombo and Kituyi not only failed to deliver the Luhya vote but also lost their parliamentary seats. It is instructive to note that they all held prominent positions, with Awori as the outgoing

Vice President, Kombo a Cabinet minister and leader of FORD-K and Kituyi a Cabinet minister and a leading light in New FORD-K. Their rejection by the Luhya electorate was a contempt card for the sitting government and GEMA as a community—a verdict that had first been expressed during the 2005 referendum. Other PNU luminaries who failed to deliver include Simeon Nyachae in Kisii, Kivutha Kibwana in Kambaland, Moi in Kalenjinland, Tuju in Luoland, and Mwakwere in Coast. Nyachae, Kibwana and Tuju, just like the Luhya trio, also lost their parliamentary seats. Moi, although not a contender, was also a loser as all his three sons who contested parliamentary seats fell aside to the ODM wave. Although Mwakwere won his parliamentary seat, he failed to deliver the majority Coastal vote. Overall, the failure to deliver in the elections for these PNU luminaries outside GEMA territory reflected the anti-GEMA feeling that had earlier been expressed in the 2005 referendum.

Table 2.3: Regional votes results

	% Kibaki	% Raila	% Kalonzo
Nairobi	47.7	44.0	8.1
Central	97.0	1.9	0.7
Eastern	50.4	5.0	43.8
North Eastern	50.3	47.2	2.3
Coast	33.1	59.4	6.5
Rift Valley	33.5	64.6	1.4
Western	32.2	65.9	0.7
Nyanza	16.9	82.4	0.3
Total	46.4	44.1	8.9

Source: Electoral Commission of Kenya

In contrast to PNU, most ODM luminaries with the exception of Nyagah won their parliamentary seats in addition to delivering their ethnic constituency, with the exception of Charity Ngilu who was unable to contain the Kalonzo wave in Kambaland. Raila Odinga easily delivered Luoland. His running mate, Musalia Mudavadi, also to a large extent delivered the Luhya vote, thus confirming the notion that the Luhyas preferred the vice presidency under ODM in comparison to that under PNU. In addition, it can be argued that under ODM, they were assured of the vice presidency unlike in PNU where Kibaki had not outrightly named his running mate. Another luminary to deliver overwhelmingly for ODM was William Ruto who, alongside William ole Ntimama, delivered the Kalenjin and Maasai votes, respectively. The Kalenjin vote for ODM was not only a victory for Ruto as the emerging Kalenjin leader but also signified the waning influence of Moi within the Kalenjin community. The Kalenjin's overwhelming vote for ODM and Raila Odinga debunked the myth that they had voted 'No' in the referendum following Moi's cue. Instead, it confirmed that they had deep-seated animosity against the leadership of the GEMA community, a

fact cemented by the characterization of the ethnic conflict that unravelled in the Rift Valley after the declaration of the results, in which mostly the Gikuyus were targets of ethnic violence. The last luminary to contribute to the ODM basket of votes was Balala. Although the Coastal vote cannot be wholly attributed to him, he played a critical role in securing the Muslim vote that ODM bagged, as he was seen as the Muslim face and point man in ODM.

Overall, in the foreseeable future, it appears that ethnicity will remain salient in party mobilization and membership strategies used by political parties in Kenya. Gender, religion or the youth identity will take a long time to acquire the requisite weight as instruments of mobilization. In the end, individuals 'vote their ethnic groups' to maximize their access to state or public resources. The cause of this 'ethinicized' voting behaviour is the elite itself. The mobilization strategy and leadership style of the past decades have influenced Kenyan communities to think that only by having 'one of your own' in State House can the community access power and patronage. The idea of 'one community, one party' is now so entrenched that it has to a large extent cornered the very elite that once ensured it evolved (Hulterström, 2007). It is these ethnic parties that have formed the basis of ethnic pacts and coalitions that have come to inform contemporary politics in Kenya, as opposed to gender, youth or religion forming the basis of these pacts and coalitions.

As things stand, the ethnic community is the undisputed—and supposedly legitimate—building blocs of politics. In fact, there seems to be few other ways to gain legitimacy as a leader than to be the (undisputed) representative of an ethnic community. Evoking ethnic loyalties has become necessary if one aspires to become the leader of the community. Few politicians in Kenya deny that they use ethnic loyalties to mobilize supporters and freely acknowledge that they would never succeed in politics if they did not (Hulterström, 2007).

Triumph of Identity Over Ideas in Kenyan Politics

Evidently, the discussions in the preceding sections have shown that political mobilization in Kenyan politics has been informed by ethnic consciousness than ideological consciousness. Both the political elite and the political parties they seek to represent have sought to manipulate the ethnic and religious identities of the various groups that litter the political arena in their quest to either retain or acquire power. This is despite the fact that most, if not all, political parties subscribe to a particular ideological line as is aptly articulated by the manifestos they launch every election year.

In Kenya, political parties are poorly organized, poorly resourced and inexperienced in mobilization efforts along ideological lines. The lack of widespread and stable party membership makes canvassing efforts difficult. New democracies may also lack the organizational expertise and material resources to hire political consultants to

coordinate a canvassing campaign (Karp and Banducci, 2007). Most political parties have constitutions and policy documents that are aligned to a particular ideological school of thought. However, these ideals remain prescriptive and are never utilized in mobilizing political support.

In line with this mode of operation, and in lieu of the fact that most, if not all, political parties in Kenya are active only during election years, one is tempted to categorize most political parties in the country under the genre of electoralist parties. This is specifically the case as they subscribe to most of the characteristics that Gunther and Diamond ascribe to this category: they are merely political vehicles used by the political elite to win an election and exercise power; they are organizationally shallow, weak or both; have a superficial and vague ideology; and are overwhelmingly electoral-oriented. Furthermore, the overriding (if not the sole) purpose of these parties is to maximize votes, win elections and govern. As would be expected, these parties are fluid and, in an effort to expand their electoral appeal to a wide variety of groups, their policy orientations are eclectic and shift with public mood (Gunther and Diamond, 2003).

With such kind of parties in place and in consideration of the numerous resources (financial or otherwise) needed to wage an electoral campaign, it is easy to see why political parties in Kenya fall prey to party mobilization and membership along ethnic lines. Ethnic identity is easy to manipulate as a mobilized identity since it has a symbolic appeal to the aspirations of ethnic entities. This is a set up that is derived in the post-colonial state in Africa which, in most instances, is anchored on notions of patronage and clientelism built along ethnic lines. Group identity is 'constructed' by political leaders who find group cohesion and mobilization a powerful mechanism in their competition for power and resources, adopting a strategy of 'reworking of historical memories' to engender group identity (Stewart, 1998). Ideology simply fails to provide the political elite with a platform within which to bring on board the various segments of society that identify with the various identities that abound in the country. Thus, to be able to mobilize voters to support a particular political party, one of their own must be seen to hold a position of influence in a given or particular political party.

To date, ethnicity continues to be the basic and focal point that the political elite use for political mobilization in order to fight the intra-elite war that is Kenya's national politics. The prominent role played by ethnicity in Kenyan politics has, in effect, meant that ideology and other policy positions have been relegated to the periphery. A critical look at the party manifestos and other policy documents in Kenya reveal striking and remarkable similarities. Most, if not all, political parties in Kenya espouse the tenets of social democracy. However, these tenets are not put into practice and remain only in paper—as neither party leaders nor members stick to their professed ideology.

In the Kenyan context, most political parties have no registered members and only activate their supporters in times of need, whether it is during elections, by-elections, demonstrations or lobbying. Parties as institutions in a representative democracy serve as vehicles for political mobilization. In Kenya, however, one of the big threats to institutionalization has been lack of a disciplined party membership. From the 1992 to the 2007 elections, there has been a dearth in distinct party membership, coupled with very few cardholders, hence the difficulty for the parties to organize. Where 'members' have cards, in most cases those cards have been bought for them by contestants for various party posts or candidates vying for nomination. This situation has led to cases of one person holding more than one party membership card for different political parties. The reason is basically that, generally, there is no political culture that gives meaning to party membership as an instrument of democratic control of the political process. Political parties also remain dormant in-between elections for the better part of the five-year cycle before the next election.

In addition, the turnover of popular political parties in each election year further shows the lack of institutionalization of political parties. Each election year has seen the emergence of different strong parties along identity lines. In 1992, the main parties were KANU, FORD-A, DP and FORD-K. In 1997, the main parties were KANU, DP, NDP, FORD-K and SDP. In the 2002 elections, the main parties were KANU, NARC and FORD-P while in the 2007 elections the major parties were ODM, PNU and ODM-K. The bottom line here is that none of the parties that were strong in 1992, 1997 and 2002 were important players in the 2007 elections, even though the players were the same, having shifted from the older parties to the new parties. This shows the fluid nature of political parties in Kenya, which is a function of shifting ethnic alliances and calculations that dominate the Kenyan political scene.

Consistent with the voting behaviour described in this study, ideological differences are of little consequence in Kenyan party politics. Neither party affiliation of individual politicians nor inter-party cooperation in parliament is to any large extent decided by ideological concerns. A politician's party affiliation is instead primarily determined by his/her ethnic belonging, and at times by more personal relations and antipathies. Party politics is all about representing the interest of your community. Moreover, electoral success is by and large determined by affiliation to the 'right' party in the politician's own region. The 'right' party is naturally the party led by one of the community's own members. Even the most popular parliamentary candidate will have trouble being elected if s/he stands on the ticket of a party associated and led by another ethnic community (Hulterström, 2007). The mode of mobilization of parties in Kenya cannot, therefore, be judged on ideological or policy differences, but rather from the social cleavages that they draw their support from, their organization and institutional structures as well as the leadership credentials within their ranks.

Conclusion

What is clear from the foregoing analysis is that political mobilization in the Kenyan context tends to take an ethnic angle. Ethnic groups are mobilized around ethnic leaders, whether in mono parties, coalitions or pacts. The ultimate goal is to either capture the presidency for the ethnic community or belong to a power sharing formula that caters for particular communities.

The evolving post-2007 politics suggests that ethnicity is here to stay. A case in point is the 11 June 2008 by-elections, which depicted the picture that political mobilization is likely to take in the countdown to the 2012 elections. The ethnic identity was central in the mobilization strategies that both the PNU and ODM used. The Kilgoris seat provided the most illustrative example. This is an area that is predominantly occupied by the Maasai and Kipsigis but considered the former's ancestral land. Consequently, when ODM nominated a Kipsigis to run for the seat, it split ODM Maasai leaders and saw Joseph Nkaissery, an Assistant Minister, break ranks with the party to support a fellow Maasai. The Maasai on their part ganged up irrespective of political affiliation and fielded one candidate, thus beating ODM in the ethnic balancing game as ODM had hoped that the Maasai would split their vote among different candidates and parties.

Evidently, the ethnic identity continues to shape political engagement and competition in the post-2007 period. With the Kibaki succession debate already raging, the ethnic identity is slowly steering the shape that the succession will take as the 'new' identities take the back seat. Central Province provides the most interesting example of how the ethnic identity remains unassailable as the key element to political mobilization. This case is interesting because it is the region that will mostly be affected by the departure of Kibaki. Already, the guns are out as politicians from the region are itching to fill the ensuing vacuum and position themselves for the mantle of the spokesperson of the region.

At the forefront of this battle is Martha Karua, the chairperson of NARC-K, who has decided to take head on Uhuru Kenyatta, who is positioning himself to align with PNU in the quest to 'inherit' the GEMA vote from Kibaki. There are also others like Kiraitu Murungi who would like to see the GEMA vote transferred as a whole to back Kalonzo Musyoka. The logic here appears to be that the country might not be ready for another Gikuyu presidency. It is imperative to note that Martha Karua is not mobilizing along the gender identity, a clear indication that gender consciousness is yet to come of age. She has thus decided to stick to the status quo of Kenyan politics, whereby to become a national leader, a politician has first to win the support of his/ her home area, then district and finally his/her community. As Grignon (2001) has noted, the Kenyan polity is a complex system of interlocking political arenas where it becomes almost impossible to envisage a national career if you have not guaranteed first the support of your own backyard. The examples of those who have tried this

path and failed are many. Prominent examples include James Orengo and Koigi Wamwere. It is this reality that Martha Karua is alive to as she struggles to build a political base within which to engage with other players in the ethnically stratified society that is Kenya.

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3

Voting Without Institutionalized Political Parties:

Primaries, Manifestos and the 2007 General Elections in Kenya

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Abstract

This chapter discusses the impact of institutional capacity of political parties on the organization of party primaries and formulation of manifestos for the 2007 general elections in Kenya. The discussion also assesses the extent to which political parties are advancing the democratization agenda in the country. Formal institutional perspective assumes that for political parties to effectively oversee the democratization project, they ought to be institutionalized. To the contrary, political parties in Kenya do not operate as formal institutions; political elites form them as convenient and temporary tools to access or retain power. Thus, parties have always been transformed, dissolved and recreated with each successive election. It is this little institutionalization that saw party primaries in the 2007 elections, particularly at the civic and parliamentary levels, marred by chaos, fraud, bribery, ethnicity, incivility and violence that undermined intra-party democracy. Some party manifestos ended up being formulated from the party leader's personal lens of winning the election, while other manifestos were significantly similar. The discussion concludes that lack of institutionalization of political parties has severely subverted democratization in Kenya. Nevertheless, the recently enacted Political Parties Act 2007 contains fundamental provisions which, if implemented, may go a long way in strengthening these quintessential instruments of democracy.

Introduction

Political parties play a central role in the governance of democratic states. It is through parties that people's representation in government is usually organized. To this end, political parties aggregate diverse interests by citizens into coherent policies that they seek to implement once they gain control of political power. They then use such policies to compete with other parties during elections to get majority support from the citizens, which would enable them to form government, whether alone or in coalition with other parties. This role makes political parties the fulcrum of change in states undergoing democratic transition as is the case in Africa.

Review of literature suggests that one of the impediments to democratic transition in Africa has been the existence of weak, personalized and fragmented political parties, particularly the opposition ones. The low level of institutionalization has seen most parties exhibit weak organizational structures that do not appropriately link them to society and enable them to effectively compete with the dominant parties in power to form the next government (Chabal and Daloz, 1999; Rakner and Svasand, 2002; Wanjohi, 2003; Oloo, 2007; Dowd and Driessen, 2008). The fact that opposition parties are a prerequisite for a democratic transition in Africa has raised worries among students of African politics on the organizational capacity of political parties to chaperon democratic change. The growing concern of such students, therefore, is how to institutionalize African political parties.

Given that elections provide the best opportunity for political parties to organize, there is growing interest in the extent to which multiparty elections are facilitating the institutionalization of political parties in the continent. It is against this background that this chapter analyzes the nature and participation of political parties in the 2007 general elections in Kenya. It seeks to demonstrate the influence of the institutional capacity of political parties on their organization of party primaries and formulation of manifestos for the elections, with a view to assessing the extent to which political parties are advancing the democratization agenda in Kenya. The assumption is that for political parties to facilitate democratization, they ought to be institutionalized. It is in this context that this chapter discusses the manner in which political parties conducted their primaries and formulated their manifestos for the 2007 general elections. In the organization of party primaries, the pertinent question that arises is whether all participants (both candidates and voters) were members of political parties and whether the primaries were conducted in accordance with established rules, regulations and procedures to the satisfaction of all participants.

The extent to which political parties are institutionalized can also be discernible in the analysis of their manifestos. Where political parties are institutionalized, their manifestos are couched in the respective party's ideology and principles. These should ultimately reflect national interest, if the party is to win support from the majority of the citizens in order to form the government. In this regard, we seek to establish the basis for the formulation of party manifestos for the 2007 general

elections. Accordingly, the questions that arise in this regard include: What are the contents of the manifestos? Is there any ideology or philosophy underpinning the policies outlined therein? How different are the manifestos of various political parties and what accounts for the differences and similarities? We ultimately seek to demonstrate that lack of institutionalized political parties is not only inhibiting intra-party democracy, but also the advancement of the democratic agenda in Kenya.

The study relied on secondary data collected from documents of political parties, published books and journals, newspaper reports on the events of the 2007 general elections, and the Political Parties Act of 2007. We also made use of the Internet to access data from the Electoral Commission of Kenya on political parties in Kenya.[1]

Conceptual Framework

Political parties are defined as formally organized groups of people who seek to control the machinery of government by placing and maintaining their members in public offices (La Palambora, 1974). Two major features in this definition distinguish political parties from other organizations such as interest groups. First is the formal organization. A political party ideally has a formally recognized structure of leadership and membership and operational procedures for carrying out various functions and obligations required to reach and win the electorate (Wanjohi, 1997). This differs from some collective behaviour usually associated with anomic interest groups that tend to spontaneously organize to protest against, or influence, a public issue and immediately dissolve once that issue is resolved. In such groups, there is no recognized leadership and membership.

The second major feature that distinguishes political parties from other organizations is that the former always seek to acquire or exercise governmental power directly. Thus, political parties, unlike interest groups that influence public policy from outside government, aim at influencing public policy by directly placing their members in governmental policy making positions so that the government can be run on the basis of their preferred policies. This quest to directly exercise governmental power, particularly in a multiparty democracy, requires that political parties be institutionalized. They ought to have well-established rules, regulations and operational procedures for recruiting members, choosing leaders, developing party ideology and policy into a manifesto, carrying out civic education and political socialization, mobilizing support, and nominating candidates to vie for public electoral seats, among others. With such formal rules, regulations and operational procedures, a properly functioning political party operates like a formal institution.

This implies a need to front formal institutionalism as the analytical framework for this discussion. The concept *institution* has been defined at two levels: at the informal and the formal levels. At the informal level, institutions have been defined, mainly by sociologists, as norms, customs, and practices that initially tend to be taken for granted in human relationships, but gradually develop into regularized behaviour and conventions that take on a rule-like status in social thought and action. This partly explains why sociologists see institutions everywhere, from handshakes to eating mannerisms and marriages (Sangmpam, 2007; Kenny, 2007). Indeed, for sociologists, any practice or regular behaviour is regarded to be an institution.

However, political scientists and economists tend to privilege formal institutions over the informal ones by supposing some routinization of behaviour and relationships into identifiable regular structures, with rules and procedures of operation. Accordingly, formal institutions involve well-defined organizational patterns; regular rules and procedures that govern the interaction of groups or collectivities; concrete symbols that these groups inhabit or use; and some informal behaviour that may coalesce around all these (Sangmpam, 2007). These regularized arrangements culminate into some order and stability that makes predictability possible. It is against this background that Easton (1990), for example, has argued that formal political institutions would include the state and its related structures such as bureaucracies, political parties, party systems, political actors and agencies, and interest groups.

We adopt this formal institutional perspective in this discussion to assess the extent to which political parties in Kenya are institutionalized through the development of operational rules, regulations and procedures that produce formal regularized structures for carrying out their activities in a stable and predictable manner. The question that we seek to answer in this discussion is how were such formal structures, if they exist, utilized in the party primaries and formulation of manifestos for the 2007 general elections? More specifically, the study analyzes the manner in which political parties nominated their candidates during the 2007 general elections and assesses the extent to which party manifestos resonated with party ideologies and principles, which are part and parcel of the formal structures of political parties.

Given that we ultimately seek to assess the extent to which political parties are advancing the democratization agenda in Kenya, it is imperative that we provide a working definition of democratization and the place of political parties therein. By *democratization*, we refer to the process by which democracy spreads within a system of governance (Modelski, 1992). *Democracy* is used here to mean governance in accordance with the people's will. In a representative democracy, all eligible individuals freely choose their representatives to the government during elections. Through the elected representatives, people indirectly participate in the governance process. Thus, the assumption is that governance by representatives reflects the

people's will, and the government subsequently derives its legitimacy from the claim of doing what the people have willed it to do (Wanyama, 2001). As already pointed out, the role of political parties is crucial in this process because they are expected to aggregate people's views into coherent policies, and then facilitate people's choice of alternative policies and representatives in the government. However, our hypothesis is that they can only facilitate this when they are institutionalized. Based on their level of institutionalization, the question that we seek to answer is how effectively political parties played this role in the 2007 general elections. Our starting point in this analysis is to take a brief historical overview of the organization of political parties in Kenya.

Organization of Political Parties in Kenya

The origin and development

A number of factors have over time underlied the origin and subsequent evolution of political parties in Kenya. One of these has been the determination of the people of Kenya to free themselves from dictatorial governments (Wanjohi, 1997), both in the colonial and post-colonial periods. Beginning with the colonial period, British domination over Africans, which manifested in numerous oppressive and discriminatory laws and policies, compelled Africans to protest in an organized manner. After a stint with parochial political associations such as the Kikuyu Central Association and the Young Kavirondo Association, Africans went into more encompassing political organization that took the form of countrywide political parties, beginning with the Kenya African Union (KAU) in 1944.

Nevertheless, the eruption of the armed Mau Mau revolt in 1952 as the first armed liberation movement against colonial rule in Africa saw the colonial government ban the organization of country-wide political parties by Africans, and subsequently restrict African political activities to the district level from 1955. The result was the formation of numerous district political parties from 1956, such as Nairobi District African Congress, Taita African Democratic Union, Nakuru African Progressive Party, Baringo District Independence Party, and the Nandi District Independence Party, just to name a few (Wanjohi, 1997). Given that Kenya's districts had been demarcated by the colonialists along ethnic lines, the consequence of political organization at the district level is that political parties, as some of the names above indicate, increasingly assumed ethnic identities and orientations. This marked the origin of ethnicity and regionalism in the organization of political parties in Kenya.

Indeed, ethnicity significantly informed the formation of the first national political parties that would lead the country to independence in 1960. Following the formation of the Kenya African National Union (KANU) in May 1960 by leaders who were predominantly from the Gikuyu and Luo ethnic communities, leaders from the relatively smaller ethnic communities, who feared the imminent Gikuyu-Luo political

dominance in KANU, embarked on organizing a coalition of their communities, which resulted into the formation of the Kenya African Democratic Union (KADU) among the Luyia, Kalenjin, Maasai and coastal ethnic groups in August 1960. Thus, though the determination to defeat colonial domination informed the formation of KANU and KADU, ethnic identities underlied the subsequent organization of these parties. The other significant party that would be formed in 1962 on the same ethnic basis, though it had a very short lifespan, was the African People's Party (APP) that brought together the Kamba ethnic group under the leadership of Paul Ngei.

At independence, the two main competing political parties succumbed to Kenyatta's manipulations and arm-twisting authoritarian tactics, which he used to consolidate his power. This forced KADU to dissolve itself to join KANU in November 1964. The dissolution of KADU introduced patronage in the organization of political parties in Kenya, given that the wooing of KADU politicians to defect to KANU essentially consisted of a combination of 'carrots and sticks' for the members of KADU. This took the form of promises of Cabinet and sub-Cabinet appointments and state development resources to leaders who would defect from KADU to KANU, and the denial of government development services to the constituencies of those leaders who remained in KADU (Oyugi, 1992; Barkan, 1994; Wanjohi, 1997; Nasong'o, 2005; Oloo, 2007).

Though KANU had benefited from state patronage to emerge as the only political party in 1964 following this merger, a rift emerged in the party along ideological lines pitting the left under the leadership of Oginga Odinga and Bildad Kaggia, which preferred that the country took socialism as the basis for socio-economic re-organization, against the right wing-led by Kenyatta and Tom Mboya, which argued for continuation with capitalism. Kenyatta's concerted efforts to stamp out the socialists from KANU and national leadership saw him enhance his authoritarian tendencies between 1965 and 1966. Along such authoritarianism, Kenyatta sidelined KANU in the governance process as he increasingly relied on patronage and the provincial administration to govern the country, thereby denying KANU the opportunity to strengthen its institutional and organizational capacity.

Once again, as was the case in the colonial period, the desire by some Kenyans to rid themselves of an authoritarian government led them to decamp from KANU under the leadership of Oginga Odinga and Bildad Kaggia to form the opposition Kenya People's Union (KPU) in 1966. KPU was the first, and so far the only, political party that was formed on the basis of an ideology. Espousing socialism, the party was committed to the quick Africanization of the economy as the only sure way of restoring the freedom of the African and the country. To this end, it fronted nationalization of the means of production as one of its most important economic policies and the complete overhaul of the country's administrative structure as the pre-eminent governance framework (Wanjohi, 1997). This ideology and policies quickly attracted

a growing number of parliamentarians who increasingly crossed the parliamentary floor from KANU to KPU.

Kenyatta responded to the unfolding political scenario with his characteristic authoritarian tendencies through constitutional amendments, statutory enactments, and physical intimidation that denied KPU a chance to organize and explain its policies to more than a few people. The physical intimidation and electoral manipulations during the 1966 'little general election' that resulted from a constitutional amendment requiring parliamentarians who had defected to KPU to seek a fresh mandate from the electorate saw KPU end up with only 7 seats in parliament out of the 29 that were contested (Oloo, 2007). The assassination of Tom Mboya in July 1969, which was blamed on Kenyatta's ethnic group by the Luo supporters of KPU, led Kenyatta to ban the party in that year. The banning of KPU left KANU, once again, as the only political party throughout the Kenyatta era, with some of KPU's leaders detained or relegated to the periphery of the political system.

When Daniel arap Moi took over the presidency in 1978 following Kenyatta's demise, he started with some populist rhetoric that was camouflaged in the *Nyayo* (Kiswahili for 'footsteps'—implying following Kenyatta's leadership style and policy) philosophy of peace, love and unity. Nevertheless, the populism that had seen the release of all political detainees, abolition of detention without trial, declaration of war on *Magendo* (smuggling in Kiswahili) and corruption, and introduction of free primary education and a milk feeding programme for pupils in primary schools soon gave way to his authoritarian reality by the early 1980s. An attempt by Oginga Odinga and George Anyona to register an alternative political party quickly prompted parliament, of course under Moi's instruction, to make a constitutional amendment in 1982 to establish a *de jure* one-party state in the country (Oloo and Mitullah, 2002; Nasong'o 2005).

Thereafter, the Moi regime extended authoritarianism to soaring proportions. The clamp down on dissenters was so intense that most of them had to flee to exile, remain silent or operate from underground. In June 1983, detention without trial was reinstated to pave way for the systematic lock up of government critics and their allies. Populism was quickly shunned as Moi went out to exhort his Ministers, Assistant Ministers and everyone else in his government to sing his political song 'like parrots', arguing that this is what he had done all along under Kenyatta (Nasong'o, 2005). To control political events from the local to the national level, he revamped and reorganized the then moribund ruling party, KANU, and placed it once again on the political map of the country as his instrument for political control. With the party serving as a personal political machine of the president rather than an institution that belonged to members and operated according to predetermined rules, regulations and procedures, Moi imposed his men at all levels of its hierarchy. He created the KANU Disciplinary Committee, which had power to summon even Ministers to appear before it to answer misconduct charges. Most of these charges bordered on

disloyalty to the President, the most feared punishment for which was expulsion from the only party, thereby ending one's political career.

Throughout the 1980s, any democratic debate that was previously tolerated was gradually replaced by a personal rule style that thrived on executive directives and orders. Criticism, however constructive and well founded in facts, was quickly dismissed as 'anti-*Nyayo*' and critics were ruthlessly suppressed (Andreassen *et al.*, 1993; Haugerud, 1995; Barkan, 1992; 1994). This political decay went hand in hand with economic decline in the country. Corruption became a major vice that significantly contributed to poor economic performance, providing enormous wealth to the elite while the ordinary citizen was called upon to shoulder the burden of nation-building 'patriotically'.

In 1990, opposition to the repressive state finally burst out of the lid as determination by Kenyans to rid themselves of authoritarianism resurfaced once again. In May of that year, prominent politicians and businessmen, Kenneth Matiba and Charles Rubia, held a joint press conference in Nairobi and, for the first time, openly called for the repeal of Section 2A of the Constitution that outlawed 'other' political parties to pave way for a multiparty political system. They subsequently embarked on preparations for a major public rally at Kamkunji grounds in Nairobi on 7 July 1990 to agitate for the restoration of multiparty democracy in the country. Their arrest and subsequent detention without trial just before the planned rally sparked off the so-called *Saba Saba* (Kiswahili for 'seven-seven', taken from the date of the intended rally, which was the seventh day of the seventh month of 1990) riots on the planned day of the rally in Nairobi and other urban centres in the country. These riots were quite significant in terms of intensifying the struggle for multiparty democracy in Kenya.

The end of the Cold War in the late 1980s, which heralded the triumph of capitalism over communism, gave Western countries and bilateral and multilateral financial institutions an opportunity to plough their energies into the course for democratization in developing countries, more so in Africa. Consequently, donor countries and organizations, under the leadership of the United States, joined the fray in 1990 by introducing political conditionality for aid to Kenya (Murunga, 2002). The decision by bilateral and multilateral donors, under the auspices of the Paris Club, to suspend aid for six months in November 1991, pending a firm commitment to political and economic reforms in the country, forced Moi's KANU government to succumb. In December of the same year, Section 2A of the Constitution was repealed to allow the formation and operation of 'other' political parties in the country. Thus, the desire by Kenyans to be ruled by a just and democratic government would once again give way to the formation of other political parties following this constitutional amendment.

In 1992, several opposition political parties came into existence. The Forum for the Restoration of Democracy (FORD) pressure group that had been formed

in August 1991 as a forum of less than ten personalities to circumvent the ban on political parties was officially launched as a party in January 1992. A host of other parties were also formed, among them the Democratic Party of Kenya (DP) headed by Mwai Kibaki, who on Christmas day of 1991 resigned as Minister of Health in the Moi government to found the party. Within FORD, tensions mounted over leadership as personalities jostled for positions and differed over the procedure for choosing the party's presidential candidate. These squabbles led to a split in the party, leading to the formation of FORD-Asili and FORD-Kenya under the leadership of Kenneth Matiba and Oginga Odinga, respectively.

The quest to remove KANU from power, coupled with the personal and ethnic drive for power, subsequently led to the proliferation of opposition political parties in the country. The formation of more opposition parties was also encouraged by the state, which was keen on perpetrating factionalism as a means of weakening the opposition in the run-up to both the 1992 and 1997 general elections (Oloo, 2007). The result was the proliferation of new opposition parties such as the Kenya National Congress (KNC), Kenya National Democratic Alliance (KENDA), Kenya Social Congress (KSC), Social Democratic Party (SDP), Party of Independent Candidates of Kenya (PICK), to name just a few. This factionalism of the opposition only aided KANU to win the 1992 general elections with a mere 32 per cent of the presidential votes.

The opposition hardly learnt from this minority victory of KANU in the 1992 elections, for more political parties continued to be formed in the 1992-1997 period to satisfy individual quest for leadership. Among the prominent parties that emerged in this period included the Forum for the Restoration of Democracy for the People (FORD-People) and National Development Party (NDP). Once again, the plurality and factionalism of opposition parties handed Moi's KANU a minority victory of 42 per cent of the presidential votes in the 1997 general elections. It was only after this second lesson in loosing elections that the opposition started working towards building alliances to establish coalition parties in preparation for the 2002 elections. Though the constitution did not have provisions for a coalition government or a coalition party, this situation informed the origin of coalition political parties in Kenya.

The idea of opposition unity for the 2002 elections had been triggered by the cooperation between KANU and one of the then leading opposition parties–the NDP. The formal merger of KANU and NDP on 18 March 2002, which seemed to consign the opposition once again to oblivion in the impending general elections, prompted the National Alliance for Change (NAC), which had been formed by DP, FORD-Kenya and the National Party of Kenya (NPK) in 2001, to start holding regular consultative meetings to plan the way forward. More opposition parties joined the initiative, leading to the conversion of NAC to the National Alliance Party of Kenya (NAK) in mid-2002. NAK consisted of 13 political parties and two political pressure

groups (Masime and Kibara, 2003). The Chairman of DP, Mwai Kibaki, was later named as the single presidential candidate of NAK, with FORD-Kenya's Wamalwa Kijana and NPK's Charity Ngilu as the prospective Vice President and Prime Minister, respectively.

In the meantime, the merger between KANU and NDP produced internal contradictions that saw NDP and other disgruntled KANU leaders, including its Secretary General and Vice President, pull out of the party over the nomination of the presidential candidate. Moi had imposed Uhuru Kenyatta on the party as its presidential candidate to the chagrin of the seasoned politicians. The dissenting faction of KANU, then known as the Rainbow Alliance, joined the little known Liberal Democratic Party (LDP) on 14 October 2002. LDP then entered negotiations with NAK to form a single opposition coalition, culminating into a post-election power-sharing agreement that was signed into a Memorandum of Understanding (MoU) at a public ceremony at the Hilton Hotel in Nairobi to establish the National Rainbow Coalition (NARC). Subsequently, NARC chose Mwai Kibaki as its single presidential candidate and promised to distribute other government positions to the leading players of the coalition. With a single presidential candidate, NARC also fielded joint parliamentary and civic candidates during the elections. This opposition unity that Kenyans had yearned for since 1992, coupled with the euphoria for change, saw NARC beat KANU by garnering 62 per cent of the presidential votes and 125 parliamentary seats in the December 2002 general elections. By the time of this election, the records of the Electoral Commission of Kenya (ECK) indicated that there were 51 registered political parties in Kenya (Oloo, 2007).

Immediately the NARC government came to power, the contradictions inherent in the two coalition partners (NAK and LDP) began to emerge as NAK became reluctant to complete the constitutional review process within the first 100 days of the new government as promised during the campaigns. Besides reneging on the power-sharing arrangement that formed the basis of its pre-election MoU with LDP, NAK now preferred the *status quo* and even suggested that the new constitution be enacted in 2012 at the end of Kibaki's two presidential terms. It is only the LDP faction of the coalition that supported the review process, ostensibly because it considered the parliamentary system proposed in the new constitution to be the means of creating government positions to accommodate its members as per the pre-election MoU (Kjaer, 2004). The NAK faction went on to boycott the Bomas III constitutional conference that debated and adopted a draft constitution, which the government altered in tandem with NAK's determination to block the reduction of presidential powers. The altered draft constitution was eventually presented to Kenyans in a constitutional referendum in November 2005. The Orange Democratic Movement (ODM) successfully led the 'No' campaign to the proposed constitution, which culminated in the defeat of the government side in the referendum and, therefore, a rejection of the altered draft constitution.

The ODM was eventually converted into a political party when Kibaki sacked the LDP members from the Cabinet following his loss in the referendum. However, before the leaders of ODM could formally register their party, some other individuals who were not in the movement that opposed the draft constitution quickly registered another party, allegedly with state assistance, bearing the ODM name under the leadership of one Mugambi Imanyara. Facing a technicality of registering their party with the preferred name that had been so snatched, the leaders in the orange movement registered their party as the Orange Democratic Movement-Kenya (ODM-Kenya). The NAK faction in the NARC government responded to this turn of events by forming another political party called NARC-Kenya to serve as Kibaki's electoral vehicle in the impending 2007 general elections. Nevertheless, come 2007, Kibaki formed the Party of National Unity (PNU) as a coalition party for his re-election, with DP, Shirikisho, New FORD-Kenya, KANU, FORD-Kenya, NARC-Kenya and FORD-People as its initial main partners. The coalition party later enlisted support from another 20 small political parties.

In the meantime, squabbles over the nomination of the presidential candidate for the 2007 general elections surfaced in ODM-Kenya. Whereas one of the presidential contenders, Kalonzo Musyoka, preferred the party's presidential candidate to be nominated through direct secret ballot by all 'members' of the party, the other contending candidates argued that the delegates system be used to choose the candidate. This led to a split in ODM-Kenya that saw Kalonzo Musyoka take custody of the ODM-Kenya registration certificate, courtesy of his kinsman, Daniel Maanzo, who had been registered as the party's chairman, in order to render the other Orange movement leaders partyless. These leaders quickly responded to this scenario by convincing (some allege that they actually bought) Mugambi Imanyara to surrender to them the original ODM that he had registered. The result was the emergence of ODM and ODM-Kenya as two separate political parties, with the former bringing together most of the original Orange movement leaders under the leadership of Raila Odinga, and the latter revolving around Kalonzo Musyoka and Dr Julia Ojiambo of the Labour Party of Kenya (LPK). With the emergence of these two parties, the stage was set for the 2007 general elections with PNU, ODM and ODM-Kenya being the leading contenders. As of November 2007, the ECK records contained 134 registered political parties in the country.

Character and Identity

Ideally, institutionalized political parties are founded on the basis of recognizable principles that underlie their ideologies, philosophies, policies and membership. Such parties assume the character of a formal organization by developing sound structures and operational procedures guided by elaborate rules and regulations to enable them carry out the various functions and obligations required to reach and win the electorate (Wanjohi, 1997). The resultant structure and operational procedures

enable the parties to develop capacity to link up with the grassroots and effectively compete for power by articulating alternative policies for the welfare of the whole society, which affords the parties a national outlook rather than a factional one. Nevertheless, the foregoing overview seems not to resonate with this 'ideal type' of political parties.

As already pointed out, most of the political parties in Kenya have been formed, and tend to draw support, on ethnic basis. Even KANU that was associated with the nationalist struggle for independence has often been associated with the ethnic group of its chairman over the years. During the Moi era, it was thought to be a Kalenjin outfit as opposed to the Gikuyu and Luo party that it was at its formation. The emerging opposition parties have also been always identified with the ethnic communities of their founding leaders, with some of the communities such as the Luo[2] changing their affiliation and support to political parties in accordance with the allegiance of their leaders. A major consequence of this ethnic identification of political parties is that most parties have become regional parties without a national outlook. Indeed, most of them are confined to the urban areas, with very little presence in the rural areas.

Being ethnic and regional in outlook, political parties in Kenya have also tended to be dominated by their founding leaders, who also double up as the perceived political heads of their ethnic communities. Besides the case of Raila Odinga already highlighted, the other examples include Wamalwa Kijana and then Musikari Kombo, around whom FORD-Kenya revolved and continues to gravitate, respectively; Kenneth Matiba in FORD-Asili; Simeon Nyachae in FORD-People; Mwai Kibaki previously in DP and now in Party of National Unity (PNU), among others. The respective party leaders have developed elaborate patronage linkages with their ethnic communities, which have enabled them to control the activities and make the most important decisions of the parties (Oloo, 2007). Thus, as much as some of these parties have constitutions that spell out rules and regulations for governing them, these are usually usurped at will by the party leaders, who are also the financiers of the parties and, therefore, their lifeline.

With parties revolving around influential personalities, most of them do not have registered and disciplined members. Very few parties have attempted to hold membership recruitment drives since 1992, including KANU, which used to recruit members, sometimes by force, during the one-party era. Thus, though KANU may be said to have registered members, that register is likely to be outdated at the moment and some of the supposed members who might have been coerced to register during

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[2] For instance, FORK-Kenya was the preferred political party of the Luo when Oginga Odinga was its chairman. Upon his death in 1994, Raila Odinga unsuccessfully sought to lead it and defected to the little known NDP, which instantly became the "Luo party". When Raila led NDP into cooperation and eventually a merger with KANU in March 2002, the Luo, after a long time since Oginga Odinga was hounded out of the party in 1966, quickly became KANU supporters. They would subsequently ditch KANU for LDP, then NARC, ODM-Kenya and now ODM when Raila made that tour of political affiliation.

the one-party era might have shifted their allegiance to other parties. In the 1990s, some opposition parties, notably FORD-Kenya, FORD-Asili and DP attempted to register members by issuing them membership cards. However, this process was abused by contestants for various leadership positions in the parties, who went out to buy the cards or even print their own cards that they would dish out to any individual to turn up and vote for them during party elections. Besides disrupting the registration of members, this culminated into multiple membership or allegiance to different political parties (Oloo, 2007). In the circumstances, virtually all parties have shed any pretence of registering members, and tend to assume that people from the ethnic group and region from which the party leader comes from support the party in question.

In the absence of registered party membership, political parties have had difficulties in organizing their functions. To begin with, most parties have not conducted internal elections over the years. Consequently, most political parties have not established elaborate structures of delegates at various levels that link the party from the grassroots to the national level, which partly explains why some parties do not have a presence in the rural areas. The result is that such parties have not organized national delegates' conferences to elect national officials of the party as provided for in their constitutions. Those that have attempted to do this have ended up holding national delegates' conferences consisting of hired delegates who do not come from the purported districts, and are not necessarily members of the respective parties. For instance, when KANU held its national delegates' conference in 2007 to endorse the party's cooperation with PNU in the 2007 general elections, there were several conflicting lists of 'delegates' from some districts, with allegations that some of the purported 'delegates' who had already secured their seats in the conference hall, thereby locking out the other groups that had travelled from the districts to Nairobi, did not even come from the respective districts. Such 'delegates' had been hired by some influential politicians to attend the conference ostensibly to lock out their actual competitors from attending the same. Thus, the national delegates' conference turns out to be an affair for non-members of the party and a mere showcase of the presumptive leader or wealthy elite (Oloo, 2007).

We should, however, note that though political parties do not have registered members, they still attract some following. As already pointed out, such following is usually based on either ethnicity, in which case ethnic communities would be supporting 'their own kinsman' to secure the top leadership of the country rather than any shade of the political party that he would be riding on to achieve this fit, or political patronage as is the case where 'delegates' are paid to attend a party's national delegates' conference to vote for the patron. With such bases of political support, party leaders have ignored the need for party membership and have subsequently relied on patronage and regional and ethnic support to personalize party activities to serve their own interests, thereby creating a disconnection between the masses and the parties, particularly in periods between general elections (Oloo, 2007).

It is this personalization of political parties that has partly contributed to the emergence of what has been described as 'briefcase parties', in the sense that they do not have physical addresses and tend to operate from either the streets or the briefcases of their leaders (Oloo, 2007). Indeed, the offices occupied by most political parties in Kenya tend to be donated to the party by the party leader. The moment the leader ditches the party, he also hounds the party out of its premises. A good example in this regard is when Kenneth Matiba threw out FORD-Asili from his Muthithi House offices following his disagreement with Martin Shikuku over the leadership of the party. Such dependence of political parties on their wealthy leaders has rendered most political parties, particularly those in the opposition, so vulnerable that they cannot enforce some of the party rules and regulations, which could adversely affect the interests of the party leaders and financiers.

It is against this background of political parties revolving around the interests of personalities that most political parties in Kenya are not founded on the basis of a discernible ideology or philosophy, but the leaders' ambition to win elections and get state power. The brief review above has shown that ideological differences have never informed the formation of political parties, except KPU. It is only after the formation of the parties that leaders have attempted to link some ideology to the electoral manifestos of the parties, as a strategy to enhance the posture of the party leader, rather than present what the party actually stands for. With the lack of specific ideals that parties stand for, there have been frequent defections by individual politicians from one political party to the other. To such defecting leaders, the suitability of a party is not the ideology that it stands for, but the opportunities it offers for advancement in the political career in terms of the ethnic and regional support that it commands (Oloo, 2007).

Clearly, political parties in Kenya do not function as institutions. They do not adhere to their structural formulation and operational procedures. Constitutions that contain rules and regulations for conducting the affairs of political parties exist on paper, but are never adhered to. This lack of institutionalization has rendered internal democracy in political parties a façade, if not a mirage. With political parties operating like personal instruments of political stalwarts rather than institutions for representing the masses in the governance process, we now turn to an analysis of how Kenyans participated in the party primaries of the 2007 general elections in the absence of these crucial institutions.

Party Primaries in the 2007 General Elections

The point has already been made that lack of intra-party democracy has seen many political parties in Kenya skip party elections and, when held, they have been characterized by manipulation, confusion, widespread rigging and violence (Oloo, 2007). These malpractices have quite often spread into the nomination of

party candidates during general elections. Since the re-introduction of multiparty politics in 1992, party nominations have witnessed intimidation of candidates, massive bribery, violence and outright rigging in favour of particular candidates. In the 1997 elections, for example, all party nominations were reported to have been marred by administrative and structural malpractices in the electoral process, vote buying, violence and the imposition of loosing candidates on the electorate by the party bosses. In some cases, the winners of party primaries were simply ignored and direct nomination of alternative candidates made by the party leadership (Oloo, 2007). The situation did not improve in the 2002 elections, particularly in the NARC nominations that attracted thousands of candidates. This over-stretched the administrative capacity of the party's *ad hoc* Elections Board, resulting into widespread violence as aspirants aggressively sought party clearance to contest in the election. Unfortunately, these scenarios seem to have been repeated in the 2007 elections as the following analysis demonstrates.

Parliamentary and Civic Nominations

With fledgling structures, the leading political parties that participated in the 2007 general elections embarked on the process of nominating their parliamentary and civic candidates by attempting to set up some guiding eligibility criteria for respective candidates and structures to manage the process. Borrowing from their experience in the 2002 general elections when the NARC coalition had to cobble up an Elections Board to manage its electoral process, the three leading political parties, namely ODM, PNU and ODM-Kenya created similar outfits that were based at the party headquarters in Nairobi to be responsible for the overall administration of the civic and parliamentary primaries.

This was followed by drafting requirements that candidates had to meet before being cleared to participate in the primaries. For instance, ODM initially set the nomination fee at a non-refundable Ksh 200,000 and Ksh 30,000 for parliamentary and civic candidates, respectively. However, the party was forced to review this fee downwards after countrywide complaints by aspirants that these requirements were meant to favour the sitting MPs, who had the money. The threat by such aspirants to switch their support to other parties forced the ODM National Executive Committee (NEC) and Parliamentary Group (PG) to review the requirements. The party eventually dropped the academic qualifications requirement and reduced the nomination fee to Ksh 100,000 and 10,000 for parliamentary and civic candidates, respectively. Upon paying this fee, the candidate was required to fulfill the ECK requirements for candidates of respective seats, that is being a Kenyan citizen and a registered voter in a constituency in the country.

On the other hand, PNU, which was rocked with controversies over whether coalition partners could sponsor candidates independent of the coalition party,

came out with more elaborate nomination rules and procedures ostensibly to cement the fledgling coalition. The party requested the ECK to supervise the process of its parliamentary and civic primaries under the guidance of its Elections Board. Only political parties that were fully paid up PNU members were to recommend candidates to the Elections Board for clearance. Parliamentary candidates were required to pay a non-refundable nomination fee of Ksh 30,000 and present a letter of recommendation from a fully paid-up affiliate political party signed by an official recognized by the PNU Council. Civic candidates were required to pay a non-refundable nomination fee of Ksh 5,000, in addition to being recommended by a fully paid-up affiliate party. Since the party, like ODM, did not have registered individual members, it went on to qualify a 'PNU supporter' as a registered voter in a constituency, which meant all registered voters in the country! Consequently, to vote in the PNU nominations, one was required to present a national identity card and an ECK voter's card, as well as the (non-existent) political party member's card (*Sunday Standard*, 11 November 2007).

With regard to ODM-Kenya, the party followed in the footsteps of ODM in setting the nominations fee at Ksh 100,000 and Ksh 10,000 for parliamentary and civic candidates, respectively. However, competition for the party's ticket was witnessed mainly in the lower part of Eastern Province, which is predominantly inhabited by the party leader's Kamba ethnic community. In the circumstances, ODM-Kenya became one of the parties that picked candidates who had lost the primaries of the other two contending parties to run on its ticket in the other parts of the country.

A look at the eligibility criteria that political parties set for their candidates clearly shows that anyone qualified to be a voter, if not a candidate. This set the ground for a free for all primaries that followed in the three competitive parties, namely PNU, ODM and ODM-Kenya. Nevertheless, it should be pointed out that these parties tended to attract very stiff competition for their tickets, mainly in the strongholds of the respective presidential candidates. This was based on the assumption that the parliamentary aspirants cleared by the presidential candidate's party to contest in a constituency within his stronghold would almost be guaranteed of being elected to parliament in the impending general election. Consequently, PNU, ODM and ODM-Kenya attracted a host of parliamentary aspirants in their strongholds to warrant the carrying out of primaries by each party to select one candidate for each constituency.

Voting in the Parliamentary and Civic Primaries

There were slight differences with regard to the civic nominations between PNU and ODM and ODM-Kenya. PNU used the delegates system at the constituency level, though it was not clear how the constituency delegates had been elected. Civic candidates were nominated on an earlier date before the parliamentary primaries. ODM and ODM-Kenya held the civic nominations simultaneously with

the parliamentary nominations, using the same venues and methods of voting. Consequently, the process of voting and the malpractices that were reported in the parliamentary primaries of ODM and ODM-Kenya equally applied to the civic primaries. Whereas the PNU civic primaries that were held using the delegates system and on a separate date from that of the parliamentary primaries turned out to be orderly, those of ODM and ODM-Kenya were largely chaotic as we demonstrate shortly.

The three leading political parties held their parliamentary primaries (and civic nominations for ODM and ODM-Kenya) on 16 November 2007. Though the holding of the parliamentary primaries on the same day was meant to reduce the defection of the losers from one party to the other, defection still occurred. ODM-Kenya, which was only popular in the Kamba community, ended up picking some of the losers, whether fairly or unfairly, from ODM and PNU to enhance its presence in the other regions of the country. Nevertheless, the major beneficiaries of the defections from ODM and PNU were the smaller political parties. Those who lost or were rigged out in the primaries of these leading parties defected to pick up tickets from the fringe and smaller, some of them nondescript, political parties. However, the choice of these small alternative parties was in most cases based on whether the small party was in principle supporting the region's preferred presidential candidate. For instance, in central Kenya where PNU was predominant, the alternative parties to PNU tended to be Safina, NARC-Kenya, DP, KANU, FORD-Asili, Mazingira Green Party, Agano Party and Sisi kwa Sisi, among others, all of which had publicly expressed their support for President Kibaki. In the ODM strongholds, examples of alternative parties to which politicians defected tended to be NARC, which was represented in the ODM coalition by Charity Ngilu, and United Democratic Movement (UDM), which increasingly became the preferred alternative party in the Kalenjin community.

Those who decamped from PNU and ODM to join other parties argued that their decision had been prompted by the undemocratic and unfair management of the nominations in both parties. Indeed, the parliamentary primaries of all these parties were largely marred by widespread irregularities and violence. To some observers, the best words that described the nominations were 'chaotic' and a major 'fiasco' (*Saturday Standard*, 17 November 2007c). A number of malpractices, incivility and undemocratic tendencies reported in the primaries could justify such descriptions.

To begin with, some of the coalition parties went into the primaries without an agreement on the electoral method to be used. A case in point is where some coalition members preferred each of the affiliate parties to sponsor parliamentary and civic candidates, while others argued for only the coalition party to sponsor such candidates in the general election. For instance, by the time of the party primaries, PNU had not amicably resolved the contentious issue of fielding a single parliamentary candidate in each constituency. Some of the coalition partners were insisting on fielding their own candidates, while others were arguing for the PNU coalition to have only one

candidate in each constituency. Though a major partner of PNU, KANU's chairman Uhuru Kenyatta had from the very outset declared that KANU would field its own parliamentary and civic candidates countrywide, while NARC-Kenya insisted on PNU fielding a single candidate in each constituency. DP, which had also declared that it would nominate its own candidates, saw NARC-Kenya as a betrayer, arguing that NARC-Kenya was an outfit for the then sitting Members of Parliament (MPs) who wanted to manipulate the exercise and emerge as the PNU nominees in their respective constituencies (*Daily Nation*, 7 October, 2007).

Such disagreements were further compounded by yet another argument over the voting method to be used, more so in PNU. Whereas some PNU supporters argued for secret ballot, others preferred the queue voting method. Though this did not become a major issue of disagreement compared to the one highlighted above, the supporters of the party ended up using either of these methods following mutual understanding at the polling centres. The bottom line, however, is that a uniform method of voting might have produced different results in some places. For instance, where queue voting was used, there is a likelihood that some individuals might have abstained from voting for the fear of being victimized or others might have been coerced to vote in a particular way. With such disagreements and the lack of consensus on the voting method, the ECK abstained from supervising PNU's parliamentary primaries as had been expected.

In ODM, its National Elections Board, chaired by (Rtd) Justice Richard Otieno Kwach, made a decision to use secret ballot in the nomination of civic and parliamentary candidates. But even this, as was the case in PNU and ODM-Kenya, had a fare share of shortcomings, which partly contributed to the anarchic and chaotic primaries that sometimes witnessed the outbreak of violence. In the first place, and as it has already been pointed out, none of these parties had registered members. Consequently, it was not possible to determine who should participate in the exercise and who should not. In the circumstances, some parties resorted to using national identity cards and the ECK voters' cards to determine those eligible to vote. In some constituencies in Nyanza Province, there was not even strict adherence to this requirement in the ODM nominations. As it turned out, voting was open to any individual who wished to. It became a public function rather than a political party's affair. This made it possible for those individuals who had participated in the primaries of one political party to also turn up for the primaries of the other parties.

The problem of membership did not only apply to the voters, but to candidates as well. Besides the political leaders, mainly the former MPs, who led the foundation of the parties, none of the other competing candidates were members of the newly formed coalition political parties. As a result, the parties did not have a proper mechanism for vetting contestants during the primaries. This partly explains the large number of candidates who presented themselves for the nominations, with

constituencies such as Chepalungu having up to 42 candidates for the ODM ticket by the end of September 2007. Individuals who had been associated with other political parties were still allowed to pick ODM nomination forms, and some of them were eventually cleared to contest in the party's primaries. For example, after James Orengo had been re-elected as SDP Chairman, secretariat workers at **Orange House** rushed to assist him when he arrived to collect the ODM nomination form for Ugenya constituency (*Daily Nation*, 30 September, 2007). It was not clear when Orengo renounced his SDP membership and chairmanship to take up the ODM membership.

With every person being an eligible voter and candidate due to the absence of strict party membership, and the nominations being carried out on the same day in all the 210 constituencies, with an average of 10 contestants per constituency, logistical and management problems quickly surfaced. One of these was the supply of voting materials. Virtually all parties did not have the capacity to produce and distribute voting materials to all constituencies in time. For instance, PNU nominations in the Mt Kenya region started late in the afternoon due to delay in the delivery of voting materials. In Embu District, some stations ended up without ballot papers while in other stations, names of some aspirants were missing on the ballot papers. The ODM nominations suffered the same fate. In Ugenya Constituency, for example, chaos erupted, with youths chanting 'No Mwanga, No nominations', when the name of one of the leading contenders for the ODM ticket, Steve Mwanga, was found missing from the ballot paper (*Saturday Nation*, 17 November 2007).

In places where there were no properly prepared voting materials, people went on to improvise some ballot papers and boxes after waiting for several hours. For ballot boxes, they used cello-taped plastic waste buckets, food containers and torn cartons. For ballot papers, the 32-page exercise books used in primary schools were on hand (*Saturday Standard*, 17 November 2007b). Where such improvization was not possible, the voters waited for the materials on hours end. In Nyando Constituency, for example, aspirants were still waiting by 5 p.m. for the improvised ballot papers that were being printed in Kisumu to facilitate the exercise (*Saturday Nation*, 17 November 2007). Where voters became impatient to wait the whole day for voting materials, improvised or otherwise, each one occasionally ended up declaring his/ her candidate the winner. ODM's primaries at Matayos polling centre in Busia District, where voters failed to get voting materials and ended up declaring one of the candidates preferred by most of the waiting voters the winner without casting a ballot, was a case in point. Such declarations would sometimes attract arguments on who actually won, and the protagonists would easily resort to violence to resolve it. This partly explains why violence erupted in some polling centres. We return to this problem of violence in a while.

Logistical problems did not only manifest in the preparation and distribution of voting materials, but also in the appointment and sending of polling officials to the

voting centres. For instance, PNU nominations were marred by confusion, partly because the party headquarters failed to send clerks to conduct the exercise following the announcement that ECK officers would man the elections, yet these officers were not on the ground in most constituencies. In Eldoret South Constituency, ODM nominations were delayed due to parallel lists of presiding and returning officers that were being circulated. In Rangwe Constituency, some of the ODM polling officers reached their polling centres very late and when they failed to convince the aspirants to postpone the nominations to the next day, they reportedly took off with the voting materials. This partly contributed to the outbreak of violence in that constituency (*Saturday Nation*, 17 November 2007).

Some candidates, occasionally in collusion with polling officials, capitalized on logistical problems in transporting voting materials to hijack ballot papers and use them to rig the elections in their favour. For instance, in Eldama Ravine, immediate former MP, Musa Sirma, had to use his gun to scare away angry ODM supporters who were baying for his blood after ballot papers were found in his car. Sirma had allegedly diverted the ballot papers and was intending to get them marked in his favour and stuffed in the ballot box. In Kericho town, irate voters burnt more than 5,000 ODM ballot papers that were being transported in a private car to an unknown destination. In Kieni, a PNU presiding officer was arrested with hundreds of ballot papers that he was allegedly attempting to use to rig in a certain candidate (*Saturday Nation*, 17 November 2007).

There were also cases where nomination elections were being conducted properly, but only to be disrupted by the candidates who saw themselves drifting to the loosing side. For instance, in Nairobi's Kasarani Constituency, former MP, William Omondi, stormed an ODM polling station in Roysambu with over 100 armed youths, grabbed ballot papers and tore them. In Makadara, at Jericho Social Hall, a group of youths stormed the ODM polling centre, beat up a returning officer and burnt ballot papers. In Gatundu North Constituency, supporters of former MP, Patrick Muiruri, grabbed and burnt ballot papers in a PNU nomination booth as they hustled the opponent's supporters (*Saturday Standard*, 17 November 2007c). In Kuresoi Constituency, irate ODM supporters of outgoing MP, Moses Cheboi, burnt ballot papers at Olenguruone claiming that the returning officer had been compromised to favour Zakayo Cheruiyot (*Saturday Nation*, 17 November 2007). At the civic level, an ODM aspirant in Sokoni ward in Bahari Constituency stormed Kiwandani polling station and roughed up the presiding officer before destroying polling materials and running away with two ballot boxes (*Saturday Standard*, 17 November 2007a).

Besides these, the other malpractice reported in the parliamentary and civic primaries was bribery. Many aspirants went out to literally buy votes as the last resort for their survival in the hotly contested nominations. For instance, in the PNU nominations in Kirinyaga Central Constituency, former State House Comptroller Matere Keriri's agent was ejected from Thaita polling station for allegedly bribing

voters at the station. Bribery allegations were also reported in Tetu Constituency where Nobel Peace Prize laureate, Wangari Maathai, threatened to withdraw from the PNU nominations on grounds that one of the aspirants was dishing bundles of money to voters at polling stations (*Saturday Nation*, 17 November 2007). In Kimilili Constituency, 10 PNU aspirants called for the nullification of the results, citing voter bribery as the main reason (*Sunday Nation,* 18 November 2007). Similar allegations were reported in the ODM nominations.

Then there were other allegations of outright rigging of the elections, most of which ended with violence. For instance, in the Jomvu Kuu civic ward in Mombasa, two ODM aspirants had to withdraw from the race allegedly after they found a rival with 600 marked ballot papers that he intended to stuff in the ballot boxes. They stormed the *Standard* newspaper offices in Mombasa with a pile of papers they claimed they had snatched from the rival, whom they claimed was a son of a prominent politician, and argued that they will not accept the results of the nominations for they were not free and fair (*Saturday Standard*, 17 November 2007b).

In Westlands Constituency ODM parliamentary nominations, one of the aspirants, Ashif Amin Walji Jnr, stormed a polling station at Westlands Primary School and confiscated voting materials after word went round that one of his rivals, Fred Gumo, had already been rigged in by Orange House officials. The incident resulted into running battles between Walji's and Gumo's supporters, which caused a huge traffic jam on the busy Waiyaki Way. In Laikipia East Constituency, three PNU aspirants refused to accept the area's nomination results even before voting had been concluded, on allegations that there were glaring irregularities that would make the results unacceptable (*Sunday Nation*, 18 November 2007).

The open violence that visited Westlands was equally witnessed in other constituencies where aspirants disagreed or suspected that electoral malpractices had been committed. This was particularly the case in Ugenya, Kanduyi, Amagoro, Nyakach, Alego-Usonga, Nyando and Mt Elgon Constituencies. In Kisumu Town West, the nomination exercise was disrupted in seven polling stations that were strongholds of one of the female aspirants by the supporters of one of the leading contenders for the ODM ticket. Rowdy supporters of the aspirant dispersed the voters, who were allegedly supporters of the female candidate, and destroyed ballot boxes to ensure that there were no results from those polling stations.

In the midst of the ensuing chaotic nominations, some of the loosing aspirants dashed to Nairobi to convince and/or cheat their party headquarters that they had won the nominations, in order to get the clearance certificate before the arrival of the true winners. One of such losers was the former MP for Nyakach constituency, Peter Odoyo, who was almost lynched later on by an angry mob when he attempted to present the fraudulently obtained clearance certificate to the returning officer in the constituency. The ensuing confusion, chaos and violence in the midst of fraudulent attempts by losers to obtain party clearance certificates saw the headquarters of

contending parties issue the losers with clearance certificates, only for the genuine winners of the primaries to arrive later to claim the very certificates already issued. It was in such circumstances that some parties issued more than one certificate in some constituencies. With many clearance certificates from one political party for the same constituency in circulation, aspirants embarked on strategizing how to beat each other in presenting their nomination certificates to the returning officers first. The ECK worsened matters by announcing that it would accept only the first certificate from a party to be presented to the returning officer in each constituency.

In the meantime, the ever-changing lists of nominees at the parties' headquarters that went contrary to the expectations of some of the voters triggered further violence in some constituencies and party headquarters. For instance, in Homa Bay town, residents took to the streets to protest an attempt by the ODM Elections Board to impose outgoing Rangwe MP, Philip Okundi, on the constituents after he had lost in the primaries. In Nyakach Constituency, bonfires were lit at the Katito-Homa Bay junction on the Kisumu-Kisii highway following the controversial announcement by ODM headquarters of Peter Odoyo, who had lost in the nominations, as the winner. Meanwhile, the unrest in Siaya District quickly spread from Ugenya, where lawyer James Orengo was preferred by the ODM headquarters over Steve Mwanga, to neighbouring Gem and Alego-Usonga Constituencies. As violence ensued in Muhoroni constituency, two contenders, Joseph Okal and James K'Oyoo, presented nomination results to the ODM Election Board to prove that each of them had beaten former MP Prof. Ayiecho Olweny, but the Board proceeded to issue the clearance certificate to Prof. Olweny (*Standard*, 20 November 2007a).

These incidents were not just confined to the ODM nominations. In PNU, for example, the Kamukunji nomination results were also disputed, forcing the party to hold an arbitration meeting at a city hotel on Saturday 17 November 2007. A scuffle ensued during the meeting, during which a Brian Otieno Weke assaulted Simon Ng'ang'a, who had allegedly won the nomination (*Standard*, 20 November 2007b). In KANU, former Mt Elgon MP, John Serut, was beaten by rowdy youth when he attempted to raid the party's headquarters in Hurlingham to claim his clearance certificate even after loosing in the nomination poll (*Standard*, 20 November 2007a).

After a couple of days of demonstrations in the constituencies over the mismanagement of the party primaries, the focus of violence shifted to the parties' headquarters. At Rainbow House, to where the ODM secretariat staff had shifted their operations after streams of protesting aspirants had made Orange House inhospitable, goons shattered all windowpanes, damaged computers and made away with blank nomination certificates for the party on 19 November 2007. The armed youth were baying for the blood of Justice (Rtd) Kwach for allegedly issuing nomination certificates to individuals who had lost in the primaries. The ODM aspirant for Dagoretti Constituency, John Kiarie, who had gone to pick his clearance certificate,

was caught up in the chaos and ended up in hospital to treat the injuries sustained. The PNU secretariat was also at one time thrown into panic and confusion when a civic nomination loser turned up armed with a gun and with a group of hooligans to demand for his clearance certificate (*Standard*, 20 November 2007a).

With such chaos, manipulations, violence and rigging in the primaries, those who fairly or unfairly failed to secure the tickets of their preferred political parties defected to minor political parties to pursue their ambitions of getting to parliament or civic authorities. This gave an opportunity to the little known political parties to present some of the seasoned politicians who had fallen by the wayside of the anarchic primaries. As the ECK closed its doors on the nomination of candidates for the 2007 general elections, a total of 116 out of the 134 registered political parties had presented at least a candidate for the parliamentary elections. More parties had cleared candidates to contest for civic seats.

Presidential Nominations

Like the parliamentary and civic nominations, political parties approached presidential nominations by setting some guiding regulations, since none of the major parties, namely ODM, PNU and ODM-Kenya, had institutionalized these. ODM required presidential aspirants to pay a fee of Ksh 1 million to be cleared by the National Elections Board for the primary. The party then settled for a National Delegates' Convention (NDC) to elect the presidential candidate. Similarly, ODM-Kenya also utilized a delegates' conference to elect its presidential torch-bearer.

The situation was rather different for PNU, which had coalesced around supporting Mwai Kibaki to run for his second presidential term. The party was from the very beginning launched as a platform to provide Kibaki a ticket to contest the 2007 presidential election following the disintegration of NARC. Consequently, there was no pretence of holding presidential nominations, though the party's nomination guidelines had provided the requirements for presidential aspirants. The guidelines required that a presidential candidate secure 1,000 signatures endorsing his/her candidature from a minimum of five provinces and pay a non-refundable fee of Ksh 200,000, among other requirements. Unlike the Orange parties, the decision on the final presidential candidate was to be made by the PNU Council through consensus, secret ballot or any other method that they would agree on (*Sunday Standard,* 11 November 2007). In the absence of another candidate to face Kibaki, these requirements remained on paper.

With regard to ODM and ODM-Kenya, the parties embarked on the process of nominating their presidential candidates by inviting interested candidates to send their applications on prescribed forms to their respective national elections boards upon paying the nomination fee. This was followed by a campaign period for the cleared candidates, during which such candidates launched their personal presidential

visions for the country. Though originating from the same ideological background, the visions of ODM candidates differed with regard to emphasis on issues. For instance, whereas William Ruto paid a lot of attention to security by suggesting the integration of the army in the management of cross border security, Raila Odinga emphasized infrastructure development as the most significant contribution to economic rejuvenation in the country. Further differences between candidates were made through the manner in which each of the candidates launched their visions. For instance, Raila Odinga made a major difference from his competitors by getting the launch of his presidential vision televised live by one of the media houses, while those of the other candidates were confined to hotel rooms with the attendance of a few invited people.

At the end of the campaign period, ODM-Kenya and ODM held their national delegates conferences to nominate their presidential candidates on 31 August and 1 September 2007, respectively, at Kasarani Sports Centre. Though the parties had set a formula for selecting the number of delegates from each constituency to attend the conferences, the fact that these parties did not have registered members gave aspirants a leeway to handpick delegates from their strongholds. The fact that some candidates enjoyed support from larger geographical areas or more densely populated areas than others initially raised fears that the losers will not accept the outcome and that the events would be marred by violence, followed by a break up of the parties. Nevertheless, such fears were allayed when both events went on without any chaotic incident.

In ODM-Kenya, Kalonzo Musyoka was competing against Dr Julia Ojiambo in a race that many had predicted would easily go Kalonzo's way. Kalonzo had organized a better function for launching his vision than was the case for Dr Ojiambo, for example. Furthermore, Kalonzo's support base in ODM-Kenya was wider than Dr Ojiambo's. As it turned out, Kalonzo Musyoka won the election and Dr Ojiambo went on to concede defeat. This surprised many critics who had expected the end of the party. As a gesture of appreciation for the support from the LPK leader, Kalonzo would choose Dr Ojiambo as his presidential running mate.

Unlike ODM-Kenya, which had only two candidates, ODM had five aspirants who were considered influential in their respective provinces of origin. Nevertheless, the front runner was Raila Odinga, the Lang'ata legislator, who was battling it out with former Vice President, Musalia Mudavadi, from Western Province; Eldoret North MP William Ruto from Rift Valley Province; Gachoka MP Joseph Nyaga from Eastern Province; and Najib Balala of Mvita Constituency in Coast Province. The latter, however, pulled out of the race at the last minute in favour of Raila Odinga.

As expected, Raila scooped the ODM ticket through secret ballot at the NDC, beating all his rivals in their respective provinces, except Musalia Mudavadi from Western Province. In Rift Valley Province, Raila managed 304 votes against Ruto's 150 votes, with Mudavadi and Nyaga garnering 13 and one votes, respectively. In

Eastern Province, Raila walked away with 237 votes while Nyaga got a paltry 9 votes as compared to Ruto's 163 and Mudavadi's 37 votes. In Western Province, Mudavadi beat Raila by 303 votes to Raila's 128 votes, while Ruto and Nyaga managed only 4 votes and one vote, respectively. When it came to Nyanza Province, Raila scooped 627 votes while Ruto got two votes and Mudavadi and Nyaga managed a single vote each. In Nairobi, also a stronghold of Raila, he got 167 votes while Mudavadi managed 15 votes and Ruto and Nyaga had two and one votes, respectively. At the Coast, Raila scooped 334 votes with Ruto, Mudavadi and Nyaga managing only 14, 8 and one votes, respectively. Finally, in Central Province, Raila got 283 votes while Nyaga came second with 15 votes and Ruto and Mudavadi managed 12 and 13 votes, respectively (*People Daily*, 2 September 2007).

With such resounding victory for Raila, all the loosing aspirants conceded defeat and pledged to support the winner in the presidential campaigns. Perhaps in recognition that Mudavadi had beaten him in his stronghold, Raila would pick Mudavadi as his presidential running mate. The peaceful nominations were hailed by many observers and critics, with some of them imagining that Kenya's intra-party democracy had come of age, before they were proved wrong by the parliamentary and civic nominations as we have already discussed.

The fact that the presidential nominations and the PNU civic nominations that were carried out using the delegates' system turned out to be peaceful and relatively orderly could be a pointer to the significance of institutionalization of political parties for intra-party democracy. Though the delegates had not been properly elected by the party membership as would be expected, their relatively small number was manageable as opposed to the parliamentary primaries where political parties took on the unimaginable task of running countrywide elections for which they were ill-prepared. As opposed to the presidential nominations where the number of delegates had been determined, the voters in the parliamentary and civic primaries could not be determined. It is not surprising that virtually all parties ran short of voting materials in the latter primaries. A comparison between the manner in which the presidential and parliamentary party primaries were conducted suggests that where parties have registered membership and operating rules and procedures, internal democracy is more likely to be enhanced than in cases where political parties are not institutionalized. In the latter case, the public is set on the few members of a party, with the result that the public ends up flouting the rules and regulations and operating procedures of the party, as witnessed in the chaotic parliamentary primaries.

Party Manifestos for the 2007 General Elections

The lack of institutionalization of political parties in Africa has quite often manifested in the absence of coherent ideologies and philosophies that underlie the policy programmes of these organizations. This is partly because political parties in Africa, and more so in Kenya, are essentially convenient and temporary tools by which the

political elite seek to access or retain power and tend to be transformed, dissolved and recreated with each successive election cycle. Quite often constructed along ethnic, regional, religious or other sectarian cleavages, political parties' organization and affiliations are very fluid and change as alliances shift in the interest of the political elite (Ake, 1996; Decalo, 1998; Chabal and Daloz, 1999). In the circumstances, the policies that one finds in party manifestos, which tend to be formulated solely for winning elections, tend to be the personal vision of the party leader and are based on what the leader thinks will convince voters to put him or her in power.

This partly explains why the manifestos unveiled by political parties in past elections in Kenya were never informed by any discernible ideology and coherent principles. The resultant similar approaches to issues made it so difficult for voters to differentiate what the various parties really stood for, as the manifestos ended up being different only in language rather than substance. With the exception of the National Development Party's manifesto for the 1997 elections, most manifestos hardly explained how the lofty promises that were meant purely to lure voters would be fulfilled. Moreover, manifestos did not eventually form the backbone of the campaign strategies of the parties (Oloo, 2007). This gave way to ethnicity, bribery and personality politics to become the major factors that guided the choice of leaders during elections, rather than issues contained in the party manifestos.

This scenario, however, slightly changed in at least two of the parties that participated in the 2007 elections, namely ODM and ODM-Kenya. As already pointed out, these parties trace their origins to the 2005 constitutional referendum, in which politicians in these parties argued for the reduction of presidential powers and devolution of government to reduce inequality and poverty in the country. These concerns informed the choice of social democracy as the guiding ideology of the Orange movement that eventually gave way to the emergence of the two parties. With social democracy as the broad guiding framework, these parties went on to frame their policies into manifestos. The process of crafting the manifestos of the Orange parties benefited from the relatively competitive presidential primaries that were not witnessed in the other competing parties, particularly PNU, which revolved around a single presidential candidate.

As already observed, ODM had five contending presidential candidates for the party's ticket. Though these candidates were largely viewed as representing the interests of specific regions, ethnic identities, or both they had to put on a national outlook by presenting what became known as their 'presidential visions'. This saw all the five candidates launch their presidential visions at different times to highlight the policies that they would pursue if elected president. These policies, which tended to differ not so much in substance but emphasis formed the core of the ideas contained in the party manifestos. This partly explains why ODM, which had many candidates, ended up with a bigger (80 pages) and more detailed manifesto than ODM-Kenya's that consisted of just 34 pages. The former party had collected more ideas and issues

to be presented to the voters than the latter party that had only two candidates, whose input in the ODM-Kenya manifesto could not be compared to that of the five ODM candidates. Indeed, some observers allege that the ODM-Kenya manifesto contained ideas that had been cobbled up by the original Orange movement members before it split into the two parties, which Kalonzo Musyoka simply ran away with. Be that as it may, ODM ended up using the bulk of the ideas from the party's presidential candidates to launch regional manifestos that addressed region-specific issues, which were published as newsletters titled *Mabadiliko Times*, for the South Rift Valley, North Rift Valley, Western Province, Nyanza Province, Coast Province, Nairobi Province, North Eastern Province and Eastern Province.

The similar ideological background and origin of these Orange parties saw them present similar issues, but with varying emphasis in their manifestos. This may not be completely surprising, given that up to August 2007, the two parties had not parted ways, and when they did, the ideas must have remained with the individuals wherever they now belonged. Subsequently, both parties largely hinged on Kibaki's failures to institute democratic governance through devolution of power and socio-economic policies that would enhance productivity and equitable redistribution of the benefits to all Kenyans.

While launching the ODM manifesto at Moi International Sports Centre, Kasarani, Raila Odinga pledged that eradication of chronic poverty and inequality would be top on the agenda of an ODM government, arguing that the recorded economic growth that Kibaki boasted of was only felt among the rich. He criticized Kibaki for his failure to honour his promises in the 2002 elections campaign of zero tolerance to corruption and enactment of a new constitution, and promised to deliver a new constitution based on the Bomas Draft within the first six months of his government. Raila noted the increasing regional disparity and promised to enact a devolved system of government that would ensure equity in the distribution of national resources. He emphasized that his government will invest at least 10 per cent of GDP on infrastructural development, which would cover road transport, a modern integrated rail network, maritime and inland waterways, air transport, energy and urban development. On poverty eradication, he pledged to introduce a social protection programme, referred to as the '*Usawa Programme*', which would provide monthly cash transfers to the very poor households and create the Ministry of Social Programmes as the programme's policy and supervisory agency. Raila promised women affirmative action where his government was to ensure a minimum of 30 per cent representation in parliament. The ODM government was also to make Nairobi an economic hub that operates 24 hours per day.

Other key issues in the ODM manifesto included free quality secondary education and the improvement of early childhood, primary, tertiary, adult and special needs education; creation of employment opportunities through policies that reduce barriers to work; enhanced security by increasing the number of police officers and

equipping them with modern tools of fighting crime; delivering universal health to all Kenyans, with free healthcare for children under five years old and free ante-natal, maternity and post-natal care for expectant mothers; harnessing the potential of the youth in the development process; increasing productivity in the agricultural, trade, services and manufacturing sectors; consolidating and expanding tourism; implementing a land reform programme and building affordable houses; ensuring the provision of clean water and efficient sanitation services; ensuring that disability rights are protected; and pursuing a progressive Pan-African and foreign policy.

ODM-Kenya's Kalonzo Musyoka hyped on the same promises when he launched his manifesto. Like the ODM manifesto, Kalonzo Musyoka focused on devolution of government to ensure participatory governance to eradicate corruption; enacting a new constitution within the first year of office; creating a productive and growing 24-hour per day economy to sustain a double-digit economic growth rate; reducing poverty and unemployment through the *Komesha Umasikini* programme that would raise productivity in all economic sectors so as to guarantee equitable distribution of benefits across regions and social groups; ensuring universal access to affordable and quality healthcare by all Kenyans by 2012, starting with free healthcare for all who are unable to afford it; developing and implementing a comprehensive education policy to support the development of primary, secondary and tertiary education, with a commitment to strengthen free primary education and implement free secondary education for all by 2009; providing housing by developing a home ownership programme while reducing the cost of construction to make rented houses affordable; implementing affirmative action to end all manner of marginalization of any member of the Kenyan community; and developing infrastructure as the lubricant of the productive sectors of the economy.

As much as the major difference in the policies of ODM and ODM-Kenya was neither in ideological orientation nor substance but nomenclature, these parties tended to give more prominence to some issues than others. For instance, the issue of implementing a new constitution to facilitate the devolution of government and effective curbing of corruption was fronted by ODM more than ODM-Kenya. Indeed, when PNU proponents begun to link devolution to the *Majimbo* (Kiswahili for regionalism) debate of the 1960s that had evoked the fear of evicting members of ethnic groups from regions to which they did not belong, ODM-Kenya responded by going quiet on devolution as ODM went into the offensive to defend it using alternative concepts such as *Ugatuzi* (Kiswahili for decentralization) to explain the real meaning of devolution to the people.

With ODM putting a lot of emphasis on equity and governance as the key to the solution of the myriad of Kenya's problems, ODM-Kenya hyped on poverty reduction through its *Komesha Umasikini* programme as the main focus of its campaign. It was in this regard that its manifesto concluded that:

> *The thrust of the ODM-Kenya manifesto is the Komesha Umasikini Movement that the party has inaugurated. The hallmarks of the*

> *movement are: increased investment in the economy, increased productivity, increased employment opportunities, higher incomes, and equitable distribution of benefits through expanded social welfare programmes especially for the poor. This is the spirit in which we propose free secondary education, free healthcare beginning with the poor, and a modest cash allowance for the poorest in our communities (ODM-Kenya, 2007: 34).*

Thus, ODM-Kenya emphasized social welfare in its manifesto, perhaps to be in tandem with its stated ideology of social democracy. It is also in the stating of the ideology and principles that one may find a difference between the manifestos of the two Orange parties. Whereas ODM-Kenya clearly stated these in the first section of its manifesto (ODM-Kenya, 2007), the same were only implied rather than stated in the ODM manifesto.

The PNU manifesto was largely at variance with the foregoing manifestos of the Orange parties in the sense that its policies could not be traced to any form of ideology. It was a typical example of the manifestos that most political parties had unveiled in past elections in the country, which were formulated on the basis of the party leaders' personal vision of how to win an election and exercise power. Rather than anchoring the policies in an ideology, the party hinged on the achievements of the Kibaki government between 2003 and 2007, and provided a whole chapter of these in its manifesto (PNU, 2007), yet the said government was not a PNU one but a NARC government. Bereft of principles and any ideological foundation but the person of Kibaki, PNU surprised all and sundry by making more-or-less similar promises to those made by the Orange parties, with the exception of fighting corruption and enactment of a new constitution. Perhaps the President skipped these only to avoid the bad memories of the loss that he suffered in the November 2005 constitutional referendum and his disappointing failure to deal with corruption during his presidency.

It is in these circumstances that PNU cobbled a manifesto committing itself to continuity (with the slogan *Kazi Iendelee*–Kiswahili for 'let the work continue') ostensibly to market Kibaki to the electorate; coalescing around ten lofty pledges. First, on education, the party pledged that every child, including those with special needs, will be educated for free in public schools from primary to secondary level of education. Secondly, PNU pledged that every child under five years of age, those enrolled in primary and secondary schools, and children with special needs will receive free treatment in public health facilities. Third, the party promised that pregnant women would receive free ante-natal, maternity delivery and post-natal care from public dispensaries and health centres. Fourth, the party pledged to double the economy and spread economic benefits to all Kenyans, thereby creating decent jobs for the youth and good incomes for urban and rural families. Fifth, PNU promised to double investment in infrastructure to build world-class networks of

roads, railways, airports and seaports, power and communications, water supply, and low-cost housing. Sixth, it pledged to develop the Million Stalls and Sheds Programme by building hawkers' markets, *jua kali* parks, and small business parks in every city, town and municipality. Seventh, it promised to recognize community rights and cultural interests while striving to promote cohesion, tolerance and mutual respect for cultural diversity. Eighth, the party pledged to ensure a 30 per cent representation of women in all public appointments and elective positions as well as full representation of all minorities in public appointments. Ninth, PNU promised to enhance the security of Kenyans and their property through the joint effort of the police, provincial administration and local communities. Finally, tenth, the party pledged to devolve government to ensure that each part of the country receives its equitable share of economic and social development opportunities (PNU, 2007).

This last point was particularly surprising because Kibaki's supporters had vehemently opposed devolution of power in the constitutional debate that culminated into the 2005 referendum. Having lost the referendum, meaning that most Kenyans preferred this system of government, but had been deleted from the Bomas Draft constitution by government operatives, Kibaki now found it expedient to sneak this controversial issue into his party's manifesto. Thus, for the sake of winning the election, devolution and empowerment of the regions, to which Kibaki had never shown commitment since 2002 when he took office, was now part of the PNU campaign platform if only it could sway voters to his side.

Indeed, Kibaki seemed to be lifting ideas from his opponents just to survive the election. For instance, the issue of free secondary education had initially been floated by Kalonzo Musyoka when he was campaigning for the ODM-Kenya presidential nomination before he bolted away with the party from his Orange movement colleagues who preferred the delegates' system in the election of the party's presidential candidate. Kibaki could not wait to borrow the idea because the popularity of free primary education implemented in 2003 had shown that many voters would be persuaded by the idea of extending the programme to the secondary level of education.

Furthermore, one can argue that some of the pledges in the PNU manifesto were mere political propaganda meant to attract votes from marginalized groups such as the populous *jua kali* traders and women rather than really addressing their interests. This was particularly the case with regard to promises on a million *jua kali* sheds, community rights and cultural diversity, and affirmative action. The *jua kali* sector is such an amorphous group that building for them one million sheds would be an uphill task, leave alone the question of how these sheds would be spread and shared among their members across the eight regions of Kenya. With regard to community rights and cultural diversity, Kenya's diversity has fragmented along ethnic, regional, social, economic, political, gender and even age basis. It is this complex diversity that has created insurmountable problems for every regime in

the country. A realistic approach would have been to recognize it as a problem that needs to be systematically dealt with, but not one that could be part of a five-year definitive promise. It was not clear what he would do with this diversity in the midst of rising ethnic tensions over appointments in the public service and the sharing of public resources during his presidency.

With such contradictions and the absence of a clear ideology and principles to guide its arguments, PNU abandoned its manifesto in the course of its campaigns, partly due to lack of coherence in the conflicting ideas. The main campaign platform became Kibaki's presumed good performance during his last regime under the NARC government. This informed the coining of the slogan *Kazi Iendelee* (Let the work contnue) as the rallying call on Kenyans to support Kibaki and, by extension, PNU.

As it turned out, the three leading presidential contenders more-or-less had the same issues in their manifestos, albeit with variations in terms of emphasis and prioritization. To many Kenyans, the core issues that they wanted immediate attention included the rising levels of poverty, crime, corruption and growing ethnic tensions since the 2005 constitutional referendum. With none of the political parties emphasizing and prioritizing all of these issues simultaneously in a programmatic manner, including a clear budgetary proposal on how they would be tackled, the ethnic identities of the various presidential candidates and their associates quickly came to dominate the election campaigns. Thus, parties embarked on mobilizing support not from the ideological and subsequent policy outlook of their manifestos, but from ethnic basis. Whereas Kibaki mobilized the Gikuyu, Meru and Embu communities to come to his aid, Kalonzo largely relied on his Kamba community to drive his campaign. On the other hand, besides counting on the Luo, Raila relied on his colleagues in ODM's inner circle, the so-called 'Pentagon', to mobilize their communities to support him. Thus, as the campaigns got to the climax, the issues raised in the manifestos were relegated to the periphery.

Role of the Political Parties Act 2007 in the Institutionalization of Political Parties

It is evident from the foregoing discussion that the chaotic and largely undemocratic party primaries in the 2007 elections were significantly a function of lack of institutionalization of the participating political parties. Without properly registered membership, political parties in Kenya have operated more-or-less like personal fiefdoms of their founding leaders, who have also acted as their financiers. Some could pass as personality cults cultivated by ethnic or regional chieftains and structures of patronage and clientelism. To be effective agents that can deliver the competitive and representative multiparty democracy, political parties need to be put on the road to institutionalization. The question that we attempt to answer here

is the extent to which the recently enacted Political Parties Act 2007 provides for the institutionalization of political parties in Kenya.

The Act has its origins in attempts by opposition leaders during the multiparty era of the Moi regime to compel the government to fund all political parties in the country as a way of sharing in the government resources that KANU was using to the disadvantage of the opposition. Nevertheless, as was characteristic of the Moi regime, the idea was always nipped in the bud by KANU's parliamentary majority any time it surfaced in parliament. The defeat of KANU in 2002 gave the former opposition leaders an opportunity to revisit the idea of the government funding all parliamentary political parties, which gave the impetus for developing the political parties bill. Nevertheless, the process of formulating the bill was to be informed by other interests beyond the funding of parties. One of these was the frustration that some of the politicians had suffered from the government when they attempted to register their parties. For instance, the Orange movement leaders had alleged that the government had attempted to deny them registration of their party by registering their movement's name as a party of other nondescript individuals when it clearly knew that they were the owners of the name ODM. To avoid such problems in future, the politicians argued for the creation of an independent registrar of political parties.

Another issue that informed the formulation of the bill was the wrangles that engulfed some of the political parties. Most of the parties had never held elections over the years and were engulfed in leadership disputes that they were unable to resolve, but did not trust the courts. Besides leadership wrangles, the first coalition party in the country, namely NARC, was bedeviled with disagreements over the violation of the pre-election MoU on sharing of power following the violation of the same by the NAK faction of the party, yet there was no arbiter or law on coalition parties. Politicians were, therefore, driven by the need to have a special mechanism for resolving disputes in political parties as well as legitimizing coalition parties and the agreements for sharing power in such parties.

On the other hand, the government wished to keep its power over the regulation and control of political parties as a means of protecting its interests in future. Consequently, those in government seemed bent on making provisions that would reduce the emergence of competitors in the political realm. Some of the tough measures on the formation and registration of political parties contained in the Act may be attributed to this effort.

Informed by these competing and sometimes conflicting interests, the **Political Parties Act 2007** has provisions on the creation of the office of the **Registrar of Political Parties**; establishment of the political parties tribunal; formation, registration and regulation of political parties; funding and accounts of political parties; and some general guidelines relating to such issues as maintenance of records of political parties, holding public meetings of political parties, winding up of political parties, the making of regulations for enforcement of the Act, and transitional provisions relating

to existing political parties. These provisions may contribute to the formalization and, therefore, institutionalization of political parties in a number of ways.

First, as already pointed out, the Act establishes the office of the **Registrar of Political Parties to be based in the** ECK offices, with clear rules and regulations to guide the registration and deregistration of political parties. This may significantly contribute to the setting of a level field for the registration of all political parties and thereby end state interference in the registration of parties, which was the hallmark of the past regimes. Nevertheless, we hasten to caution that this may happen only if the ECK operates as an impartial institution that is independent from government control.

Second, the Act prohibits the formation and registration of political parties on ethnic, age, racial, gender, religious, regional or professional basis. It defines a party that has been formed on such basis as one that:

> *...its membership or leadership is restricted to or includes only members of a particular ethnic, age, tribal, gender, regional, linguistic, corporatist or racial group, profession or religious faith or if its structure and mode of operation are not national in character (Government of Kenya, 2007: Section 14(2)).*

The registration requirements under Section 23 make further express provisions that may compel political parties to operate with a national outlook as opposed to the current situation where parties have easily been identified with particular regions and ethnic groups. It stipulates that a political party shall be qualified to be fully **registered only if it has:**

(a)   first been provisionally registered;

(b)   **obtained not less than 200 members who are registered as voters for the purposes of parliamentary elections from each province;**

(c)   **on its governing body, a member from each province ordinarily resident or registered to vote in such province;**

(d)   submitted a list of the names, addresses and identification particulars of at least one founding member of the political party ordinarily resident in each district and such other particulars as the Registrar may prescribe;

(e)   submitted to the Registrar the exact location of its head office, which shall be its registered office within Kenya, and a postal address to which notices and other communications may be sent, together with the exact locations and addresses of its district offices if any (Government of Kenya, 2007: Section 23(1)).

Though the thresholds in sub-sections (b), (c) and (d) are so low that any party can easily satisfy, they will compel every registered political party to have some semblance

of presence in each province and district of the country. If the thresholds in these sub-sections can at least be raised, the provision may help to reduce the dominance of personalities in the formation of political parties, which has seen most political parties fail to develop a national following.

Thirdly, the institutionalization of political parties in Kenya has quite often been hindered by the frequent defection of members from one political party to the other, mainly after loosing an election, which weakens parties from time to time. The Political Parties Act now makes provisions that are likely to reduce this occurrence. Besides prohibiting a person from being a member of more than one political party at the same time, it requires any person who intends to resign from his/her political party to give a fourteen-day written notice prior to the resignation to:

(a)   the political party;

(b)   the Clerk of the National Assembly, if he is a member of the National Assembly; or

(c)   the Minister responsible for local government, if he is a councilor (Government of Kenya, 2007: Section 17(2)).

In addition to this, Section 17(4) of the Act foresees a person to have resigned from his previous party once he forms another political party; joins in the formation of another political party; joins another political party; or publicly advocates for the formation of another political party. These provisions are likely to enhance party loyalty, particularly for MPs and councillors who would not want to risk loosing their political seats and thereby curb the frequent defection of politicians from one party to the other.

Fourth, the Act attempts to establish uniform structures for all political parties by stipulating in a schedule what a standard constitution of a political party should contain. Among other things, the Act requires that each party constitution make provisions for its objectives, its office location, eligibility and admission of members, the general organization of the party, composition and powers of governing bodies, establishment and organization of district branches replete with offices, the procedures for voting whenever there is a poll, and regular holding of elections to choose leaders of the parties. This, along with the provisions in section 23(1)e outlined above, will go a long way in making political parties operate like institutions, rather than the current practice where parties function under the whims of individuals.

Fifth, the Act provides that a political party shall lose its status as a registered political party and as a body corporate if:

(a)   it has not participated in a parliamentary election or local government election with candidates of its own for a period of six years; or

(b)   it fails to participate at the next general election following its full registration (Government of Kenya, 2007: Section 24(6)).

This is a significant provision that might help to reign in political entrepreneurs who have taken to forming and registering political parties for speculation purposes. Such parties that now litter the register of political parties in Kenya tend to be offered for sale to the highest bidder whenever splits occur in major parties (Oloo, 2007), or ambitious politicians lack a sponsoring party in an election year. The implication is that some political parties, many of which exist only in the registers and not on the ground, have not been formed to address specific political agendas, but to make fortunes for the entrepreneurial party founders when they eventually sell them. This provision will now compel party founders to form political parties with the sole purpose for which political parties in any democracy exists: to compete for political power.

Sixth, one of the leading impediments to the institutionalization of political parties in Kenya has been the lack of funding (Wanjohi, 1997; Oloo, 2007). The point has already been made that wealthy individuals have monopolized decision making in political parties just because they are the financiers of these parties and some of the parties have faded to oblivion upon the withdrawal of support by such financiers. The Political Parties Act addresses this problem by making provision for public funding of political parties. It establishes a Political Parties Fund that will draw funds from the Exchequer and other donations, which will be distributed as follows:

(a)   fifteen per cent shall be distributed equally among political parties;

(b)   eighty per cent shall be distributed proportionately by reference to the total number of votes secured at the last general election by each political party's presidential, parliamentary and civic candidates; and

(c)   five per cent for the administrative expenses of the Fund (Government of Kenya, 2007: Section 30(3))'.

This Fund is likely to enhance the institutionalization of political parties not just because parties will have access to funds to run their activities (some unscrupulous individuals may just form parties for the sake of getting access to the Fund) but because the bulk of the Fund will be distributed according to the parties' performance in elections.

Seventh, the Act makes provisions for the establishment of coalition political parties as well as a tribunal, known as the **Political Parties Disputes Tribunal, to** arbitrate on disputes that may arise between members of a political party; political parties forming a coalition; or appeals from the decisions of the registrar of political parties. The significance of these provisions in the light of the circumstances that led to the collapse of the NARC coalition cannot be over-emphasized.

Finally, the transitional provisions of the Act expressly require the existing political parties to comply with the new law or be deregistered. These parties are now required to, among other things, revise their constitutions to conform to the requirements of the Act; hold elections to choose leaders; apply for full registration

under section 23(1) of the Act within 180 days after the commencement of the Act or face deregistration; and declare their assets and liabilities to the Registrar of Political Parties. This is likely to see the beginning of institutionalization of political parties as those unable to fulfill the new requirements, such as the previous 'briefcase parties', will definitely fade away and thereby reduce the plurality and factionalism of political parties in the country.

The major challenge to all these efforts is whether the party chiefs, who are also the legislators, will accept to abide by these tough provisions. The Act commenced in July 2008 and the 180 days within which the existing parties should comply with the Act lapsed in January 2009. About 40 political parties held elections and met other stipulated requirements, but most of the parties failed to comply with the Act. Such parties are trying to turn to the Act to raise what they call 'contentious issues' contained therein, probably as a means of subverting its implementation. Some of the contentious issues so far raised include, first, that the appointment of the Registrar of Political Parties should be vetted by parliament and not just the ECK, which has previously been seen to be pro-government. Secondly, some politicians have argued that the outlawing of regional and sectarian parties contradicts the freedom of association that is provided for in the constitution. Such politicians are now threatening to move to court to declare the Act unconstitutional. Third, some politicians are challenging the proposed registration fee of Ksh 600,000, arguing that the fee is exorbitantly too high and is intended to kill small parties. Fourth, sections 31(1)c and 31(5) bars political parties from receiving donations from foreigners. Politicians are now challenging this provision, arguing that government funding of parties is not adequate and they now want these sections to be reviewed to allow parties to receive foreign donations. Whether the Act will survive these challenges from the politicians, who are also the legislators, remains to be seen.

Conclusion

The purpose of this discussion was to analyze the nature of political parties in Kenya with a view to demonstrating the influence of their institutional capacity on their participation in the 2007 general elections, and to assess the extent to which political parties are advancing the democratization agenda in Kenya. From a formal institutional perspective, the discussion assummes that for political parties to chaperon democratization in the country, they ought to be institutionalized.

The findings show that most political parties in Kenya do not have formal structures that link them to the people. Most of them have written constitutions and rules and regulations for governing some of their activities, but they are rarely used or adhered to. This has culminated into a situation where political parties are founded and draw support on ethnic or patronage bases; they do not have registered members to whom leaders should account; individuals occupy party leadership

positions without being elected and/or those who are elected come in through flawed electoral processes; electoral procedures are ignored or processes are tilted to endorse predetermined leaders; founding leaders of political parties single-handedly control and determine the affairs of parties; the poor resource base of political parties has rendered them so vulnerable that they can easily wind up should the party leader withdraw financial and material support; most political parties operate as 'briefcase parties' without physical addresses or offices unless such space is donated by the wealthy leaders; most parties lack an ideological orientation; there are frequent defections of politicians from one political party to the other partly due to lack of specific ideals and principles for which parties stand for; and political parties are formed and used as mere instruments for individual ride to power. Clearly, political parties in Kenya do not function as institutions.

The result was the chaos, manipulations, violence and rigging that visited the parliamentary and civic primaries of the three leading political parties in the country, namely PNU, ODM and ODM-Kenya. Those who fairly or unfairly failed to secure the tickets of their preferred political parties ended up defecting to minor political parties to salvage their ambitions of getting to parliament or civic authorities. It is, nevertheless, interesting to note that the presidential nominations that were carried out using the delegates' system, which is in tandem with the institutional approach, turned out to be peaceful and orderly. Though the parties' delegates had not been properly elected by the party membership as would be expected, the relatively small number of delegates was manageable as opposed to the parliamentary primaries where political parties took on the unimaginable task of running countrywide elections for which they were ill-prepared.

Given that political parties in Kenya have tended to be convenient and temporary tools by which the political elite seek to access or retain power and have always been transformed, dissolved and recreated with each successive election, the policies in some party manifestos are usually the personal vision of the leader rather than the political party. This was particularly the case in the PNU manifesto. Nevertheless, ODM and ODM-Kenya, which shared a common origin in the 2005 constitutional referendum that saw them adopt a common ideology to shape the policies in their manifestos, exhibited a slight exception to this trend. These two parties also attracted many presidential contenders and, for the first time, conducted presidential primaries, which became a major source of the ideas that they crafted into their manifestos. Despite these changes, the manifestos of ODM, PNU and ODM-Kenya were similar, the only difference being in the emphasis that they gave to these issues. Even the PNU manifesto, which had no shade of any ideology, lifted some of the popular ideas such as devolution from the manifestos of the Orange parties.

Therefore, the lack of internal democracy and institutionalization of political parties have significantly subverted democratization in Kenya. We hope that the Political Parties Act 2007, which contains fundamental provisions on the formation, registration, management, funding and dissolution of political parties in Kenya will be

successfully implemented to enhance the institutionalization of these quintessential instruments of democracy.

Nevertheless, we hasten to point out that the nature of political parties in Kenya has perhaps been influenced by the politics of patronage that revolve around a powerful presidency. It is such a presidency that has perpetuated the culture of impunity, sycophancy, dependency, inequality, intolerance and authoritarianism that frequently visits political parties. The institutionalization of political parties may, therefore, require the institutionalization of the political space through a new constitutional dispensation that would reduce the powers of the president. Thus, it is a new constitution that emphasizes institutional rule as opposed to the current personal rule that may significantly create space for the implementation of the Political Parties Act, and the institutionalization of political parties and democratization of the political system in Kenya.

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4

Pastors or Bastards? The Dynamics of Religion and Politics in the 2007 General Elections in Kenya

Babere Kerata Chacha

...Then the Lord God called to the man, and said to him, 'Where are you?' And he said, 'I heard the sound of Thee in the garden, and I was afraid because I was naked; so I hid myself...' Genesis 3:9

Abstract

One of the events that have surprised observers of Kenyan politics in the recent past is the participation of the clergy in politics and their role in ethnic and electoral conflicts. Equally troubling and perhaps less commented upon is the recent surge of evangelical political activism and the decline of mainstream churches in public affairs. These developments in the nature and dynamics of religion in Kenya. To many, religion appears to be the new ideological flash-point in the post-Cold War era. The transformations taking place in African societies mean that it is more urgent than ever before to understand the role of religion in political processes. Cultural factors such as ethnicity and religion have become more important in people's search for fundamentals on which to build their hopes for the future. As such, when religion is used as an instrument for gaining political power, and emphasizing exclusiveness and primacy of one's own group at the expense of others, it brings a most destructive contribution. This chapter explores how religion was used for mobilization during the 2007 general elections in Kenya. The critical questions that the chapter attempts to answer include, inter alia: How did the clergy's approach to issues of social justice and politics during the Moi era (1978-2002) differ from those of the Kibaki era (2002 to the present)? What explains such differences? What motivated Kenyans who are assumed to be

very religious to set churches ablaze? Was it a consequence to, or a symptom of moral degeneration? Or was it a symbolic rebellion against a compromised and a decaying church? The chapter concludes that ethnic cohesion tended to work against religious norms, whereby religious leaders 'ethnicized' the pulpit and embraced various ethnic rather than religious identities. The study draws from information obtained through interviews, questionnaires, participant observations, religious sermons, newspaper reports, church magazines, and Internet blogs.

Introduction

Not long ago, William Owens (2006) released his bestseller, *Bastards in the Pulpit.* In this book, Owens sought to address the problematic and thorny issue of church leadership and what he thought had gone wrong with the clergy. He did this in his bold, yet scripturally sound title, '*Bastards in the Pulpit*'. Owens argues that:

> *There are problems due to the fact that many church leaders have assumed positions of leadership that they themselves have not been either qualified for, or called to undertake. As a result, their relationship with God has become questionable, if not altogether lost, in the pursuit for worldly ambitions that are neither always pure nor spiritual (Owens, 2006:6).*

Owens's admonitions were not only addressed to the American clergy but to the African too. Unfortunately, social scientists as well as theologians in Africa have not re-directed such criticism on the decay experienced in religious institutions, and particularly concerning the recent electoral confrontations in Kenya. The existing literature on the analysis of the role of religious institutions in Kenya has only tended to focus on the positive role or the consequent conflict between religious organizations and the State (Lonsdale *et al.*, 1978; Okullu, 1974; *Njoya, 1987; Gitari, 1990;* Sabar-Friedman, 1995; Throup, 1995; Sabar-Friedman, 1997), while few have focused on the influence of such factors as modernity or change (Ngunyi, 1995; Lonsdale *et al.,* 2005; Parsitau, 2008; and Kavulla, 2008). Consequently, this study offers a critical analysis of the role religious leaders played during and after the 2007 general elections. The study argues that religious leaders 'ethinicized' their pulpits, from where they embraced various ethnic rather than Christian identity, hence the phrase that blood of tribe is thicker than water of baptism. The study argues that in moments of crisis, Kenyans retreat into ethnic wombs rather than sanctums of religion (Nagelle, 2007).

The relations between religion and politics are complex and paradoxical. Both try to secure and maintain power, but there are differences and contrasts in the aims and values for which they aim to secure power, and also radical divergence in their conceptions of the nature and source of power (Falola, 1998:7). In Kenya, the institution of politics is a hotly contested terrain, unlike the religious one. That being the case, it is paradoxical that even the religious tend to seek to contest for such space at whatever cost, as recently seen in the 2007 electoral competition for parliamentary and presidential positions. Consequently, at an abstract level, the religious and the political tend to be conceptual opposites.[1] The basic power envisaged in politics is secular, of this world; that envisaged in religion, whether immanent or transcendental, is of another quality from another world. Both politics and

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1 See, for example, Rawls versus Habermas arguments on religion, politics, and war in Rawls, John (1993); Habermas, Jürgen (1995: 109-131); Rawls, John (1995: 109-131); Rawls, John (1997), reprinted in *Political Liberalism* (2005); and Habermas, Jürgen (2006).

religion imply awareness of social relationships and emphasize integration: politics is concerned with society and religion is concerned with congregational bonds. However, whereas politics is focused on relations of men with other men, religion is more oriented to relations of men with gods or other spiritually conceived forces. Religion deals with the sacred, politics with the profane (Chinedu, 2002:176).

Religion and politics both use calculation and appeal to emotion, but religion is grounded in revelation while politics tries to keep within the bounds of reason (Gifford, 1994:93). Value-wise, religion operates in the name of a principle of truth, while politics often makes do with canons of expediency. In a hierarchy of social activities, religion commonly stands at a peak of evaluation (paralleled in some contexts by art, science, or philosophy). By comparison, politics may be rated low in the scale of public esteem. This study, therefore, argues that religion plays a central role in contemporary African politics, not only in contesting for peace but also conflicts–those that lead to securing political power. In view of this, any analysis of politics and conflicts on the continent must take into consideration such conceptual framework. The study further argues that the use of religion to perpetuate hatred and conflict may not necessarily be a display of irrational activity that would fall into a 'new barbarism' analysis, but rather understood on the basis of the fact that religious beliefs and practices often serve to provide legitimacy to some groups among the wider population, where the 'cause' is expressed and backed with reference to religious beliefs and traditions. It helps to mobilize support, reinforces hierarchy, and serves as a tool of intimidation (Casanova, 1994; Duke and Johnson, 1989).

In the analysis of the institutional or Gramscian (or 'popular') and the phenomenological approach,[2] it is important to recognize the work of Ivan Vallier, who played a central role in revitalizing the study of religion (and the institutional approach), and to carrying it beyond the legalist framework. In various articles and a book (Vallier, 1970), insisted on finding the key to understanding the Catholic Church in Latin America not in its documents, discourses or ideology, but rather through an institutional analysis that would focus on how the Church structured its relations with society. For Vallier, the Church as an institution sought, above all, to maintain and extend its influence. Previously, it could achieve this by means of treaties, laws or relationships with elites. However, this entailed an enormous cost in a democratic period; it tied the Church's well-being to a series of alliances with elites whose power was in decline.

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2 To date, five theoretical and methodological models have been widely used in the study of the interaction of religion and society: the institutional, popular (or Gramscian), phenomenological, rational choice and ideal interest (or Weberian). The logic of each helps determine the nature of the data sought and the analytical approach. The institutional and rational choice approaches tend to focus on institutions and their drive to maintain influence and meet their goals, both transcendental and material (Berryman, 1994). Rational choice also assumes that religious behaviour is influenced by individual and group interests. The popular and phenomenological approaches tend to analyze the interaction of religion, society and culture in terms of processes of social and political transformation, which create new norms and actors that go beyond institutional needs (Haynes, 1996).

Instead of focusing on institutions and elites together with their efforts to maintain influence and control, the origin of change is situated in major social transformations that create new actors, necessities and ideas. According to this point of view, it is the people who 'erupt in the churches' using their presence to spearhead necessary changes. Therefore, what is needed is to focus on the grassroots, working with data from organizations, movements, actors and the creation of what the sociologist Christian Smith (1999) has called 'an insurgent consciousness.' From this perspective, religious change has its roots in social conflict. It is impossible to understand religious expression or the churches in isolation from society. Emerging ideas, the models of action they championed and the organizations that they created made sense in light of those to whom they represented. Therefore, any attempt to draw a direct line between religion and politics is impossible. Dominant institutions project a worldview, which causes people to accept a submissive position. This is what Gramsci called *hegemony*: a power for cultural domination stronger than mere physical coercion. Likewise, a counter-hegemony may develop when those whom Gramsci called organic intellectuals create new ideas and base them on the experiences of groups in the midst of the fight for social and political change.

Authors such as Enrique Dussel (1992), Otto Maduro (1982), or Phillip Berryman (1994) insist on locating these organic intellectuals as emerging out of the popular classes and giving shape (ideological and organizational) to the latter's struggles. They find them among younger clergy in certain religious congregations that have spearheaded the process of change and, above all, in grassroots organizations. The process is fully dialectic; new ideas and organizational methods are introduced within a situation of conflict. The same dynamic of conflict and formation of classes and groups leads to the people 'erupting' within the Church, for example. In this model, it is 'the people' who provide ideas and models for the institution, and not the reverse. The emergence of liberation theology and liberation movements in Peru, Brazil and Central America in the 1970s and 1980s are examples. The Gramscian approach is very useful for insisting on the need for re-reading reality and the history of change from below. It forced one to recognize that changes in religion and politics emerge from many and varied sources.

Religion, Policy and Political Morality in Kenya

Religion has been a strong correlate of Kenya's political orientation for more than five decades and in Africa as a whole. However, the precise analysis of its impact in society depends on how one defines the public's degree of 'religiousness'. According to Sindima, religion is the heartbeat of African ways of life (Sindima, 1998:203) but according to Mudimbe, it is a practice of cultural 'metisse' rather than the sentimental essence of a continent (Mudimbe, 1997: 231). In examining the strength of Mudimbe's assertion, one quickly captures its evocative discussion of the politically significant ways in which African intellectuals and politicians practice their religious faith. Most

important is his biographical passages on the narrative of one Rwandese priest and scholar, Alexis Kagame, the author of *Bantu-Rwandan Philosophy of Being in 1956*. Mudimbe shows how Kagame's practice as a seminarian and then as an 'indigenous clergy of Rwanda' served to challenge racism within the colonial seminary. Kenya, like elsewhere in Africa, is no exception to this promiscuous mix of religiosity and daily life and to what Lonsdale refers to as the African rule of energetic Christianity (Lonsdale *et al.*, 2005). It is estimated that almost 70 per cent of its 32 million people claim to be Christians, and of these, no less than 10 per cent attend church regularly (National Survey of Churches in Kenya, 2004).

Consequently, like other Africans, 'it is largely through religious ideas that Kenyans think about the world today'. Religion and politics are topics that obsess them, whether in bars or bus queues (Spear and Kimambo, 1999). Therefore, the role of religion as an organizational base for political mobilization does greatly colour and shape the final outcome of elections. Not only do candidates choose to make appearances in churches, synagogues or mosques, but leaders of such religious bodies can mobilize their worshippers through various means: encouraging members to register and vote; providing members with transportation to the polls; permitting voting guides to be distributed within the religious setting; and publicly addressing political issues in the religious setting.

Precisely, Londsale *et al.,* (2005) holds that Kenyans are notorious in the use of biblical imagery and metaphor almost in all aspects of their lives. To him, the premises are twofold: the fact is that Kenya is predominantly Christian or because the Bible has become the nearest thing to a national narrative, a storehouse of universally recognized moral and political images. In politics, songs are sang in gospel tones. Take, for instance, the *Unbwogable* song that became the National Rainbow Coalition (NARC born of NAK) theme in 2002 and how it had a positive impact on political change. More significantly was the NARC anthem: *Yote Yawezekana Bila Moi* (corrupted from a religious tune, '*Yote yawezekana kwa imani*'–all is possible by faith) or more recently the *Mapambano*, *Musilale,* an ODM anthem that took the country by storm and the consequent *Yote Yawazekana Bila Moi*, which was set to make a comeback only that this time it alternated with a new release, *Yote Yawezekana Bila Mwai*. Equally, the ODM political crowds enjoyed the *Bado Mapambano* tune, with Mbita legislator, Otieno Kajwang', as the lead singer (soloist). All resonated with biblical imagery and featured an essential organizing factor of political lifeblood. On the other hand, the PNU side seems to have preferred Christian hymns and electric guitar music with vigorous dancing (*Daily Nation*, 29 June 2007, p23). In sum, religion is so much part of people's lives, and is strongly tied into their cultural identities and their efforts to survive amidst life's contingencies and the political insecurities of the Kenyan state.

Does this confirm that Kenyans and politicians, like many Africans, are notoriously religious?[3] **(see also Awolalu, 1979; Mbiti, 1977; Parrinder, 1961; Olodumare, 1962). While this may be true, then how come that a country so avowedly religious in culture can engage in massive violence or even be so badly governed? (Lonsdale** *et al.***, 2005). What happened that these people who Tshishiku Tshibangu calls incurably religious (Mazrui, 1993) could turn against each other and fight so bitterly in an electoral conflict that almost tore Kenya apart? Was this an act of religious concubinage (Mbiti, 1977) where people abandon their religiosity and seek unethical means to solve their differences? One may ask what happened to a country described by Drakard as God-hungry Kenya, where churches provide the answers to spiritual and social needs? A country where Christ is the Answer, where preachers are very** forthright and know neither fear nor respect of men; a country where worship is lively **and vibrant; where Kenyans are constantly aware of their dependence on God—and God's laws—regarding their personal behaviour; where public meetings normally** begin and end with prayers (Drakard, 2006). If that is the degree of religiousness in Kenya, **then the critical question is: What explains Kenyan's behaviour in 2007?** Kisaka rightly explains why this is the case:

> *...so Kenya is generally a religious community. But how this religion works out in economics, how it works out in politics, how it works out in ethnicity, how it works out in aesthetics, how it works out in defining ethical values, how it works as a true worship, as a religion itself—those are the critical questions that we are now being called upon to engage. We have assumed we are a peaceful country. We have assumed that our religion is deep enough. The truth is that it is not deep enough (Kisaka, 2008).*

In a recent address to the Annual General Meeting of the Kenya Church Association in London, Njonjo Mue admonished those wishing to study crisis of religious leadership in Kenya to investigate the historical role that religion had played before the 2007 violence. He said:

> *In order to understand the role the Kenyan church played in the lead up to the 2007 general election and what role it can play in the healing and reconstruction of the country after the widespread violence that followed the announcement of the presidential election results, it is necessary to briefly go back in time and examine the way the church has faced the challenges of each new political era. This will in turn help us in determining the way forward for the church in post-election Kenya (Mue, 2008).*

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[3] According to Mbiti, wherever the African is, there is his religion. He carries it to the fields where he is sowing seeds or harvesting a new crop; he takes it with him to the beer party or to attend a funeral ceremony; and if he is educated, he takes religion with him to the examination room at school or in the university; if he is a politician, he takes it to the house of parliament...

This study takes up Njonjo Mue's challenge to frame up a basis upon which to establish understanding of the role that the clergy played and the inclinations they took in the 2007 post-election violence in Kenya.

Religion and Politics in the Later Moi Era, 1992-2002

During the turbulent years of the 'nineties', the Kenyan church generated a mélange of radical theologians and social activist clergy who were appropriately christened the 'firebrand.' This small cadre of radicalized clergy garnered disproportionate influence within the Kenya community in the span of a decade. Their achievement stemmed in large measure from the alacrity with which they were able to fashion a bold self-image structured around such elements as a sedulous commitment to social change, a penchant for high social visibility and, a conscious decision to focus on the political sphere as their primary target for social action.

For the most part, the clergy who identified with this orientation shared a cosmopolitan profile; they were mostly from the Anglican Church, predominantly urban, largely well educated, ecumenically involved, substantially alienated from traditional theology, and were from diverse ethnic backgrounds. Furthermore, this 'breed' of clergy marshalled consensus rather quickly around the notion that they represented and attempted to redeem religion from ethical sclerosis and ossified ecclesiastical structures. This conviction readily fostered a corollary sentiment; the 'firebrand' came to understand itself as the *avant garde* of the clerical style that would surely inform ministry in the 'nineties' and beyond.

During most of this period, the church celebrated a robust engagement with the political class of the time. One of my respondents held that Kenyans in the period preceding the 2007 elections lacked a model and courageous clergy at a time when they desperately needed one, a sentiment recently echoed by the Prime Minister, Raila Odinga, that 'We should ask them where they were when Kenyan needed them most at the height of post-election violence' (*East African Standard*, 19 June, p.1). Almost all the religious groups were divided, and this undermined their ability to speak as authorities above politics... 'there lacked a church leader with the power of a David Gitari, Timothy Njoya, Alexander Muge or Henry Okullu, earlier outspoken clergy on socio-political matters in Kenya' (Allen, 2008). Many Kenyans were convinced that religious leaders could still play a similar role in events preceding the 2007 election crisis, drawing on their reservoir of credibility as leaders of civil society as was the case during Moi's KANU regime. But what is it that made the clergy in the Moi era so exceptional?

Since 1992, the church and other civil societies in Kenya played a central and critical role in the social-political and economic development of the country. Their stance seemed to echo the writings in Luke Chapter 4:18, which reads: 'to bring good news to the poor, to proclaim liberty to the captives, and recovery of sight to the

blind; to set free the oppressed and announce that the time has come when the Lord will save his people'. In the political arena, the role of the church was more evident in the period preceding the introduction of multiparty politics. Indeed, the clergy constituted a central place in the body of the then reformers in Kenyan politics—they were not only motivated by faith, but repeatedly used religious language to argue for their cause.

Despite the oppressive reaction by the government, religious leaders during the Moi era continued to preach against the high level political power monopoly by the ruling party, KANU. The most vocal church leaders in the crusade to democratize Kenya were the Catholic Bishop Ndingi Mwana-a Nzeki, Anglican Bishops Henry Okullu and Alexander Kipsang Muge, and Presbyterian Church Timothy Njoya, among others. Under the banner of the National Council of Churches of Kenya (NCCK), the church was at the forefront in condemning the 1988 queue voting system not only as unbiblical but also a travesty to political justice. Leading theologians within the churches viewed their mission of fighting Moi's dictatorial regime as part of their exercise of 'the prophetic ministry of judgment' (Gitari, 1988). They took it as the obligation of the church to 'constantly remind people of the standard of righteousness and justice, which alone exalts a nation', and its duty to morally and practically support the state when 'it upholds that standard' while responsibly criticizing it or those in authority 'when they depart from it'. As such, the church acted as a conscience of the society and time and again questioned the one-party rule excesses from the pulpit.

For instance, Moi and KANU emerged victorious in the 1992 elections, which were fraught with serious electoral malpractices and were preceded by ethnic cleansing of communities perceived sympathetic to the then opposition parties in Rift Valley, Western and Coast provinces. Despite the victory, the Anglican Church of Kenya (ACK), formerly the Church of the Province of Kenya (CPK), Catholic and the Presbyterian Church of East Africa (PCEA) clergy did not congratulate the President and KANU as was tradition, but instead prayed for peace and prosperity in what they described as a troubled country. They promised to continue to fight for freedom, justice, peace and human dignity, which they claimed were at stake (Gitari, 1988). In as much as a cross-section of mainstream churches were united in condemning the excesses of the Moi regime, this translated into a united political force by the parties of the moment.

The critical question is how did the church succeed in offering a sustained opposition to the oppressive Moi regime? Galia Sabar-Friedman attributes this ability to the stability of the foundation of the church as its source of power. He argues that, first, the church derived much of its power from the dense network of structures, bodies and organizations it had in virtually every social and economic sphere, which ensured its on-going physical presence among the people in their everyday lives through its religious services, thus giving it an organizational distinctiveness (Sabar-

Friedman, 1993). Its organizational web of contacts with people of all ages, classes, professions, ethnic backgrounds and localities gave it an unparalleled insight into the needs and mood of the people (Anderson, 1977; Barret *et al,* 1974; Lonsdale *et al.,* 1978; Strayer, 1978). Secondly, this same organizational web afforded it the means for the broad dissemination of its moral doctrines and social and political views. At times, this two-way channel also served as a means of communication through the church, between the people and the political elite, and vice versa. Besides, the church had at its disposal radio broadcasting, weekly newsletters and monthly newspapers and magazines that gave it considerable reach to the people. Finally, the church had the benefit of financial independence from government.

Also, by 1992, almost all local societal organizations had succumbed to manipulations by KANU and the executive. Only a cross-section of the mainstream churches and a group of lawyers organized around the Law Society of Kenya (LSK) were able to resist usurpation because they already had established ties to the outside world and controlled financial resources of their own. Apart from individual lawyers, the churches, and in particular the National Council of Churches of Kenya (NCCK), put up the first coherent challenge against authoritarian rule. While the NCCK had been working closely with the state bureaucracy of the newly independent Kenya during the 1960s and 1970s, the relationship became now increasingly strained. The NCCK's theology was liberal and its 'gospel as much social as individual.' The staff 'had no organic or historical connection with the local environment', a situation that enabled the NCCK 'to be 'alongside' the new African politics (Lonsdale *et al.,* 1978.) in a way that local churches would have found difficult even if their leaders had thought it desirable'.

It is noteworthy, as observed by Gifford, that the mainline churches, rather than the pentecostal ones, shouldered most of the social responsibility and played the most important role in public space in Kenya from 1974 to the end of the millennium (Gifford, 1994:21). According to him, the Catholic Church and the Church of Province of Kenya (CPK) acted as midwives of transition to democratization in Kenya. He asserts that in Kenya, the most articulate criticisms of former President Moi came from individual Anglican bishops, and later from the NCCK. During President Moi's 24-year rule, the mainline churches—that is the Catholic, ACK, the PCEA and the Methodists—were quite active in checking the state (Oloo, 2005:24-25). They did this in collaboration and solidarity with the NCCK as the umbrella body of most protestant churches. This effort was also in collaboration with other groups within civil society and professional groups such as the Law Society of Kenya.

The Ufungamano House—a church-owned premise with conference facilities and a theatre —was a melting pot of perceived 'pervasive' politics and it offered a sanctuary and a focal meeting place for the mainstream religious bodies, civil organizations and progressive political parties and players to chart out the socio-political, legal and economic destiny of Kenya. However, the Kibaki era was to see an increasingly

declining influence of 'Ufungamano' in public affairs, and no longer the conscience and moral watchdog of society.

Religion and Politics in the Kibaki Era, 2002-2007

The Kibaki regime that came into power in 2002 heralded a new era in the realm of religion and politics in Kenya in many fundamental ways. For one, when Kenyans went to the polls on 27 December 2002, there was much at stake than the fate of the KANU regime under Moi. For many Kenyans, it was an issue of whether or not they could break KANU's 40-year monopoly of power and determine who would lead their country out of the then crippling economic and political crises in which civil liberties such as free speech had been severely circumscribed. For the rest of Africa, it was a test case on whether and how a smooth and peaceful political transition could be made from decades of misrule under the hegemony of one political party towards democracy (Throup, 2003). Indeed, as Kibaki's optimistic speech echoed, it was a historic moment for democracy in Kenya. These sanguine expectations of change crystallized in the political parties and individual compositions of the NARC government. When church leaders urged the new president to fulfill his elections campaign pledges–specifically to improve the economy, root out corruption and provide free primary education and affordable healthcare–Kibaki responded by saying: 'You have asked me to lead this nation out of the present wilderness and malaise into the Promised Land...I shall do so' (Gonza, 2003). With this promise, religious leaders in Kenya seem to have relaxed their stance to Kibaki's regime, some say even compromised. Consequently, three years on, the National Rainbow Coalition (NARC) had fragmented, scattering the NARC dream of a more united, prosperous and less divisive Kenya. What happened to the NARC vision? Did Kenyans give serious thought to the post-Moi political and economic transitions? What about political accountability and its implications? Answering these questions is critical to understanding the direction religious leadership took in response to changing the pattern of political leadership.

In some instances, religious leaders were a barrier to the struggle for institutional reforms and transparent and accountable governance structures. The government appeared to have failed to bring about a new and more democratic dispensation in Kenya. To many, Kibaki had failed to take the nation.... into the Promised Land, yet religious leaders largely remained silent on matters of social justice. First and foremost, the key personality of the 'Ufungamano', Mutava Musymi, an erstwhile critic of the Moi regime, became a close ally of President Kibaki and served as a presidential appointee on an anti-corruption body (he went on to contest a parliamentary seat on the President's party soon after stepping down from the NCCK Council and is now a Member of Parliament). Cardinal Njue, also a close ally of Kibaki, on several occasions issued statements that could be interpreted as being

supportive of the establishment. The courting of religious leaders by patriarchs of political parties had begun.

Secondly, in the 2005 referendum on the new constitution, Pentecostals pushed for the rejection of a draft constitution proposed by President Kibaki because it permitted abortion under certain conditions and provided for Islamic Kadhi courts. In alliance with the Catholics and mainline protestants, pentecostals formed a new body called the Kenya Church to oppose the establishment of the Kadhi courts as envisaged in the proposed constitution. While most pentecostals argued that the constitution should be secular, the Pentecostal Assemblies of God responded to the Kadhi courts provision by supporting a proposal for Christian courts in the constitution (*East African Standard*, 25 August 2005; Ranger, 2004: 365; Amran, 2005). Indeed, in June 2005, a coalition of christian churches unveiled an alternative draft constitution, supported by most pentecostal leaders, which excluded Kadhi courts (*East African Standard*, 25 August 2005; US Department of State, 2005 a).

Thirdly, in 2003, the inter-faith 'Ufungamano Initiative' launched an independent constitutional drafting process. The christians in the initiative opposed the provision of Kadhi courts in the new constitution. This was roundly condemned by muslims, who left in protest. In May 2004, 34 protestant churches threatened to take legal action to expunge the Kadhi courts provision (US Department of State, 2005a). The opposition of the entrenchment of the Kadhi courts in the constitution was as far as the unity of the christians went. When it came to the decision of advising their adherents on how to vote on the constitution, both the mainstream Catholic Church and ACK asked their adherents to vote with their conscience. This came after the realization that their congregation was likely to consider ethnicity and the advice of the political class in voting. This is indeed what happened.

At the climax of things, the public voted against the draft constitution through a November 2005 referendum. Following this constitutional defeat, opposition leaders held a breakfast meeting with the Kenya Church bishops to celebrate. At an opposition rally in Nairobi, pentecostal pastors led the crowd in prayer (*Daily Nation*, 26 November 2005; Kanina, 26 November 2005). In August 2006, top representatives of KANU and the Liberal Democratic Party (LDP) officially registered the Orange Democratic Movement (ODM) as a new political party to compete in the 2007 general elections (*Kenya Times*, 25 August 2006).

When American televangelist, T. D. Jakes visited the country in October 2005, Raila Odinga, the *de facto* leader of the LDP and Uhuru Kenyatta, the KANU chairman, were among the opposition politicians who attended his crusade at Uhuru Park. Jakes' visit to Kenya was reportedly viewed with suspicion in government circles, leading to non-attendance of government officials to a dinner party at Bomas of Kenya that would have been used as a stage to set a programme for the Bishop to market Kenya in the USA. Nevertheless, the marriage between religious leadership and political class had begun.

In addition, local christian church leaders such as Pastor Mike Brawan of Nakuru and Bishop Margaret Wanjiru of Jesus is Alive Ministries became prominent in the political rallies held by the opposition politician, Raila Odinga. The two were later nominated to vie for parliamentary seats in Odinga's party, the Orange Democratic Movement (ODM). This association with religious groups extended beyond political association. The main parties made a point of opening political meetings with prayers. President Kibaki's campaign rally at Nyayo Stadium in December 2006, for example, featured Islamic, Hindu, Christian and traditional prayers. Even invoking christian names for political convenience was thought to add value, as Bertil Mketu reveals:

> *An interesting aside (sic) is the fact of the presidential candidates' names. Mwai Kibaki has not used his Christian names prominently, so much so that if one was to call the Roman Catholic Kibaki using the names Emilio Stanley, few people would know who was being spoken of. The ODM candidate has on his part had to fend off claims that he is not Christian for among other reason his lack of a Christian Western name. Kalonzo Musyoka, the ODM-K candidate has made more pronounced use of his Christianity, using both? His name Stephen more prominently and also confessing to being a born again Christian (Mketu, 2000).*

Kalonzo Musyoka's (the current Vice President of Kenya) rally at Uhuru Park in November 2006 was reportedly preceded by a church service and he sought to inject a quasi-religious bent to his campaign by speaking prophetically. He also promised miracles, and had previously chaired the Prayer Group of the National Assembly and was involved in the first National Prayer. In this case, therefore, it seems that politicians are not against religion as a set of rituals and ceremonies–they are only too willing to use such religion for their own political ends–but they are against honesty and justice because honesty exposes their deceptions and justice deprives them of the privileges of abusing their powers.

Towards the end of 2006, the NCCK comprising thirty seven (37) mainstream churches in Kenya (formerly a worthy, neutral and credible public watchdog) was being accused of continued political partiality, soft stance and cooperation with the Kibaki government. Joining the bandwagon, the **Kenya Catholic Episcopal** was also consistently accused of direct political support to the incumbent President Mwai Kibaki. In a report, one Obongo commented:

> *NCCK's recent omissions and commissions clearly suggest that the faith group's leadership has failed to exercise wisdom and restraint when commenting on issues relevant to the 2007 campaigns, thereby alienating sections of their members with different political preferences (Obongo, 2006).*

The accusations became more serious when there was conspicuous studious silence maintained by both NCCK and the Catholic Episcopal when Kibaki unilaterally appointed commissioners to the Electoral Commission of Kenya (ECK) without the opposition's input, disregarding an agreement by parliamentary political parties in 1997 that all parliamentary political parties would be consulted in such appointments. The church also remained silent when accusations were leveled against the government for using undue advantage to appease voters by creating new districts, giving university charters, issuing title deeds, and money—the so-called facilitation fees to potential voters—as well as using public resources. Thirdly, the NCCK and the Catholic Episcopal turned a blind eye on skewed coverage of various campaigns that openly favoured the President on the national broadcaster, Kenya Broadcasting Corporation (KBC). These same religious bodies were very vocal in condemning Moi's personalization and domination of KBC news coverage in the 1980s and 1990s.

In conclusion, in comparison with the Moi regime, the church-state relations in the Kibaki era were and are still more complex. This complexity arises not merely because, since the post-cold war, liberal political structure has been more open and allows the participation of a larger number of players from the religious field, but because those involved legitimize their actions from a vastly expanded range of ideologies and knowledge systems: christian theologies, often combined with ingredients of traditional religious and political repertoires (Bayart, 1993: 243). The second proposition is that as religious and political elites have increasingly sought legitimacy from each other, the religious and political fields are both sites of shifting coalitions where rival parties compete for ideological and material resources.

Consequently, from the 2002 elections, mainstream religious organizations, particularly churches, were less critical of Kibaki than would have been expected of them. The Catholic Church particularly seemed to view him as one of their own, being a Catholic. In fact, pentecostal churches, whose agenda was adopted by the Catholics and the NCCK, all combined to form an opposing front to this new body called the 'Kenyan Church'. It seemed also that the defeat of the new constitution was overwhelmingly not only along ethnic lines but religious too, undoubtedly on the side of Kibaki, who was continually viewed by the catholics as a prominent member.

The year 2007 provided a period of complete departure from the conventional relationship between religion and politics in Kenya, to one in which 'Caesar and God spoon-fed' each other; a period of pimply onrush of newer churches, and of political positions well summed up in Parsitau (2008) as a period when the clergy were departing 'from fishers of men to fishers of votes' so much so that the national religious delirium had reached fever-pitch. Bishops, pastors, apostles, evangelists and preachers declared their interests in civic, parliamentary and even presidential elections. Consequently, what was unfolding was the worst type of political partisanship: those religious leaders serving the God of PNU and those of the ODM party.

Beginning with usual pomp New Year celebrations, the year 2007 was well received by the clergy, mainly praying for peaceful campaigns and election. There were no critical issues of clerical divergences. Televangelist Pius Muiru opened the year at Nyayo National Stadium with a live broadcast by KBC. Worshippers prayed for peace and unity for the forthcoming elections. It was in this platform that Muiru announced his intention to vie for the presidency. Other places that had such spiritual celebrations were the Door Christian Foundation Church, Nairobi Pentecostal Church-Valley Road, St Joseph Catholic Church, and Central Seventh Day Adventist Church where pastor Thomas Nyakundi and Charles Keros called for forgiveness and reconciliation among Kenyans. They also criticized civil servants who engaged in corruption and asked Kenyans to fight fraud and injustices. Other celebrations in other parts of the country were held at Makadara grounds in Mombasa where Muslims flocked for the New Year and Idd ul-Hajj celebrations. The message preached prevalently was peace and unity among Kenyans, as faithfuls prayed for the forthcoming general elections.

The tempo of events was fast and within seven days after the New Year celebrations, drama unfolded at Holy Family Basilica where a journalist was slapped and dragged out of the church by the president's security men and a church elder because he was 'attempting to take the picture of the president.' Curiously, Fr Maloba Wesonga agreed that it was right because the journalist did not respect the church, the journalist was disturbing the President's attention...making him have a hard time praying in the church (*Daily Nation*, 12 January 2007, p.17). Bishop Maurice Crowley of Kitale was the only clergy who condemned the use of violence against the journalist.

By mid-February 2007, the new year's campaign theme changed to, this time round, minimum reforms. This openly split the clergy. It came out in one of the daily under the banner, 'church tells off law reforms crusaders.' While the Catholic Church announced it would push for comprehensive reforms, the PCEA dismissed calls for reforms, describing them as a plot by politicians to push for their personal agenda. The PCEA Secretary General, Samuel Murigu, said that it was disturbing that Kenyans were being misused through the planned mass actions by leaders pushing for minimum reforms, claiming they were intended to satisfy short-term vested interests of the politicians.

Catholic Archbishop Ndingi Mwana-a Nzeki, Abdulgafur El Busaidy of the Supreme Council of Kenya Muslims (SUPKEM) and the Hindu Council of Kenya Chairman, Rashim Chitnis said in a statement 'we call on the president to show statesmanship in this matter and do what is good for the country and not what his party, supporters, opponents or ministers are saying' (*Daily Nation*, 23 February 2007). On 9 May 2007 at Waumini House, 'catholic bishops accused MPs of selfish interests in reform talks, saying the proposal was driven by short-term agenda of the politicians.' Twenty seven catholic bishops headed by John Njue accused the MPs of selfish interests in reform talks and causing violence in various parts of the country. They argued that the minimum reforms proposals were driven by egocentrism and

short-term interests of the politicians. From this point, it emerged that there was a clear division between those who were supporting the reforms (ODM) and those opposing (PNU).

By mid 2007, it was clear that religion would be a key factor in the 2007 election. This is because the country was awash with crusades and other similar religious functions that were usually well attended. Parliamentary aspirants all over the country are known to use church attendance functions and fund raising activities for religious causes, as a strategy for winning votes. Although tribe may win one the backing of one constituency, getting the support of a religious leader with a large following would open wider political doors across the country and persuade millions to become more receptive to a politician's message.

Recent scholarship has shown that struggles for political power in Africa have in fact entailed the manipulation of religious symbols and beliefs of both Islam and Christianity. Actors seeking political influence have used religion to gain legitimacy (Falola, 1998). The relevance of this point for contemporary African states is important, for when 'elite believe that their positions are threatened, they fall back on the religious element, emphasizing religious differences in an attempt to draw sympathy from those of their original faith (Nzeh, 2002)'. For example, in a testament on how central religion is to politics, and just how passion-inducing religion can be, Raila Odinga's Memorandum of Understanding (MoU) with the National Muslim Leaders Forum (NAMLEF) remained one of the contentious and prominent political issues during the campaigns. The revelation that he had signed an MoU with the Muslim leaders sparked off unprecedented public debate within the perceived PNU strongholds. Consequently, Raila's political opponents used this to claim that one of the provisions of the allegedly signed document was to facilitate the 'Islamization' of Kenya. Circulating in the Internet was an email stating that 'there are plans to abolish Christianity and stop the immediate spread of the gospel as soon as Kenya becomes an Islamic state'. For many christians and evangelicals in particular, the contents of the email were as true as was the possibility of turning Kenya into an Islamic state.

The document raised concerns to the general public and created unprecedented tension as it touched on old suspicions and stereotypes between the two faiths. There were fears of transforming Kenya into an Islamic state ruled by *Sharia* law, and Raila had to later release the contents of the MoU to the public after persistent clamour from PNU and sections of the clergy perceived to be sympathetic to Kibaki. However, the MoU had merely pledged to set up deliberate policies and programmes to redress historical, current and structural marginalization of muslims in Kenya once he ascended to power. The MoU was denounced by the Supreme Council of Kenyan Muslims (SUPKEM), and a section of christian groups (*Daily Nation*, 21 October 2007). In fact, Raila observed that Kibaki had signed the same MoU in 2002 with muslims, which he did not fulfill. The fight for the muslim vote became even more evident as both presidential candidates, Raila and Kibaki, strove to endear themselves to the muslim

voters by dressing in muslim outfits when they attended *Idd-ul-Fitr* celebrations. This was a manifestation of the value attached to the muslim vote as a block. However, the muslim vote was not homogenous as has been the case with ethnicity. As observed, NAMLEF differed with SUPKEM over the MoU signed with Raila. Najib Balala and the NAMLEF leadership represented the muslim in ODM while Yusuf Hajji and Sheikh Juma Ngao of SUPKEM represented muslims in PNU.

Further, David Sperling has argued that much of the public agenda of muslims is aimed at defending their religious and cultural values against secularization and christianization (Sperling, 2005). These values, which receive the universal support of all muslim communities in Kenya, constitute a common religious denominator of muslim identity, and thus provide a common idiom of protest. Historically, the muslim community as a body has sought to play a somewhat non-partisan role during elections. However, in 2007, there was no impartiality because many issues have recently emerged, which have politicized the community to the point of creating unprecedented internal divisions at the same time (Sperling, 2005). However, one emotive issue that appeared to anger the muslim community was the transfer or rendition of suspected Islamic terrorists to Ethiopia. There was confusion about the fate and nationality of 12 Muslim suspected terrorists handed over to the Ethiopian government by Kenyan authorities. The Kenyan government spokesman insisted that the deportees were not Kenyan nationals. This infuriated the Muslim leaders who insisted that the families of the deportees are known and that there were signed affidavits to that effect. When President Kibaki asked the Muslims to give him the names of the suspects so that he could follow up on the issue, Raila Odinga, the following day, released the names of the alleged deportees, claiming that they were Kenyan nationals whose families were known.

Related to what is described above are the frequent anti-terrorist police swoops carried out in the coast region, which have antagonized many muslim families. Older issues of concern to muslims were alleged discrimination in the issuance of birth certificates, identity cards and passports. Muslim youth also expressed displeasure with the Kibaki administration, citing discrimination, poverty, lack of jobs, regular police harassment and their being wrongly associated with terrorism. The concerns kept muslim issues alive in Kenya's public space throughout the electioneering period. It is against such concerns that the muslims agreed to back the leader of ODM.

On the christian front, not all pentecostals and evangelicals agreed to the stand taken by Nairobi-based churches, and the response was diverse and reflected divergent views and standpoints. For example, under the leadership of the Rev. Dr Wellington Mutiso, several churches first challenged the signatories of the alleged memorandum of understanding between ODM presidential candidate Raila Odinga and a group of muslim leaders under the NAMLEF umbrella (Munene, 2007). Six days later, on 29 November 2007, a group of church leaders under the aegis of the Nyanza Religious Leaders responded with a strongly worded two-page statement signed by 23 leaders. It read in part:

As Kenyans head towards the general election, we as Nyanza leaders note with great concern the partisan involvement of a section of Kenya's religious leaders in the country's political issues. It is on this note that we express our disgust with our Nairobi-based evangelical brothers' attacks and unnecessary criticisms of the agreement made between NAMLEF and...(Warigi, 2007).

Another three days later, on 5 December 2007, the ACK bishops of Maseno, Southern Nyanza and Bondo, all ODM strongholds, presented to the press a statement entitled 'Misplaced Concern', criticizing the position taken by evangelicals on the Raila-Muslim pact. The bishops told the evangelicals that it was the right of any group to enter into an MoU with political leaders as long as it was not injurious to any person or group in respect to the constitutional order of the country. This led to further divisions within various religious organizations, which assumed ethnic and denominational dimensions. The bishops from Maseno and Nyanza supported Raila Odinga and ODM, while those from Nairobi and its environs supported Kibaki and PNU (Parsitau, 2008).

Church leaders often used civic education, prayer meetings and other occasions to openly campaign for their preferred parties and candidates. It is no wonder that at the height of the violence in January 2008, when asked to comment on the role of the church, a political analyst famously quipped, 'We have seen the Church of PNU and we have seen the church of ODM but, pray tell... where the church of Jesus Christ is?' Against this backdrop, it is not surprising that when the political crisis erupted leading to widespread violence in the wake of the disputed presidential election results, the church struggled to find its voice. Church leaders could not rise above their partisanship to give the country a clear moral direction. The church had been reduced to a helpless spectator in the emerging tragic drama.

Many Kenyans believe that religious leaders also played a role, however inadvertent, in stoking tensions. Two moments were crucial. When Raila Odinga signed an ambiguous memorandum of understanding with a Muslim group that some read as a veiled promise to permit *Sharia*-like legislation in Muslim-dominated regions, the catholic bishops issued a statement from Rome during their mid-November *ad limina* visit, warning that 'granting special religious favours during campaign time is wrong.' Second, John Cardinal Njue of the Catholic Church twice expressed public opposition to *Majimbo*, referring to federalist politics in which the country's regions would gain power at the expense of the central government. Within days of being appointed the second Kenyan Cardinal ever, Njue was perceived as having made a major mistake that tainted the Kenyan Catholic Church. *Majimbo* had been the rallying point of Odinga's campaign, and Njue's statement was read by many as an indirect endorsement of Kibaki, a Catholic and by extension, a Gikuyu. Njue's intent, backed by the bishops' conference, was to defend national unity. Yet, the statement proved explosive because of the cachet of being a new cardinal. One protestant leader close to the ODM called Njue 'a mouthpiece of Gikuyu tribe' in the Catholic Church in Kenya (Parsitau, 2008). Within the Catholic Church, Archbishop Zacchaeus Okoth

of Kisumu distanced himself from Cardinal Njue's position, claiming that it was not binding as it had not been expressed in a pastoral letter. Here too, some sensed the recourse to ethnicity, given that Archbishop Okoth is a Luo, presiding over Kisumu, a diocese that is overwhelmingly composed of the Luo community and a strong base of support for Odinga.

These developments created an impression that Njue and other christian leaders were taking sides. As one Kenyan academic put it, 'No one, absolutely no one, is perceived as being neutral in the present situation.' Some analysts read this perception as a failure in moral leadership. Musambayi Katumanga, holds that:

> *The churches were silent when we really needed them...we are more harsh with our church leaders because they are the ones who are supposed to stick their necks out on questions of justice and honesty. That is their mission, and they have failed us (Allen, 2008).*

In summary, religion along with ethnicity and economic issues were among the factors that may have influenced voting patterns in Kenya's 2007 elections. In fact, religion appeared to be a swing or determinant factor and the pentecostal clerics contesting politics brought it to the fore.

Meanwhile, one of the most interesting features of the 2007 general elections was that it saw new ways in which religious authorities shifted the approach to issues of social justice. Some say it was a march from pulpit to parliament, one newspaper caption summed up the direction of this new approach 'we need action, not prayers alone...(*Daily Nation*, 23 March 2007)'. The clergy argued that politicians had failed the country by engaging in corruption, immorality, selfishness and ignoring the parliamentary *motto* of the welfare of society, and just government of men. Notably, this justification for the clergy involvement in politics seems to have been more widely held by the evangelical churches than the mainstream churches. This was demonstrated by the manner and zeal by which evangelical churches fielded presidential, parliamentary, and even civic candidates and participated in politics and the general electioneering processes more than had been witnessed before.

Despite their zealous participation, the critical question remains: why did evangelical christians conventionally perceived as a potent electoral force and the theologically conservatives increase their rates of political participation in the 2007 general elections? It has been argued that this trend had been emerging since the dawn of the millennium when pentecostals, who all along had been neutral politically, seemed to have adopted a shift from non-engagement in social-political issues to full engagement. According to Kalu, pentecostal cosmology links individual, social and political misadventures to the larger cosmic battle between God and His enemies. They declare that God has a purpose and counsel for individuals, families, communities and nations. By opening doors of the body and gates of communities and nations, demonic forces enter to possess, control and derail from God's intended

design. Contrary to some criticisms that pentecostals see the devil in everything and refuse to acknowledge systemic evil, pentecostals place responsibility on both individuals and social structures on the rulers and the ruled (Kalu, 1998).

Moreover, according to the 2006 *Pew Forum on Religion and Public Life Survey*, the pentecostal and charismatic movement accounted for more than half of Kenya's population. The survey also found that approximately seven in ten protestants in Kenya are either pentecostal or charismatic, and about a third of Kenyan catholics surveyed could be classified as charismatic.[4]

Similarly, according to newspaper reports, the Registrar General's office was overwhelmed by increasing demands for registration of these churches (Ndegwa, 2007). The Attorney General, Amos Wako, while speaking in a workshop for church leaders, revealed that the department was overwhelmed by increasing demand for registration of churches, and the facility was facing difficulties in processing 6,740 pending applications by various religious organizations. Wako also revealed that there were about 8,520 registered churches and that about 60 applications were being filed every month (Ndegwa, 2007). Although not all of these churches seeking registration are pentecostal, the majority of them were of pentecostal and charismatic inclinations. Thus, thousands of these newer churches have sprung up and sprouted in all major urban centres, some within less than three to five kilometres from each other. Some are huge mega churches while others are too small to be called churches but, anyhow, add to the numbers. The accuracy of the statistics notwithstanding, the numerical and institutional growth and strength of pentecostal christianity in Kenya cannot be ignored.

During the clamour for a new constitution in 2005, the pentecostal churches plugged into public space like never before. Since then, a large number of pentecostal clergy and followers have come to view electioneering as something that christians can rightly participate in. This is evident from the numerous statements they issued throughout the campaign period and by adding their voices on a number of national debates and issues such as *Majimbo* (regionalism), the MoU signed by Raila Odinga and a Muslim group, ethnic violence, corruption, free and fair elections, human rights issues and constitutionalism.

A stellar example can be given from the manner in which two prominent evangelicals, Bishop Margaret Wanjiru and Pius Muiru, grew in leap to prominence.

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[4] *The Pew Forum on Religion and Public Life Surveys Overview: Pentecostalism in Africa, (2006).* See also *World Christian Encyclopedia (2001),* and *World Christian Database (2006).* The 2006 Forum survey of adults 18 years and older was based on a national probability sample of Kenya's adult population, excluding the largely Muslim-populated North Eastern Province. The sample represents roughly 97 per cent of the population. In the survey, approximately nine-in-ten identified themselves as christian, comprised of roughly 23 per cent catholic, 62 per cent protestant and 5 per cent African Independent Churches (AIC). An additional 8 per cent identified themselves as muslim, 2 per cent as non-religious and 1 per cent as following a traditional African religion. These findings are very similar to those of the 2003 Demographic and Health Survey (cited in *Pew Forum on Religion and Public Life,* at www.pewforum.org/religion-politics.

Figure 4.1: Religious trends in Kenya

Source: Demographic and Health Surveys
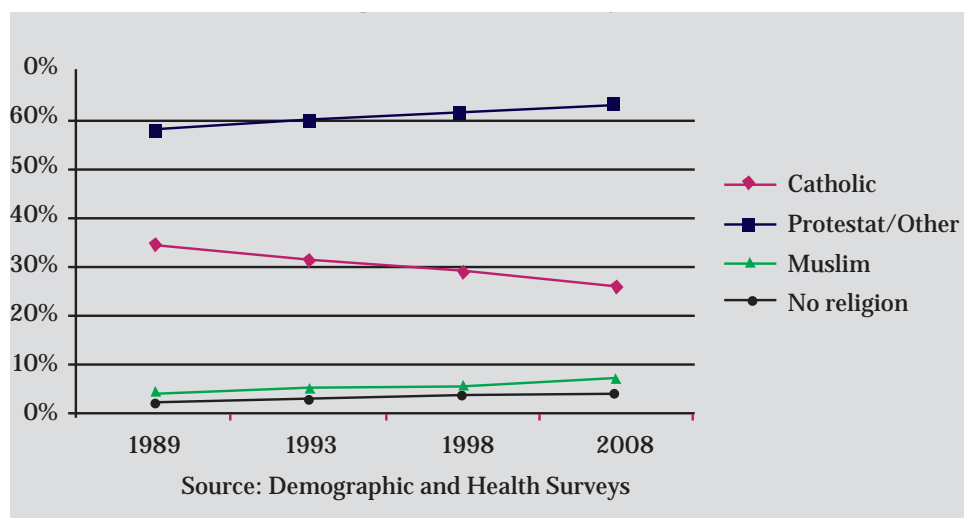
Source: Kenya Demographic and Health Surveys

Bishop Margaret Wanjiru of Jesus is Alive Ministries (JIAM) and one of the most influential women preachers in Kenya successfully contested for the Starehe Constituency seat on an ODM ticket, proclaiming that she was 'taking Starehe for Jesus'. Her, church, located along Nairobi's Haile Sellasie Avenue, established in 1993 and has grown into a huge religious and business empire. Thus, from a small, humble and local church a few years ago, her ministry has exploded to become a 20,000 strong congregation with weekly television broadcasts which, according to information on her website, reaches as far as the UK and the Bahamas.

Bishop Pius Muiru, the head of Maximum Miracle Centres International, contested for both presidential and parliamentary elections on a Kenya People's Party (KPP) but was unsuccessful. He started preaching at Jevanjee Gardens in 1998 and now has a network of 250 churches across the globe. In 1998, he went on air on KBC radio with his TV programme *Kuna Nuru Gizani* (there is light in the darkness). In 2002, he began an orphanage, Maximum Miracle Centre Children's Home, at Kahawa Sukari in Nairobi. His church, located at the Odeon Cinema, Nairobi, draws large crowds every Sunday. Besides being a televangelist, he is also believed to be fabulously rich and has built himself a business and religious empire. Since he began his ministry in 1998, Bishop Muiru concentrates much of his time on evangelism and soul winning. He initially shunned political limelight and concentrated on consolidating his church and became a renowned televangelist. In January 2007, Bishop Muiru baffled many when he declared that not only would he be in the run for Kamukunji parliamentary seat, but also that he would be running for the presidency. He even led a demonstration on 16 August 2007 against the Media Bill passed by a

section of MPs, compelling journalists to reveal sources of their stories. This was a demonstration of active participation in politics and claim for public space by the pentecostal church leaders.

The explosion of pentecostalism has been tremendous during the last few decades in Kenya. These churches sharply rose to prominence due to a combination of socio-religious factors, including opening up to younger evangelical christian leadership, rapid urbanization and the collapse of African economies. The pentecostal's fast growth has equally been fuelled by aggressive evangelism, church planting, lay mobilization, lively music and celebratory nature of worship (Asamoah-Gyadu, 2005). Their influence has also invaded all aspects of Kenyan civic life and their presence is now being felt in the realm of politics, economics, cultural and socio-religious fields.

Politics as an institution is becoming increasingly more lucrative in terms of remuneration and significance in comparison to other institutions in Kenya. Consequently, it is attracting people from different disciplines, including the clergy. Religious leaders will use their authority for self-aggrandizement politics to place themselves into positions of power, and to justify their own powers and privileges. Thus, religion, government and politics are becoming tightly interwoven to become different manifestations of one single entity—absolute power vested in a single person.

On the other hand, during the 2007 elections, many leaders of pentecostals joined the bandwagon. Although most of these men of collar lost, they proved to be quite popular. For example, the Rev. Moses ole Sakuda of **Kajiado North Constituency** proved to be a serious challenger to political heavyweight Prof. George Saitoti. Pastor Mike Brawan also put up a spirited fight for the Nakuru Town Constituency.

The rapid growth of pentecostalism has been most extensively studied, particularly by sociologists (Hollenweger, 1972; Martin, 1990; Poewe, 1994; Cox, 1996; Synan, 1997; Kalu, 1998). Some scholars agree, for example, that pentecostalism has certainly contributed towards the global reshaping and meaning of Christianity at the beginning of the twenty-first century. These groups, as we have seen, changed the political landscape of Kenyan politics as majority got involved directly or indirectly in poll politics, thus complicating the conventional way in which religion and politics had been practiced.

Between November and December 2007, not only did the number of prophecies about imminent catastrophes increase in number, but also in the attention they received from the upper economic classes and the media, which traditionally scoffed at them. These prophecies included predictions of the tremors experienced in the country in July 2007, which were interpreted as God's judgement of the nation. There were also conflicting 'prophesies' by prominent christian leaders, which predicted victory for various candidates and prayed and anointed them as God's choice for

presidency. For instance, the Manton Prophecy became a reference book or political gospel and often read in churches mainly in Central Kenya and part of the Rift Valley. The prophecy read in part:

> *President Mwai Kibaki will be re-elected as Kenya's President on December 27, 2007. My Hand is upon him to produce continued development and reformation in Kenya over the next five years, says the Lord! Crime will be dealt with severely; and it will decrease greatly and even be eradicated in certain sectors in the coming season! I saw three Visions of clashes, the first conflict I saw was involving the Mungiki. I saw men in military uniforms going in against these criminals to foil them (http://www.thomasmanton.com/prophecies/index.php?ctr_id=110&cnt_id=2).*

The ODM prophecy came from Theodhore Aluoch:

> *...the Lord spoke very clearly that the ODM was endorsed by him, mandated by him to lead this Nation he did not say that they were to share it with coalition, this coalition is man's plan. The lord had already declared Mr Odinga as his choice to lead this Nation, therefore there is no deals to divert the word of the lord...Odinga will win and become the president fulfilling his prophecy his word over this Nation, he watches over his word (http://melqoshrain.wetpaint.com/page/A NEW+PROPHETIC+WORD+FOR+KENYA+2008?t=anon).*

A decisive and most devastating prophesy that divided religious groups and voters among the Kalenjin was William Samoei Ruto's prophecy linking him with legendary Samoei and the future of the Kalenjin community. It was 'rumoured' that Ruto was a direct descendant of the great Nandi military strategist and leader. This earned him a euphoric following and great 'respect'. In fact, Ruto seems to share a name with Orkoiyot Koitalel Turugat arap Samoei. Many Kalenjins viewed Ruto as the reincarnation of Koitalel, or at least a descendant. Consequently, like Koitalel, Ruto was seen as defending Kalenjin rights. This myth was instrumental in understanding how Ruto was able to emerge as the foremost Kalenjin leader. In addition, just before the year 2007, one hundred years on, a Kenyan from Warwick University, with the help of an Egyptologist, tracked some sacred tribal sticks down to Captain Meinertzhagen's son's home. On discovering the significance of these sticks to the Nandi tribe, the son, Randle Meinertzhagen, decided that they return them to Kenya. One informant commented that 'it was so glorious for the Kalenjins to have acquired the strength of their great grandfather' as the sticks were handed to Ruto to preserve in Eldoret Town Hall.

The third prophecy concerned the political leadership in Western Kenya and Luo Nyanza, and it went: *Bubwami bukhamile khunyanja* (The leadership will come from the lake). '*Masinde Muliro nali owulila baana Babukusu ne Bajaluo, Nyanga*

balimuwa Bubwami (Muliro should cooperate with the Luo because they would one day give him leadership)'. With this dream, it was argued that the Bukusu had been totally seduced into ODM due to the strategy the party has used of cashing in on the infamous Elijah Masinde prophecy. It was alleged that the founder of Dini ya Msambwa, which was a thorn in the flesh of the colonial government, issued a prophecy in the 1960s that the leadership of the country would come to the Bukusu through Nyanza. This prophecy seems to have been modified by ODM supporters and the word 'Bukusu' had been conveniently replaced with the word 'Luhya'. This was supposedly done to accommodate Musalia Mudavadi, a Maragoli, and Raila's running mate in the political scheme. While visiting the family of Elijah Masinde, Raila invoked the prophecy and made a promise to the family:

> *I am your son and a believer in Masinde's prophecy and that is why we are here today to let you know that the prophecy is about to be realized. It's important for the Luhya to come together.*

Some scholars argue that such prophesies had impact in the mobilization of people to support certain candidates. They also argue that these conflicting views fuelled the divisions in the church further. For instance, Travis R. Kavulla observes that Bishop Margaret Wanjiru began her campaigns on the basis of a prophecy made by a visiting American Minister, which was imbued with pentecostalist imagery and rhetoric throughout. She was anointed in God's name for electoral victory at a Christmas day service at her church; she later claimed that she was 'taking this seat for Jesus' after being violently attacked on the campaign trail. After her election, she proclaimed her success as a sign that God materially rewards His believers. Wanjiru's religious and political speech aligned in a mutually reinforcing rhetoric premised on the material rewards promised by both. Her election provides strong evidence to the way that prophecy actually works (Kavulla, 2008).

One of the enduring memories of the 2007 general elections was the replete stories of prominent Kenyan politicians reported visits to witchdoctors in Tanzania, Nigeria and Zanzibar. Witchcraft and other unflattering spiritual exercises are usually a symptom of two things: desperation to get something at any cost, even at the cost of flirting with evil, and profound disempowerment in the face of injustice that has infiltrated the psyche and intimate relations (Rowlands and Warnier, 1988; West, 1997; Ciekawy, 1998; Behrend and Luig, 1999; MacGaffey, 2000; Heywood, 2000). If this is the case, the reports about an increase in consultations with witchdoctors indicate that the Kenyan population is instinctively aware that the country is profoundly flawed, but feels powerless to identify the cause of the problem or feels that they are too intimately intertwined with the problem to obtain the distance

necessary to examine or resolve it. According to Florence Bernault:[5]

> *At the twentieth century's end, religion and magic constitute one of the most powerful rhetoric of political culture in Equatorial Africa. Public rumours depict sorcery as the most common way to achieve personal success, wealth, and prestige in times of economic shortage and declining social opportunities. Political leaders are widely believed to perform ritual murder to ensure electoral success and power, and many skillfully use these perceptions to build visibility and deference. In the domestic arena, familial and social conflicts repeatedly crystallize around accusations of sorcery, especially during times of sudden deaths or personal disasters. Permeating the entire social and cultural spectrum, magic stands today as an ambivalent force that helps promote individual and collective accumulation as well as control social differentiation (Bernault, 2000).*

As Karugia explains, christianity or western religion does not sufficiently tackle the fundamental problems affecting Kenya and Kenyans and, hence, the invocation of witchcraft. This problem emanates from christianity, theological, cultural and historical roots. He points out that christianity has no geographical affiliations in Kenya. He is very diplomatic about this when he says that: 'The problem is not Jesus Christ. No he is a nice guy, who lived in another time in another place and we have confirmed he is not suitable for our Kenyan politics and for our time (Karugia, 2007: 4)'. It, therefore, emerges that christianity, like ethnicity and witchcraft, are the proposed antidotes, which the observer who diagnoses Kenya's problems must be willing to confront at the risk of alienation by believers, career ethnicists and the not-so-noble religious practitioners. The use of prophecies and witchcraft demonstrates how political parties mobilized strategies, regional arguments and historical justifications to court particular regional votes and promises of succession, power-sharing and regional devolution of authority and resources to create a broad-based multi-ethnic coalition.

Ethnicity and Religious Factors

A core feature of the post-colonial state and society in Kenya is its fragmentation along ethnic cleavages. The consequences of the ethnicisation of power and politics in Kenya is the constriction of the political space, hardened ethnic suspicion, deepened mutual ethnic antagonisms, and the reduction of politics to a zero-sum game (Jinadu, 2007a). The implication of the ethnicisation of power and electoral competition, and

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[5] In southern Congo, the political tradition relies in part upon the leaders' continuity with their descendants. In contrast, leaders of northern Congo have repeatedly seized power by annihilating or killing their predecessors. Most of their strength is associated with military and supernatural power. In many societies in Gabon, power and witchcraft are closely associated, yet leaders are chosen among remarkable individuals, not in a dynastic line.

the challenge for the consolidation of electoral democracy and the future of the state as rightly observed by Jinadu (2007b) is that:

> *If the state is the hotly contested hegemonic electoral terrain, where ethnic conflict takes place and invariably assumes deadly dimensions, as evidenced in electoral violence, we need to address the applied policy question of what modifications or alterations in the political and constitutional architecture of the state, including the administration of elections, are more appropriate than ones based on neo-liberal assumptions of possessive individualism to structure and direct ethnically-induced electoral violence to more manageable ends.*

Politics in Kenya in the run up to the 2007 elections was no doubt influenced by ethnic concerns; voters, parties and policies were distinctly placed along ethnic cleavages. The incumbent, Mwai Kibaki, is Gikuyu and his main rival and front-runner, Raila Odinga, is Luo. Thus, class is not the only reliable predictor of political loyalties and voting behaviour even in developed countries (Kwaja, 2009:40). Far more powerful are the constructed identities of ethnicity or religion. In Kenya, ethnic identities have greater political salience than religious identities or class in determining who gets what, when and how. Elections in Kenya from 1992 to 2007 have shown how determined the political class is to cling to power, notwithstanding the cost of this political system (Young, 1999).

The 2007 Kenyan election, which was meant to be a step forward towards consolidating electoral democracy was not only perceived to be rigged in favour of the Kibaki-led PNU, but also exceptionally violent, resulting in over 1000 election-related deaths and over a quarter of a million people displaced as a result of the violence (Romero *et al.*, 2008). The use of violence was informed by the fact that politicians and electorates were divided along ethnic fault lines. For instance, more than ten (10) churches countrywide were set ablaze in the volatile hotspots. This sent shock waves to all religious watchers inside and outside the country. The sheer cold-blooded calculations that saw the burning to death of over fifty (50) women and children trapped in the Kenya Assemblies of God Church in Eldoret symbolized the climax of deep-rooted tribal hatred that had been building up towards the 2007 elections. It equally rekindled memories of the genocide that killed an estimated 1 million Tutsis and moderate Hutus in Rwanda in 1994.[6] To a certain extent, this was seen as a pointer to the simmering revulsion among members of the opposition leadership to what they considered to have been the robbing of their victory by the incumbent President Mwai Kibaki, and his agents.

The burning of churches during the violence was shocking, given that many had come to regard churches as sacred and neutral places of worship and sanctuary. In the immediate aftermath of the elections, the overwhelming impression was that christians had been betrayed by their own brothers and sisters and their own leaders. Etnicity was at its all time high and it eclipsed religion.

During the same period, a catholic clergy was murdered in Eldama Ravine area. Asked why a clergy was murdered, an informant from Muserechi explained: 'I think since the church priest was a Gikuyu, then the priest had stepped on the wrong zone at the wrong time ...the highest percentage of the youths around Muserechi were ignorant and drunken'. On the other hand, it seems true that ethnic hatred and 'religious extremism' prompted much of the violence surrounding Kenya's disputed presidential elections, according to a Baptist pastor who lost a bid for a seat in parliament:

> *.... members of Odinga's Orange Democratic Movement with close ties to the National Muslim Leaders Forum orchestrated much of the rioting....Muslim extremists tied to the opposition party pledged long before the election that if certain conditions were not met prior to the December 27 voting, violence would result... I was in a unique position as both a pastor and a politician. I was in meetings where I heard what the politicians were saying, and I was in meetings where I heard what the bishops were saying.*[6]

The informant observed that while violence in Kenya has been portrayed as a spontaneous reaction to injustice and vote fraud, Muslim radicals planned much of it in advance. And while 'we will never know' if the election was rigged by the party in control...voters unquestionably were threatened and harassed by Muslim supporters of the opposition party. People were prevented from going to the polls, and people were prevented from counting votes. According to a mimeo released by religious leaders from the Kalenjin community:

> *...The violence was spontaneous and NOT premeditated. The bishops and the clergymen categorically refuse the sick and demonic notion some people may be harbouring that there was any form of planning, training or funding of youth for post-election violence. Those making such claims especially against the Kalenjin community must be having other ulterior motives other than the truth.*[7]

Ethnic clashes are thus a product of manipulation from both sides of the political divide to settle scores of old hatred and rivalries. Political acrimony across ethnic fault lines in the run up to the 2007 elections and beyond was rooted and further influenced by deep-seated grievances, and economic and policy issues. The perception that certain ethnic groups have been discriminated against in terms of access to political power and equitable distribution of economic growth further heightened tension between the Kibaki-led PNU supported by the Gikuyu and Odinga's ODM supported by the Luo (Romero *et al.*, 2008). The reality of the Kenyan political system reveals that mobilization of ethnic identities has brought negative forms of ethnicity

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[6] Susan Nagele, 31 January 2008/Volume CXXXV, Number 2: Election Chaos, A report from Kenya.

[7] http://www.abpnews.com/3043.article, Ken Camp, Pastor points to Muslims as source of Kenya violence; experts disagree, 21 February 2008.

to the forefront, to the extent that virtually everything came to be defined in terms of 'we' versus 'them' or the disruptive power of competing ethnicities (Olukoshi, 1999). The political parties and political class rely on this sort of mobilization as a vehicle for gaining legitimacy, to the extent that it has become the most dominant negative feature of politics in Kenya. In fact, it is a great source of concern in terms of the future of democracy that rather than abating, this mobilization is a prominent platform for collective political bargain and mandate protection.

Aftermath of the 2007 Elections: Confession of the Clergy and Reconciliation Efforts

Soon after the 2007 elections and the violence that engulfed Kenya, reconciliation efforts began. The clergy had lost moral authority to reconcile warring political factions and seemed to be partisan and divided along ethnic lines even after the elections. For example, in February 2008, prominent heads of christian churches in Nyanza Province expressed scepticism on both the outcome and management of the post-election crisis and called upon the relevant government to resolve the impasse to ensure that the disputed election results are resolved amicably and peacefully. The clergymen comprised the Chairman of the Nyanza Council of Churches, Bishop Washington Ogonyo Ngede, Bishop Francis Mwai Abiero of the Maseno South Diocese of the Anglican Church, Bishop Zephania Ouma Orao of the new Wine Church, Bishop Julius Otieno Oloo of the Living Water Church, Archbishop Asper Ogelo of the Gospel Fellowship Ministry, and Bishop George Obul. The church leaders maintained that the ODM presidential candidate, Raila Amolo Odinga, had legitimately won the polls and had beaten his opponent President Mwai Kibaki with a landslide majority.

> *It was their case or an overwhelming majority victory for Odinga and no sane person can cast doubt over this naked fact... Shameless rigging of the election was even witnessed by members of the European Union observers, the Commonwealth observers and members of the diplomatic corps. All and sundry had witnessed how the election process was abused and made their stand known...rigging was hatched by a few heartless cliques who surround the president, the Bishops further argued.*[8]

In March 2008, the NCCK formally apologized to the nation for having taken sides during the 2007 general election. This was considered an important step in the long road to the church recovering its credibility and playing its role of being the conscience of society. Several churches also joined forces in an initiative dubbed *Msafara-The Wheels of Hope*–in which over 500 believers joined a caravan from Mombasa through

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[8] Joint statement by religious leaders from the Kalenjin community under the auspices of Community Development Society on the post-election violence in Kenya, 14 January 2008.

Nairobi, Nakuru, Eldoret to Kisumu praying to cleanse the nation from demonic influences and taking humanitarian relief to internally displaced persons.

The second religious body to confess was the Catholic bishops in late March 2008. The church, having gone through much turbulence, yielded to the widespread criticism and admitted liability:

> *We (The Catholic Church) did not listen to the voice of the shepherd, who is Jesus Christ. We failed to love one another. We sinned by failing to love one another...*

Cardinal John Njue made the apology at the Holy Family Basilica as faithfuls celebrated a thanksgiving mass for formation of a grand coalition government. Though Catholic bishops repeatedly appealed for peace in the wake of the violence, the calls were dismissed especially by opposition members who said there could be no peace without justice. The church, in trying to track down its lost glory, initiated either independently or jointly with other civil society movements, lobbying of leaders for power-sharing between Raila Odinga and Mwai Kibaki. For example, the Evangelical Alliance of Kenya became instrumental in the formation of an inter-religious group, which used its collective lobbying power to negotiate at national level. They pleaded with the public to pray for peace:

> *Pray that the meeting would be fruitful and that President Kibaki and opposition leader Odinga would be receptive to seeking out a peaceful resolution. Pray that further violence will be avoided and that peace will be restored, that leaders would show restraint. Pray for the church in Kenya, that it would be a powerful source of healing and reconciliation and that its leaders and members would be protected in the midst of the instability. Pray for those who have lost loved ones, or been forced to leave their homes as a result of the crisis.*

The group held about three meetings with the former UN Secretary General, Kofi Annan, and the negotiating team for the National Accord. Involvement in these talks represented a positive departure for the church, which had been seen as heavily partisan and which, consequently, had lost a voice in politics at local and international level.

Even in this quest for reconciliation, religious groups were deeply divided on many other issues, the most prominent being whether suspected perpetrators of the post-election violence should get blanket amnesty to hasten national healing and reconciliation. Those from the Rift Valley and Nyanza supported unconditional release while their counterparts in Central and Eastern provinces supported the fact that justice must be done. Cardinal John Njue, the Archibishop of Nairobi, opposed amnesty calls to youths accused of taking part in the violence in Rift Valley, Nyanza, Western and Nairobi provinces. This was seen as continuation of the partisan role the church took during the election. Citing Obare:

> *We have given our ears to the state, instead of the state listening to us. We are compromised to the extent that it has become difficult for religious leaders to face their flock and preach...The church is morally and spiritually bankrupt. It is supposed to be the right regiment of God, which reconciles mankind with God. It is charged with saving mankind for life on earth and thereafter.*[9]

Even as this ecclesiastical crisis persisted, most informants for this study were of the view that certain religious leaders had directly been used by politicians, especially government ministers, for material gain. One commentator observed that:

> *...religious leaders should repent for being irrelevant; they don't exist anymore; most of them have become religious prostitutes and they are fed by the very government; they can't speak against the hand that feeds them.*

Father Patrick Kanja Wachira admitted thus:[10]

> *We were there, of course, but just like the nation itself, we were divided with respect to our political allegiances. Some of us were candidates for parliament, others gave politicians space to campaign at our places of worship and some of our utterances allowed people to draw conclusions with respect to the side we were on. You will understand, however, that it is also difficult for religious leaders to act according to people's expectations. During the referendum, the Catholic Church, at least, tried to be neutral, telling people that they should vote according to their conscience. Then we were accused of not giving direction. This time, many of us did take sides, and some even crossed the boundary and went into politics full-time. I admit that this caused confusion among the population.*[11]

Conclusion

In this chapter, we have argued that, historically, the relations of religion and politics in Kenya have been complex and paradoxical. Both institutions have increasingly yielded a certain degree of power and prominence in society as seen in the public's degree of 'religiousness'. For instance, politicians easily make appearances in churches, synagogues, or mosques and, on the other hand, religious leaders sometimes mobilize worshippers by encouraging members to register and vote, providing them with transportation to the polls, or publicly addressing political issues in religious settings. Consequently, cultural factors such as ethnicity and religion

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[9] Leo Odera Omolo, API/APN in Kisumu, Kenya.

[10] Juma Kwayera, Kenya: Religion no longer alternative voice, East African Standard, 25 May 2008.

[11] *Wajibu* magazine, Vol. 23, p1, 2008.

have become more important in people's search for fundamental values on which to build their hopes for the future. As such, when religion is used as an instrument for gaining political power, and emphasizing exclusiveness and primacy of one's own group at the expense of others, it brings a most destructive contribution. This frequent participation in religious activities thickens social networks that can be used for rapid and intensive political mobilization, hence reasons for the interest of many politicians to invoke religious discourses in public campaigns and mobilization.

Consequently, the 2007 general elections in Kenya demonstrate that ethnicity and ethnic politics are major forces that influence the behaviour of both the political and religious class. Where political power is at stake in confrontational politics, ethnic relations are likely to lead to conflict. The elections reinforced the fact that ethnicity and ethnic politics can be used by the political class to mobilize passions in a bid to protect or project their sectional interests. We have argued that during the turbulent years of the 'nineties', the Kenyan church generated radical theologians and clergy who were bold and focused on the political sphere as their primary target for social action. In comparison with the Moi regime, the church-state relations in the Kibaki era were more complex because of a larger number of players from the religious field, but also because those involved legitimized their actions from a vastly expanded range of ideologies and knowledge systems. Under the Kibaki regime, the churches embraced pastoral theology focusing more on welfare and individual morality of believers. They tended to use their authority for the purpose of self-aggrandizement, and politics to place themselves into positions of power and justify their own powers and privileges. At this point, religion was shaped and distorted for political purposes both by religious and administrative leaders.

Religious readers must guard against involvement in politics and keep a strategic and critical distance if this would compromise their christian witness or mislead the congregation; instead they should use the spiritual potential to bring about peace, love and growth.

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PART II:
THE GEOPOLITICS OF DEVELOPMENT AND ELECTIONS IN KENYA

5

The Geography of Voting in Kenya: An Analysis of the 2007 Presidential, Parliamentary and Civic Voting Patterns

Peter Ngau and Musyimi Mbathi

Abstract

This chapter analyzes the voting patterns in the 2007 Kenya's general elections for presidential, parliamentary and civic seats. Voting patterns are not independent from space and Kenya is no exception. In this election, high voter turnout was experienced, especially in areas where presidential candidates came from or had ethnic inclination. A link, therefore, is drawn between ethnic, regional preferences and candidates. Socio-economic factors are strong determinants of voting patterns in Kenya and there is strong spatial correlation in voting patterns. The Kenya population showed good understanding of issues affecting them and, hence, reflected the way they voted during the elections. Issues such as unemployment, crime and even constitutional amendment took centre stage during campaigns at all levels. Economic and political issues were seen as major determinants, since areas that perceive the government as not having done enough on these and other issues opted to vote for the opposition. Similarly, areas that perceived the government as having addressed these issues backed the incumbent president. Analysis by gender shows low levels of representation at parliamentary and civic levels by women. In North Eastern, Western and Nyanza provinces, for example, there was no single elected woman to parliament. In 2002, there were a total of 8 elected women compared to 14 during the 2007 general elections. The place of women in politics is still not well defined in the Kenyan political space. This may be attributed to cultural and economic reasons, which differ between communities and regions.

Introduction

There are multiple factors that determine voting patterns worldwide. These include education, economic status, ethnic background, political orientation, religion, gender and psychological determinants. These cut across geographical boundaries within respective countries. Racz (2004) observes that voting preferences mirror historical, economic, cultural and other determinants of political behaviour. McConnell and Bowditch (2008) in their analysis of voting patterns in the United States presidential elections (1976-2000) observed that voting patterns were also influenced by economic status and previous trends, where sections of citizens always opted to vote with the winning party, and maintained traditional voting preferences.

Within more developed economies of the west, elections and voting patterns are largely determined by the performance of the economy. This yardstick is therefore used by the electorate to determine success or failure of the incumbent (Lewis-Beck and Stegmaier, 2000; Geys, 2006). Voting patterns within less developed economies, according to Horowitz (1985) and Katipeni (1997), among others, are greatly influenced and decided on cultural, racial, linguistic or tribal solidarities. Elections in these settings are little more than a head count of identity groups.

However, Bratton and Kimenyi (2008) observed that in Kenya, ethnicity is an important factor in explaining electoral choices, but not the only one. There were several other relevant determinants of partisanship, such as personal economic well-being, the performance of the economy and the government's record.

In Kenya, the constitution allows those who have attained the age of 18 years to register as voters. A total of 14,296,180 voters were registered for the 2007 general elections used to elect presidential, parliamentary and civic leaders country-wide. Of these 14 million voters, 52.9 per cent were male while 47.1 per cent were female. The election, which took place on 27 December 2007, involved electing a president, 210 members of the National Assembly, and 2,498 members of local authorities (councillors). This electoral process was supervised by the Electoral Commission of Kenya (ECK) and also involved independent observers drawn from local and international actors.

Key questions for the analysis of Kenya's 2007 general elections voting patterns are: What factors explain the spatial variation of voting patterns exhibited by voters? Are the voting patterns explained by the spatial setting (urban or rural)? Is the pattern of voting based on ethnic, party and other socio-economic variables? What gender representation is exhibited across the country and within the provinces? Hypothesis for the study are expressed thus: Whether there are marked voter turnout differences between urban and rural areas; and whether voting patterns are highly dependent on socio-economic and cultural factors defining regions and party popularity.

Previous elections in Kenya show a strong relationship between cultural background and voting patterns. Oyugi (1997) and Orvis (2001), for example, pointed out that previous multiparty elections in 1992 and 1997 rotated around ethnic alignments. However, the 2007 general elections saw major ethnic groups come together to support presidential candidates, Mwai Kibaki and Raila Odinga, in their bids. Bratton and Kimenyi (2008) observe that voters considered other factors other than ethnicity in deciding how to vote.

The 2007 general elections show that voting patterns were determined largely by ethnic backing, setting (rural or urban) and party affiliation by region. In Ghana, for example, voting patterns exhibit a rural-urban dichotomy, with rural areas generally voting for the incumbent (Bahumia, 1998). Socio-economic and political characteristics of regions play an important role in defining voting patterns in Turkey's Izmir region (Gulgun and Tanju, 2008).

The purpose of this study is to analyze the 2007 general elections in Kenya at national and constituency level and determine what patterns can be observed, and what underlying factors explain the voting patterns. The study will examine the voting patterns by analyzing four scenarios or landscapes defined by representation, setting, participation, and change/dynamic landscapes. The representation landscape shows party and gender representation, the setting analyzes voting patterns within urban and rural areas, participation compares voter registration and turnout aspects, while change or dynamic landscape examines the patterns of change in representation by members. The unit of analysis is the constituency and provincial level of administration.

Geography of Voting: A Theoretical Analysis

Kotlin and Schill (2008) maintain that there exists 'three geographies' (cities, suburbs and small towns, and rural communities) whose political attitudes are unique. They argue that it is these units, and not states, that really affect political behaviour. Although this is valid, it is the larger spatial units (state or constituency) that are taken into account in the vote tallying and representation in parliament.

The analysis and approach taken in this study is based on two geographies: urban and rural. Election results in Kenya are presented on the basis of constituencies, whether urban or rural. No distinction is made when tabulation of results is made. Within the current electoral system, there are several constituencies composed of urban populations. These include those within Nairobi Province, Mombasa Island, Nakuru and Kisumu municipalities. There are constituencies with urban connotation, but reality on the ground shows otherwise. Machakos Town, Eldoret North, Kisumu Town East and West, and Nyeri Constituencies are classified as urban but have large rural populations residing within. The study has, however, made an attempt to distinguish between urban and rural constituencies in the analysis by setting/

spatial landscapes. The sub-urban constituencies have been subsumed within the larger classes of urban or rural.

Pattie and Johnson (2008) observed that there were two main lines of thought that dominate in the explanation of electoral behaviour. Firstly, positional theories place emphasis on voter social locations, long-term ideologies and loyalties. Second, valence theories maintain that voting decisions are determined by short-term judgements of government competence and performance. Both views, according to Pattie and Johnson (2008), take cognizance of partisan identification and economic interests of voters.

Economic factors also influence voting patterns. On the other hand, voting patterns are influenced by current government performance in all sectors, including economic. This explains patterns mainly in developed countries where government performance and globalization issues are predominant.

What determines voting patterns in Kenya? Multiparty politics in Kenya is still at an early stage of development, barely 15 years old. This explains the dynamic nature of the political environment as evidenced by numerous and unstable political parties, often lacking strong ideologies. In Kenya, the political scene tends to be modelled around powerful individuals, who rally regional and ethnic support. This may not be the picture in more developed economies of the west where the few political parties within a nation enjoy nationwide support, and are founded on strong ideological and institutional background.

The 2007 general elections in Kenya were the tenth elections since independence and the fourth under a multiparty political system. Historically, these were the most highly contested in Kenya owing to vigorous campaigns by political parties and voter involvement/participation.

Bratton and Kimenyi (2008), in an analysis of the 2007 Kenya general elections, observe that there is more to voting than ethnicity. Similarly, Bratton *et al.* (2005: 307) in a comparative study of several African countries noted:

> *Ethnic-linguistic identity plays no significant role in vote choice in five countries... all of which rank low in ethnic voting....Indeed, for all countries studied, vote choice is first and foremost a product of popular performance evaluations...What matters most to voting for the winning party is whether people think that the national president has done a good job.*

Pork and Barrel Effect

The *Pork and Barrel Effect* may be used to explain patterns of voting and the role of the ruling elite regarding political support. The term *pork barrel politics* usually refers to spending that is intended to benefit constituents of a politician in return

for their political support, mainly in the form of votes. This terminology was also initially used to describe the effect of passing of bills by Congress in the United States of America in order to benefit a small group of citizens, usually with the intent of securing votes to reflect the bill's sponsor. The pork and barrel effect is referred to as 'election pork,' for example in Danish (valgflæsk) but this word does not always imply corrupt or undesirable conduct. Election pork in Swedish (valfläsk) and Norwegian (valgflesk) implies promises made before an election, often by a politician who has little intention of fulfilling them. Similarly, within the Kenyan context, government funding of projects to benefit particular districts and communities was evident during the campaign period prior to the 2007 and other general elections.

Throup and Hornsby (1998) make reference to pork and barrel politics during the 1997 Kenyan general elections when the incumbent toured the Coast Province and announced that the government was re-opening the collapsed Ramisi Sugar Factory and Kilifi Cashew Nut Factory. In Lamu District, the President ordered the expedient issuance of title deeds to farmers in Mpeketoni Settlement Scheme.

The situation prior to the 2007 general elections was not any different. The government and other influential people within it executed specific actions to yield jobs or other benefits to specific groups and patronage opportunities to its political representatives. Common was the creation of new districts and road projects. In December 2007, President Mwai Kibaki yielded to demands by Baringo North KANU parliamentary aspirant, John Lokorio, to create Baringo North District, whose headquarters is Kabartonjo. In addition to promising tarmacked roads in the area, the President also issued title deeds to land owners in Mochongoi Division, saying the second batch would be completed the following year.

In Western Province, the President created Kakamega District, which was composed of only Kabras Division. Similarly, in Eastern Province, he created Mutomo and Mwala Districts, as well as Shurr and Kalacha Divisions in Chalbi District and Kargi and Ngumit Divisions in Laisamis District. In Marsabit, he created Omarr, Karare, Dakha Barida and Segel Divisions.

Two days prior to a by-election in 2006, the President created more administrative boundaries in Saku Constituency. In the same district, the Vice President is on record declaring the creation of new locations and sub-locations during the campaign period before the by-election. In November 2007, in a move likely to be seen as another government bid to woo voters, the Minister in charge of forest resources, David Mwiraria, announced that loggers will be allowed into the gazetted forests and the *shamba* system would be reactivated. The *shamba* system was banned four years ago to protect forests that the government thought were being depleted.

The launch of the women and youth funds late in 2007 may be interpreted to imply government seeking support from the two groups come the elections. However, government officials were quick to deny this, claiming that the funds would reach all, irrespective of their political inclination.

Analysis of voting patterns, especially in areas that received a fair share of infrastracture and capital projects shows total support for the incumbent. On the contrary, most areas that exhibited poor road network and general lack of infrastructure did not support the incumbent. For example, in the 2002 general elections, North Eastern Province voted against the KANU government in anticipating for a change.

During the 2006 by-elections in Marsabit and Moyale Districts, the government hoodwinked the residents that it was concerned about their plight by mobilizing resources to commence road construction, only for the equipment to be withdrawn after the by-elections. Not much has changed in this province since 2003. Poor infrastructure, insecurity and food scarcity still affect the residents of this region.

However, these efforts by the government may sometimes be well meaning and may at times yield positive results. Election time goodies may be used by an incumbent with positive results if people on the ground are convinced that it has nothing to do with the political events of the moment. Opposing sides may similarly use these gestures to rally the people and protest against the government, claiming that they came late and are unwelcome.

Role of the Church

Machiavelli made an attempt to link politics to morality in his work *Discourses on Livy* (1531). He viewed conception of the proper application of morality to practical political life as important. Machiavelli advocated that rulers use the power of the church to establish and maintain their reigns, believing that this would maintain stability in society (Mansfield and Tarcov, 1998).

Some governments have either endorsed or fully administered specific religions, sometimes to the degree that citizens have been strongly discouraged from following any other. A close link between religion and politics is exemplified in the case of the Church of England, which was established in the sixth century and remains the official Christian church in England, with the monarch empowered as its 'Supreme Governor'. Other examples include the Roman Catholic Church's status as the official religion of several countries in Europe and Latin America, and the official status of Islam in many countries around the world.

Khan (2004) observes that there are two reasons why religion and politics are intertwined. The first is the increasing use of complex discourses for the purpose of legitimization. Today, all politicians seem to follow the Machiavellian dictum—it is not important to be just, it is important to be seen to be just—and, therefore, politicians and political parties and regimes produce discourses to legitimize their goals and strategies. It is in the production of these discourses that religion either underpins political logic or camouflages politic motivations, depending upon the cultural context.

The second reason and perhaps the most important reason why religion will always play a role in crucial political issues is the important role that religion plays in identity formation. All political issues that are important eventually affect individual and collective identity and, in the process, trigger religious sentiments. As long as religion plays a role in the identities of people, it will play a role in politics.

The situation in Kenya draws parallels to the views presented earlier. The church is regarded as an institution near to the masses and, thus, commanding a large following. The church has a moral responsibility to educate its followers on the need to elect morally upright leaders, but not necessarily endorse a candidate. Members of a given religion during the elections will most likely vote for those who belong to their faith. The Catholic Church in Kenya, for example, did not strongly condemn any misgivings of the current government during the elections. This may be attributed to the fact that the incumbent president belongs to the Church. The Church during the election period had developed a close relationship with some politicians, going out of their way to contribute generously towards church construction and related activities. All this was meant to convince the potential voters, who are otherwise churchgoers, that the contester was a peoples' person and close to them socially. This networking has worked for some politicians over the years, given that most churches may not be well endowed, and thus the donations are welcome.

While religion and state in Kenya are separate under the Constitution, the two (religion and politics) mix freely in national life. In the late 1960s, the church came out strongly to protest over the assasination of Tom Mboya, who was up against tribalism and political intolerance shown by the then regime. In the 1980s and mid 1990s, the church came out strongly and supported political change. Bishops Alexander Muge and Henry Okullu were among notable clerics who pressed for political change in Kenya. Many consider them as having helped midwife democracy in Kenya in the years between 1985 and 1995. Throup and Hornsby (1998) write:

> *During 1990 and 1991, the Bishop's Conference had issued two pastoral letters on political issues each year, but in the six months since the legislation of multiparty politics...the bishops had issued five letters all highly critical of KANU and Moi regime. They demanded a non-partisan electoral commission and even supported calls for voter registration boycott as drummed by the National Council of Churches of Kenya (NCCK). Former President Moi repeatedly warned the church to keep off politics.*

Kenyan politics has witnessed great interest by religious leaders since the 1980s. In the 2002 general elections, Pastor Moses Akaranga and Bishop Stephen Ondiek were elected members of Parliament in Sabatia and Ugenya Constituencies, respectively. Akaranga was later appointed to the Cabinet. In the 2007 elections, notable religious leaders who sought election included Pastor Pius Muiru of Kuna Nuru Gizani ministry, Bishop Margaret Wanjiru of Jesus is Alive Ministries, and

the Reverend Mutava Musymi, formerly head of the National Council of Churches of Kenya. Although Pastor Muiru was unsuccessful, Bishop Wanjiru and Reverend Mutava Musyimi went on to win the Starehe and Gachoka seats, respectively. The church played a role, but other factors such as party affiliation contributed to the candidates winning.

The public support shown by religious leaders and their followers in past elections is testimony that politics and religion in Kenya are intertwined. The Catholic Church in October 2007 plunged into the *Majimbo* (federalism) debate by making it clear it had no preferred presidential candidate in the coming polls. In 2007, the Kenya Episcopal Conference described the *Majimbo* system of governance as 'disastrous' and warned that it would divide the country into tribal groupings if implemented (*East African Standard*, 26 October 2007). The Anglican Church of Kenya (ACK), on its part, added its voice to the debate, declaring its support for a devolved system of government, which the opposition led by the Orange Democratic Movement (ODM) preferred. The two church groups clearly expressed their views, which supported the ruling party and opposition, respectively.

The ODM may be the best example to demonstrate the role and impact of religious institutions in politics. During the 2007 general elections, it managed to control the entire Coast Province vote based on the Memorandum of Understanding (MoU) signed between the Muslim community and the party leader Raila Odinga. Although some leaders of the faith did not approve of this (*East African Standard,* 11 November 2007), the MoU was seen as working favorably in the support Raila Odinga received from Muslims.[1]

In November 2007, the Presbyterian Church of East Africa (PCEA) Secretary General declared support for Mwai Kibaki's re-election. PCEA is predominant in Central Province and the Secretary General's stand was seen as an ethnic realignment rather than a religious stand. He equated the support to a pregnancy that is due.

National versus Local Interests

During the 2007 elections, President Mwai Kibaki stood on a Party of National Unity (PNU) ticket for entry to parliament. Many of those who supported the president did so based on what they saw as his development record and ideology, keeping in mind that the party was barely three months old during the election date.

PNU, like other parties, had to rely on point-men from each region/province to spearhead its campaigns. These link persons fronted for the party within their

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1 The National Muslim Leaders Forum (Namlef), which signed the pact on behalf of fellow Muslims, said they had been motivated by the need to protect the interests of members of the religious community who have suffered oppression under successive governments since independence in 1963. Namlef chairman Sheikh Abdullahi Abdi said: 'The objective was to safeguard the interests of a section of the Kenyan community (Muslims) that has undergone atrocities over the last 44 years' (*Daily Nation,* 28 November 2007).

respective regions, given their understanding of the local politics and support from the local communities. PNU had ministers Simeon Nyachae, Musikari Kombo, Chirau Mwakwere and Kipruto arap Kirwa as point-men in Kisii Nyanza, Western, Coast, and Rift Valley provinces, respectively. It was expected that these personalities would attract voters and win majority votes. However, local politics seemed to take centre stage, where voters did not approve of PNU at local level but rather its opponents. This explains why many of the PNU point-men lost at local level.

In some regions, parties may not have had much impact at local level, but rather individuals. This may explain why Linah Jebii Kilimo, Charity Ngilu, Kabando wa Kabando, Danson Mungatana and Wavinya Ndeti won their respective seats in major party strongholds.

The political stand by New FORD-Kenya, Safina and Shirikisho parties to support their own candidates at local level while backing Kibaki for the presidential seat reinforces the notion that local level politics were important and indeed shaped the outcome of elections.

In North Eastern Province, the ODM presidential candidate used the Wagalla Massacre as a campaign tool by promising would be voters that he would look into the issue once elected. This incident, which resulted in the loss of many lives during the fight against insurgency in the region, is close to the hearts of the local population. Therefore, any politician who offered to help the community address the issue was likely to win the day.

Clanism also played a major factor in determining the voting outcome within North Eastern Province. ODM won 5 out of 11 seats in this province, while KANU retained 3 seats with Safina and NARC-Kenya winning 1 seat each. North Eastern was originally seen as a KANU stronghold, but factors such as clan support led to KANU candidates losing out to other candidates supported by major clans. During the referendum for the new constitution in 2005, the Member of Parliament for Wajir East spearheaded the then pro-government 'Yes' campaign. Come the general elections in 2007, he was regarded as a sell-out since the local Muslim community believed the constitution did not favour the Muslims in particular.

Methods and Data in Voting Analysis

Geo-information and associated methodologies such as mapping and analysis, spatial modelling, visualization and spatial statistics are important and valuable tools in understanding the nature of relationships between two or more variables. In this study, they are used to show, for example, election outcomes against well-being status and geographical regions. The use of visualization models to show voting patterns and people's preferences for presidential, parliamentary and civic parties and candidates provides, at a glance, outcomes across the Kenyan spatial sphere.

GIS tools have been used to provide a better understanding of voting patterns across the country and contribute to an understanding of political forces and drivers over time. Data analyzed are from the 2007 general elections and previous elections, which were obtained from the Electoral Commission of Kenya (ECK). This data was obtained from ECK records, including the official website, and verified with government gazette notices. A database was created using statistical software (SPSS and Microsoft Excel) to enable the running of frequencies. To integrate the data into GIS for spatial analysis, the data was converted into database format (dbf). Arc-View software was used to generate shape-files containing spatial data, which were linked to the statistical tables using key identifiers in both datasets. This enabled spatial analysis and visualization of voting patterns and presentation of statistics. Spatial models were developed showing voting patterns at national and provincial level.

Both quantitative and qualitative methods were used in this study. For the quantitative data, the main sources are the ECK 2007 general election results. Data and information was obtained from a variety of articles and books, and Internet-based sources and local press/newspaper articles.

The GIS environment provides the ability to relate tabular data (voting outcomes) to the geographic features (constituencies) and be able to perform spatial and overlay analysis. In this case, GIS was used to create valuable maps and presentations that revealed national, provincial, constituency and local level voting patterns.

The database, which was used to develop spatial models of voting patterns, contained variables such as voter turnout, percentage of voters who voted during the elections, setting of the constituency (rural or urban), representation by gender, local government representation, and whether the seat was retained by the incumbent or a new member of parliament was elected, among other variables.

Use of GIS tools

The relevance of GIS in social science research and the analysis of place and space has been highlighted previously (Soja, 1989; Crabtree, 2003). Goodchild *et al.* (2000), for example, notes that social scientists are continuing to pay more attention to location and spatial interaction in theoretical frameworks.

The science of GIS and spatial analysis has the capability of integrating political, demographic and social processes to facilitate their interpretation (Goodchild, 2000). Increasingly, GIS is being applied to better understand and respond to a variety of socio-economic and political problems.

One of the strongest arguments for using GIS in mapping and understanding voting patterns in the analysis of voting patterns in Kenya is that it provides observations with context, whereby processes can be examined in their geographic settings.

GIS was used to provide answers and perform the following functions:

- Generating models (thematic maps) to denote the intensity or variation of observed patterns

- Overlaying of different sets of information

- Demonstrating change and dynamism over time in the political landscape

- Measuring participation and popularity of entities (parties and personalities) across the country

Geo-information tools have traditionally been used to provide answers to questions relating to space, locational factors, change and dynamics and observations. In essence, a GIS will be used to provide answers to:

(i) Location: What is at..................? Providing answers to what exists where/particular location

(ii) Condition: Where it is............? Provide answers as to where certain behaviour/phenomena is observed

(iii) Trends: What has changed over time.............? Provide answers on why and by how much change has taken place

(iv) Patterns: What spatial patterns exist.........? Explores what phenomenon is known to exist in particular locations and possibly why it does. A combination of variables is used to obtain specific answers

Other reasons advanced by organizations and individuals for the use of GIS tools are that more than 70 per cent of information and data has geographic orientation, or is associated with specific spatial locations; GIS has a strong visualization and analytical capability; and that GIS has the ability to combine spatial and non-spatial data and attributes to provide answers to users.

For social scientists, GIS technologies can be used to analyze and interpret data in different ways. The analysis of two or more variables at the same time enables one to generate and visualize information otherwise not available. In this case, GIS tools were used to examine voting patterns within urban and rural settings and match these with outcomes based on party popularity. It was also possible to analyze local government and parliamentary representation. There were areas where parties won both parliamentary and local government seats, while in others, the party that won a parliamentary seat did not enjoy grassroots (local government) support by using the councillor's indicator. Analyzing election results to answer questions about voter turnout and preferences is best carried out with the help of GIS. In summary, therefore, these tools make interplay of factors such as zone/region, party and demographics more apparent and, therefore, helps generate new insights.

Data Structure

The structure of the data used for analysis is based on the spatial aggregation and disaggregation of areas of representation. At the bottom is the registration area where a particular voter is entitled to vote. This also coincides with the area/location where one registers as a voter. Many registration areas can be aggregated to form a civic ward within a local authority. Civic wards are represented by councillors. Constituencies are made up of more than two civic wards. At this level, the areas are represented by a Member of Parliament (MP). An aggregation of constituencies thus forms the parliament, which also consists of non-elected members (nominated MPs).

The database developed was able to show voting patterns at civic, constituency and national level. Within these levels, the performance of individual parties was analyzed to generate spatial models of the 2007 general elections. The model below illustrates the data structure and voting and representation levels in Kenya.

Kenya comprises of 8 provinces and, currently, more than 140 districts. A province constitutes districts, which in turn constitute constituencies. There are 210 constituencies, although the number of registered voters in each constituency varies. The constituencies vary in geographical size, with the smallest being urban constituencies, although they have large numbers of registered voters. Table 5.1 shows the number of constituencies within each province. Rift Valley Province has the largest number of constituencies (49), registered voters and is also the largest in size. Central Province is the smallest after Nairobi but has the second largest number of registered voters. Nairobi, Rift Valley and Coast provinces depict a more cosmopolitan population structure.

Data Validity

Data used in this study was sourced mainly from the ECK database, among other independent sources. The registered voters per constituency data obtained from the Commission showed statistics of registered voters by age and gender. By election time, the database may not have taken into account changes such as deaths, which are likely to occur among the registered group. Consequently, there were a large number of deceased voters still appearing in the voters register. Cases of multiple registration occurred in several parts of the country. This aspect could significantly affect end vote tally, especially in constituencies where voter registration was low.

Electoral Results of the Main Political Parties, Voting Patterns and Underlying Factors

Findings

Many scholars have contributed to the theoretical and empirical analysis of voting behaviour, and examined the factors that contribute to observed patterns in a

developing country setting such as Kenya's, but few have used spatial tools to analyze these patterns. Spatial models were developed to help in the visualization of voting patterns following the 2007 general elections in Kenya.

Figure 5.1: Electoral data structure (spatial and tabular)
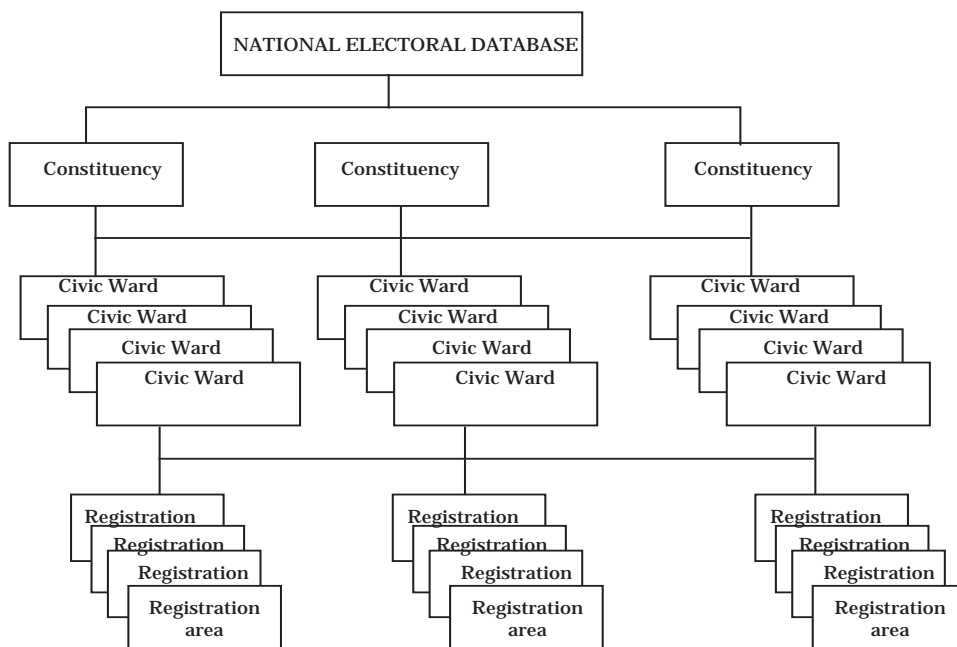
Table 5.1: Population and registered voters by province

Province	No. of constituencies	Projected population (2005)	Registered voters 1997	Registered voters 2002	Registered voters 2007
Nairobi	8	2,751,860	720,305	884,135	1,225,356
Central	29	4,038,407	1,340,186	1,563,084	2,186,936
Eastern	36	5,120,674	1,459,510	1,734,209	2,374,763
Rift Valley	49	8,366,048	2,145,505	2,415,555	3,358,381
Nyanza	32	4,916,566	1,334,827	1,555,986	2,041,680
Western	24	3,885,287	1,019,455	1,202,104	1,564,682
North Eastern	11	1,438,916	165,782	216,336	315,756
Coast	21	2,927,269	781,999	879,741	1,178,537
Total	210	33,445,100	8,969,566	10,451,150	14,246,091

Source: Electoral Commission of Kenya

Representation landscape

Candidates were fielded by 108 parties throughout Kenya. Of these, only 23 (or 21%) managed to have one (1) member elected to parliament. Table 5.2 shows the number of seats each party managed to win, while Figure 5.2 shows seats secured by respective parties during the 2007 general elections. Only 4 parties managed to secure more than 10 parliamentary seats. ODM and PNU, which were viewed as the main parties, managed to secure 99 and 43 seats, respectively. ODM-K secured 16 seats while KANU managed 14 seats.

The spatial distribution of seats won by political parties shows dominance in particular regions by party owing to a number of factors. ODM, for example, captured majority of the seats in Nyanza, Coast, Rift Valley, Nairobi, Western and North Eastern, with varied margin in each province. PNU was more popular in Eastern and Central provinces (around Mount Kenya region).

PNU secured 20 (69%) of the 29 parliamentary seats in Central Province while ODM secured 27 (87%) of the 31 seats in Nyanza Province. ODM-K secured 14 (38%) out of the 37 seats in Eastern Province. ODM secured 33 (66%) of the 50 seats in Rift Valley (refer to Table 5.5).

Figure 5.2: Parliamentary representation by party
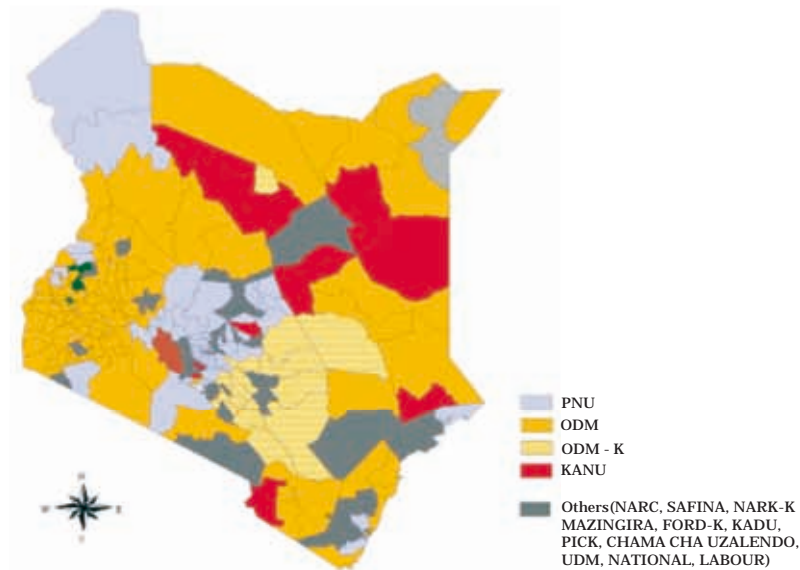
Analysis of 2007 General Elections, Kenya

Table 5.2: Political party representation in parliament after the 2007 general elections

Party	Seats	Seats (%)
ODM	99	47.14
PNU	43	20.48
ODM-K	16	7.62
KANU	14	6.67
Safina	5	2.38
NARC-K	4	1.90
FORD-P	3	1.43
NARC	3	1.43
New FORD Kenya	2	0.95
Chama Cha Uzalendo	2	0.95
PICK	2	0.95
Democratic Party	2	0.95
Sisi kwa Sisi	2	0.95
Mazingira, UDM, PPK, FORD-A, CCU, KENDA, NLP, KADU-Asili, PDP, FORD-K (one seat each)	10	4.80

Some of the smaller parties such as UDM, FORD-K and Safina, managed to secure parliamentary seats and ward level seats. The major parties, in many instances, secured both parliamentary and civic seats unlike the smaller parties. This may be attributed to the resource requirements for mobilization at ward level, which smaller parties may not have enjoyed.

There were constituencies where a party won majority of the civic seats within the constituency but did not win the parliamentary seat. This was the case in Igembe North where KANU won majority of the civic seats but the parliamentary seat was won by a PNU candidate. This is discussed at length elsewhere in this chapter.

Table 5.3 shows the newly created districts and the constituencies. The parties representing the constituencies are shown. Creation of new districts is used to determine the impact of actions by political leaders prior to elections. The government of the day created more than 50 new districts. Analysts would view this as a political strategy to elicit support, but the government maintained otherwise.

The table clearly shows that the incumbent government did not benefit outright from the creation of new districts as may have been thought. The incumbent government secured 38 per cent of the seats while ODM secured 41 per cent of the seats in the newly created districts. The two main parties secured seats within their strongholds. The strategy did not work well for the incumbent, especially in Western, Eastern and North Eastern Provinces.

At ward level, the three main parties enjoyed support from their strongholds. PNU secured majority of ward seats within Central Province while ODM got majority seats in Rift Valley, Nyanza, Western and Coast Provinces. ODM-K secured both parliamentary and ward level seats in lower Eastern Province, while KANU secured both parliamentary and ward level seats in parts of Eastern and North Eastern Provinces.

A comparison of parliamentary seats representation and local government representation shows a similar picture, although there were areas where a political party won the parliamentary seat but did not have a majority at local government (ward) level.

The questions arising from the above observation are whether a presidential candidate could have majority seats in parliament and not win the presidential elections. This is possible when we take into account local politics. Voters may have elected an aspirant aligned to a particular party based on his local popularity and not party affiliation, while voting for a presidential candidate who belongs to a different political party.

As shown in Table 5.4, there were constituencies where majority of the civic seats were secured by a different party other than the one fronted by the Member of Parliament. This may be attributed to candidates of smaller parties concentrating efforts to secure civic seats as opposed to parliamentary seats owing to resource constraints. Voters may have voted candidates based on their individual traits rather than party lines. This was the case in Kilome Constituency, which was an ODM-Kenya stronghold, but Harun Mwau was elected on a Party of Independent Candidates of Kenya (PICK) ticket owing to his exemplary development record in the area.

Party Representation by Province (2007 General Elections)

Table 5.5 shows strongholds of the main political parties during the 2007 general elections. PNU managed to secure majority of the seats in Central Province. Similarly, ODM and ODM-K managed to secure majority seats in Nyanza and lower Eastern Provinces, respectively. Unique about the findings is that there were provinces where the main parties did not secure a single seat. PNU did not secure any seat in Nyanza. Similarly, ODM did not secure any seat in Central Province. This demonstrates the ethnic factor within elections in Kenya. Voting patterns of the Kenyan electorate are not entirely determined by party agenda and candidate's development record. Other factors such as ethnicity and region are important. The impact of a polarized political landscape is evident in Kenya, with smaller parties having control in small spatial regions dominated by a homogenous ethnic group.

Tables 5.3: Representation in new districts

Central Province	
Nyeri North	PNU
Nyeri South	PNU
Murang'a North	PNU
Murang'a South	PNU
Kiambu East	PNU
Kiambu West	PNU
Gatundu	PNU
Nyandarua North	PNU
Nyandarua South	PNU

Rift Valley Province	
Trans Nzoia North	ODM
Trans Nzoia South	ODM
East Pokot	ODM
Uasin Gishu North	ODM
Uasin Gishu South	ODM
Laikipia West	PNU
Laikipia East	PNU
Molo	PNU
Naivasha	PNU
Subukia	PNU
Narok North	ODM
Narok South	ODM
Loitokitok	PNU
Turkana North	PNU
Turkana South	ODM

Eastern Province	
Yatta	ODM-K
Kangundo	ODM-K
Kibwezi	ODM-K
Kitui South	ODM-K
Kitui North	ODM-K
Igembe	PNU
Tigania	PNU
Meru Central	PNU
Imenti North	Mazingira/PNU
Imenti South	PNU

Western Province	
Kakamega North	FORD-Kenya
Kakamega South	ODM
Vihiga/Emuhaya	ODM
Hamis/Sabatia	ODM
Mumias	ODM
Butere	ODM
Bungoma North	FORD-Kenya
Bungoma South	ODM
Bungoma East	KADU
Bungoma West	FORD-Kenya

Coast Province	
Kilindini	ODM
Kinango	FORD-P
Kaloleni	PNU

North Eastern	
Wajir North	ODM
Wajir East	ODM

Nairobi Province	
Nairobi North	ODM
Nairobi West	ODM
Nairobi East	ODM

Nyanza Province	
Kisumu East	ODM
Kisumu West	ODM
Rongo	ODM

Figure 5.3: Representation at civic level based on majority seats at local authority

**Local Government Representation
(Majority of Seats Captured)**

Majority of Seats by Party
- PNU
- ODM-K
- KANU
- ODM
- OTHERS

Shared seats by Number of Councillors
- ODM PNU
- PNU ODM-K
- KANU SAFINA
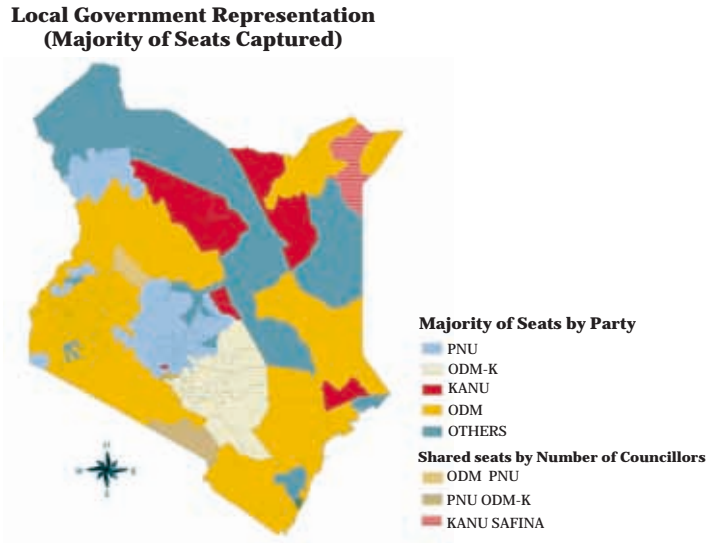
Setting/Spatial Landscape

There is a distinction between rural and urban population participation and involvement in politics. Politics within urban areas, which are cosmopolitan, have in the past witnessed partisan-based campaigns, sometimes resulting in violence owing to rivalry between tribal groups. Approximately 75 per cent of the country's constituencies are regarded as rural, with more than 6 million voters during general elections. The urban constituencies had slightly more than 3.1 million voters who turned out. A comparison of voter turnout shows rural constituencies registering higher voter turnout compared to urban constituencies.

All major parties (PNU, ODM and ODM-K) obtained more votes from rural areas, including Members of Parliament. Of the urban constituencies, PNU managed to secure 12 seats, representing 21 per cent, while ODM and ODM-K secured 51 per cent (29 seats) and 5 per cent (3 seats), respectively. Other parties combined secured 22 per cent (13 seats) of the urban constituencies. Within the rural constituencies, PNU, ODM and ODM-K secured 31 seats (20%), 77 seats (52%) and 30 seats (20%), respectively.

An analysis of the urban presidential votes shows that the incumbent received more votes than any other candidate. Kibaki received 1,543,311 votes, an equivalent of 49 per cent of the urban vote, due to an overwhelming support from Central and Nairobi Provinces, which have many urban constituencies. Presidential candidates received majority votes from rural areas, with Kibaki receiving most rural votes from his native Central Province. Raila obtained 1,301,047 votes from Rift Valley compared to 926,143 from Nyanza where he comes from. This is attributed to the large number of registered voters in Rift Valley compared to Nyanza. Raila obtained 11,491 votes

Table 5.4: Constituencies where parliamentary and civic seats are dominated by different parties

Constituency	Party of Member of Parliament	Majority civic seats
Central Imenti	Chama Cha Uzalendo	PNU
Kilome	Party of Independent Candidates of Kenya	ODM-K
Kitui west	National Alliance Rainbow Coalition	ODM-K
Isiolo South	Kenya African National Union	NARC-K
North Horr	Orange Democratic Movement	NARC-K
Saku	Orange Democratic Movement-Kenya	KANU
Nyatike	Orange Democratic Movement	PNU
West Mugirango	Orange Democratic Movement	FORD-K
Bomachoge	Forum for Restoration of Democracy-People	FORD-K
Nakuru Town	Party of National Unity	ODM
Mogotio	United Democratic Movement	ODM
Kajiado North	Party of National Unity	ODM
Lugari	Kenya African Democratic Development Union	ODM
Malava	New Forum for Restoration of Democracy-Kenya	ODM
Kimilili	Forum for Restoration of Democracy-Kenya	FORD-K
Webuye	Orange Democratic Movement	PNU
Sirisia	Party of National Unity	FORD-K
Mathira	Safina	PNU
Mukurweini	Safina	PNU
Gatundu South	Kenya African National Union	PNU
Githunguri	Safina	KANU

from Central Province, which is regarded as Kibaki's stronghold, whereas Kibaki obtained 239,395 votes from Nyanza largely from the Kisii and Kuria communities. This can also be explained by the urban nature of constituencies around Kisumu, where a cosmopolitan community is evident.

Participation Landscape

High voter turnouts were experienced in Central, Rift Valley and Nyanza Provinces. Rural areas registered high voter turnout compared to urban areas. Some rural constituencies in Central and Nyanza Provinces registered turnouts of over 90 per cent, compared to an average of 53 per cent registered in Nairobi Province. The high turnout in Central Province is because it was home to the incumbent president, while Nyanza largely supported Raila although he vied for a seat in Nairobi's Lang'ata Constituency. The Rift Valley vote is seen as support for ODM and William Ruto, who hails from the province and is a member of the powerful party organ, the 'Pentagon'. North Eastern Province has had a perennial low voter turnout pattern largely due to the migrant nature of communities residing in the region.

Table 5.5: Parliamentary representation by party

Participating party		Central	Coast	Eastern	Nairobi	N. Eastern	Nyanza	Rift Valley	Western	Total
PNU	Count	20	2	7	2	0	0	10	2	43
	% within participating political party	46.5	4.7	16.3	4.7	0.0	0.0	23.3	4.7	100.0
	% of total	9.5	1.0	3.3	1.0	0.0	0.0	4.8	1.0	20.5
ODM	Count	0	13	3	6	6	27	33	18	106
	% within participating political party	0.0	12.3	2.0	5.7	5.7	25.5	31.1	17.0	100.0
	% of total	0.0	6.2	1.4	2.9	2.9	12.9	15.7	8.6	20.5
Others, e.g. UDM, KADDU, KANU, Safina, FORD-K, New FORD, etc	Count	9	5	13	0	4	4	4	4	43
	% within participating political party	20.9	11.6	30.2	0	9.3	9.3	9.3	9.3	100.0
	% of total	4.3	2.4	6.2	0	1.9	1.9	1.9	1.9	20.5
ODM-K	Count	0	1	14	0	0	0	1	0	16
	% within participating political party	0.0	6.3	87.5	0.0	0.0	0.0	6.3	0.0	100.0
	% of total	0.0	0.5	6.7	0.0	0.0	0.0	0.5	0.0	7.6
No data	Count	0	0	0	0	0	0	2	0	2
	% within participating political party	0.0	0.0	0.0	0.0	0.0	0.0	100.0	0.0	100.0
	% of total	0.0	0.0	0.0	0.0	0.0	0.0	1.0	0.0	1.0
Total	Count	29	21	37	8	10	31	50	24	210
	% within participating political party	13.8	10.0	17.6	3.8	4.8	14.8	23.8	11.4	100.0
	% of total	13.8	10.0	17.6	3.8	4.8	14.8	23.8	11.4	100.0

Figure 5.4: Parliamentary representation by party (Central, Eastern, Rift Valley, North Eastern, Nyanza and Western provinces combined models)

Parliamentary Representation by Party (Central Province)

Party
- FORD Asili
- FORD People
- KANU
- Pick
- PNU
- PPK
- SAFINA
- Sisi kwa Sisi

Parliamentary Representation by Party (Eastern Province)

Party
- Chama cha Uzalendo
- Democratic Party
- KANU
- Mazingira
- NARC
- NARC-K
- ODM
- ODM-K
- PICK
- PNU
- Safina

Parliamentary Representation by Party (Rift Valley Province)

Party
- KANU
- Kenya National Democratic Party
- NARC-K
- ODM
- PNU
- United Democratic Movement

Parliamentary Representation by Party (North Eastern Province)

Party
- KANU
- ODM
- SAFINA

Parliamentary Representation by Party (Nyanza Province)

Party
- Democratic Party
- NARC
- National Labour Party
- ODM
- People's Democratic Party

Parliamentary Representation by Party (Western Province)

Party
- Ford Kenya
- ODM
- KADU
- PNU

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Table 5.6: Political party representation by setting (2007 general elections)

Participating party		Town	Rural	Total
		Constituency setting		
		Town	Rural	Total
PNU	Count	12	31	43
	% within participating political party	27.9	72.1	100.0
	% of total	5.7	14.8	20.5
ODM	Count	29	77	106
	% within participating political party	27.4	72.6	100.0
	% of total	13.8	36.7	50.5
Others, e.g. UDM, KADDU, KANU, SAFINA, FORD-K, New FORD, etc	Count	13	30	43
	% within participating political party	30.2	69.8	100.0
	% of total	6.2	14.3	20.5
ODM-K	Count	3	13	16
	% within participating political party	18.8	1.3	100.0
	% of total	1.4	6.2	7.6
No data	Count	0	2	2
	% within participating political party	0.0	100.0	100.0
	% of total	0.0	1.0	1.0
Total	Count	57	153	210
	% within participating political party	27.1	72.9	100.0
	% of total	27.1	72.9	100.0

Figure 5.5: Distribution of votes by province (urban)

	Nairobi	Central	Eastern	Western	Rift Valley	Nyanza	Coast	North Eastern
Kibaki	313478	619583	95947	128980	229804	23232	102506	29781
Raila	288922	22555	15064	166809	279833	318835	102506	29781
Kalonzo	52974	6013	140527	2038	6296	612	28093	980
Others	6091	2143	2109	3683	3234	669	3238	52
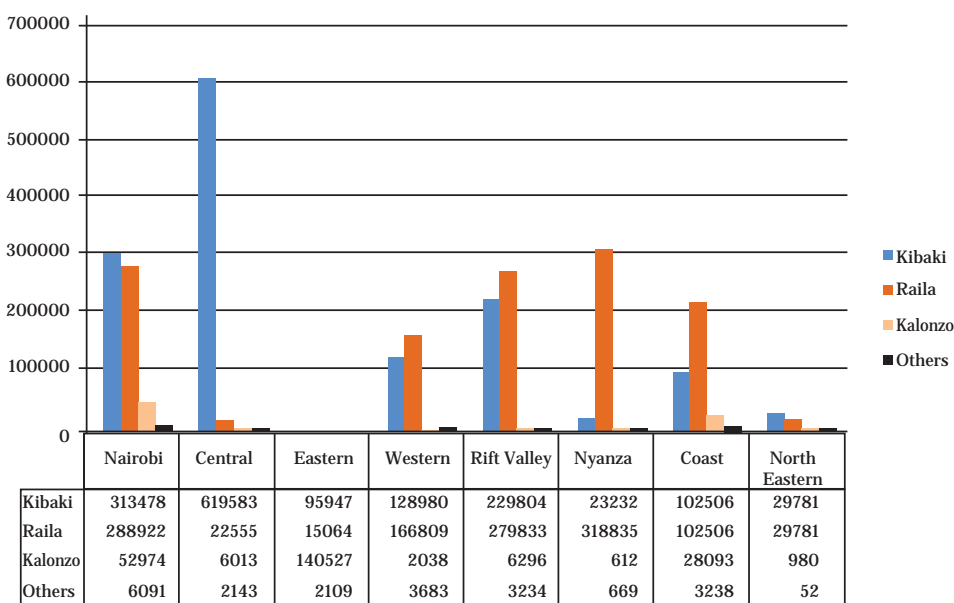
Table 5.7: Distribution of urban presidential votes by province

	Nairobi	Central	Eastern	Western	Rift Valley	Nyanza	Coast	N. Eastern	Total
Kibaki	313,478	619,583	95,947	128,980	229,804	23,232	102,506	29,781	1,543,311
Raila	288,922	22,555	15,064	166,809	279,833	318,835	224,298	20,609	1,336,925
Kalonzo	52,974	6,013	140,527	2,038	6,296	612	28,093	980	237,533
Others	6,091	2,148	2,109	3,683	3,234	669	3,238	52	21,224
Total	661,465	650,299	253,647	301,510	519,167	343,348	358,135	51,422	3,138,993

Figure 5.6: Constituencies, setting (rural and urban classification) and voter turnout

Analysis of 2007 General Election Kenya

Figure 5.7: Voter turnout during the 2007 general elections

Analysis of 2007 General Election Kenya

Figure 5.8: Voter turnout by province

Table 5.8: Comparison between voter turnout and voter registration by age

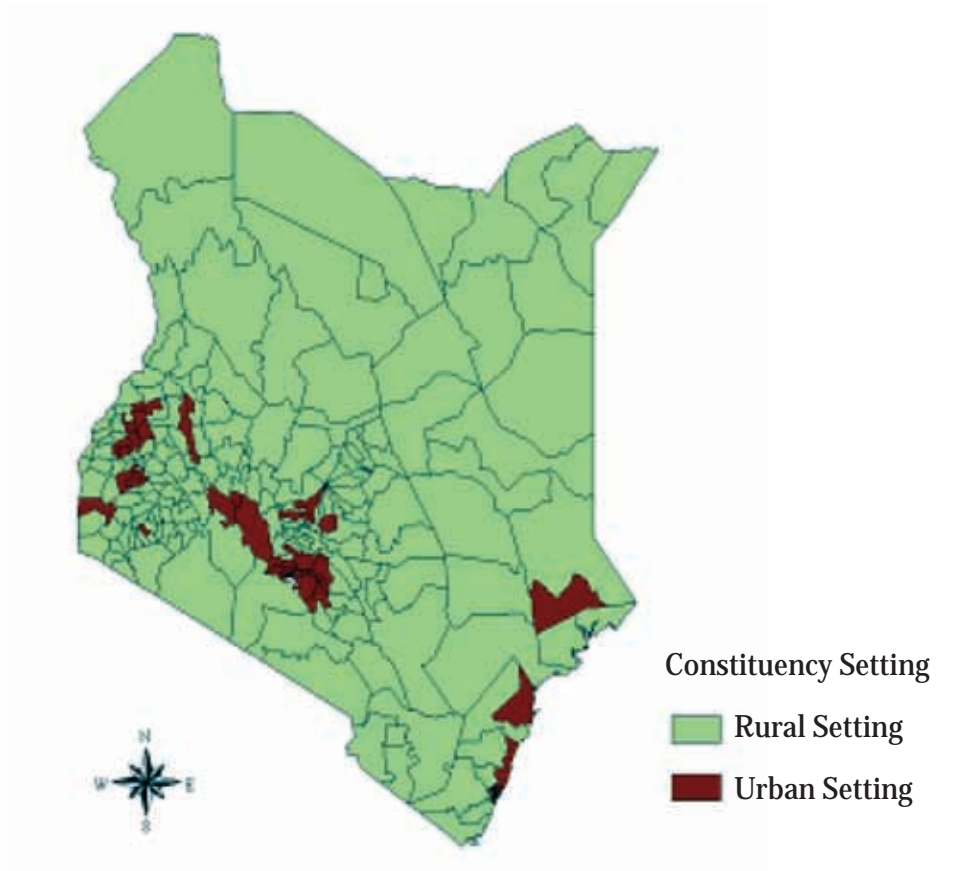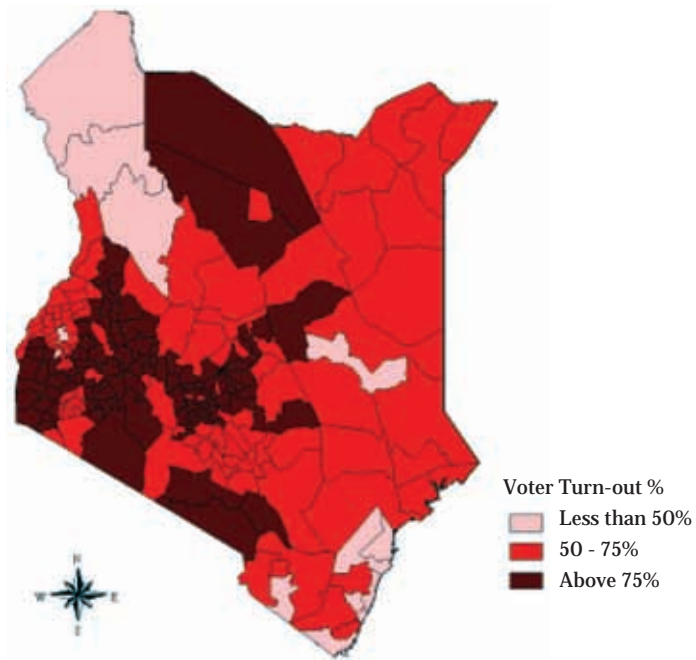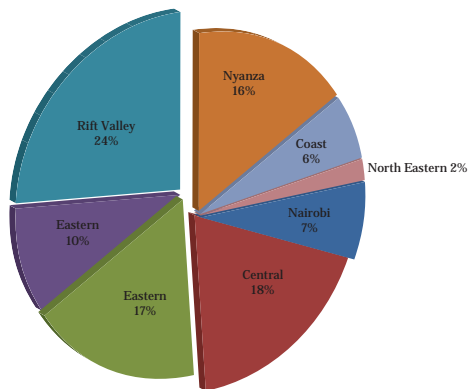| Constituency	Province	Voter turnout (%)	% Registered voters			
			18-30 years (%)	31-45 years (%)	Above 45 yrs (%	Total registered (as 100%)
Uriri	Nyanza	86	33.3	30.3	29.5	40,688
Karachuonyo	Nyanza	94	31.5	28.1	36.5	62,257
Mbita	Nyanza	93	38.8	32.1	28.8	40,634
Othaya	Central	89	37.1	31.1	31.7	57,344
Ndaragua	Central	88	36.0	31.9	31.8	47,244
Tetu	Central	87	34.7	30.6	35.2	49,824
Buret	Rift Valley	85	39.0	31.7	28.6	62,404
Mosop	Rift Valley	84	36.2	33.8	30.3	60,568
Narok North	Rift Valley	81	41.2	33.9	24.5	81,789
Bura	Coast	64	36.1	29.8	31.0	27,313
Lamu West	Coast	66	34.2	34.4	29.5	34,733
Galole	Coast	63	33.8	31.6	32.3	22,274
Kaiti	Eastern	72	28.1	33.4	38.0	53,626
Nithi	Eastern	77	32.4	33.1	33.5	124,169
Manyatta	Eastern	77	35.1	36.3	27.8	83,430
Butula	Western	69	28.5	31.3	39.2	42,754
Funyula	Western	70	33.3	30.4	35.7	38,241
Amagoro	Western	69	36.7	31.9	30.8	85,969
Wajir West	N. Eastern	65	43.8	24.4	28.4	35,772
Mandera West	N. Eastern	66	45.1	23.5	28.2	25,916
Mandera Central	N. Eastern	73	47.7	25.8	24.5	41,396

Note : Percentage totals may not add up to 100 percent due to rounding off by the Electoral Commission of Kenya.

Gender and Participation

There were women parliamentary candidates in 60 per cent of the constituencies. Unique observations were made in North Eastern and Nyanza Provinces where only 10 per cent and 49 per cent of the constituencies, respectively, had women candidates. 21 of the 29 constituencies in Central Province (72.5%) had women parliamentary aspirants. This represents the second highest after Nairobi Province, where all seats attracted women aspirants. In Nairobi Province, all the parliamentary seats attracted women candidates and 3 out of the 8 seats were won by women candidates. In Rift Valley Province, more than half (60%) of the constituencies had women aspiring candidates. The province has the largest number of women representatives (6).

According to the Inter-Parliamentary Union (IPU), women make up approximately 16 per cent of the world's parliamentarians. This implies that of the 43,961 representatives, only 7,165 are women. In Rwanda, however, women representatives account for 48 per cent of the representatives in parliament. In Kenya, women comprise only 7 per cent of the elected members of parliament.

In the 9th Parliament, only 8 constituencies had women representatives, which translated to 3.8 per cent. In the 10th Parliament, 14 women or 6.6 per cent, were elected to represent various constituencies.

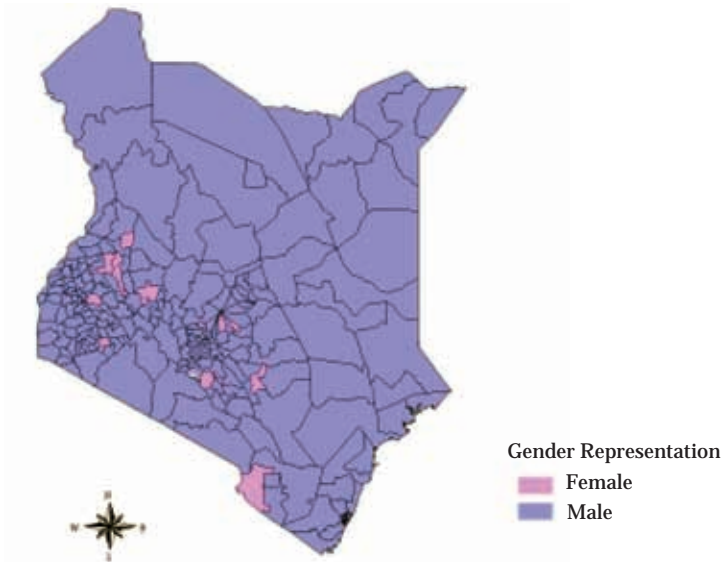**Figure 5.9: Registration of female parliamentary candidates**
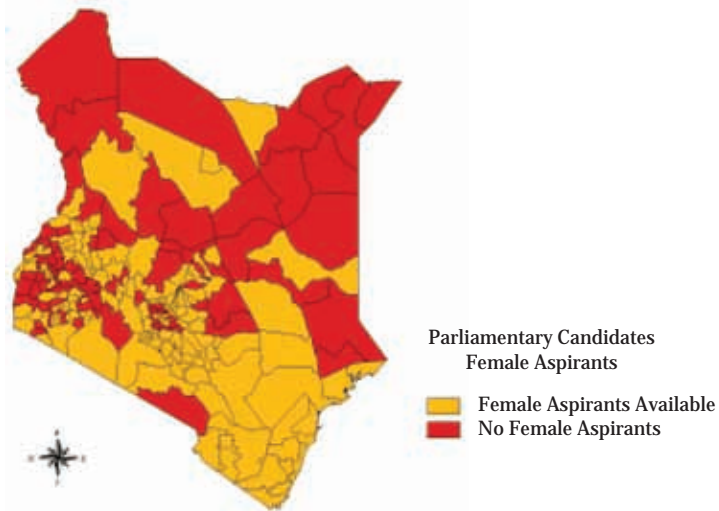
Analysis of 2007 General Election Kenya

Figure 5.10: Parliamentary representation by gender

Analysis of 2007 General Election Kenya

Analysis of civic seats secured by women shows a low representation across the provinces. Table 5.10 show the provinces with less than 10 per cent of women councilors elected in local authorities. North Eastern Province had no woman elected councilor. The same pattern is replicated with the parliamentary seats (Table 5.9). The lack of elected women leaders at parliamentary and civic level from North Eastern Province may be attributed to cultural reasons, where women are not considered favourable to lead or take up political positions.

Table 5.9: Women representation in parliament, 2002 and 2007

Women representation	2002	2007
Nairobi	1	3
Coast	1	1
Eastern	2	3
North Eastern	0	0
Central	2	2
Rift Valley	2	5
Nyanza	0	0
Western	0	0
Total	8	14

Table 5.10: Women representation at civic level, 2007

Province	Male	Female	Total
Nairobi	58	4 (6%)	62
Coast	209	8 (4%)	217
North Eastern	145	0	145
Eastern	370	22 (6%)	392
Central	249	10 (4%)	249
Rift Valley	691	27 (4%)	718
Western	243	13 (5%)	243
Nyanza	357	28 (7%)	357

Fifty per cent of Members of Parliament who were elected on a PNU ticket comprised new MPs, as opposed to 74 per cent elected on an ODM ticket. ODM had a popular following in Nyanza Province, where voter turnout was high. PNU similarly enjoyed a popular following within Central Province, where voter turnout was high

with only 14 per cent (4 constituencies) experiencing less than 75 per cent voter turnout. In Nyanza, 45 per cent (14 constituencies) returned less than 75 per cent voter turnout. These were mainly from the Kisii region. From the above patterns, we may conclude that party loyalty and the influence of presidential candidates may have played a big role in influencing voting patterns. This may not, however, be necessarily true for the Rift Valley Province where large voter turnout was experienced especially in the South Rift zone. The Kipsigis community came out in large numbers to cast a protest vote against the government. The group felt that the new government under Kibaki had sidelined them and that no tangible economic benefits were visible during the incumbent's time in office.

Change/Dynamic Landscape

Of the 14 million voters registered prior to the elections, 68.8 per cent were below 40 years while 31.2 per cent were regarded as the older voters. This phenomenon played a large part in determining the election outcome. The youth, for example, were faced with high unemployment rates, lack of representation and blame of government for the high levels of corruption. Voters express satisfaction with incumbents by voting them back and sometimes with large margins. This indicator can be used as a voter satisfaction index where retained MPs imply voters' confidence. Of the 210 members of the 10th Parliament, 31.9 per cent retained their seats. Rift Valley, North Eastern, parts of Eastern and Coast Provinces witnessed new MPs being elected. Of the new MPs elected, 37.6 per cent (79 MPs) were aligned to the opposition while 22.8 per cent or 48 MPs were aligned to the ruling party/coalition. Before the 2007 general elections, the country had been experiencing a high unemployment rate, rising crime, undelivered promises especially on the constitution, and poor rating and performance of MPs at national and constituency level. Unemployment among the youth, rising crime and corruption were some of the things voters took issue with during the elections. The 2005 referendum, for example, was a good indicator of how citizens perceived the government and related performance aspects.

The *Majimbo* debate was a pertinent issue in Rift Valley and Coast Provinces. The land issue in these two provinces remains largely unresolved, with communities especially in the Coast feeling short changed in land ownership, while in Rift Valley the question of 'newcomers' dominated the political discussion. However, one cannot dispel the notion that ethnic considerations determined voting patterns in Kenya, especially in the larger urban areas such as Nairobi and Mombasa. Johnston and Pattie (1997) observed that people in Britain voted according to their perceptions of national and personal economic circumstances and, as such, perceptions are spatially, in particular regionally viable.

In Igembe and North Imenti where KANU and Chama cha Uma (CCU) party candidates, respectively, won over PNU candidates, this could be attributed to the poor choice of PNU candidates. The electorate was not happy with the former

Minister of Finance whose record had been put to question. The voting out of Mwiraria may be regarded as a protest vote against the candidate, but not PNU *per se.* In Nyaribari Chache Constituency, the long serving Member of Parliament was ousted by a newcomer from the National Rainbow Coalition (NARC), which was an ODM affiliate party. Again, the electorate had shown need for change of guard and hence opted to elect a new leader.

Emerging Pattern of Participation, Awareness and Representation

Prior to the 2007 general elections, the three-piece voting system was very popular. This system of voting advocated for a uniform pattern of voting where voters would choose civic and parliamentary candidates from one party. The system was so strong that in the 1997 general election, a civic aspirant from Kirinyaga District vying on a Democratic Party (DP) ticket was elected even after he had died.

One would expect that within Nyanza and Central Provinces, where ODM and PNU, respectively, enjoyed massive support, the three-piece voting system would work perfectly. PNU enjoyed massive support in Central Kenya where the presidential candidate (Mwai Kibaki) hailed from. In the 1992 general election, voters from Central Kenya voted for DP or FORD-Asili civic and parliamentary candidates using the three-piece voting system. The system worked very well then and was highly recommended by parties to their supporters. A former Mathioya MP, Joseph Kamotho, who twice lost in general elections for being in the 'wrong party', KANU, once said of the three-piece voting: 'Even if it was a dog, for as long as it would contest on FORD-Asili, it would have been elected in this region instead of a KANU candidate.' The candidate coined this quote after he lost the Kangema parliamentary seat.

In the 2007 general elections, the three-piece system did not work as well as it did in previous elections. There were numerous areas where voters would vote a presidential candidate from one party and parliamentary candidates from another. In Central Province, Safina and other parties managed to have their parliamentary candidates win over their PNU opponents, although voters voted for the PNU presidential candidate Mwai Kibaki. PNU candidates in Kiharu, Mathira, Gatundu North, Kinangop and Mukurweini lost to other candidates from smaller parties. The PNU presidential candidate, however, received massive support from the province.

In lower Eastern Province, voters in Kitui Central and Kilome Constituencies supported candidates from other parties, despite ODM-K enjoying overwhelming support in the area. Similarly, within Coast Province, Shirikisho Party supported parliamentary candidates but backed PNU's presidential candidate for the presidency. In Western Kenya, New FORD-Kenya fielded parliamentary and civic candidates but supported the PNU presidential candidate.

Shirikisho Party of Kenya, which was a partner of PNU in Coast Province, did not manage to capture a parliamentary seat as in previous elections where in 1997

it won the Likoni seat and in 2002 it won the Magarini seat. Prior to the elections, there were tensions between PNU and Shirikisho over campaign funds. This may have angered Shirikisho members to shift loyalty from PNU to ODM in protest. ODM-K was expected to win many seats within Coast Province but managed only one seat, namely Bura Constituency, despite the numerous campaign visits by the party's presidential candidate to the province.

In Rift Valley Province, women parliamentary candidates managed to win six (6) seats. Mogotio and Sotik Constituencies picked women candidates which, according to many observers, marked a transformation in the cultural beliefs of the Kalenjin community.

The impact of young voters was felt, considering the loss of seasoned politicians such as David Mwiraria, Simeon Nyachae and Joseph Munyao. Although other factors such as party affiliation may explain why they lost, the young electorate was out to place a mark on the Kenyan political scene in the 2007 general election. However, it is important to note that the youth constituency was as ethnic as the next as shown by the voting pattern across the country. If the youth in Central Province did not prefer the incumbent, given their numbers, they would have voted for the opposition. With this in mind, the youth vote did not go above ethnic considerations in most parts of the country. Numerous old guards lost their seats in the 2007 general elections as indicated elsewhere, but this may not entirely be attributed to the youth factor. If youth votes were to go to one of their own in totality, the ODM-K presidential candidate would have been the benefactor as he was younger compared to the PNU and ODM presidential candidates.

Geographic Dimensions of Well-Being (Impact on Voter patterns)

In 2005, according to the Kenya National Bureau of Statistics (KNBS, 2005), Central Province had the lowest poverty incidence of 31 per cent compared to Nairobi (44%), Rift Valley (48%), Coast (57%), Nyanza (65%), North Eastern (64%), Western (61%) and Eastern (76%) provinces. It is expected that areas with low poverty incidences would have supported the then regime and incumbent if suitable policies and development efforts were directly responsible for community well-being. In Kenya, the situation as presented in Figure 5.11 shows Central Province and parts of North and upper Eastern and Rift Valley with low poverty incidences. Support for the incumbent and PNU was mainly from Central Kenya and parts of upper Eastern Province. Rift Valley Province, to a large extent, voted for ODM and other smaller parties such as UDM and FORD, depending on the region.

ODM-Kenya received overwhelming support from lower Eastern Province at presidential, parliamentary and civic levels. In Central and Nyanza provinces, PNU and ODM, respectively, obtained total support at all levels. The three presidential candidates managed to consolidate the political backing of their kinsmen from

these provinces. With only a few constituencies (5 out of 24) where PNU got majority backing at presidential level, Western Province largely supported ODM at all levels. This pattern of voting was observed during the 2002 general elections where voters supported NARC candidates at all levels. This was seen as a protest vote against KANU, which had been in power since independence. Kenyans during the 2002 elections voted for NARC candidates irrespective of their background. In other constituencies, the three-piece approach to voting was not effective especially where unpopular candidates were 'imposed' upon people by the nominating parties. This was particularly evident in Mukurweini and Mathira constituencies in Nyeri District, where the incumbents lost to candidates fronted by the Safina Party. In other cases such as Siakago, the incumbent, who was equally strong, lost to a Safina party candidate because the later had a well-organized and heavily funded campaign. Kilome constituency, despite being in the heart of ODM-K stronghold, was won by a PICK candidate who had a good development record.

Figure 5.11: Geographical dimensions of well-being

Population in each constituency
below poverty line (%)
< 24
24 - 34
34 - 44
44 - 54
54 - 64
64 - 74
> 74

Data Source:
Kenya National Bureau of Statistics, 2005

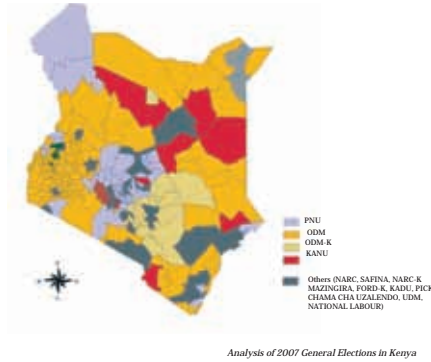*Analysis of 2007 General Election Kenya*
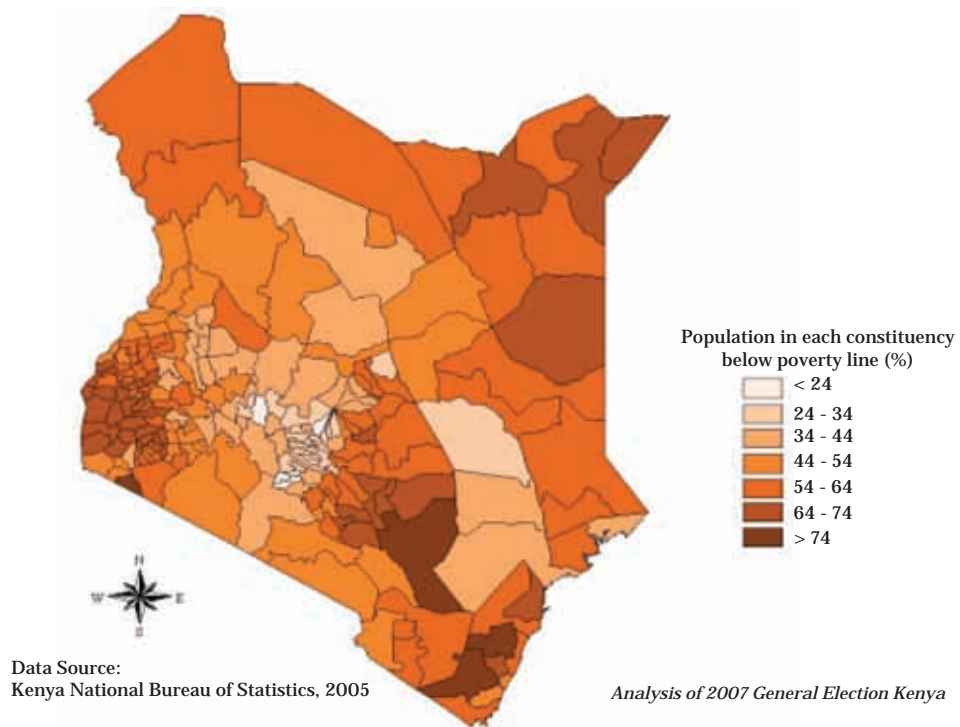
   The emerging patterns of voting clearly indicate the impact of awareness creation by civil society among the voting population. Increased voter awareness raises the need for effective representation, and opens doors to credible leaders and parties with good development agendas and track records.

Figure 5.12: Three-piece vote pattern

Constituency vote pattern:
Presidential candidates
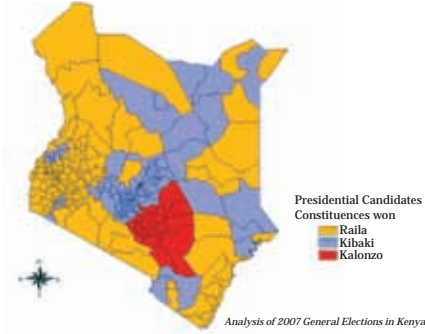
Local government representation:
Majority of seats captured
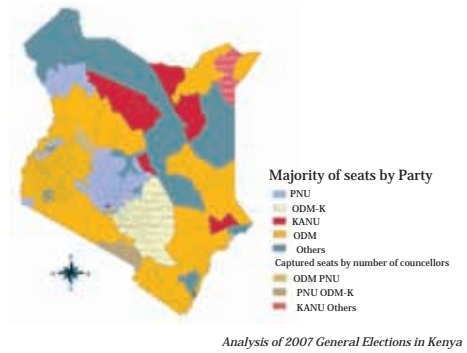
Parliamentary representation
by party

Conclusion

This chapter provides a basic explanation and insight regarding the voting patterns experienced during the 2007 general elections in Kenya. It also provides insight into the factors explaining the patterns, using spatial models. The unit of analysis was the constituency and the main source of data was the Electoral Commission of Kenya (ECK).

Voting patterns show that parties enjoyed support from ethnic regions, which explains the close link between people/voters, candidates and ethnic background. To a large extent, the three main parties (ODM, PNU and ODM-K) obtained vast support from regions where their presidential candidates had roots. Representation by women at civic and parliamentary levels was not very visible, although there was an improvement from the previous elections in 2002. In 2002, there were 8 elected women MPs while in 2007 there was a total of 15, with Rift Valley Province having 6 women MPs.

The setting (rural or urban) did not influence voter turnout. It is expected that higher voter turnouts would be experienced in urban areas. On the contrary, Nairobi, which is largely urban, witnessed an average turnout of 53 per cent compared to North Eastern (63%). Rural communities, due to enhanced civic education, have become more aware of their rights and especially the need to vote and determine who leads/represents them.

There are various factors explaining spatial variations of voting patterns. The regional support for a particular presidential candidate will explain the support parties and presidential candidates got from regions across the country. The discussion does not suggest that ethnic or regional support or ethnic background was the sole determinant or voting pattern. Economic factors and political ideology were also important factors in the elections. Central Province was satisfied with the government performance as indicated by the numerous projects initiated in the region. Rift Valley, Nyanza, Coast and North Eastern Provinces felt that the government had not done enough with respect to economic development and, therefore, their choice for a different candidate who they thought would bring more economic development and distribution of national resources.

Voter turnout patterns can be used to help the ECK plan for better distribution of voting centres. High turnouts necessitate the creation of new voting stations to avoid long queues and waiting on the part of potential voters. The voter turnout may be used as an indicator of the impact of civic education campaigns. Pockets of low voter turnout in North Eastern, Eastern, North Rift Valley and Western Provinces are evident. The ECK should, therefore, target these areas in an effort to educate and encourage voters on the need to participate in the election process. The number of registered voters should be matched by sufficient resources during election periods, since high turnouts are expected. This indicator may be one of the key aspects to take into account during the creation of new constituencies. The spatial modeling of voting patterns within Kenya and developing economies would provide analysts with data to explain changes over time between and within regions. Previous elections results in Kenya may be used to demonstrate the impact of multiparty politics on the voting patterns in Kenya.

The advantages of using a GIS tend to speak for themselves, and have been extensively covered when discussing what a GIS actually is/does. One of the main attractions is the ease at which information can be presented and analyzed. This provides much of the basis for the support of the technology. The extensive data handling capabilities also helps provide in-depth knowledge and widespan information for users and analysts. The government and the concerned electoral body (ECK) needs to put in place a GIS-based system to capture changes regarding population, voter registration, administrative boundaries and other socio-economic variables in order to manage voting and related activities in future.

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6

Local Level Politics: The 2007 Parliamentary Elections in Kenya

Geoffrey R. Njeru

Abstract

Since independence in 1963, Kenyan election results have exhibited a mix of competitive issue-based politics and subjectivity to extra-rational forces such as ethnicity and clanism. While in some instances the electability of a candidate has largely depended on performance in local level development, in others it has been dictated by social origins and political patronage. Using the 27 December 2007 general elections as a benchmark, this chapter attempts to interrogate five main issues: the extent to which Kenyan voters pay attention to the performance of candidates in terms of local level development; the extent to which issues of local development and economic recovery influence the political discourse of electoral mobilization; the extent to which issues of local development and economic recovery ultimately influence the electoral outcome; the extent to which use of CDF and other devolved funds influences election results; and finally, the manner in which development performance compares with ethnicity, party affiliation, gender and class in determining electoral outcomes in Kenya at the local level. By examining the results of the 2007 general elections and field data, the study concludes that ethnicity, political party euphoria and political patronage appear to be gradually giving way to objective, rational considerations such as performance of individual candidates in local level development. In addition, electoral mobilization appears to be increasingly moving towards concrete development issues such as poverty reduction, to the extent that those candidates with a proven track record of development or appear to have the potential to mobilize the constituents in development activities have increased chances of being elected to parliament or local authorities.

Introduction

Development is both a state and a process. As a state, it is the ultimate and/or desired situation of being where basic needs have not only been met but the greater proportion of society may also be involved in mass consumption. As a process, it is a multi-dimensional phenomenon of perpetual motion towards higher levels of human satisfaction and well-being. It is a process that pairs economic growth with equity or qualitative change in life for the majority population over a sustained period of time. Conventional dimensions of development include higher per capita incomes; guaranteed access to adequate quality food at all times; improved shelter; infrastructural growth (tarmac road, rail, sea and air transport); banking and insurance; quality health insurance; higher life expectancy and reduced infant mortality; and security of livelihoods. At the political level, development entails increased democratization of governance; existence of people's representative organs, e.g. political parties; a vibrant civil society including free press; and observance of individual rights and freedoms/liberties such as freedom of association, assembly and choice of governors. Socially, increasing secularization of the public domain; liberation of the mind; and individual empowerment towards rational choice are all factors associated with development. Using environmental resources in a sustainable manner, and having in mind future generations is also a major characteristic of development.

Local development may, therefore, be construed to mean the attainment of the above prerequisites at the micro level. Since poverty levels are high in most constituencies countrywide, local level development simply means poverty reduction. In a conceptual framework that links development with leadership, the individuals associated with bringing about positive change to the majority of the citizens should ideally be [s]elected as leaders. These may be seen as the facilitators who work with (not for) the people to achieve development. Local level development may, therefore, be associated with aggregating and nurturing community initiatives to achieve what the people at the grassroots believe is desirable and rightfully theirs.

Those perceived to be instrumental in raising the people's standards of living and/or have a proven track record of doing so are likely to be elected or re-elected into positions of leadership. However, this is the ideal situation. In a practical Kenyan situation, this does not preclude the seepage of extra-rational considerations in voter behaviour or electoral choice, which give way to ethnicity, nepotism, personal aggrandizement, corruption (especially bribery in vote buying), and unfettered loyalty to political party euphoria.

In this chapter, local level development is taken to mean increased capacity of the local people to access and make decisions on the allocation of devolved funds, prioritization and participation in the implementation, and management, monitoring and evaluation of development projects, which results in poverty reduction. The

unit of analysis is the constituency. The chapter examines the allocation and use of Constituency Development Fund (CDF) as an indicator of development.

Kenyan elections since independence have been an enigma to both contestant and voter. On the one hand is a desire by both parties to exhibit Westminster-level competitive issue-based politics, while on the other is a covert exercise of scooping as much of public resources as possible and redirecting them back to the home constituency. The latter is what may be termed local level development politics.

The 27 December 2007 elections were the ninth general elections in independent Kenya and the fourth after the restoration of multiparty democracy in 1992. They attracted 9 presidential candidates, 2,548 parliamentary candidates and 15,334 civic (council) nominees sponsored by 117 political parties. Comparatively, the 2002 general elections had attracted 5 presidential, 1,035 parliamentary and 7,009 civic candidates (ECK, 2007). This chapter interrogates the following five pertinent and related issues: To what extent do Kenyan voters pay attention to the performance of candidates in terms of local level development? To what extent do issues of local development and economic recovery influence the political discourse of electoral mobilization? To what extent do issues of local development and economic recovery ultimately influence the electoral outcome–is there an automatic linkage between the intensity of the discourse and the electoral choices made? To what extent did the use of CDF and other devolved funds influence election results? Finally, how does development performance compare with ethnicity, party affiliation, gender and class in determining electoral outcomes in Kenya at the local level?

Performance of Candidates in Local Level Development and Electoral Outcome

During the Kenyatta era, institutionalized semi-competitive regular parliamentary elections were in vogue through the notion of 'constituency service.' This notion held that the worth of a politician was to be measured in terms of the development activities or projects he/she initiated in their home constituency (Okumu and Holmquist, 1984: 54). Subsequently, parliamentary elections were turned into a series of local referenda on the ability of individual politicians to contribute to local development. The incumbent Members of Parliament were therefore assessed in terms of their ability to secure state resources for their constituencies' development (Wanyama, 2004).

However, this notion has changed with time. Recent electoral discourse appears to suggest that different communities have in the past voted for different reasons and may have paid less attention to the performance of the candidates. The trend is changing. During the 2007 general elections, for instance, the Luo and Gikuyu communities prioritized electing those who stood by their preferred ethnic leaders (Raila Odinga and Mwai Kibaki, respectively) in blocs so as to capture political

power and not those who appeared to demonstrate independent thought and ability to deliver local level development. Thus, even when some Members of Parliament (MPs) demonstrated clear inability to deliver development to their local communities, they still got re-elected. However, as the 2007 general election results show, more and more voters are abandoning ethnic or narrow sectarian interests or considerations in their electoral choices and increasingly scrutinizing the performance of individual candidates in terms of their ability and willingness to deliver local level development.

In the past, allegiance to a particular party or political leader seemed to diminish the need for ascertaining leader performance and accountability. The priority to elect those who supported Odinga, Kibaki or Kalonzo for the presidency seems to have shifted focus of voters' attention on the performance of candidates at the community level. Going by this paradigm, and as Belle (2004) observes, a leader would still be re-elected even if he/she does not demonstrate commitment to local community endeavors. This is more the case when considering presidential candidates. Community commitment to landing one of their own in the State House, irrespective of whether or not individuals from that community will enjoy tangible benefits, often blinds rational electoral choice. At the local level, narrow and irrational considerations such as ethnicity and nepotism are more visible in multi-ethnic constituencies. Where there is only one ethnic group, two scenarios are likely to emerge. Some voters may be swayed by sub-ethnic nationalism or clanism. On the other hand, and as was evident in the 2007 elections, some voters will deliberately opt to interrogate the performance of individual candidates and when this happens, people are likely to vote for candidates who belong to their ethnic groups.

By the end of July 2008, more than Ksh 3.5 billion from the Constituency Development Fund (CDF) was in various constituency bank accounts, unutilized for improvement and development of the constituencies for which they were allocated. This was despite the fact that most constituencies were and are still experiencing high levels of poverty. As new entrants and incumbent MPs geared up for election and re-election in December 2007, respectively, Government statistics indicated that Central Province had over Ksh 350 million, Coast Province approximately Ksh 500 million, Eastern Province about Ksh 600 million, Nairobi Province about Ksh 80 million, North Eastern Ksh 127 million, Nyanza Province over Ksh 600 million, Rift Valley Province about Ksh 800 million, and Western Province over Ksh 400 million of uncollected CDF funds. While these funds remained uncollected in the eight provinces to develop the constituencies, a report by the United Nations Development Programme (UNDP) indicated that poverty, disease, and insecurity remained major problems despite the indicated 6 per cent economic growth in the country overall (Kamau, 2007 in *nationmedia.com*).

Proper CDF utilization in alleviating poverty and related problems guaranteed the re-election of many MPs, such as Lang'ata's Raila Odinga (now Prime Minister). The

constituency had only Ksh 3,184,537.25 uncollected CDF, which may be interpreted to mean that the fund may have been well utilized in local development. It may also explain the flurry of slum upgrading and poverty reduction activities in the constituency, especially in Kibera, the second largest slum in Africa (the largest being Soweto in South Africa) with a population of about 1 million. The estimated population density is 300,000/km² tucked in a number of villages such as Kianda, Soweto, Gatwekera, Kisumu Ndogo, Lindi, Laini Saba, Siranga/Undugu, Makina and Mashimoni. Its population is put at between 600,000 and 1.2 million. This may explain Raila's popularity not only in Lang'ata but also nationally (see Appendix 6.1 for list of uncollected CDF funds nationally).

According to a study carried out by the Institute for Education in Democracy (IED) on voting patterns and behaviour in Kenya, it is possible to predict future voting patterns of candidates based on their ethnicity, especially when potential presidential candidates are well known. In some parts of the country, particularly Central, Rift Valley, Nyanza and parts of Western Provinces, voting trends are fairly predictable. This is because the patterns and behaviour in these regions are mainly conditioned by definite variables such as ethnicity and political party affiliation. According to this study, the 2007 general elections were closely linked to ethnicity and political party loyalty or affiliation as compared to local development initiatives (IED, 2004). However, a closer look at the same election's outcomes shows a shift in voter behaviour towards greater preference for candidate performance in local level development.

It is, therefore, intriguing that some of the reasons that drive or motivate people to vote the way they do have nothing to do with local development. An audit carried out by IED during the pre-election period observed that voters are also 'imported' and registered in constituencies other than the ones they belong to. The study found that a significant number of voters registered in Mvita, Juja, Maragwa and Kaiti Constituencies did not reside in those constituencies. In addition, some politicians took advantage of the voters' illiteracy and poverty to manipulate and influence them to register in different polling stations. Such voters do not pay attention to the performance of the candidates they vote for, but rather to the personal benefits such as the handouts they receive following voter registration in different constituencies (IED, 2007).

An observation report of Kasipul-Kabondo by-election showed that response and attendance of political rallies were motivated by expectations of handouts from the candidates and their campaign agents. There were allegations that, in most rallies, the voters demanded handouts from the candidates before being addressed (IED, 2006). During the campaigns, the electorate coined a terminology in *Dholuo* (the Luo language) known as '*gonywa*'. The terminology literally means 'release or free us' and it meant that the aspirant(s) were required to give monetary handouts as a precondition for being voted for (IED, 2006). It is curious that in a recent study, less

than 30 per cent of Kenyans showed interest in a candidate's local development record and less in the areas of trustworthiness, economic planning, concern for constituents, party affiliation and good governance (Steadman Group, 2006). Going by what appears in Figure 6.1, therefore, it comes as little surprise that issues of negative ethnicity, clanism, and monetary handouts dominated the 2007 general elections in many parts of the country. These were manifestations of pent up ethnic anger over perceived marginalization or exclusion in national resource distribution.

Figure 6.1: Qualities considered when electing a leader

"What is the most important quality you consider when electing a leader?"

Base = 499, All respodents
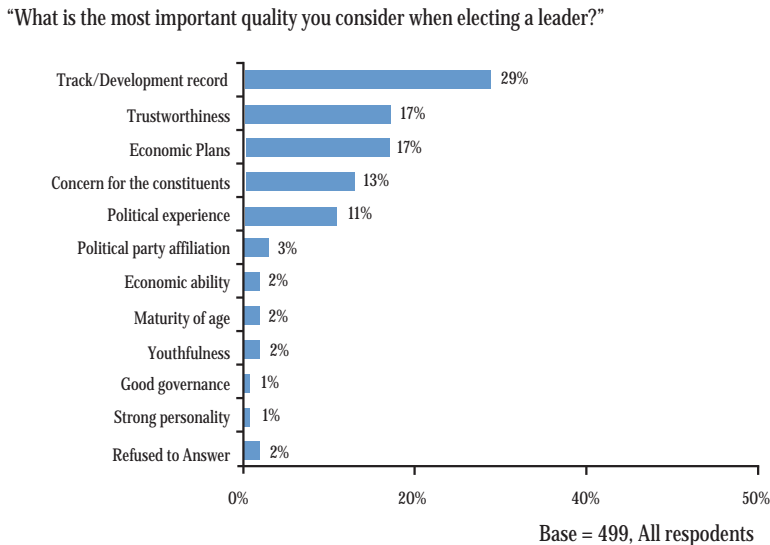
Source: Steadman Group (2006)

Thus, although a number of studies indicate that local development is a priority to most voters, this is not particularly reflected in the voting outcome of the concerned candidates as exemplified above. Political party affiliation, gender and ethnicity, among other issues, tended to take precedence over local development in the 2007 general elections. In Ndia Constituency in Central Province, 50 per cent of the respondents appeared to show concern for local development while electing a leader and 3 per cent paid attention to political affiliation. A focus on the people's attitude towards political party affiliation during the elections disregards the importance of local development. However, as Table 6.1 illustrates, most voters (88%) in Ndia preferred those candidates affiliated to the Party of National Unity (PNU). Out of these respondents, less than 20 per cent would vote for their preferred candidate if they were in ODM (see Table 6.1). This is a clear indication that political party affiliation sometimes overrides the importance of the candidate's performance in terms of local development to the voter. At the national level, the bipolar PNU/ODM political party affiliation was all too evident.

Table 6.1: Parliamentary voting preferences by party

	Robinson Githae	Dr Marion Mutugi	Harrison Mureithi	Kibicho James	Mithamo John
PNU	88	88	88	91	88
NARC-K	69	67	86	74	71
NARC	54	51	63	52	41
DP	46	60	61	60	61
FORD-P	43	49	49	44	27
Shirikisho	42	49	51	45	32
KANU	38	46	51	38	32
FORD-K	34	49	47	45	29
Safina	31	40	41	41	27
ODM-K	18	18	24	18	12
ODM	14	14	20	15	12

Source: Steadman Group (2006)

Note: The question was: Would you vote for your preferred parliamentary candidate if he or she were in? (% saying Yes)

According to the Report of the Commonwealth Observer Group on the 2007 Kenya general elections, the major political issues included ethnicity; political reform; widespread poverty; devolution of political and administrative power; wider constitutional reform; political violence; and gender issues. There appeared to be greater awareness among political parties of youth issues, such that most political parties placed strong emphasis on issues of particular interest to the youth, such as education and employment. The youth, who constituted the majority of registered voters, had taken a stronger and more active interest in the electoral process, while others put themselves forward as candidates for elected office. However, lack of access to campaign funding for this group, in general, meant that young candidates could not compete on the same footing as those with greater asset portfolios.

Local Development and Economic Recovery in the Political Discourse of Electoral Mobilization

Although the NARC government won the 2002 elections on an ethnic-based coalition, the country looked forward towards local development and economic recovery (Kanyinga, 2007). Following the decline of economic growth during the Moi era, NARC used economic recovery, fighting corruption and creating 500,000 new jobs a year, among others, as major campaign major. These were expected to translate into a sense of 'national unity' and fulfillment of the campaign pledges, particularly economic recovery that had registered negative growth during the KANU regime. The NARC government managed to register a 5.8 per cent growth, though the institutional

and legal infrastructure to fight corruption 'has not become visible and corruption reigns in the country' (Kanyinga, 2007).

The media played a significant role in exposing government scandals such as Anglo-Leasing, in which the government lost over Ksh 7 billion. This created awareness among the public and influenced political mobilization against the government and the officials involved in the scandal. This was followed by the resignation of Cabinet ministers such as Chris Murungaru, who also lost his Kieni seat to Nemesyus Warugongo in 2007. The media as a communication tool played a critical role in putting issues of local development and economic recovery at the heart of the political discourse (Omollo-Ochilo and Wanyande, 2007). It was also the media that sensitized the constituents on CDF that Members of Parliament were still withholding in bank accounts despite deteriorating levels of poverty and disease facing the communities. The media, however, seems to have been selective in its coverage of some presidential and parliamentary candidates, which could have contributed to the popularity and election of some of the candidates to the detriment of others. It also failed to give adequate coverage to women candidates, except from when they experienced violence (UNDP, 2007).

Issues of local development and economic recovery were mostly used in electoral mobilization particularly by the sitting MPs to defend their seats, and/or influence the electoral outcome. Some MPs took credit for the government's supply of electricity in the rural areas and free primary education among the semi-literate and illiterate voters. For instance, the Msambweni MP took credit for the government's construction of a Ksh 60 million sea wall at Vanga and supply of electricity to the small fishing village. However, his rivals focused on the utilization of CDF. Apart from a new girls' secondary school in Vanga, the MP's rivals argued that nothing much had been achieved through CDF. Major problems facing the constituency, such as lack of piped water, medical facilities, lack of desks and inadequate classrooms in the constituency were used to influence the voters against the sitting MP (*nationmedia. com*, Tuesday, 8 May 2007).

The provision of free education in secondary school became a point of focus where several presidential aspirants used it as a key rallying point to woo voters. In what some critics termed as a campaign tool, the government released a Ksh 4.3 billion subsidy for public secondary schools to cater for tuition fees. To garner votes and public confidence, President Kibaki announced that secondary school students in Form One and Two were to benefit from free education beginning January 2008. Kibaki's arch-nemesis in the presidential race, Raila Odinga, had promised to go beyond subsidized education to a free and compulsory primary and secondary education if elected president. To fund such an ambitious venture, he had promised to pursue billions of taxpayers' money stashed in foreign accounts and seal loopholes that had led to loss of billions of shillings.

Two other presidential aspirants, Kalonzo Musyoka and Najib Balala (before stepping down in favour of Odinga), also came out promising to offer free education if elected. According to Kalonzo, such an undertaking would be funded by development partners, and broadened tax revenue bases. On his part, Musalia Mudavadi, who later became Raila's running mate after the ODM primaries, while unveiling his vision, said: 'I will make secondary education available and accessible. To this end, we will provide levy-free secondary education'.

A study carried out by the Kenya Institute for Public Policy Research and Analysis (KIPPRA) on the feasibility of Free Secondary Education (FSE) said such an undertaking would be a good public initiative and that, if implemented, it would increase access to secondary education while relieving the cost burden from parents. This would allow households to increase spending on other needs such as health and post-secondary education and training, hence impact positively on poverty reduction. Free secondary education would increase the country's stock of human capital while at the same time increasing the social benefits of education. Such a move would be very popular with citizens, and hence reinforce the need for embarking on FSE (KIPPRA, 2007). Free secondary education was used by the presidential candidates and their supporters who were seeking parliamentary and civic seats to prop up, shape and influence the process of electoral mobilization around the country.

Local Development, Economic Recovery and Electoral Outcome

Was there an automatic linkage between the intensity of the discourse (electoral mobilization and outcome) and the electoral choices made in 2007? According to the 2003 Kenya Afrobarometer Survey, the December 2002 general elections may have taught both politicians and ordinary citizens several profound civic education lessons. For leaders, it showed the value of building coalitions across parties and ethnic groups in recognition that no single community has anything close to an electoral majority on its own. For citizens, it showed that if politicians organized themselves so as to give voters a clear choice, the ballot can constitute a powerful tool for peaceful change. Whether such a change can be translated into any discernible improvement in their lives is another matter altogether.

The immediate post-election period was thus deemed an opportune time to begin illuminating the conditions currently affecting Kenyans, to reveal their attitudes and evaluations of their political and economic systems, and to capture their expectations and aspirations for the future (Kenya Afrobarometer Survey, Working Paper No. 33). According to Chweya (2007), political transitions are fundamentally a function of the control and allocation of resources. The 2002 elections and the coming into power of the NARC government were welcomed as a political transition and the beginning of economic recovery and growth. However, the NARC government failed in achieving equitable distribution of national resources and the fight against corruption. This,

according to the author, was going to lead to resource-based revolts as a means and manifestation of political transition in the 2007 general elections.

Electoral outcome is sometimes determined by issues other than local development and economic recovery. Just as the 2002 general elections were influenced by party euphoria, money, ethnicity, clanism and nepotism, the 2007 general elections were influenced by the same factors. These factors, to some extent, determined the voting patterns of different areas of the country, as well as interfering with the voters' conscience (Njeru and KEC-CJPC, 2007). The 2007 elections do not appear to have had an automatic linkage between the intensity of the discourse and the electoral choices made. This was contributed by a number of factors:

(a)   The right to security of the person was not guaranteed especially in clash-hit areas, which influenced voter turnout. Elections in some constituencies such as Garsen, Kamukunji, Starehe, Rongo, and Kajiado North, among others, were characterized by violence. Incidents of death and injury arising from violence, intimidation and use of inflammatory language were reported in these constituencies. In other constituencies such as Kitutu Chache, Lang'ata, Webuye and Westlands, there were acts of intimidation, where voters, party agents and supporters of candidates intimidated other voters as well as ECK officials.

(b)   There was voter bribery through financial inducements. Acts of bribery were reported in Bahari, Gatanga, Ikolomani, Kibwezi and Westlands constituencies, where candidates allegedly bribed voters. Bribery interfered with the right of the electorate to decide their destiny.

(c)   There were cases of electoral violence and discrimination (see illustration of forms of electoral offences committed in each province in Figure 6.2). Such violence discouraged and hindered many voters from participating in the process, particularly the vulnerable people, such as those with disabilities, the elderly, the sick, expectant mothers and parents with babies. In other areas, violence also resulted in loss of life, destruction of livelihoods and denying people their right to vote, as polling stations could not be accessed.

(d)   There was unabated misuse of state resources through indiscriminate creation of new districts.

(e)   There were also allegations of rigging on the part of the current administration (KHRC, 2007).

Figure 6.2: Forms of electoral violence by province
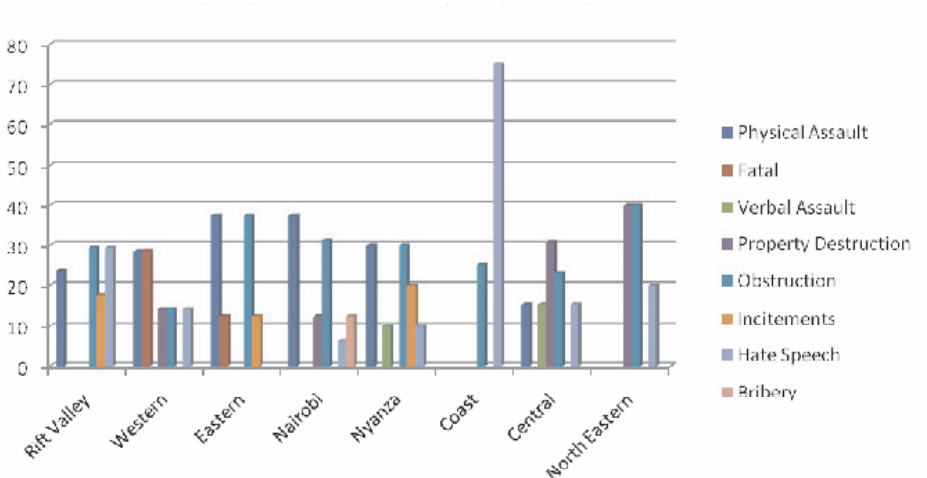
Source: Data from various sources (2002-2007)

Devolved Funds and Election Results in the 2007 Parliamentary Elections

To what extent did use of CDF and other devolved funds influence the 2007 parliamentary results? Since parliament passed the Constituency Development Fund (CDF Act 2003) into law in 2003 and its immediate implementation by the NARC government, the fund emerged as one of the topmost campaign tools by the government and parliamentarians across the political divide as the country approached the 2007 general elections. The fund, pegged at 2.5 per cent of total annual revenue collection, is supposed to go directly to the country's constituencies through the sitting MPs to help in local development. Most politicians and government harped on CDF impact in economic recovery and poverty reduction at the grassroots to resuscitate their plummeting political fortunes. However, the voters were suspicious of the extent to which most MPs were withholding CDF money running into billions of shillings to finance and facilitate their re-election. With over Ksh 3.5 billion from the CDF lying unutilized in various bank accounts as several projects went uncompleted, there was general concern that the money could end up in the MPs' campaign kitties to influence voters ahead of the general election. In Nairobi alone, where NARC-K and ODM-K politics was strongest, there were accusations and counter accusations over poor development records–Ksh 80,792,150 was unutilized by polling day (27 December, 2007).

According to a study conducted by the CDF Insight Team, the ECK statistics in collaboration with those from the CDF National Board and the United Nations Development Programme (UNDP) secretariats, a majority of the MPs who lost their seats at the last general election across the country had accumulated billions

of CDF cash lying unused in bank accounts, with scores of incomplete projects in their constituencies. Most of those who made it back to the 10th Parliament had lesser amounts of unused CDF cash in bank accounts. This scenario is somewhat compounded by those who registered high amounts of unused funds, but survived the onslaught due to the then prevailing ODM-PNU political parties' euphoria. Below, we randomly pick a few constituencies in each of the eight provinces to more closely examine the influence of CDF in the 2007 general election outcomes.

In Nairobi Province, by the end of 2007, Kamukunji Constituency was leading with unused CDF money amounting to Ksh 26,898,815. The then sitting MP, Norman Nyagah, was voted out in the 2007 general elections. Starehe Constituency had accumulated Ksh 25,155,766, and the then sitting MP, Maina Kamanda, lost. Embakasi had accumulated Ksh 16,153,496. The then sitting MP, David Mwenje lost. In contrast, most of those who made it to the 10th Parliament had lesser amounts of unused CDF monies. Good examples are Raila Odinga's Lang'ata Constituency, which had accumulated Ksh 3,184,537; Beth Mugo's Dagoretti, which had Ksh 555,746; and Fred Gumo's Westlands, which had Ksh 1,011,637. The hypothesis that prudent use of CDF may have influenced election results may therefore be validated for constituencies in Nairobi Province.

Coast Province had the poorest constituency in the country, Ganze. The then sitting MP, Joseph Kingi, lost with an unused CDF kitty of Ksh 39,066,036, followed by Kaloleni Constituency's former Cabinet Minister, Morris Dzorro, with Ksh 49,933,347 before the general elections. Danson Mungatana of Garsen Constituency had Ksh 16,723,380, which is comparatively high but he survived the onslaught, though there is an election petition in the High Court. Najib Balala was re-elected in Mvita Constituency and had comparatively less accumulated funds of Ksh 3,695,163. The hypothesis also passes for Coast Province constituencies.

In the Rift Valley Province, Eldoret North was ranked among the best run CDFs in the run up to the 2007 elections. During the financial year 2004/2005, it was ranked fifth countrywide with an allocation of Ksh 33 million. During 2005/2006, the constituency was allocated Ksh 43 million and ranked third in the country for putting CDF money into good use. In 2006/2007, the constituency was ranked first position after receiving the second highest amount of funds of Ksh 60 million after Hamisi Constituency of Western Province. William Ruto of Eldoret North Constituency was among the MPs who got re-elected in the 2007 elections, even though he had Ksh 24,703,499 of unspent CDF (*Daily Nation*, 20 March 2008 and www.cdf.go.ke). In contrast, Moses Cheboi of Kuresoi, Koigi Wamwere of Subukia and Jane Kihara of Naivasha all lost despite having amounts of unspent CDF similar to Ruto's. This may be interpreted against the background of national politics. Eldoret North voters were not just electing Ruto on the basis of CDF performance alone, they were voting in a serious presidential contender, one of their own. Here, one encounters performance in serious competition with ethnicity and sectionalism.

Noah Wekesa's Kwanza Constituency was leading in unspent CDF in Rift Valley Province of Ksh 31,966,313 followed by Mwangi Kiunjuri of Laikipia East with Ksh 27,276,188. They were both re-elected. Kipruto Kirwa of Cherangany lost to Joshua Kutuny, yet he had the lowest unused CDF kitty of Ksh 487,440 in the province, while Gideon Moi had the second lowest unused CDF of Ksh 1,112,860 and yet lost to Sammy Mwaita of the ODM. However, overall, Rift Valley Province was the region with the highest number of re-elected MPs to the 10th Parliament, yet it had millions of unused or accumulated CDF monies. Looking at voting patterns in Rift Valley Province, one begins to see the influence of ODM party euphoria and a spirited effort to get rid of the Moi dynasty. Moi's two other sons, Jonathan and Raymond, who had vied for the Eldama Ravine and Rongai parliamentary seats, respectively, both lost.

North Horr Constituency in Eastern Province led with an unused Ksh 43,997,222 allocated for CDF projects. This seems to have lubricated the exit of the then sitting MP, Kanacho Ukur Yattani. In Imenti Central, Kirugi M'Mukindia had an unused CDF kitty of Ksh 40,068,580. He lost to Gitobu Imanyara. Kitui South had the lowest unused CDF of 190,983 followed by Tigania East with Ksh 319,773 and then Kibwezi with Ksh 384,692. Among the three constituencies, only Tigania East re-elected the sitting MP, Peter Munya. Performance in terms of CDF use may not have been foremost in the minds of voters in Eastern Province. Instead, people seen to be closely allied to Kibaki or with prospects for Cabinet appointments may have carried the day.

Central Province had Limuru leading the pack with an unused CDF accumulated to Ksh 37,635,423. This may be seen largely as the origin of the failure by Kuria Kanyingi to get re-elected in the 2007 parliamentary elections. Ndia Constituency's Robinson Njeru Githae somehow survived the onslaught after failing to use CDF that had accumulated to Ksh 27,679,572. In stark contrast, Othaya Constituency had Ksh 23,540,279 in unspent CDF, though Kibaki garnered majority votes of 50,408 against his opponent who got only 477 votes. Wangari Maathai of Tetu Constituency had the lowest unspent CDF of Ksh 13,454, yet she lost to Francis Nyammo of the PNU party. Maathai's exit may have been the result of her voters' perception of an increasing distance between her and President Kibaki, and her winning of a Nobel Prize in environmental conservation. The Tetu voters may have seen it wise to relieve her of the parliamentary seat so that she could concentrate on global matters now that she had become an international personality.

In North Eastern Province constituencies, Fafi was leading the pack with unused CDF amounting to Ksh 24,631,871 and Wajir North with Ksh 19,600,848. The two sitting MPs, that is Aden Ahmed and Ali Abdullahi, respectively were, however, re-elected. Dujis, Lagdera and Mandera Central had less of unspent CDF compared to others with Ksh 1,860,580, 1,388,276 and 2,243,227, respectively. The three constituencies, however, voted out their sitting MPs. North Eastern Province constituencies thus present an enigma. Those MPs who had more of unspent CDF

(meaning those with relatively poor record of CDF use), and those with less of unspent CDF (and by extension those who might have used CDF well) were not re-elected. What may explain this scenario in this province of one ethnic group, namely Somali, is clanism. Where candidates come from majority clans, it matters less the individual's development performance if they come from the minority clan.

Western Province registered some of the highest CDF-related MP casualty rates. Perhaps one of the first and biggest casualties in the country was the then sitting Vice President and Funyula Constituency MP, Moody Awori. His constituency had accumulated Ksh 12,172,289 in the countdown to the 2007 polls, much less than half of what had been unspent in constituencies such as Emuhaya (Ksh 38,308,979) and Bumala (Ksh 26,397,409), yet Kenneth Marende and Wakoli Bifwoli, respectively, were re-elected. Moody Awori lost and his influence in the number two position in the previous government did not prove an asset. The other big culprit was former Minister for Labour, Newton Kulundu, whose Lurambi Constituency had accumulated Ksh 34,040,173 in unused CDF. Lurambi alone had 6.8 per cent of the poor population in Western Province, followed by Kimilili with 6.7 per cent poor and an unspent CDF of Ksh 19,484,331. As indicated above, Marende's Emuhaya was leading in the province with a total unspent CDF of Ksh 38,308,979 but he was apparently saved by the ODM euphoria that was sweeping the region, and by being close to ODM leaders Musalia Mudavadi and Raila Odinga. Budalangi Constituency, like many others, is said to have witnessed CDF abuse in the sense that previous committee members awarded themselves tenders without any bidding process, while those who got the tenders were rumoured to be relatives and friends of the then sitting MP. The constituency had a total of Ksh 24,311,893 in unspent CDF, and this may have led to the polling out of the incumbent MP, Raphael Wanjala.

In Nyanza Province, Alego-Usonga Constituency's Samuel Weya could not ride on the ODM euphoria despite his having swept the parliamentary nominations. His constituency led the province with an accumulated and unused CDF of Ksh 56,830,255. Other MPs who also exited and had huge unspent CDF monies were Kitutu Chache's Jimmy Angwenyi with Ksh 47,551,876 and Rarieda's Raphael Tuju, former Foreign Affairs minister. Although rumoured in many press reports to have been effective in CDF usage, he had accumulated unused CDF of Ksh 45,410,958, ranked third in Nyanza. Tuju is 'reputed' to have initiated a number of development projects in his constituency, such as improved roads, a mobile clinic, better schools and efficient disbursement of bursary funds. His ouster in the 2007 general elections may be attributable to two main factors. First, his appointment to the Cabinet by President Kibaki did not go down well with other leaders allied to the Liberal Democratic Party led by Raila Odinga, who felt short-changed in the pre-election Memorandum of Understanding (MoU) and saw Tuju as a sell-out. Tuju's failure to align himself with the popular party and presidential candidate in Nyanza may have led to his ouster from parliament regardless of his local development record (Ochieng' and Ayako, 2007).

Table 6.2: Status of CDF use and parliamentary election results in Kenya

Province	Constituency	Unused CDF on election eve 2007 (Ksh)	Fate of Incumbent MP
Nairobi	Kamukunji	26,898,815.00	Lost (Norman Nyagah)
	Starehe	25,155,766.00	Lost (Maina Kamanda)
	Embakasi	16,153,496.95	Lost (David Mwenje)
	Lang'ata	3,184,534.00	Re-elected (Raila Odinga)
	Westlands	1,011,637.00	Re-elected (Fred Gumo)
	Dagoretti	557,746.20	Re-elected (Beth Mugo)
	Makadara	443,524.50	Lost (Reuben Ndolo)
Coast	Kaloleni	49,933,347.00	Lost (Morris Dzorro)
	Bahari	45,221,381.05	Lost (Joseph Khamis)
	Ganze	39,066,066.35	Lost (Joseph Kingi)
	Garsen	16,723,380.00	Re-elected (Danson Mungatana)
	Lamu East	3,962,904.50	Re-elected (Abu Chiaba)
	Mvita	3,695,163.75	Re-elected (Najib Balala)
Rift Valley	Kwanza	31,966,313.25	Re-elected (Noah Wekesa)
	Laikipia East	27,276,188.00	Re-elected (Mwangi Kiunjuri)
	Eldoret North	24,703,499.00	Re-elected (William Ruto)
	Kuresoi	24,661,200.50	Lost (Moses Cheboi)
	Subukia	24,207,438.70	Lost (Koigi Wamwere)
	Naivasha	23,365.873.70	Lost (Jane Kihara)
	Baringo Central	1,112,860.95	Lost (Gideon Moi)
	Cherangany	487,440.75	Lost (Kipruto arap Kirwa)
Eastern	North Horr	43,997,222.45	Lost (Ukur Yattani)
	Imenti Central	40,068,580.00	Lost (Kirugi M'Mukindia)
	Kaiti	30,216,124.10	Re-elected (Gideon Ndambuki)
	Manyatta	25,215,588.50	Lost (Njeru Ndwiga)
	Kitui Central	17,580,785.00	Re-elected (Charity Ngilu)
	Runyenjes	2,204,507.15	Lost (Nyaga Wambora)
	Kibwezi	384,692.00	Lost (Kalembe Ndile)
	Tigania East	319,773.00	Re-elected (Peter Munya)
	Kitui South	190,983.00	Lost (Ezekiel Mwangu)

Province	Constituency	Unused CDF on election eve 2007 (Ksh)	Fate of Incumbent MP
Central	Limuru	37,635,423.65	Lost (Kuria Kanyingi)
	Ndia	27,679,572.50	Re-elected (Njeru Githae)
	Othaya	23,540,279.20	Re-elected (Mwai Kibaki)
	Mathioya	22,340,373.00	Lost (Joseph Kamotho)
	Kipipiri	5,339,821.65	Re-elected (Amos Kimunya)
	Kandara	3,743,828.20	Lost (Joshua Toro)
	Kinangop	3,727,761.00	Lost (Waithaka Mwangi)
	Tetu	13,454.20	Lost (Wangari Maathai)
North Eastern	Fafi	24,631,871.75	Re-elected (Aden Ahmed)
	Wajir North	19,600,848.00	Re-elected (Ali Abdulahi)
	Mandera Central	2,243,227.00	Lost (Billow Kerrow)
	Dujis	1,860,598.00	Lost (Maalim Mohamed)
	Lagdera	1,388,276.25	Lost (Sheikh Abdullahi)
Western	Emuhaya	38,308,979.60	Elected (Kenneth Marende)
	Lurambi	34,040,173.50	Lost (Newton Kulundu)
	Nambale	14,140,467.05	Re-elected (Chris Okemo)
	Funyula	12,172,289.10	Lost (Moody Awori)
	Malava	2,752,322.85	Re-elected (Soita Shitanda)
	Mt Elgon	2,710,113.20	Lost (John Serut)
	Mumias	532,129.10	Lost (Wycliffe Osundwa)
Nyanza	Alego-Usonga	56,830,255.25	Lost (Samwel Weya)
	Kitutu Chache	47,551,876.05	Lost (Jimmy Angwenyi)
	Rarieda	45,410,958.30	Lost (Raphael Tuju)
	Rangwe	3,913,675.00	Lost (Philip Okundi)
	Ndhiwa	3,805,028.00	Re-elected (Orwa Ojode)
	Kisumu Rural	2,516,398.00	Re-elected (Anyang' Nyong'o)
	Kisumu Town West	1,701,717.60	Lost (Rev.
	Kasipul-Kabondo	8,042.00	Lost (Paddy Ahenda)

Source: Kenya National Bureau of Statistics (2008)

Secondly, Rarieda was one among many constituencies that recorded high unused CDF funds in Nyanza Province, standing at Ksh 45,410,958 just prior to the elections. This reality, therefore, quickly overshadows and reduces the talk of a 'good development record' to mere propaganda (see Appendix 6.1). This is dealt with in greater detail in a later section.

Kuria Constituency had an accumulated CDF of Ksh 31,184,410 and had the highest poverty incidence in the province of 80 per cent. The constituency did, however, re-elect its then sitting MP, Wilfred Machage. Kasipul-Kabondo recorded the lowest unspent CDF of Ksh 8,042, yet the sitting MP was polled out. These statistics are shown in Table 6.2.

Thus, although some MPs were voted back in 2007 with relatively huge amounts of unspent CDF, voter preference for candidates with a track record of local level development, particularly measured in terms of CDF use, was evident throughout the country. This suggests that more and more Kenyans could be shifting from ethnicity and political patronage as determinants of voter choice towards the more rational considerations of local level development.

A report by UNDP revealed that the poverty level is still substantially high across the country, even with the introduction of the CDF money, which MPs had turned into a campaign kitty. According to the report, poverty, disease and insecurity remain major problems in Kenya despite the 5 per cent economic growth. Even as Nairobi MPs continued to withhold millions of CDF, according to the UNDP report, over 60 per cent of Nairobi's population live in slum areas with high levels of crime, poverty and lack of basic social amenities. Ironically, although Ganze Constituency was rated the poorest in the country, Coast Province led with a colossal amount of Ksh 477,826,718 of unspent CDF in bank accounts held by various CDF committees (www.cdf.go.ke).

According to a national opinion poll, only 31.9 per cent indicated a large impact of the CDF programme in their constituencies. The rest of the respondents indicated either a small impact (46.9%) or neither large nor small (14.6%). A proportion of 5.8 per cent was not aware of the impact of CDF progammes in their areas (Figure 6.3).

According to a recent study (Njeru and NACCSC, 2007), some CDF committees are composed of the MPs' relatives and close associates, who determine the allocation of funds and projects to be funded. In this voter and civic education handbook, Njeru poses some pertinent brainstorming questions to assist voters come up with ways and means of streamlining CDF management for maximum benefit to the greater majority of citizens. The handbook sensitizes voters on the need to vote for leaders who support equitable distribution of resources and promote the well-being of people with disability, the weak, disadvantaged and marginalized. However, issues such as money, kinship, ethnicity and clanism were expected to play a major role in influencing the outcome of the 2007 general elections.

Figure 6.3: Perceptions on impact of CDF on local level development

Has the impact of CDF programme in your constituency been large or small?

N = 2,654
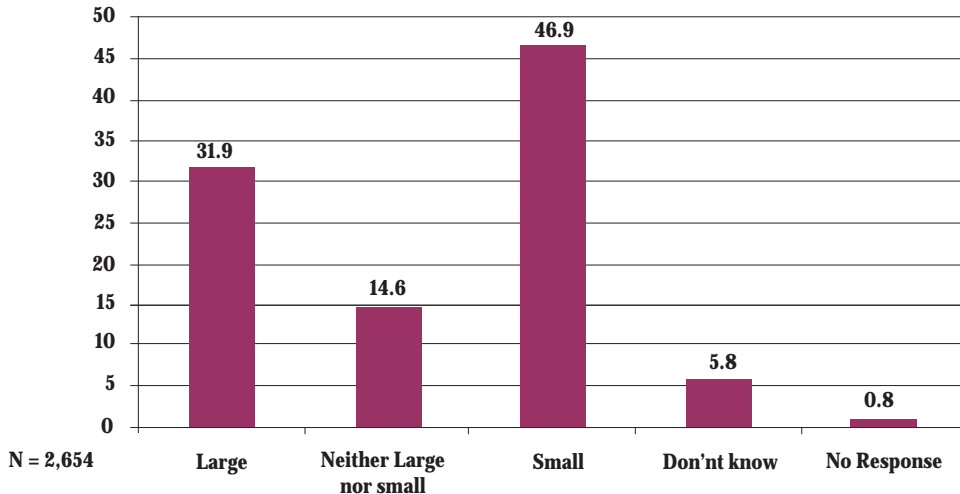
Source: Government of Kenya, National Opinion Poll 15-18 June 2006

The Local Authority Transfer Fund (LATF) was established in 1999 through the LATF Act No. 8 of 1998, with the objective of improving service delivery, improving financial management, and reducing the outstanding debt of local authorities. LATF comprises 5 per cent of the national income tax collection in any year. It is one of the operational devolved funds whose aim is to reduce socio-economic disparities and improve the well-being of citizens. LATF monies are combined with local authority revenues to implement local priorities (KIPPRA, 2006).

The whole idea of having funds such as these is based on the belief that government at the local level has a better understanding of community needs, and is more capable of delivering improved, responsive and relevant services. However, according to a survey carried out by KIPPRA (2006), LATF was the least known devolved fund in the country. Free primary education was the only fund that recorded consistently high levels of awareness (at over 90%) with LATF being the least visible fund at less than 30 per cent. The Free Primary Education Fund recorded the highest rating for impact, with over 90 per cent reporting a positive impact. With most Kenyans unaware of the existence of LATF, the fund had little implication in influencing electoral outcome.

Although the incidence of overall poverty was quite high in 2005/06 at 45.9 per cent (Figure 6.4), the utility of the devolved funds, notably CDF, LATF and FPE in empowering the local communities has not been fully achieved to make a significant impact on electoral choice for voters.

Figure 6.4: Incidence of overall poverty, 1992-2005/6 (%)
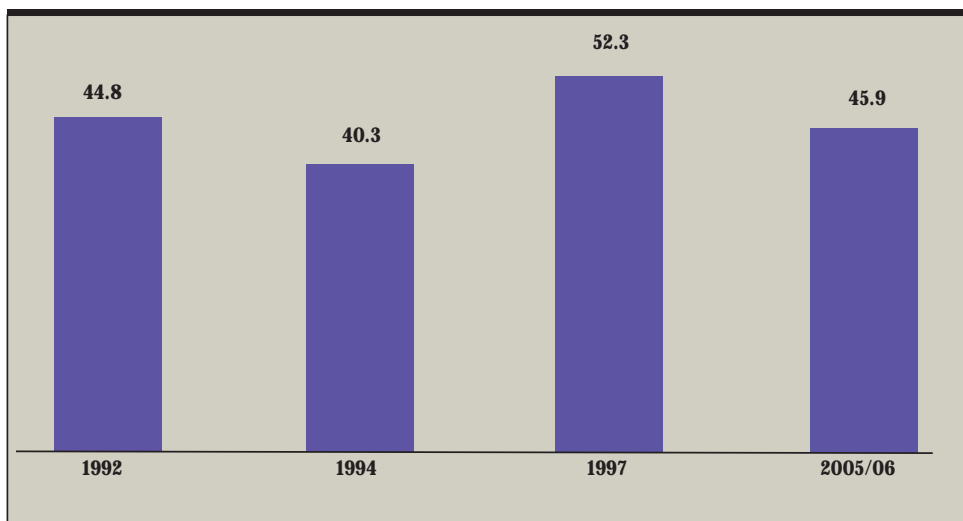
Source: Kenya National Bureau of Statistics (2007)

Figure 6.5: School enrolment after introduction of FPE (2004-2006)
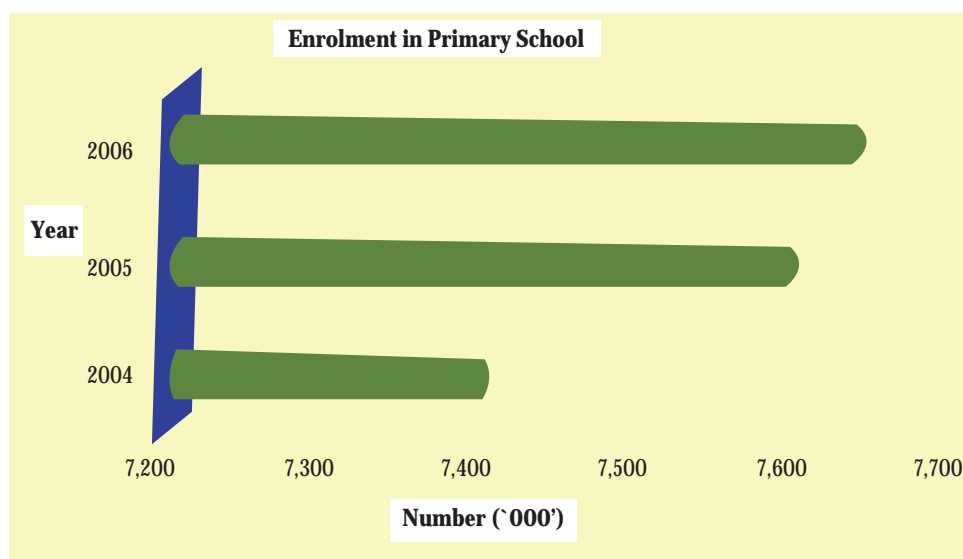
Source: Kenya National Bureau of Statistics (2007)

President Kibaki announced Free Primary Education (FPE) in January 2003 and the enrolment is seen as a success, with over 7.6 million registered by 2006. This is, however, seen as a gimmick to hoodwink the electorate, particularly the poor, who have widely benefited from this programme (Njeru and Njoka, 2007). It is also facing such problems as inadequacy of classrooms, lack of books and inadequate teachers to cater for the large enrolment, which is likely to have adverse effects on the quality of primary education (Wanyande *et al.*, 2007).

Development Performance and Electoral Outcomes in Kenya at the Local Level: The Place of Ethnicity, Party, Gender and Class

The role of development performance as compared with ethnicity, party affiliation, gender and class in determining electoral outcome in Kenya has generated various arguments and ideas from different scholars both in Kenya and abroad. According to Bratton and Kimenyi (2007), the introduction of multiparty politics in Kenya in 1991 led the ruling party and opposition parties to quickly splinter according to ethnic groupings. As a result, the first multiparty election held in 1992 largely rotated around ethnic alignments, a pattern repeated in the 1997 general elections (Oyugi, 1997; Orvis, 2001; Machira, 2001). Nevertheless, this view seemed to take a new direction in the 2002 general election when a broad coalition of ethnic groups supported Mwai Kibaki for president. An overview of Kenya's December 2007 contest revealed that voters consider factors other than ethnicity in deciding how to vote. A debate on the relative importance of cultural identities and economic interests can be found in the literature of mass electoral behaviour (Lichbach and Zuckerman, 1997). For advanced democracies, analysts agree that elections usually take the form of a referendum on the economy, with voters rewarding or punishing incumbent political parties at the ballot box depending on their past policy performance (Lewis-Beck and Stegmaier, 2000; Geys, 2006).

Figure 6.6 indicates the importance of development performance of individual candidates in determining their election or otherwise. 30.8 per cent of the national opinion polls conducted in 2006 indicated that voters were likely to be more concerned with the development record of the parliamentary candidates than ethnicity during the 2007 general elections.

Although ethnicity is an important factor in explaining electoral choice, Kenyans have also shown care about policy interests such as personal economic well-being, the performance of the economy, and the government's record. Furthermore, the importance of ethnicity varies depending on individual's self-ascribed identity, with 'ethnics' more often employing feelings of group identity and 'non-ethnics' more often making rational calculations of self and group interest.

According to Afrobarometer publications on the results of national sample surveys on the attitudes of citizens in selected African countries towards democracy, markets, civil society, and other aspects of development, the most striking evidence of a popular

Figure 6.6: Likely determinants of voter choice in the 2007 general elections

What is the single most important quality a parliamentary candidate should have?
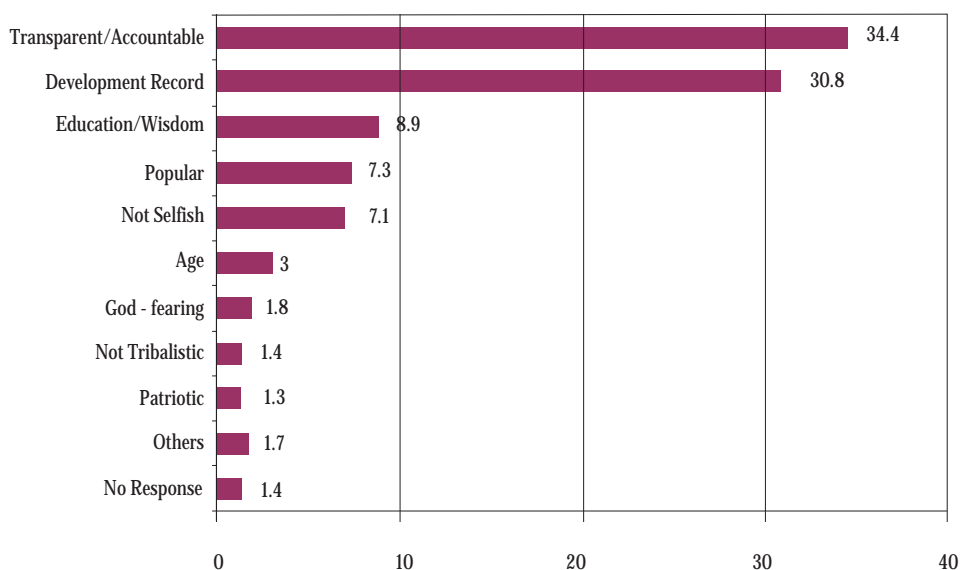
Source: Government of Kenya (2006: 15-18)

desire for non-ethnic politics concerns people's self-appraised reasons for making a choice at the polls. The survey asked respondents to select the qualification 'most important to you when you decide whom to vote for in a presidential election.' The most frequent answers concerned the candidate's expected service to the community (27%) and honesty in handling public funds (25%). Less than 1 per cent of all respondents (10 persons out of 1,207) said that the most important consideration was that the candidate 'belongs to my ethnic group.' Political scientists have long known that voters are poor judges of their own political motivations, and that survey research is a blunt instrument for revealing real voting rationales. However, the strength of this result indicates that either voting in Kenya is genuinely non-ethnic, or Kenyans are describing their political world in a way they want it to be, rather than the way it really is.

Table 6.3 describes the voting patterns in Kenya in regard to local development and other voting motivations in the 2007 general elections. In Kenya, as in other personalized polities in Africa, ordinary people often judge the fairness of the political system with reference to the ethnic character of the political elite. Despite protestations that a candidate's ethnic identity does not enter into the voting calculus, citizens acknowledge that an ethnic division of spoils is an important (if unspoken) sub-text in national electoral contests.

This observation is confirmed in Table 6.4 by the weight that survey respondents attributed to ethnic origin of candidate in the voting calculations of other Kenyans.

With reference to 2002, when the National Rainbow Coalition (NARC) swept into power at the head of a pan-ethnic coalition, less than a third of the respondents (30%) saw the ethnicity of candidate as an important consideration for the electorate. A larger proportion (37%) acknowledged that ethnicity was a factor in the 1997 elections. Apparently, according to the survey, many Kenyans saw the December 2007 general elections as the most polarized contest of all. Half of all survey respondents (50%) said that the ethnic origin of a candidate was going to be an important consideration for their fellow citizens. By this time, the NARC coalition had broken down and the presidential race had crystallized into a Gikuyu-Luo tussle over the presidency (Afrobarometer National Survey, 2007).

Table 6.3: Self-described voting motivations, Kenya 2007

The preferred candidate would:	%
Actually serve the community	27
Be honest in handling public funds	25
Care about the community	22
Have experience at managing public services	19
Have a high education level	4
Have a chance of winning the election	1
Belong to my ethnic group	<1
Other	2

Source: Afrobarometer Survey (2007)

Table 6.4: Perceived salience of candidate's ethnicity in recent elections in Kenya

Election year	%* (N=1,207)
1997 elections	37
2002 elections	30
2007 elections	50

Source: Afrobarometer National Survey (2007)

* Per cent seeing the ethnicity of candidates as being 'somewhat/very/extremely important.'

The Afrobarometer National Survey also indicates that most voters were mostly concerned with policy issues during the 2007 general elections, rather than ethnic identity. When the respondents were asked to describe 'which political party you like most,' they claimed to give top priority to 'the policies the party promises to implement' (70% said they considered this factor 'a lot'), 'the personal integrity of

the party's leader' (66%) and 'past governing experience of the party' (55%). Only one out of five (20%) made similar mention of 'the ethnic or regional origins of the party's leader'. However, mistrust among different ethnic groups in voting according to ethnic lines was seen to contribute towards ethnic alignment among the voters. Although policy issues were a cause of political party alignments, it is important to note that the alignments were dictated by the crystallization of the Gikuyu-Luo tussle of ethnicity. As Posner (2005: 104) notes:

> *The fact that so many survey respondents told me that tribalism was wrong…does not imply that it is absent either from their calculations or from their behaviour. Despite their preference for a situation in which resources are not distributed along ethnic lines, they find themselves trapped in an equilibrium where ethnic favoritism is the rule, and where they lose out in access to resources if they ignore its implications for political behaviour.*

The survey results contain evidence of this form of reasoning. When Kenyans were asked about the characteristics of 'the political party you most dislike', 59 per cent cited 'the party's perceived tribalism.' In other words, voters referred to the institutional reputation of their opponent's party in deciding, defensively, to vote as an ethnic bloc. They did not need to be primarily motivated by their own ethnic origins to behave in this fashion; they only needed fear that their opponents would rely on formulae of ethnic exclusivity. Where voting blocs were polarized, and where polarization revolved around ethnicity, voters were hard pressed to maintain a commitment to policy issues above ethnic origins as a basis for voting (Bratton and Kimenyi, 2007).

Ethnicity in Kenya has taken the form of the 'ethnification of political and economic processes', which means that people are made to treat ethnicity as increasingly relevant to their personal and collective choices in terms of selection of a candidate during elections. Thus, political leaders and the people they lead are stimulated to consolidate, form or stabilize an ethnic identity; and the political opportunity afforded by ethnic networks is easily exploited for political support. Most ethnic groups in Kenya associate the relative economic prosperity of the Gikuyu and Kalenjin elite to the real or imagined favours derived from the political advantages that accrued to them during the Kenyatta and Moi presidencies, respectively. The same is now being said of the Kibaki presidency. Thus, there is common talk of those who have 'eaten' and those who have been marginalized or excluded altogether. In terms of political mobilization, therefore, political leaders call upon their ethnic communities to group together and fight for political office either as a way of ensuring their continued stay in power, so as to continue 'eating', or to gain political power as a way of finding an 'eating place' (Makoloo and Ghai, 2005).

According to John Githongo (former Permanent Secretary in charge of Governance and Ethics in the Kenya government), development performance, which should have won the government broad popularity, had instead led to cynicism and envy along

ethnic lines. Corruption, accompanied by the conspicuous consumption of a ruling elite perceived to be from one part of the country had increased suspicion among different ethnic groups. Kenya's rapid economic growth had not trickled down to the average Kenyan, thus leading to mobilization of votes through ethnic lines. To hardline members of the ruling (mainly Gikuyu) elite, Raila Odinga had become the epitome of their historical fears: he is a Luo, a community whose elite had engendered deep mistrust of the Gikuyu elite through a history of betrayals. He (Odinga) was also seen as an unconstrained populist, whose talk of equitable distribution of resources masks a desire to encroach onto what the Gikuyu had grown and built.

To Odinga's hardline supporters, Kibaki and his lieutenants exemplify the worst of Gikuyu arrogance and greed. The desire to teach the Gikuyu a lesson was strong enough to explain the popularity of the ODM. The Kenya general elections 2007 Observation Report notes that the 2005 referendum on the constitution played a key role in polarizing the country along tribal lines, and the animosity created continued to affect the political climate during the general elections. However, Githongo notes that comprehensive constitutional reform, a credible anti-corruption programme, and better management of presidential powers are cardinal to a stable future for Kenya (*Financial Times*, 2005).

In an article by Oloo (2007), women are classified as a minority due to discrimination on the basis of gender. The author notes the effects of gender discrimination, particularly poverty, due to gender-based division of labour, which has traditionally kept women in the private sphere leaving the public sphere for men. As such, women have been disadvantaged in many public affairs, including political leadership. Figure 6.7 summarizes the results of the national opinion poll on the likelihood of voting women candidates to parliament. It illustrates the negative cultural attitudes towards women parliamentary candidates. Most people (48.1%) were unlikely to vote for women candidates regardless of their performance at local level.

Gender-based Violence

There were several cases of gender-based electoral violence reported during the 2007 elections. The prominent ones are listed below. There were two incidents in Nairobi and one in Eastern and Western provinces each. The incidents were used to deter women from participating in the elections.

Figure 6.7: Likelihood of voting women candidates in the 2007 general elections

Would voters in your constituency be likely or unlikely to vote for a female candidate for parliament?
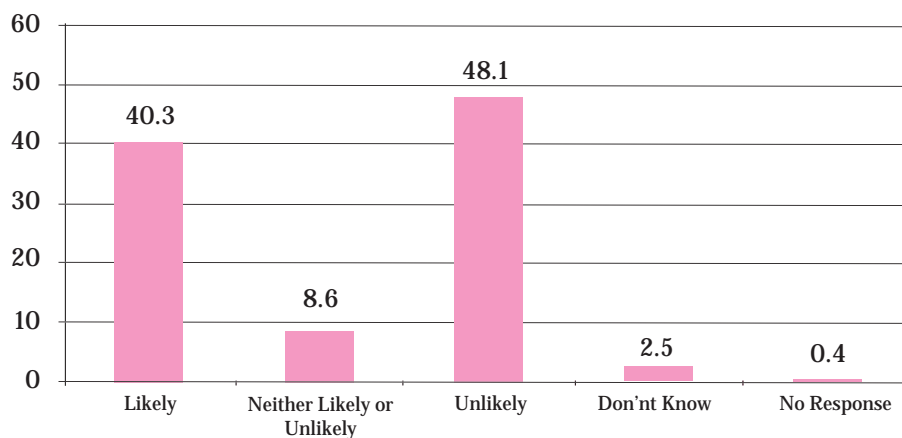
Source: Government of Kenya (2006)

Documented cases (Youth Agenda, 2007)

- In North Imenti Constituency, Flora Tera was brutally assaulted and humiliated by youth hired by an alleged elderly politician

- In Webuye Constituency, several women were stripped naked for wearing NARC-K T-shirts

- In the first case in Nairobi, Orie Rogo Manduli was grievously assaulted in intra-party violence involving PNU

- In the second Nairobi case, a civic candidate within the city's Embakasi Constituency, **Aisha Ali, was assaulted in Dandora. All the incidents resulted in the victims getting severely injured and being hospitalized.**

- On 16 September 2007 at Kibera area in Lang'ata Constituency, a PNU parliamentary aspirant from a Nairobi constituency was apparently in the company of two administration police officers who opened fire at a crowd of young people that were heckling the politician.

Source: Youth Agenda (2007)

In the East African region, Kenya is noted for having the smallest number of women holding elective positions. Statistics, however, show that women's limited participation in politics and governance is neither due to lack of qualified women, nor their level of exposure and intellectual skills for participation. According to Ogada (2007), there are three issues in the public domain that may offer some explanation for women's limited participation in politics and public life in Kenya. First is the socio-political environment in which the electioneering processes take place. Second is the role political parties and their internal structures and operations play in facilitating women's participation; and, thirdly, the socio-economic environment in which the 2007 electoral processes were taking place in Kenya. In this regard, Kihoro (2007) underscores the need for Kenyan voters to change their attitude towards women candidates. He further encourages women parliamentarians to champion 'national women agenda' as a means of improving the socio-economic, political and cultural well-being of women at the grassroots level.

The 2007 general election in Kenyan had the highest number of women political aspirants ever witnessed in the country's history. There were over 269 women cleared through the different political parties to run for parliamentary and civic seats, compared to 44 in the 2002 elections. This scenario was the result of a concerted effort by non-governmental organizations and civil society activities that started in earnest in early 2006 in the run-up to the 2007 electioneering period. Most of the sensitization and mobilization activities were undertaken by the Gender and Governance Programme partners, funded by development agencies through the UNIFEM kitty for women, and in furtherance of Article 3 of the Millennium Development Goals for Kenya.

Many sensitization workshops and seminars for women aspirants focused on individual skills for capacity and confidence building, including identification of electioneering issues, development of relations with media houses, and the packaging of the 'self' for public space and elective position. The emphasis was on 'transformative' political leadership, guided by the principle that no society can hope to progress when women are locked out of political participation.

In Kenya, women comprise 52 per cent of the voting population–this was too significant a proportion to be ignored in the decision making processes and public policies that affect the lives of women and those of their families. Yet, few women were nominated by the major political parties during party nominations due to the fact that parties were male-dominated. Most women seeking nomination with big parties found shelter in smaller parties when violence perpetrated against them reached alarming levels. Women did not benefit from direct political party nominations as compared to their male counterparts; for example, a male candidate in Yatta Constituency was given direct PNU nomination without considering other candidates, including women who had participated in the party politics. There was

gender disparity within the ECK, especially at decision making level, which was also seen to affect the participation of women in the elections (UNDP, 2007).

Lack of internal democracy within parties is a major problem affecting the participation of women in politics. This has in the past seen direct nomination of candidates who are able to finance the political parties. This has continued to marginalize the economically and socially-disempowered groups such as women, the youth and those with disabilities. The 2007 general elections, although touted as the first closely contested elections, were characterized by cut-throat competition but marred by corruption, thus putting women at a disadvantaged position due to their low economic capability (UNDP, 2007).

As Ogada (2007) observes, the lower the women's economic capability, the further away from the centre of power and decision making they are within these parties, and the less likely it is that aspiring women would be able to negotiate and influence their chances of winning party nominations. Most women encounter character assassination, mudslinging, false promises, propaganda, and so on, which make the cost of involvement in the current socio-political environment too costly in terms of social capital, especially for many career women with leadership qualities. Many career women find the social environment hostile and are not willing to play hard-ball in the political game, which is played according to male-stream rules, and at the expense of family and career dignity and social running—even as role models to the girl-child.

During the nomination exercises in November, some women aspirants were subjected to physical beating and rape, abductions, and even deliberate delay and hijacking of the nomination exercises in order to cause conflict with women's other gender role performances. In September, Flora Igoki Tera, an ODM-Kenya parliamentary candidate for the North Imenti Constituency was accosted, beaten and forced to eat human waste on her way home in Meru. Alice Onduto, a parliamentary aspirant for Lugari Constituency, who lost in the nominations, was shot dead while on her way home in Nairobi's South C Estate on 1 December 2007. A female civic aspirant was battered and admitted to Nairobi Women's Hospital during nominations in Embakasi Constituency (Ogada, 2007; UNDP, 2007). Thus, gender violence significantly frustrated the chances of women participating in the democratic process. The issue of gender marginalization was also evident in areas where women's voting was informed by the choice of their husbands (Commonwealth Secretariat, 2007).

Conclusions

After careful analysis of the 2007 general elections, a few conclusions may be drawn. First, ethnicity, political party euphoria and political patronage are gradually giving way to objective, rational considerations such as performance of individual candidates in local level development. Second, electoral mobilization appears to be moving in

the direction of concrete development issues such as poverty reduction, to the extent that those candidates with a proven track record of development or appear to have the potential to mobilize the constituents in development activities will in future have increased chances of being elected to parliament or civic authority. Third, and going by the second conclusion, there is likely to be a link between the intensity of the discourse and electoral choice or results. Fourth, although parliamentary incumbents with good CDF management may have lost their seats, it is becoming increasingly clear that utilization of devolved funds, especially CDF, is likely to have direct influence on the way people vote. Good managers will win and bad managers will lose. This is likely to be an enduring barometer in political performance. Fifth, Kenyan voters will need to develop and nurture a liking for women candidates if gender equity is to be realized in electoral politics in the country.

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Appendix 6.1: Uncollected CDF as of July 2007

Uncollected CDF as of July 2007 (Ksh)	
Rift Valley Province	804,753,997
Eastern Province	589,652,515.65
Nyanza Province	637,710,743.95
Coast Province	477,826,718.45
Western Province	434,457,018
Central Province	392,058,851
North Eastern Province	127,978,200
Nairobi Province	80,792,150

Uncollected CDF by province, constituency and MP (Ksh)		
Nairobi Province		
Kamukunji	Norman Nyagah	26,898,815.70
Starehe	Maina Kamanda	25,155,766.10
Embakasi	David Mwenje	16,153,496.95
Lang'ata	Raila Odinga	3,184.537.25
Westlands	Fred Gumo	1,011,637.80
Dagoretti	Beth Mugo	557,746.20
Makadara	Reuben Ndolo	443,524.50
Coast Province		
Kaloleni	Morris Dzorro	49,933,347.15
Bahari	Joseph Khamisi	45,221,381.05
Ganze	Joseph Kingi	39,066,036.35
Kisauni		38,361,198.50
Msambweni	Abdallah Ngozi	38,248,418.50
Matuga	Ali Mwakwere	34,926,851.80
Malindi	Lucas Maitha	33,925,479.10
Bura	Ali Wario	25,362,681.50
Taveta	Naomi Shaban	23,835,610.60
Galole	Tora Mugava	23,586,644.50
Magarini	Harison Kombe	22,151,039.80
Likoni	Suleiman Shakombo	18,006,298.05
Kinango	Gonzi Rai	17,997,521.80
Garsen	Danson Mungatana	16,723,380.00
Wundanyi	J. Mwandawiro	11,299,471.00
Voi	Boniface Mganga	10,448,453.65
Lamu West	Yasin Twaha	9,587,578.20
Changamwe	Seif Kajembe	5,976,802.65

Mwatate	Marsden Madoka	5,510,456.00
Lamu East	Abu Chaba	3,962,904.50
Mvita	Najib Balala	3,695,163.75

North Eastern Province

Fafi	Aden Ahmed	24,631,871.75
Wajir North	Ali Abdulahi	19,600,848.00
Mandera West	Abdi Mohamed	18,420,330.50
Wajir East	Abdi M. Mohamed	17,456,987.70
Ijara		15,981,302.75
Mandera East	Isaac Shaban	13,547,546.00
Wajir South	Ali Hassan	8,152,815.50
Wajir West	Ahmad Khalif	4,694,395.90
Mandera Central	Adan Billow	2,243,227.00
Dujis	Hussein Maalim	1,860,598.70
Lagdera	Sheikh Abdullahi	1,388,276.25

Eastern Province

North Horr		43,997,222.45
Central Imenti	Kirugi Laiboni	40,068,580.00
Yatta	James Mutiso	34,374,040.00
Kaiti	Gideon Ndambuki	30,216.124.10
Laisamis	Taitus Lemusei	29,429,237.10
Mwala	John Katuku	29,174,747.50
Saku	Abdi Sasura	28,714,385.50
Manyatta	Peter Ndwiga	25,215,588.50
Gachoka	Joseph Nyagah	25,077,682.50
Masinga	Benson Mbai	24,656,665.50
Mwingi South	David Musila	23,516,768.35
Kangundo	Moffat Maitha	22,761,207.50
North Imenti	Daudi Mwiraria	22,418,289.70
Mwingi North	Kalonzo Musyoka	21,211,646.25
Mutito	Julius Kilonzo	19,434,040
Kitui Central	Charity Ngilu	17,580,785
South Imenti	Kiraitu Murungi	17,482,776.00
Kathiani	Peter Kaindi	16,223,769.40
Tharaka	Francis Nyamu	12,811,085.90
Siakago	Justin Njoka	12,810,847.50
Isiolo North	Abdi Kuti	10,841,838.00
Ntonyiri	Richard Maore	10,359,957.55
Makueni	Kivutha Kibwana	10,022,121.80
Igembe	Raphael Muriungi	9,293,716.70

Machakos Town	Daudi Mwanzia	8,350,993.60
Nithi	Petkay Miriti	8,051,426.70
Moyale	Galgallo Boru	7,269,682.00
Isiolo South	Ali Bahari	6,496,147.00
Tigania West	Kilemi Mwiria	6,203,003.00
Kitui West	Winfred Nyiva	5,504,104.20
Mbooni	Joseph Munyao	4,251,198.60
Kilome	John Mutiso	2,412,354.05
Runyenjes	Martin Nyaga	2,204,507.15
Kibwezi	Kalembe Ndile	384,692.15
Tigania East	Peter Munya	319,773.00
Kitui South	Ezekiel Mwangu	190,983.20
Central Province		
Limuru	Simon Kanyingi	37,635,423.65
Ndia	Robinson Githae	27,679,572.50
Othaya	Mwai Kibaki	23,540,279.20
Mathioya	Joseph Kamotho	22,340,373.00
Githunguri	Arthur Magugu	19,322,308.80
Juja	William Kabogo	18,990,243.00
Mwea	Alfred Nderitu	18,606,732.50
Kangema	John Michuki	18,522,009.50
Gatanga	Peter Kenneth	17,863,368.00
Ndaragua	Geoffrey Muchiri	16,748,092.50
Kiambaa	James Njenga	15,334,142.25
Mukurweini	Mutahi Kagwe	14,961,693.70
Kigumo	Onesmus Kihara	13,287,018.00
Nyeri Town	Peter Gichohi	13,283,573.70
Lari	James Kimathi	13,047,840.15
Ol Kalou	Muriuki Karue	12,937,200.00
Mathira	James Gachagua	12,339,458.50
Gichugu	Martha Karua	10,369,237.20
Kerugoya-Kutus	Daniel Karaba	9,036,781.35
Kabete	Paul Muite	8,705,335.00
Maragwa	Elias Mbau	8,504,767.50
Gatundu South	Uhuru Kenyatta	7,139,850.50
Kiharu	Kembi Gitura	6,770,762.00
Gatundu North	Patrick Muiruri	6,728,390.90
Kieni	Christopher Murungaru	5,539,821.65
Kipipiri	Amos Kimunya	5,339,821.65
Kandara	Joshua Ngugi	3,743,828.20

Kinangop	Waithaka Mwangi	3,727,761.00
Tetu	Wangari Maathai	13,454.20
Rift Valley Province		
Kwanza	Noah Wekesa	31,966,313.25
Laikipia East	Mwangi Kiunjuri	27,276,188.00
Laikipia West	Geoffrey Kariuki	26,866,602.00
Molo	Mukiri Macharia	26,747,598.20
Samburu West	Simeon Lesirma	25,572,872.45
Samburu East	Sammy Leshore	25,139,526.80
Eldoret North	William Ruto	24,703,499.00
Kuresoi	Moses Cheboi	24,661,200.50
Subukia	Koigi Wamwere	24,207,438.70
Naivasha	Jane Kihara	23,365,873.70
Saboti		21,778,185.25
Tinderet	Henry Kosgey	21,131,999.75
Marakwet East	Linah Kilimo	20,193,849.90
Marakwet West	David Kiprono	19,177,165.10
Keiyo South	Kiprono Biwott	19,012,478.80
Narok South	Stephen Kanyike	18,241,739.00
Emgwen	Stephen Tarus	17,580,785.00
Mosop	John Sambu	16,886,632.00
Turkana Central	David Ethuro	15,338,359.35
Mogotio	Joseph Korir	15,271,937.50
Eldoret East	Joseph Lagat	13,424,794.30
Rongai	Alicen Chelaite	12,368,360.70
Eldoret South	David Kiptanui	11,866,195.60
Aldai	Jim Choge	11,563,044.75
Eladama Ravine	Musa Sirma	11,470,080.00
Kacheliba	Samuel Poghisio	10,620,289.05
Kapenguria	Samuel Moroto	10,190,502.50
Narok North	William Ntimama	9,140,676.40
Turkana North	John Munyes	8,337,351.75
Kajiado North	George Saitoti	7,385,162.40
Nakuru Town	Mirugi Kariuki	7,084,663.25
Keiyo North	Lucas Kipgosgei	5,942,507.50
Kipkelion	Sammy Rutto	4,254,506.70
Sigor	Philip Ruto	3,903,388.50
Kajiado South	Geoffrey Parpai	3,157,462.00
Kilgoris	Gideon Konchella	1,404,104.15
Baringo Central	Gideon Moi	1,112,860.95

Cherangany	Kipruto Kirwa	487,440.75
Western Province		
Emuhaya	Kenneth Marende	38,308,979.60
Lurambi	Newton Kulundu	34,040,173.50
Shinyalu	Daniel Khamasi	29,630.324.15
Hamisi	George Khaniri	28,855,219.95
Kanduyi	Athanas Musiko	27,241,798.75
Bumala	Bifwoli Wakoli	26,397,409.10
Budalangi	Raphael Wanjala	24,311,893.75
Butere	Wycliffe Oparanya	24,107,430.50
Sabatia	Moses Akaranga	23,862,948.45
Vihiga	Andrew Ligale	22,746,275.90
Kimilili	Mukhisa Kituyi	19,484,331.60
Butula	Christine Abunga	17,478,272.55
Sirisia	Moses Wetangula	17,149,439.55
Matungu	David Aoko	15,424,975.50
Webuye	Musikari Kombo	15,311,291.50
Nambale	Chris Okemo	14,140,467.05
Khwisero	Julius Odenyo	12,750,005.74
Funyula	Moody Awori	12,172,289.10
Ikolomani	Daniel Khalwale	10,687,857.00
Lugari	Enoch Wamalwa	5,737,364.40
Amagoro	Sospeters Odeke	3,873,137.00
Malava	Peter Shitanda	2,752,322.85
Mt Elgon	John Serut	2,710,113.20
Mumias	Wycliffe Osundwa	532,129.10
Nyanza Province		
Alego Usonga	Samuel Weya	56,830,255.25
Kitutu Chache	Jimmy Angwenyi	47,551,876.05
Rarieda	Raphael Tuju	45,410,958.30
Bomachage	Joel Omagwa	40,176,681.15
West Mugirango	Henry Onyancha	39,655,185.20
Gem	Jakoyo Midiwo	33,264,273.95
Bobasi	Stephen Kengere	31,847,564.00
Kuria	Wilfred Machage	31,184,410.60
Karachuonyo	Awiti Adhu	27,337,994.50
South Mugirango	James Magara	26,297,344.35
Nyando	Eric Opon	23,773,955.00
Muhoroni	Patrick Olweny	22,329,486.05
Nyatike	Tobias Orao	22,776,406.55

Uriri	Herman Odiambo	21,928,536.40
Bonchari	John Opore	20,749,896.25
Ugenya	Ondiek Oluoch	19,458,574.40
Mbita	Otieno Kajwang'	17,131,848.80
Rongo	George Mbogo	15,081,598.55
Gwasi	Zaddok Madiri	14,098,206.70
Bondo	Oburu Odinga	14,033,386.95
Kisumu Town East	Eric Sungu	11,498,098.95
Kitutu Masaba	Jimmy Ondieki	9,169,112.00
Nyaribari Chache	Simeon Nyache	8,941,383.50
North Mugirango	Geoffrey Okeri	7,385,162.40
Migori	Charles Oyugi	5,634,972.00
Rangwe	Philip Okundi	3,913,675.00
Ndhiwa	Joshua Orwa	3,805,028.00
Nyaribari Masaba	Hezron Maduku	3,021,128.35
Kisumu Rural	Peter Anyang' Nyong'o	2,516,398.00
Kisumu Town West	Joab Omino	1,701,717.60
Kasipul-Kabondo	Peter Otieno	8,042.00

Source: www.cdf.go.ke

Appendix 6.2: National Poverty Indices

Kabete Constituency in Central Province is the least poor, while Ganze Constituency in Kilifi District, Coast Province, is the poorest in Kenya.

Nairobi Province

Poverty index for Nairobi as a whole is 44 per cent. Among the constituencies, poverty incidence ranges from 31 per cent in Westlands to 59 per cent in Makadara. The 8 political constituencies in Nairobi contribute 6 per cent to total national poverty. With an estimated 874,058 poor people, almost half (49%) of them are concentrated in 3 of 8 constituencies, namely Embakasi (19.1%), Kasarani (17.3%) and Makadara (12.5%). The least contribution to provincial poverty comes from Westlands (6.7%) constituency.

Central Province

It comprises of 29 political constituencies. The average poverty index is 31 per cent. Poverty indices range from 16 per cent in Kabete to 43 per cent in Nyeri Town Constituency. The 29 political constituencies in Central Province account for almost 8 per cent of total national poverty. With an estimated 1.1 million people, two fifths (41%) of them are concentrated in 8 of the 29 constituencies, namely Juja (8.4%), Gatanga (5.3%), Mwea (5.0%), Kinangop (4.8%), Kiharu (4.5%), Ol-Kalou (4.3%) and Kieni (3.7%). The smallest contribution to provincial poverty comes from Ndaragwa Constituency.

Coast Province

It comprises 21 constituencies. Poverty incidence is 57.6%. Poverty indices range from 30 per cent in Bura to 84 per cent in Ganze. It has an estimated 1.363 million poor people. 60 per cent are concentrated in one-third of the 21 constituencies, namely: Bahari (10.3%), Kaloleni (10.1%), Msambweni (9.0%), Kisauni (8.0%), Malindi (7.1%), Kinango (8.7%) and Ganze (6.7%). The smallest contribution to the province's poverty comes from Lamu East Constituency, which contributes only 1%.

Eastern Province

It has 36 electoral constituencies. Poverty incidence in Eastern Province as a whole is 58 per cent. Poverty indices range from 34 per cent in Ntonyiri to 76 per cent in Kitui South Constituency. It has an estimated 2.62 million people. 42 per cent of them are concentrated in 10 of the 36 constituencies, namely: Makueni (5.1%), Nithi (4.5%), Kitui Central (4.4%), Mbooni (4.2%), Kangundo (4.2%), Kibwezi (4%), Igembe (3.9%), Mwingi North (3.9%), Mwala (3.7%), and Machakos Town (3.6%). The least contribution comes from Saku and Laisamis constituencies, which contribute each less than 1 per cent.

Rift Valley Province

It has 49 political constituencies. Poverty incidence in Rift Valley as a whole is 48 per cent. Poverty indices range from 34 per cent in Subukia to 64 per cent in Turkana Central Constituency. It has an estimated 3.18 million poor people, one-third of them concentrated in 10 of the 49 constituencies, namely: Eldoret North (4.4%), Saboti (3.8%), Narok South (3.2%), Molo (3.1%), Nakuru Town (3.1%), Kilgoris (3.1%), Turkana Central (3.0%), Turkana

North (2.9%), Naivasha (2.9%) and Bomet (2.8%). Samburu East has a low population, and the smallest contribution of 0.4 per cent to provincial poverty.

Western Province

It comprises 24 political constituencies. Poverty incidence ranges from 50 per cent in Amagoro to 70 per cent in Ikolomani. 24 political constituencies in Western Province contribute almost 14 percent to total national poverty. With an estimated 1.99 million poor people, 63 per cent of them are concentrated in Lurambi (6.8%), Kimilili (6.7%), Malava (5.4%), Mumias (5.2%), Sirisia (5.2%), Webuye (5.0%), Nambale (4.9%), Emuhaya (4.8%), Kanduyi (4.7%), Shinyalu (4.5%) and Amagoro (4.4%). The smallest contributor to provincial poverty is Budalangi constituency, which accounts for 1.8 per cent.

Nyanza Province

It has 32 political constituencies. Poverty incidence in the province as a whole is 65 per cent. Poverty incidence ranges from 43 per cent in Migori, to 80 per cent in Kuria Constituency. There are 32 political constituencies in Nyanza Province, contributing to 19 per cent of the total national poverty.

With an estimated 2.73 million poor people, 43 per cent of them are concentrated in 10 of the 32 constituencies, namely: Kisumu Town West (5.8%), Kasipul-Kabondo (4.6%), Kuria (4.3%), Kitutu Chache (4.3%), Alego (4.0%), Kitutu Masaba (4.0%), Rangwe (3.8%), Bomachoge (3.8%), Ugenya (3.8%) and Bomasi (3.6%). Kisumu Town East accounts for the smallest contribution to poverty, accounting for only 1.5 per cent of the total provincial poor.

Source: Ndenge G., Opiyo C. and Mistiaen J.*, Geographic Dimensions of Well-being in Kenya: Constituency Level Profile Vol. II.*

PART III:
SOFT POWER IN ELECTORAL POLITICS

7

'Soft Power', Popular Culture and the 2007 Elections

Mbugua wa-Mungai

Abstract

The proliferation of 'new technologies' as alternative communication avenues has led to a monumental shift in the practice of electoral politics and in other social-economic endeavours in Kenya. These technologies enable new ways of mobilizing political support and retaining the accruing loyalties by means of constant interaction between politicians and voters. Through alternative media, political actors have found new ways of fencing off opponents, and eroding their support bases by means of propaganda as they firm up their own support centres. These schemes mainly hinge upon a manipulation of real or perceived differences with opponents' identities, even as the principle actors involved seek similarities—some obviously non—existent-between themselves and their supporters. The messages so generated often function as critical fracture points upon the national political landscape. This chapter discusses the connection between popular cultural flows, alternative communication technologies and the 2007 general elections in Kenya. It is argued that these technologies provided space in which new relations evolved and social networks intensified. Alternative communication, whether via internet or cellphone text messages, FM radio, rumour or popular cultural media enabled relatively easy and swift information transmission and collaboration between social actors. This allowed new kinds of social mobilization not tied to specific locales or rooted in ethnic identities. Thus, one might see how Diaspora correspondents' e-mail messages shaped the discourse around specific questions before and after the elections. However, even though discussions at this level tended to reject the same tensions and multiple divisions that politics of belonging and autochthony had brought to the fore at the national level, they, ironically, buttressed the same by drawing up a different matrix of exclusions and inclusions. The chapter concludes that whereas popular culture possesses immense potential for enabling citizen critique of power and political processes with a view to solidifying democratic governance, they simultaneously had serious effects on all consumers.

Introduction: The Media and Conflict

Anecdote

Two kilometres to Juja, a really dusty little town on the road to Thika in Kenya, you find a row of eateries–Karuana Market, Kipipiri Grill, Wings, among others–patronized mainly for Nyama Choma (roast meat) and Ugali (a popular traditional maize meal in Kenya) by travellers destined North to the interior of Kenya and beyond to Ethiopia through Moyale. A few days after voting on 27 December 2007, I noticed that the eateries were deserted; where boisterous travellers usually exchanged political banter, the premises were quiet with most people having left for their homes upcountry. Save for a few loners like me who had no desire to go elsewhere, the place was dead. We waited tensely for the ECK to announce the winner of the presidential vote. To kill the moments, we kept in touch with others around the country via our cellphones as we feasted on roast meat. Then two strange things happened on Sunday 30 December after Mwai Kibaki was sworn in for his second term as president. First, Thika Road, whose desolation only moments ago I had been contemplating, exploded into cacophony. Suddenly, vehicles with lights flashing and horns blaring and throngs of humanity that seemingly emerged from invisible crannies waving twigs amidst loud ululation filled both sides of the dual carriageway. I turned to watch the news on NTV where the Minister of Internal Security, John Michuki, was on air. He had just issued a ban on 'live TV and radio broadcasts.' The second eerie thing happened at that precise moment; our cellphones suddenly became useless. Over the next six hours, it became impossible to call, send a text message or load calling units into the gadgets. The rumour that started circulating was that the Minister had ordered the National Security Intelligence Services to jam, CIA-style, all telecommunications systems in the country. As I drove home, my musing led me back to the many text messages that I had been receiving since June 2007. Later, the Kenya government's peace messages that were sent through Safaricom and Celtel (now Zain) on 3 January 2008 served to affirm the central place of soft power[1] in diverse Kenyan cities, sleepy dusty towns and villages, and how it connects our lives as citizens, and transforming them profoundly.

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[1] The term 'soft power' is adopted from Joseph Nye (2004). The author acknowledges Hezron Ndunde, who was engaged as a research assistant between May and October 2008. His paper '*From Cyberspace to Public: Rumour, Gossip and Hearsay in the Paradoxes of the 2007 General elections in Kenya*' (CODESRIA 12th General Assembly, Yaounde 7-11 December 2008) benefitted extensively from data collected for this chapter.

The 2007 general elections, especially coming relatively so soon after the 2005 constitutional referendum, generated deep passions. The jubilation on Thika Road on the evening of 30 December was matched by expressions of violent disappointment in other parts of the country. The same fervor was evident in discussions that appeared in print, radio, television, cellphone text messages,[2] rumour ('short, non-narrative statements of belief', Fine and Turner, 2001:19) and conversations on the December elections, not just as a means to putting a government in power, but even more critically as an important way of discussing nationhood.

Whether scholars or shoe-shiners, hawkers or doctors, the assumption was that all the issues that usually come up within citizens' moral economy would be addressed and resolved contingent to the particular political positions that one would take in support or otherwise of specific political parties. In this regard, newspapers were replete with opinion pieces about the role of 'the media' in shaping events before and after the general elections. However, a closer examination of any random sample of such 'discourse' in mainstream papers between January and August 2008 shows that writers were concerned with assessing one overriding question: was the media guilty of incitement to violence? (Oriare, 2008; Omanga, 2008). This question is overly simplistic and only adduces predetermined answers–the answer is usually in the affirmative–particularly because these opinions are formulated teleologically.

Current discussions on the role of the media before, during and after the 2007 general elections are largely informed by a reading of the 1994 Rwanda genocide, in which *Radio Television Libres des Mille Collines* (RTLM) was adjudged to be guilty of incitement to violence, urging people to 'kill the Tutsis, *Inkotanyi* (cockroaches)' and moderate Hutu neighbours. This is widely thought to have contributed to the slaughter of 800,000 people in 1994 (Thompson, 2007; Kezio-Musoke, 2008). In any case, any meaningful analysis of the media's role in the Kenyan context cannot be done without taking cognizance of the fact that the contested issues (land, *majimbo,* and perceived exclusion from political power, among others) had been long in the making[3] (*Sunday Nation*, 2007; Siele, 2007) and that media coverage of them merely shaped the ways they were fought out during the 2007 election campaigns. Overall, whether the perceived equivalence between the Rwanda and Kenyan situations is in/correct, an unfortunate consequence of viewing Kenyan media through the lens of the Rwanda genocide is that media are reduced to merely having been 'hate media.' The media in Kenya played other significant roles, especially as a mobilization tool

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[2] In everyday interactions, cellphone text messages are popularly referred to by the acronym 'sms'—short message service—which is used both as a noun and a verb. The term 'text messages' will be used interchangeably with the popular form.

[3] Eyewitness accounts in Kuresoi indicate that as far back as April 2007, neighbours from communities perceived to be pro-government were already being warned that they were 'planting and harvesting the last crop.' A male informant reported being urged by a 'friendly' neighbour to construct his house on wheels for later in the year he might have to seek quick means of transporting his belongings 'back to Central Province.'

as demonstrated below in the discussion of popular media, and that such role of the media needs to be seen alongside other issues within and outside Kenya.

At another level, popular opinion tends to blame especially vernacular FM stations for 'inflammatory' broadcasts during the 2007 elections (Orlale and Kadida, 2008; Njeru, 2008; Ugangu, 2008).[4] **This may be attributed to the fact that radio has a high penetration rate of 95 per cent in Kenya (Obonyo, 2008). But then, while the charges leveled against especially vernacular FM radio may be true up to a point, it is necessary to consider that radio broadcasts intersect in complex ways with a whole range of other popular modes of communication–politicians' rhetoric in village** *baraza* **(public meetings), traditional and contemporary folklore, TV broadcasts and newspaper reports. Therefore, attempts at singling out for blame any of these modes of expression ignore various agentic subtleties (for instance ethnicity, kinship, economic status, religion and gender) that determine media consumption** behaviour. Thus, an analysis of the media in relation to Kenya's 2007 general elections **ought to be undertaken within broader terms than is presently the case in ongoing popular discourse. Indeed, one of the crucial assumptions of this study in relation** to the question of democratization and voter/citizen participation in democratic processes is that the media enabled people to develop particular political positions and consciousness in regard to specific issues such as land, control of state power, *majimbo* (regionalism), national and ethnic citizenship, among others.

In a more productive sense, one might pose the question: was there a correlation between media content and consumption of such material? Cast in such terms, it **becomes possible for us to contemplate other ways, not necessarily the narrow but** probable charge of 'incitement', in which the media might have informed 'consumers' decision making in relation to voting. It is, therefore, important to emphasize that a proper critique of the media must begin with the period before the elections. However, the thrust of the analysis in this study will be on the role of 'soft media'–e-mail messages and cellphone text messages–which, being virtual sites and unlike conventional print and electronic media, enable 'invisible' communication between **large communities of consumers. In addition, selected newspaper editorial cartoons** will be analyzed because they are a significant lens through which broader events are interpreted in popular fashion by the reading public. By deploying these various modes of soft media, citizens exercise *soft power*, understood as non-coercive power, i.e. without the usual overt means such as guns and other tools of violence. Soft power invites participants to take positions by means of persuasion and propaganda and **often succeeds because it has emotional appeal.**

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[4]On a more official level, vernacular radio is also held culpable for incitement to violence in the Kenya National Commission on Human Rights Commission report *On the Brink of the Precipice: A Human Rights Account of Kenya's Post Election-Violence* (August 2008). The Kriegler Commission that investigated the conduct of the 2007 general elections arrived at a similar conclusion.

In Kenya's political culture, much of it defined by ethnicity, personal connections with party elite and the possession of vast wealth (Haugerud, 1997; Mutua, 2007), it is usually assumed that contestants have access to means that might enable them to engage with their respective constituencies and their opponents. In regard to such resources, the media in its various forms plays a complementary role to the possession and distribution of financial bounty. Indeed, the media's role might in some ways perhaps be deemed to be even more important than largesse. However, **one of the ironies of deploying soft media in an attempt to shape public opinion is that** initiators of particular messages have no control over the ways in which recipients of such information eventually decode and redeploy it. Further, while it is easier to **predict how mainstream media such as national daily newspapers might work, it** becomes much more difficult to determine how alternative, non-mainstream forms of communication such as phone text messages, e-mail, blogs and Internet chat rooms might function within the context of intense political contestation. It is especially **necessary to attempt an understanding of how these domains of knowledge work** because their interactive nature means that one cannot vouch for the credibility, authority or even the intent of the various actors who might 'respond', by writing or **other action, to the discourses that emanate from within these sites. Thus, while it is easier to structure radio content to counteract aggressors' propaganda, as seen in the** role of UN radio in Cambodia, or to formulate sector-specific radio messages aimed at inciting violence, as evinced by the case of RTLM in the 1994 Rwanda genocide (Dallaire, 2007:16-18), it is more difficult to police the content of soft media, who receives it, and what they eventually do with it.

In the Kenyan context, this was roundly demonstrated by the helplessness of **the Permanent Secretary in the Ministry of Information and Communication, who** stated that even though he had in his possession contacts of people who spread 'hate **messages' through their cellphones, the law did not allow him to seek the prosecution** of suspects on the basis of such 'evidence'. For the purposes of our research, one of the unfortunate consequences of the government forbidding people from sending on 'inciting messages'–Appendix 7.2, 33c: 'The Government of Kenya advises that the sending of hate messages inciting violence is an offence that could result in prosecution'–is that we could not locate data to show Kenyans' assessment of the post-**election period.**[5] However, even in the face of weak laws relating to the phenomenon of hate speech, it is significant that the government finally acknowledged the uses to **which soft power could be put.**

In this regard, this study interrogates a number of questions. First, how were these messages structured and what effect did they have on the political space? Second, how

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[5]**After this warning was issued, it became impossible to obtain any more sms data for the purposes of** this study. Overall, it would have been useful to access especially Dholuo and Kalenjin texts, but all attempts to solicit these from informants before and after the government warning, failed. Therefore, the only vernacular sms examined in the study are in Gikuyu, while the rest are in English and Kiswahili.

did these messages affect political choices and what was their effect on democratic governance? Third, what explains the high consumption levels of such messages? Fourth, what is the character of the consumers of different types of messages? Fifth, how do these 'alternative media' interact and with what political consequence(s)? Finally, what is the content of the messages that were in the diverse media platforms that were used before, during and after the election periods?

The study begins by a description of the methodology and the theoretical frame(s) that were used in data collection and analysis before moving on to analyze the content of specific media, beginning with cellphone texts, e-mail and finally cartoons. Even though there was no deliberate effort to collect rumour texts, inevitably they feed into the study data in ways that are too significant to ignore. Differently put, there is such a high degree of inter-textuality in the data that to understand one text, it is almost **always necessary to fall back onto one's knowledge of other discourses, be they in the 'hard' or 'soft' media categories. In any case, a particular message might initially** appear in one modality, say e-mail, before being culled and converted into another **form such as 'sms' contingent to users' needs in relation to their political position(s).** Ultimately, the study makes some important findings and conclusions.

At this point, and being aware of the contested applications of the term 'popular culture', it is imperative that we specify the sense in which this rubric is used in the study. We do not invoke the term in the classical European sense that delineates a distinction between high and low (mass) culture (for instance, Arnold, 1932 and Hogart, 1970). However, if that was all, then a clarification such as the one attempted here would be superfluous. Rather, and especially within a post-colonial context, we are interested in the term to the extent that it references everyday cultural practices that are widely used not because users lack an alternative but because they prefer **particular channels (sms, e-mail, urban legends, cartoons, music, and magazines)** over others (letters, newspaper articles).

In this sense, the 'popular' is defined by usage preference and not sociological criteria such as class. Thus, even though it has been argued that popular culture is mainly defined by its sub-cultural placement in relation to a mainstream culture (Bauman, 1992: xiv-xvi; Fiske, 1992: 25; Hebdige, 1979), it is necessary to point out that in non-western societies where a rigid high/low brow class distinction is untenable as a basis of describing the popular (wa-Mungai, 2005: 124-126) *practices are definable as popular often by how much they go against the grain of official discourse as well as by the prevalence of their usage.* Indeed, as Ogude and Nyairo (2007:5) have argued, 'the popular (in post-colonial Kenya) is defined by what could be described as fluid circulation of practices common to and shared by various groups of strata or society, with blurring distinctions'. The soft media that are examined **in this study inscribe a different understanding of popular culture in a manner that** challenges the rigidness, and even inappropriateness, of the classical understanding of the term in a society such as post-colonial Kenya.

In regard to popular media, few things have had as radical an effect on forms of association in the country as emergent technologies, of which the cellphone is arguably the ultimate example, impacting as it does on microeconomies, individuals' domestic lives and crime (wa-Mungai 2007:347-349; Wambugu, 2007). If this contention is true, we consider the various ways in which citizens combine a range of interdependent technologies (Internet and sms) and folk practices (urban legends, for example) to challenge traditional forms of communication (TV news broadcasts).

In the context of the 2007 general elections, ensuing interactions were utilized in the pursuit of particular political agendas, some of which could not be aired by mainstream media. These popular exchanges take place against the background of consumer practices, an exploration of which would be crucial to an understanding of the choices that people make within Kenya's cultural economy. The popularity of the Internet might arise from the fact that cyberspace is difficult to police; freedom of expression in whatever form, coming especially after the authoritarian years of Daniel Moi's rule during which civil liberties such as free speech had been severely circumscribed, is highly prized. Rumour, as non-narrative text, is anonymous, a fact that guarantees its popularity as it frees tellers of the responsibility of authorship on account of the foaf principle–a 'friend-of-a-friend' told me–by which they can avoid being held accountable for what they tell (Brunvald, 2001:155) and, consequently, its potency as a medium of social critique. On the other hand, sms are preferred because they are brief and highly portable. As Nyairo and Ogude (2005) have argued in relation to pop music, the portability of a popular cultural form enables its re-deployment in diverse contexts. In the case of sms, all that users in opposed political camps need to do is to edit a text as appropriate and then send it on to multiple recipients. In a sense, the practice of 'texting' (sending sms) clearly speaks to intertextuality at the level of ideas. Further, when e-mail content is taken up and transcoded as sms, it becomes possible to think of intermediality, since the latter will not make full sense without recourse to the e-mail text.

Reading Soft Power and Popular Culture

The study made use of several methodological approaches ranging from library research to fieldwork. It surveys available literature on the use of soft media forms in Kenya, in this case sms, which appeared in the local press between January and July 2008. Second, various sms were collected from various sources–individuals as well as institutions–and analyzed thematically and stylistically. The texts from 2007 to 2008 were compared with 20 others from the 2002 general elections to find out if there were any recognizable patterns or themes. Third, the content of e-mail messages collected from known and unknown correspondents was analyzed thematically. Fourth, in the fieldwork phase, a total of 20 randomly selected informants from Nairobi, Thika and Nakuru were presented with a set of five cartoons specifically selected because they had a bearing on the theme of this study. By means of a questionnaire, they were

asked to comment about the texts. Their responses were analyzed alongside sms and e-mail texts. Urban legends kept being generated even at the time of writing and the narratives that emerged served as a background against which to observe the issues at being re-contextualized and recast in ways that deviated significantly from either what informants had said earlier in the field, or what individuals had previously put down in e-mail communication.

The study also draws from the insights of Anderson's theorization of 'community' (*Imagined Communities*, 1991). The central question undergirding his work is 'how do people forge ideas of 'community'?' The value of Anderson's work lies in the extent to which it enables us to evaluate practices, be they verbal or written, by means of which people who do not otherwise share common values (language, ethnicity, religion or geographical location) constitute a sense of community. The sodalities thus established might be temporal, but the critical issue is that individuals in far-flung places can rally around a common issue on the basis of which they perceive themselves as members of a community with similar interests, in the present case these being anchored chiefly in the choice of a party and a presidential candidate.

Subsequent research, particularly in folklore, from which a significant corpus of the study data is sourced, enables us to extend Anderson's thesis to different fields such as cyberspace and emerging groups. For instance, where the written word is central to Anderson's argument about community, folklorist Degh (1999) has shown how in the age of modern telecommunications, virtual communities proliferate in cyberspace . Blogs, chat rooms and e-mail allow individuals with divergent interests to converge and temporarily invent their own communities. The strength of the idea of temporal groups, for long an established idea in folkloristics (Ben-Amos, 1982), is that it enables us to appreciate the possibility that individuals can simultaneously belong to various in-groups, especially because membership to one does not necessarily call for disloyalty to another.

The idea of multiple-belonging then leads on to that of networks (Noyes, 2003), meaning that individuals can draw on their contacts outside the group without necessarily being circumscribed by allegiance to their community. There are useful implications from the foregoing theoretical bearings in regard to the Kenyan situation. Through the textual and verbal practices that they engaged in, citizens in specific contexts came together by *temporarily disregarding ethnicity or intra-ethnic competition* and created temporary common political cause around which to identify. Narratives and messages targeting their common 'enemies' became tools of mobilization directed against perceived others (determined by ethnicity but also on the basis of political affiliations to the main political blocks, i.e. ODM and PNU). In this case, emergent technology was used to bridge the gap between members of ethnic groups that would ordinarily have had at best suspicious relations between them in the pursuit of a common cause as espoused by particular political parties. Thus, where ODM rallied various ethnic communities into a super-ethnic

block that came to be called K4 (Kenya 41)[6] around the *majimbo* and land issues, PNU operatives mainly sought to mobilize the Gikuyu (labelled K1, Kenya One–an euphemism for *Mungiki*) around the issue of retaining the 'big seat' as a means to supposed continued economic prosperity.

At another level, semiotic analysis was done on five editorial cartoons from the *Daily Nation*. Cartoons are often a combination of both visual and written modes of expression and work by means of over-simplified graphics into which is configured a complex system of signification through allusion. Whether these are over-simplifications or hyperbolical renditions of the actual bodies or objects, cartoons usually are intended to evoke grotesquery–e.g. distorted bodies in space, the scatological or simply the filthy–which is an important modality of social critique (Bakhtin, 1984; Stallybrass and White, 1986:80-124; Mbembe, 2001; Musila, 2007). As such, a reader needs to have some knowledge of other discourses that lie outside the immediate text, which then become the semiotic 'ground' (Scholes, 1982) upon which the interpretation of meaning might take place. Such grounds might be real life mannerisms at the level of speech, gestures, fashion sense, general demeanor and so on of an individual who is featured in the cartoon. The written punch-line aids in interpretation, since it often supplies an element of irony between what it says and what is depicted in the cartoon. Since cartoons are floating signifiers, readers use whatever grounds they might be familiar with to infer the meaning of a particular text. In other words, different readers might arrive at varied interpretations of the same cartoon because they are deploying different 'keys' (Goffman, 1974) in the decoding process.

Texting: Sms-lore and the Construction of 'Monsters'

'Smsing', a practice that by now has garnered the force of tradition, wields enormous power over Kenyans. This was forcefully brought to the fore when, during the Kriegler Independent Review Commission hearings in Eldoret on 8 July 2008, a Kiswahili text message, allegedly from a senior politician from the area, was circulated: '*Ole wenu mkiruhusu meno-mbaya na vinyagarika wake awashtaki kwa kamishen hapa Kericho. Lazima mvuruge kikao vilivyo. Ni haki yetu*! (from Mzee wa Kazi)' (Woe unto you if you allow bad-teeth and his menials to report you to the commission here in Kericho. You must disrupt the proceedings as appropriate. It is our right!). Indeed, proceedings at Eldoret were temporarily derailed as the residents asserted their right to prevent the truth about the Rift Valley violence from emerging. Of significance is that like other messages that were being circulated before and during

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[6]This is a reference to the common assumption that Kenya is comprised of 42 tribes; K1 is thus a code which means that the 'Kikuyu are just one tribe against the other 41 Kenyan tribes' and they can thus be easily annihilated. The balkanization of Kenya along these lines was publicly presented in February 2008 as an option to nationhood on both TV and in print media by two vocal ODM legislators, one of them now a Cabinet minister. In an e-mail that is in our possession, some US-based Kenyans called for the Gikuyu to be beaten back and confined into a small enclave.

the elections, the dominant idea is the us-they/insider-outsider dichotomy, which takes on particular resonance in the above text in the context of 'resident' vs 'settler' land politics of Rift Valley Province, an issue that occupied a central plank in both the 2007 general elections and the 2005 referendum campaigns. One of the key attractions of sms is the medium's ability to evade immediate surveillance. Even if **they wished to, by the time law enforcers seek transcripts from a particular cellphone** service provider's databank to detect wrong-doers, a text will have traveled around **the globe and back, rendering policing efforts non-sensical since the message will** already have been delivered and consumed anyway. Ironically, in areas where news sources were inaccessible for whatever reason, friends and family members abroad would monitor the media in their countries for reports on Kenya and text this information back to Kenya.

In a situation of political competition, text messages are framed within a sense of the gravity of threats posed by the opposition. Therefore, the bulk of text messages used here (Appendix 7.2)[7] revolve around Kibaki/Raila and the PNU and ODM, which they are taken to represent, respectively. Few texts about Kalonzo were circulated and those that did merely ridiculed him as a spoiler and a non-starter; **during the campaigns, Raila referred to the December 2007 elections as 'a two-horse race' where** Kalonzo would be a mule. Public opinion did not see Kalonzo as a real **threat either to** Kibaki's presidency or to **Raila's chances of ascendancy to power. As a result, the real sms warfare was waged between supporters of the two main presidential contestants.**

Two interesting patterns are perceptible in a comparison between 2002 campaign sms (Appendix 7.1) and those deployed in the 2007 electioneering period. First, in the 2002 texts, which were directed at KANU—the Rainbow opposition's key target—there was very little attempt at vilifying any of its members on the basis of their ethnicity. In contrast, a significant number of the 2007/08 texts are formulated upon ethnic **labels, in this case anti-Gikuyu and anti-Luo stereotypes. This suggests that ethnicity was one of the critical platforms upon which the 2007 general elections was contested.** Second, and perhaps even more important, where much wit went into the 2002 sms, those from 2007 were nearly always direct insults directed at individuals. For instance, compare texts no. 2b) and no.63) below, taken from Appendix 7.2 to the succeeding texts no.4) and no. 5) from Appendix 7.1:

> 2b).   **He is cold, he is a time player, he is a terminator, a destroyer, a demolist (sic) with an odd national constituency. He is Raila Odinga and he** hasn't what it takes to deliver Kenyans to the Promised Land. Join other Kenyans in stopping this great son of Africa. Today the people have spoken. Send this sms to 10 people.

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[7] For ease of reference, variants of the same text have been categorized alphabetically after the main entry, which is marked by a number. Only the spelling in these texts has been edited for clarity.

63. *Kai kimbararigi gikuingira? Nitwathira* (Gikuyu: So the chameleon could go through? We are finished).

4. KANU's presidential candidate's brain will be upgraded. Press down to continue. Upgrade now. Loading...Loading <System Error> Upgrade **failed. No brain detected.**

5. In Noah's Ark (NARC) after the rain (reign), God made a promise and sealed it with a Rainbow. Never 2 make his people suffer. Vote NARC!

What the first set of text lacks in terms of both creativity and subtlety is achieved by the second set by way of humour and observation (sarcasm couched in technological and biblical terms). The tone of the Appendix 7.2 messages above is predominantly bitter, perhaps because of the perceived gravity of the issues at stake, such as *majimbo*, exclusion from power and the sharing of national resources. Incidentally, none of these were an issue in the 2002 campaign, suggesting that various political actors must have worked zealously to make them matter within the 'wedge issues' that dominated the period between the 2005 constitution referendum campaign and December 2007. In common, however, the texts from both campaign periods evince a parodic playfulness with Bible verses and prayer. This might be accounted for by the fact that many Kenyans are familiar with the Bible, at least from school. Thus, there exists ready templates ranging from traditional sayings to the Bible upon which cellphone text messages can be crafted for quick circulation.

In terms of structure, the texts work by combining a number of stylistic strategies. First, they make use of local sayings to evaluate individuals' capacity for leadership. Cultural assumptions about who can or cannot be a leader are evident in especially **anti**-Raila texts. This idea runs through the following Gikuyu texts:

Appendix 7.2, 57:

> *TIP Tip? Gema twina kura 6 million! Mwoiga twathwo ni kihii na tucoke mung'etho? Umirai tucikirie Kibaki ciothe bururi ndugathwo ni kihii gia gutuma twikire inyatha na kinine indo citu cionthe. tambia ndeto ino kuri andu 50 a Gema kana makiria. Kura yaku niyo ikugiria bururi ucoke misiri* [We in GEMA have 6 million votes! How can we allow ourselves to be ruled by an uncircumcised boy and to go back to idleness? Come out and let us give all our votes to Kibaki so that the **country will not be ruled by an uncircumcised boy who will force us to put on shorts and who will destroy all our wealth. Circulate this message** to 50 or more people from GEMA. Your vote will prevent the country **being taken back to Egypt**].

Appendix 7.2, 58:

> *Muthuri aikariire njung'wa thingira-ini onaga haraya gukira kihii kihaicite muti*[8] *iokana ona kihaicite kirima-iguru. Ndumiriri ino ni ikinyire kihii ti Raila* [A man seated on a traditional stool outside his hut sees further than an uncircumcised boy perched atop a tree or a mountain. This message should be relayed to boy Raila].

The text immediately above echoes a 2002 sms (Appendix 7.1, 8). Such a message would resonate with Gikuyu/GEMA voters precisely because in their cultural set up, circumcision and the assumption of manhood is a key requirement for anyone **aspiring to a leadership position, an idea that circulates in the popular imagination** through contemporary popular music (wa-Mungai, 2007:344-347). It would be **worthwhile to establish whether anti-Luo stereotypes established upon this ritual will change now that Raila and the Nyanza political elite has led the Luo into accepting circumcision, allegedly for 'medical reasons.'**

At another level, these texts work by means of extensive allusion: to history (Appendix 7.2, 44: Raila's role in the 1982 coup), the Bible (extensive parody of prayer), personalities in current affairs (Dick Morris), and contemporary events (Appendix 7.2, 25: The Orange revolution in Ukraine; no.50: Jacob Zuma and Thabo Mbeki). As a genre, sms are also highly reflexive as can be seen in instances where texts are parodies of others (see for instance Appendix 7.2 no. 42a and 42b; 43 a, b and c; 47 a, b and c; 48 a and b; Appendix 7.1, 12 etc). Text 59 in Appendix 7.2 is taken from the 2005 constitution referendum campaign. On the whole, these messages are highly intertextual and for readers to make sense of them, it is necessary to fall back onto other discourses, of which music and religion are examples that are usually simultaneously at work in other media such as newspapers, television and radio. **Thus, the broad pool of popular culture becomes a critical resource for both** the crafting and reading of cellphone text messages.

Humour is another stylistic strategy that is wired into sms. The three texts below allude to a TV advertisement for Crown Paints featuring Peter Marangi, who speaks English with such a heavy dose of first-language influence as to mark him distinctly as a Gikuyu-speaker; ironically, during the peak of the violence in the January-February 2008 period, victims' first-language accents became a giveaway that resulted, often times, in death.

Appendix 7.2, 55:

a)   Breaking Newz: Peter Marangi is painting State House Orange. Have **u heard Peter Marangi has already painted State House orange in readiness 4 Raila?**

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[8] This saying seems to have been popularized after the 2005 referendum by Gikuyu singer, Makibi James in his track '*Riua Nituotete*'.

b) **I think democracy's an ass! On a light note, Peter Marangi says the orange color at State Hse was only the undercoat. The final color is blue. 'laughing 2 kp frm crying.'[9]**

c) *Hi. Kwani* (why is) the undercoat is taking forever to dry so that the final one may be applied? This waiting is getting onto everyone's nerves.

The dynamism of sms as a mode of communication is demonstrated by the fact that the above texts were composed and adapted simultaneously to the announcement of vote tallies by the Electoral Commission of Kenya (ECK). The mutation of content **(the winner changes from Raila/ODM to Kibaki/PNU)** suggests that these texts were composed with an eye glued to TV broadcasts at the Kenyatta International Conference Centre, the ECK's base during the elections. In a related but different context, an informant stated that the outbreak of violence in several parts of the Rift Valley Province on 30 December 2007 happened 'spontaneously' because it was coordinated via sms. If this claim is true, this case serves to illustrate the efficacy of sms as a tool for mobilization. However, the spontaneity claim can hold in regard only to the signaling of violence to commence, not to its underlying causes. Text 55b above also shows that correspondents are aware that their playful engagement with words is also a critique of democratic practice, i.e. that not all of its mechanisms **will always make sense**.

Metaphor and euphemism are another critical structural element that is extensively applied in sms-lore. For our purposes, it is significant that these metaphors render the competition for power in terms of sexuality, particularly their valorization of phallic domination. This happens because, as public space, Kenyan politics has traditionally been the playing ground for men's fantasies of power; women are treated as mere objects with which men can play out their many games. In this case, sexism **and misogyny abound not just in the minds of politicians but also among ordinary** Kenyan men. The texts from Appendix 7.2 below evince popular attitudes around which images of sexuality virility and violation become tropes of either power or its loss. The texts below are taken from Appendix 7.2 and they satirize PNU's (*Kazi iendelee*) and ODM-K's 'Wiper' slogan–the latter is derived from the practice of crowds waving back to preachers at Christian rallies:

66a) Campaign can b fun! At dawn when ODM is already out, PNU men can still be heard from their bedrooms whispering; *PANUA KAZI IENDELEE* [open so that we continue with the job] while ODM-K men r still being told; niko wet, *NIPATIE WIPER* [give me a wiping cloth].

In colloquial Kiswahili, *kazi* means sex, and the suggestion then is that ODM men (predominantly Luo and Kalenjin) are better than those in the other parties because they finish 'working' on their women early. The play between the acronym PNU and

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[9]Apparently, the quotation is an allusion to Langston Hughes' 1952 fictional text *Laughing to Keep From Crying*, **an aphorism now about African Americans' strategies of coping with the pain of racial prejudice and social exclusion.**

the Kiswahili 'panua' (open) is aimed at depicting the mainly Gikuyu men in that party as ineffectual lovers who have to plead for sex from their women ('open so we can continue with the job'). On the other hand, the males in ODM-K (perceived to be a party for the Akamba) are ridiculed for going to bed with women who have been 'worked' to exhaustion, which is an allusion to the stereotype of the Akamba as promiscuous. Texts 67 and 68b have a direct bearing on this perception given that both Kalonzo and Ngilu are Kamba: 'Under Kalonzo's government, sex will be legalized and free'; 'With Ngilu in, the pentagon becomes sexagon. No wonder they have been singing '*bado matombano*' (Kiswahili: intercourse has not begun)'(see Skuma, 2005a for sexual stereotypes about the Akamba). Similar wordplay is noticeable in the following variant of text 66a:

66b) Why you should be in ODM. ODM women scream *YAWA, YAWA, YAWA* [PLEASE, PLEASE, PLEASE] in praise of *Nyundo* [hammer] while men in PNU are busy telling their wives to *PANUA PANUA ili kazi iendelee* (open so that we continue with the job). Women in ODM-K are so wet that their men keep asking *WAPI WIPPER* (sic)!!!!(WHERE IS THE WIPPER).

Text 51 'Desperate 4 votes from sex workers, Kibaki has now declared Koinange Street a full district, *ati ndio kazi iendelee* (so that the job can continue!!!)' is an euphemism for sexual intercourse. The relationship between voters and vote-seeking politicians is mapped in terms of prostitution through the invocation of Koinange Street, one of Nairobi's chief solicitation grounds for commercial sex workers, while the reference to voters being 'screwed' in text 69 (which references 'intercourse' in 66b above) indicates an awareness on the author's part that politicians are a deceitful lot out to take advantage of voters.

The invocation of obscenity in everyday discourse is one of the ways through which citizens of post-colonial African states speak back to power (Mbembe, 2001:102-141); figuring mighty politicians in grotesque terms–represented here by the dirt associated with sex–enables critique by ordinary people. Also, it alludes to the suspect nature of the 'act' into which politicians are enticing voters; the transaction is felt to be dishonest and, like sex procured from prostitutes, it has potentially debilitating effects. The extensive use of sexual metaphor in everyday discourse, especially in its phallic sense, might be accounted for if we consider the fact that Kenyan politics is predominantly a masculine space (wa-Mungai, 2007:352-355). It is thus common linguistic practice to figure political opponents as subdued females as a means of claiming one's 'superior' masculinity and hence power (Dundes, 1997). In text 71, for instance, Kibaki's vote seeking, by its alleged linguistic *faux pas*, is likened to a desire to penetrate sexually both female and male voters. The reality of voters 'being screwed' by politicians is all too common, and Kenyans thus seem to be being cautioned about the danger of falling for contestants' tricks during the elections.

A major stylistic element of sms is the use of mother tongue. The obvious reason for this is the need to keep out others deemed not to belong to the message sender's in-group. However, the logic of doing so fails if we consider that many Kenyans are multi-lingual; an informant reported that in much of the Rift Valley, village translators under some ODM politicians' pay would monitor various vernacular non-Kalenjin FM radio stations to inform residents who might not understand these other languages 'what the enemy was plotting.' In the case of sms, the possibility for translation ensures that in these transactions, there can be no secrets withheld by members of one community to the exclusion of others. It seems clear that the real value of using mother tongue lies in the fact that some vernacular idiom cannot be accurately or fully rendered in translation, and thus particular nuances will be lost. In this way, users of a vernacular can still negotiate meanings amongst themselves without 'outsiders' catching on as to the real meaning of the linguistic transactions taking place in his hearing. For instance, few Gikuyu speakers interviewed are aware that '*Kimbararigi*' (no.63 above) means chameleon; it would be much harder for a non-Gikuyu speaker to grasp the sense of such a text. By the same token, when the Kalenjin call for the 'cutting of grass', no translation would capture the fact that this is an allusion to *chemulbai*, a weed that grows amongst the millet and which has to be carefully identified before removal since it closely resembles millet.[10]

In nearly all such cases, obfuscation might be achieved by the use of common words. In the following text, the writer assumes the persona of an illiterate Gikuyu:

> Annex II, 64: *Urogio ni gikeno uingihirwo ni migate ona thota ona nyama ugie na kwendwo ni arata ona thu ona nyamu-cia mucii na cia githaka--- especiari cia githaka uhutio handu uthure wambaki ugie na kumena njaruo ciothe-especiari raira-na wahota nyamu yothe iriaga thamaki kana nyamu o yothe iriaga iria ingi-cori ndathii nambere ndigukuwici gundi naiti-a cori ndiramini meri krithmathi-meri krithmathi enda hapi niu yia-na kathi ienderee!* (May you have joy and an abundance of bread, soda and meat and may you be loved by friends, enemies and animals–both domestic and wild ones–especially wild ones and be moved to vote for Kibaki and may you hate all the Luo–especially Raila–and if possible hate all animals that eat fish or any animal that eats others–sorry if I go on I won't wish you a good night–sorry I mean merry Christmas–merry Christmas and a happy new year–and may the job continue).

The construction of monsters/animals (*nyamu*) is a fairly widely deployed tactic especially within the domain of ethnic stereotypes (wa-Mungai, 2007:347-349). For instance, usually in Gikuyu stereotypes and phraseology within ordinary conversation,

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[10]The Kalenjin informant who assisted with Kalenjin words and concepts used here wished to remain anonymous.

the full reference to the Luo is 'animals from the west.' The metaphorization of particular ethnicities in non-human terms is a common practice. For instance, it has been reported that during the 2007 campaigns, the Kalenjin broadcaster Kass FM referred to Gikuyu residents of the Rift Valley as 'madoadoa' (Kiswahili: spots) and 'mongoose' (*kamunne/kibungbungit*) and 'grass' and to the Kalenjin as 'people of the milk' (Obonyo, 2008). However, sometimes the animal imagery is turned around to valourize particular qualities that a group might consider itself as holding. The two texts below, which were received as the vote count on the evening of 29 December 2007 began indicating that Kibaki had overtaken Raila demonstrate this amelioration process.

> Appendix 7.2, 20: *Ui!Ui! Ngai baba! Teithia nari iriuke na giting'oe! Thaai! Thathaiya ngai thai. Ruroruma nyambo* (Oh! Oh! God the father! Help that it (snake) may at least come back to life by the tail. Peace! Praise God peace. May it the Gikuyu nation have a firm foundation).[11]

> Appendix 7.2, 65. *Turi mbere ta maniuru ma ndurume. Ngai niendete ruriri rwa Gikuyu na Mumbi. Uga uthamaki ni witu. Cokera ringi. Uga uthamaki urotuura. Uga irotoma: irotharara: irothii uguo na miri ya mikongoe. Tambia ndumiriri ino kuri nyumba itu* (We are ahead like the snout of a ram. God loves the nation of Gikuyu and Mumbi. Say leadership is ours. Repeat again (sic). Say may our leadership last forever. Say may it (enemy) perish. May it never prosper. May it disappear from the face of the earth following the roots of the Mukongoe).

During the election campaigns, it was common in everyday conversation to hear references to the Kibaki government and by extension to the Gikuyu community as '*nyoka* '[Kiswahili and Gikuyu, a snake] that must be killed. Text no. 20 above refers to the fact that sometimes if a snake's tail still shows signs of life after the head has been crushed, then this is an indication that the serpent is not dead and will revive. The snake here speaks to the survival of the Kibaki presidency (a perception that is extended to the fate of the Gikuyu); the prayer is that the government/community will be so strong as to never be removed from power. The ram, calling to mind the sexuality/phallic contest discussed above, may be taken as signifying conquest/domination over the flock; the message's sender celebrates an assumed Gikuyu domination of other ethnicities. There is a process of complex coding and an interweaving of discourses whose knowledge is a crucial background for any analytical reading of the text messages.

Finally, there is an inter-media structure to text messages. Sms, rumour and e-mail are a mutually reinforcing cyclic flow. Thus, it will be noticed that a text that

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[11]Acknowledgement is made to Wallace Mbugua Kamau for help with deciphering this text.

might begin as a rumour may often end up on the Internet and vice versa. It is also **interesting to note that some of the rumours originate from newspaper opinion** pieces before being taken up in sms and the Internet. But whatever the source of rumour, there is a crucial axis along which the interpretation of both text messages and e-mail content can be done. About 19 rumour texts, both oral and in text message form, were collected (Appendix 7.3). Each of them revealed anxieties related to the 2007 election. *Rumour*, **understood as 'information that is spread without secure standards of evidence'** (Fine and Turner, 2004:19), works in situations where information is lacking, prompting people to fill in the existing gaps by inventing material. This is especially so in situations where official communication is either slow or non-existent.

A key characteristic of rumour is its plausibility; it contains bits and pieces of fact about the people and events that are the subject of telling. Due to its 'credibility' element, hearers of the rumour are easily drawn to believe its content without critiquing it. However, whether the rumour is about the US and Britain being out to effect a 'regime change' (text no. 1) or the resignation of both the Kenya Army's Chief of General Staff and the Commissioner of Police (text 14), it is clear that the text's authors are concerned with flaws, real or perceived, in the electoral process and its outcome as well as with key officers who are seen as cornerstones to the government.

If people's belief in the latter officials is shaken, then they might be convinced about the imminent fall of the government. The gloating evident in Appendix 7.3 text no. 9 seems to be rooted in a belief that because Kibaki allegedly 'stole the vote', then the suffering of his family is justly deserved. On the other hand, text no. 17 ('A city preacher prophesied about the death of 5 MPs–four from ODM and one from PNU–because of their role in the post-election violence') evens things out for those who believe that ODM should be blamed for the post-election anarchy.

The Internet was quite an efficient means of disseminating these rumours. For **instance, the rumour about** Raila's visit to a *Sangoma* **was 'reported' in a South** African newspaper before it began circulating via e-mail and finally by word of mouth. Overall, election-related rumours indicate citizens' hopes that democracy needs to be seen to work without the country being held captive by politicians' interests, a **situation which is worsened by the fact that the contest is tied to the fortunes of** specific communities, in this case that of the Gikuyu against that of the Luo/other tribes represented in ODM and vice versa.

Themes

We now examine some of the prevalent themes carried by sms texts. This will demonstrate how soft power was used to persuade voters to make particular political **choices. A cluster of four themes emerged.**

Leadership capabilities

One of the dominant themes has to do with politicians' real or perceived capabilities **for leadership. Their personalities and agendas are scrutinized and weighed against** those of opponents. Consider for instance the following text on Kalonzo Musyoka:

> Appendix 7.2, 1: It is now confirmed that Kalonzo Musyoka will on **22 Dec 2007 step down for Mwai** Kibaki in exchange for Ksh 10 billion and a VP's position. That was expected. We have all along stated that Kalonzo has always been a Kibaki/PNU Grand Project dubbed the **MIRRACLE (sic)**. Kalonzo never intended to challenge Kibaki, leave **alone trying to replace him. That's why he and** Kibaki are focused on **bashing Raila in a one way focus. Indeed** Kalonzo has proved to be untrustworthy. He has betrayed everyone who he has associated with including his current supporters and Kenyans who thought he was an **agent of change.** *ASHINDWE* [MAY HE BE DEFEATED]–message Luos **are passing on.**

Depicting him as unreliable, the sms is formulated on the basis of the stereotype of the Kamba as '*wasaliti*', traitors, with a servile mindset (Skuma, 2005a). '*ASHINDWE*' is adopted from the context of Christianity and is usually an invocation of God's power to defeat Satan. It is also relevant that Kalonzo is a professed born-again Christian and the text seems to be censuring his perceived hypocrisy: upright Christians are not supposed to be cutting deals with the 'devil', i.e. Kibaki. The attitude encapsulated in this text might help explain the disapproval with which the ODM leadership greeted the eventual appointment of Kalonzo to the vice presidency in January 2008.

Of the three presidential candidates, Kibaki, Kalonzo and **Raila Odinga, the latter's** capabilities were the most scrutinized in these text messages. He enjoys uncritical praise in the following text Appendix 7.2, no. 2a (There is an e-mail version of this sms) which contests the Appendix 7.2, no.2 sms discussed earlier:

> *He is bold, he is a team player, he is a liberator, and he is a panafricanist, a democrat with a national constituency. He is **Raila Odinga and he has what it takes to deliver Kenyans to the Promised Land.** Join other Kenyans in supporting this great son of Africa. Send this sms to 10 people.*

Raila was keenly scrutinized because he was perceived by PNU supporters to **be the real threat to** Kibaki's hold onto power. It might be noted also that unlike in 2002 when presidential candidate Uhuru Kenyatta's colleagues in KANU were also objects of attack via sms, in 2007 the sms were targeted strictly at the principal **contenders for the presidency, Kibaki and Raila. Since the stakes were considered** to be especially higher in the 2007 general elections than in the previous one, all **energies were trained at the key targets,** *the enemy.*

While the bulk of sms available tend to depict Raila negatively ('dictatorial', 'with blood on his hands', 'power hungry'), there is also some grudging admiration for his mobilization skills even by his opponents. This is shown for instance in the following sms that was from a Gikuyu supporter of PNU–Appendix 7.2, 3: '**Raila strategized** well, started campaigns early, propaganda, ethnicity, anti-Kikuyuism, youth vote, **rebellion against age, etc.' On the other hand, there were few sms targeting** Kibaki as a person; the bulk of them lampoon PNU collectively. This might be due to the fact that Kibaki's character is already well known; epithets like 'hands off', 'laid back', 'aloof', amongst others have been widely used in the local press to describe him and thus making fun of him as an individual would not have had a significant impact and would have been an expensive waste of resources in a highly-charged contest.

Ethnic arithmetics

A second dominant theme revolves around the question of what is locally-referred to as 'tribal arithmetic.' Seven texts (Appendix 7.2, 6-10) show a deep-seated concern with ethnic numbers: candidate x will win if voters from this (beginning with those from his ethnic group) and that 'tribe' turn out en masse to vote for him. Underlying this dynamic is a realization that in political contests, most voters identify first and foremost with a candidate from their own ethnic group regardless of his/her agenda–often the only agenda is capturing power. Unfortunately, this is an entrenched practice in Kenyan culture (Mutua, 2007) that not even many years of civic and formal education has succeeded in countering. E-mail messages and Internet chat room discussions were particularly keen to paint both the 2005 referendum and the 2007 elections as a battle pitting all other Kenyan tribes (K41) against the Gikuyu (K1).

As such, the narrow parameters of ethnic consciousness became a critical context in which sms were used to undertake some kind of autochthonic 'civic' mobilization as seen in Appendix 7.2, no. 11-12c. Thus, it is necessary to underline the argument that the call for people to come out to vote is not issued by politicians so much because they want to get voters to fulfil their obligations to the civic state, but rather because it is assumed that voters have a primary duty towards their ethnic state; failure to vote would be to betray presumed 'community's interests.' The spectre of slavery, such as that evoked by reference to the travails of the Israelites in Egypt, and untold **suffering might occur if the presidency is captured by members of other ethnicities.** A critical observation in this regard is that often during election campaigns (the same can be said of the referendum), even highly schooled people (players in the **national political scene, scholars, business people, church leaders for instance) tend to fall back on ethnicized thinking. This throws into serious doubt both the strategies** and objectives of existing civic education programmes, of which the 2007 '*Vijana Tugutuke*' campaign might be a good example because it targeted the youth and

it had the backing of both the ECK and the Institute for Education in Democracy (IED), **a local NGO.**

A feeling of being besieged runs through a considerable number of texts (Appendix 7.2, nos. 13-32), which depict a people's sense of impending doom; personal and collective ruin is envisaged if a member of the opposing camp wins the presidency. Incidentally, this became the basis upon which the violent destruction of the other was legitimized. However, the bulk of these texts are directed at **Raila**, **especially** because of the ethnic stereotype of the Luo as an arrogant and destructive group (Skuma, 2005b; Wa-Mungai and Samper, 2006). In the main, the idea is to depict **badly the community that is hell-bent on accessing power by all means, including** destroying the country: Appendix 7.2, 17. 'This thing has gone 2 the wire n can go either way! Will Jaluo's concede? I sense chaos in the air! If Kibaki wins, how will he govern without MPs?' Whatever political position writers had previously taken, they now seemed to realize that chaos and general anarchy might derive directly from whatever prior choices they had made or were perceived to have supported. Indeed, as the lawlessness caught on in the first days of January 2008, there was a perceptible change in the tone of the text messages from gloating triumph to desperate resignation (Appendix 7.2 nos. 21, 23-25, 27-29). Appendix 7.2 nos. 30a and 30b are a reference to the boycott of businesses perceived to belong to PNU supporters that was called by ODM, again an idea that was actively discussed by participants on a list of mainly US-based scholars. The latter text is a subtle sarcastic reference to the fact that 'divisions' *amongst leaders are often mere postures* since Kenyan politics mapped as harlotry is as we have seen above devoid of real values and principles; the 'principled positions' adopted by either camp during the conflict are here read **as mere postures.**

Hatred

The theme of hatred comes up in three texts (Appendix 7.2, 39-41):

39.   No more innocent Kikuyu blood will be shed. We will slaughter them right here in the capital city. For justice to prevail, compile a list of Luos you know. We will give you numbers to text *this information to* (**Original emphasis**).

40.   Fellow Kenyans, the Kikuyus have stolen our children's future, we must deal with them in the way they understand better... violence!

41.   'Ru annoyed with Kipkalya Kones? How could he take a trip and fail to invite William Ruto with him? What are friends for? Damn it!!..ing. Vote for Dav'

The last text above was received in May 2008 after the death of Kipkalya Kones **and Lornah Laboso in a plane crash. Incidentally, whereas it has been assumed that**

there was a proliferation of hate messages during and after the elections, they seem to have been far much fewer than it was thought. Many of the sms texts circulating during the period are doubtlessly insulting, but other than the three cited above, they can hardly qualify as hate messages. In their numbers, and even in the likelihood that such 'hate sms' were never tracked down, it is doubtful that they could, on their own, have been enough to incite people to violence. In this regard, it might be argued that where election-related violence may be attributed to incitement, then modes of persuasion other than sms were at work.

'Save Kenya peace project'

Lastly, in the gloom of murder, arson and general mayhem whose intensity lasted up to March 2008, Kenya experienced a 'peace outbreak.' From musicians to preachers, politicians, and media houses and cellphone companies, Kenyans were assailed by calls to prayer and the quest for peace: Eric Wainaina's patriotic song '*Daima*' ('Kenya Only') quite nearly supplanted the national anthem in public gatherings and on TV. In similar vein, there was a deluge of peace messages (Appendix 7.2 nos. 33-36). They mainly evinced an abhorrence of bloodshed, which ironically only a few weeks before was being touted as 'the better option' to a Kibaki/Gikuyu presidency, but it is doubtful that the newly-discovered conversion to peace runs deep. Indeed, as an informant angrily and repeatedly stated: 'Forget about these useless Waki and Kriegler commissions! 2007 was only a taster. The real thing is on the way in 2012!' Whether these chilling sentiments–they have a bearing on texts 39 and 40 above–have any possibility of coming to pass or not, in any analysis of popular forms of engagement such as sms, it is vital that we consider the issues raised in citizens' moral economy. Thus, the themes that emerge here need to be understood within the framework of Kenyans' every day struggles, tribulations and successes in their various spaces of political organization.

Cyberspace Politics

Unlike sms, which could be used by anyone in Kenya so long as they had a phone, use of the Internet was somewhat limited in the sense that it requires much more sophisticated infrastructure (power, a computer, a phone line and Internet connection) and computer literacy. As such, urban residents used cyberspace interaction more than those in rural areas. However, this is not to underestimate the potency of the messages that were circulated through the Internet. Like sms, cyberspace-based discussions were also fed on rumour and misinformation from the press.

Two main forms of engagement were utilized. First, there were mass e-mails that would be authored and then be endlessly edited as appropriate before being forwarded by both known and anonymous correspondents. Here, only selected texts have been used as the number is overwhelming. Then there are the 'ethnic' websites

in which Kenyans 'debate' and (re)define their identities in relation to specific questions—culture, politics, economics among others (Odhiambo, 2007). Popular sites include: *www.jaluo.com* (the subject of Odhiambo's analysis), *kikuyu.com*, *kalenjin.com and kisii.com.* While some discussion sites are named to obscure an ethnic component *(www.kenyans.com, mashada.com, africanbulletsandhoney. com,* among others) discussions therein nevertheless often entail recourse to ethnicity. These discussions often became too passionate; at one point during the 2007 elections dispute, 'discussions' on *mashada.com* became so virulent that the web's administrators had to temporary shut down the site. Thus, we see that even the ethnically marked sites are not merely platforms for the expression of a cultural imaginary. Usually, the self is projected in antithetical placement to other ethnicities in the civic nation. In this regard, for instance, *www.jaluo.com* enabled Diaspora Luo to explore their grievance about 'political exclusion and betrayal': 'several contributors to the website felt strongly that Luos (sic) should either try the option of federalism or secession from Kenya and join Uganda' (Odhiambo, ibid:18). These sorts of ideas are woven back and forth between chat rooms, e-mail, sms and eventually everyday conversation, especially when they appear as opinion pieces in local dailies. This is the manner in which, for instance, the 'emptying' of the Gikuyu from the Rift Valley and the call for forcible confinement of all Gikuyu to Central and Eastern Provinces was celebrated and couched in political economy in terms that thereby normalized the violence into a 'logical' proposition for ODM supporters.[12]

While it is true that e-mails were more limited than sms in terms of penetration, their content was more virulent. This might be due to the fact that unlike text messages that can only take up a limited number of screen characters, e-mail affords correspondents enough space to explore ideas fully. Usually, writing an e-mail takes more time and it is, therefore, assumed that the words that are committed to print are the product of deeper reflection than is the case with sms that are often composed and sent on the spur of the moment. E-mail messages before the elections were mainly propagandistic, with writers pitching for their preferred presidential candidates by drawing out 'supporting evidence' and, equally, by vilifying other contestants for the top seat. At that time, writers were still hopeful that their man would win.

However, there is a conspicuous shift in tone in post-election e-mails. In them, arguments are formulated to rationalize either the claims that Kibaki 'stole the election' or that 'Raila actually won'; we did not come across many pro-Kibaki texts. These texts evince both bitterness and despair at the 'failure of democracy.' Questions are raised about the allocation of more resources to some parts of Kenya than to others, the lack of participation of people from outside the Mount Kenya region in national government, and the role of the judiciary in fomenting rather than stemming conflict. Here, mainly Diaspora-based Kenyans and others actively participated in popular discourse even though their ideas were often at variance

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[12]E-mail 'discussion' mainly among North American Kenyans (in the author's possession).

with reality. For instance, effort was made to downplay the role of ethnicity in the 2007 elections; anyone who was in Kenya at the time would easily recall the density of ethnic animosity, **especially against** Kibaki as a 'Mount Kenya candidate.' At any rate, in a method that can be seen as merely reverse negative ethnicity, there was a heavy emphasis in ODM campaigns that the movement stood for the dreams of Kenyans other than those in PNU (i.e. Gikuyu). This then removes the high moral ground from beneath those among ODM who previously argued for the need to have **de-ethnicized politics in the country.**

Cartoon Politics

Kenyans take editorial cartoons quite seriously. Out of the 20 Kenyans whose views **were sampled for this study, only one of them stated that he reads the cartoon page** for entertainment.' The rest overwhelmingly said they scour cartoons for 'hidden messages/truths'; in reading cartoons 'the message cannot be seen by a naked eye. One has to think outside the box'; they communicate 'social reality'; 'they depict the other side of life in a brave manner. Cartoonists rarely mince their words. They say it as it is.' Cartoonists are, therefore, considered to be fulfilling an important **social function: teasing out hidden meanings and presenting them to the public for judgement.**

While there is obviously no consensual interpretation of political cartooning among readers, it is assumed that, ultimately, cartoons have some impact on the way citizens view the political class. These forms of communication cumulatively build **up a composite picture of politicians about whom readers then formulate particular** positions. It is thus possible for us to argue that readers do understand these visual texts as a mode of social critique, a lens through which to view especially the mischief **of the political elite.**

None of the respondents indicated having any trust in politicians; they are seen as egotistic, hypocritical individuals whose agenda rarely, if ever, coincides with **that of ordinary folk. Indeed, an informant described Raila and** Kibaki's grotesque **appearance in cartoon no. 4 as 'beastial': 'They are created akin to animals with big teeth and elongated lips who are ready to maul each other.' This potential in** politicians to devour one another, and by extension Kenyans, needs to be understood **against the background of the perception that they were primarily responsible for** taking Kenya downhill before and after the events of the 27 December 2007. At any rate, as is evident in public discourse about politicians' conduct, few Kenyans believe that this class is up to the task of helping Kenya develop.

Even though betrayal is perceived to be Kalonzo Musyoka's forte, informants indicate that his is not a peculiar quality. In cartoon no. 1, informants argued that in accepting the vice presidency, Kalonzo displayed 'shocking gluttony.' Again, like we saw with sms, politicians are evaluated both as individuals and also as members of a class; cartoons then become a good way of memorializing specific

traits in individual leaders. Thus, Martha Karua's image is imprinted in the public imagination as a 'shrewd' and 'aggressive' player, just as the former US Secretary of State Condoleeza Rice, a diplomat-politician, was singled out for her masculine, Rambo-like qualities. This appears to be an allusion to the masculinity of Kenyan politics that was raised earlier. Indeed, the two ladies are considered to be tougher than even the men; they have the required rough cut to survive in the unruly world of men-controlled politics.

In cartoon no.2, the respondents expressed the view that politicians' demands are always at variance with those of voters. Here, the by-now easily recognizable *Wanjiku* (a metaphor for *mwananchi*, 'common man') is alluding to the common practice whereby the 'big men', once they have been voted into power, demonstrate a deep-seated disdain for voters. Her needs–Kibaki and Raila to work together to unite the country, stopping the violence against the poor, dialogue with justice and reconstruction and jobs for all–were/are very different from those of the two contestants especially at that particular time when violence in the country was spiraling out of control. *Wanjiku's* scepticism about the political class echoes the routinely expressed view that politicians are only interested in causes that further their own self-interest; *wananchi* often wondered, during the moments of intense national anxiety between January and March 2008, whether Kibaki and Raila's rigid stances resulted from any altruistic belief in the well-being of the nation or, more likely, whether they were determined by narrow self-interest. Indeed, their demands as they dug into their entrenched positions were as opaque to *Wanjiku* just as each could not tell what his opponent had in mind since both sought to conceal their real wishes. Respondents stated that the 'moral' of the cartoon was that politicians must adopt the principle of accountability if democracy is to work in the country.

Cartoon no.3 was understood as a comment on 'the futility of trying to revive democracy in Kenya.' In fact, some readers were convinced that democracy has never taken root in the country: 'It [democracy] died a long time ago. We've probably lacked it since independence.' One of the questions that comes up in Kenyans' every day conversation is whether there exists in the country any democratic institutions and practices worth the name. Voting is increasingly seen as a fraudulent time-wasting exercise and the lack of accountability on the part of politicians as the norm of cynical public 'service.' The Zimbabwe situation, in which opposition leader Morgan Tsvangirai, after beating the incumbent Robert Mugabe in the first round of voting in the 2007 elections, still emerged empty-handed was cited as 'proof' that democracy does not work in Africa. There is also the realization that in the absence of strong systems and in their place the existence of a weak electoral commission and sham party nominations, democracy will never work.

On the fifth cartoon, informants indicated that they thought politicians were being censured over their inability or reluctance to 'see sense' and for insisting on remaining on higher grounds–unlike the mediators who sought humble positions–which they did not have the moral authority to claim in the first place. Their intransigence, based

on myriad issues of self interest, could see the whole of East Africa suffer. Further, informants stated that the cartoon depicts Kenya's connections to global realities, a fact that 'puny-minded politicians' are thought not to grasp as they retreat into their ethnic bastions.

Overall, editorial cartoons are a complex convergence of discourses. The latter in turn become the semiotic ground upon which newspaper readers interact with cartoon as texts. Thus, one's ability to read into a cartoon's meaning is only going to be as good as an individual's exposure to, and their ability to read other grounds that lie outside the text. It is clear that Kenyan readers pay attention to critiques of politicians and by extension appraisals of democratic practices that take place daily in newspapers. Like other modes of communication, cartoons are likely to mean different things to different people depending on their personal and social dispositions, their relationship with the power elite and their perceived potential gains as members of an ethnic community, as was the case during the 2007 general elections. It is, therefore, a safe assumption that cartoons are an important mode of communication through which citizen awareness of democratic and governance issues are continually evolving.

Conclusions

This study set out to attempt an explanation of the connections between popular culture, alternative communication technologies and the 2007 general elections. The interrogation reveals some of the complex challenges of living in modern Kenya that grow directly out of the nature of the country's politics. Perhaps nowhere else are these dilemmas played out with more tension than in the fractured identities that citizens construct around the dual question of ethnic and civic nationhood. For example, Diaspora Kenyans often consciously invoke their ethnic identities in Internet discussions. Inevitably, a lot of the discussion that went on in popular sites before the elections seems to have been forged around the somewhat misguided idea of solidifying the fortunes of several ethnic groups around particular rallying points within the larger political contests whose apex would be reached on 27 December 2007. We say misguided because the winner of a presidential vote in Kenya cannot guarantee the well-being of an entire ethnic community no matter how ethnic-minded he/she might be, since class interests will almost always override all others. But again, regardless of how Kenyans understand democracy, it might just become necessary to look for a way of dealing with the fact that ethnicity is part of Kenya's heritage and that it needs to be addressed not by means of abstract argumentation ('historicizing self-determination' as one e-mail called it) but within the reality of the country's politics.

The above discussion then raises the question: are Kenyan voters innocent of the charge of uncritical allegiance to the ethnic nation? Looking at sms, e-mail texts and Internet discussions, it seems clear enough that politicians, and perhaps it can

even be assumed that they were behind these texts or that they encouraged their authorship by failing to speak against them, find it easy to whip up ethnic emotions during elections because an ideology of ethnicity already exists among voters. At any rate, before they join parliament, Kenyan politicians are usually part of the everyday life in which arguments about this or that ethnic group are always taking place in the open. Therefore, regardless of claims that might be made in learned e-mail discussions, it may be difficult in the Kenyan context to define democracy without bending it to the demands of ethnicity, not because citizens are incapable of understanding it otherwise, but precisely because that is the way the country's political culture is structured–and politicians would rather have it remain that way. Thus, for instance, the only reason that there were no anti-Luhya or anti-Maasai sms or e-mail texts in 2007 is that these communities were not fielding 'one of their own' as presidential candidates. However, if we examine texts from 2002, we notice an abundance of anti-Kalenjin content and it is a safe assumption that if a member of the Elmoro tribe vies for the presidency in 2012, Kenyans will either construct or drag out pre-existing narratives and stereotypes to deploy against that largely unknown community. Thus, rather than encourage (healthy) debate, soft media merely entrenched prejudices.

This, however, is not to repudiate the fact that there were concrete issues raised in these discussions: land ownership and control, the ethnicization of the civil service, unequal distribution of national resources and infrastructural collapse in various parts of the country, among others. The argument here is that, often, these issues were lost in the din of arguments formulated in popular media about Raila 'the Luo', Kibaki 'the Gikuyu' and Ruto 'the Kalenjin.' In these circumstances, concern with the credibility of the electoral process does not always arise out of a principled concern with democratic practice; self-interest (to be part of the political centre) is often part of the reason. The latter is indeed perhaps a legitimate right but if pursued purportedly on behalf of an ethnic group, then it becomes merely a cynical lie and there can be little doubt about its potential for anti-democratic practice.

A relevant question may also be raised about the role of civil society organizations (CSOs) before the elections; their role after the elections in the drive for peace and providing material necessities is clear enough. Indeed, a site like *www.ushahidi.com* was a key cyberspace intervention through which many victims of the violence were rescued. Be that as it may, of all the soft media texts available from the pre-election period, there is not a single one on civic education. Even if these groups carried out voter education drives, why is it that they did not seize the opportunities afforded by emergent technology to counter/check the ethnic polarization that was clearly evident before and during the actual voting day in the 2007 general elections? Did civil society deliberately shirk that opportunity because of partisan political interest?

Perhaps it is necessary to ask whether the tensions that affected other sectors of the population were at work too within the CSOs, and hence polarizing their work

(Njogu, 2008: xi). It is our view that civic education is part of the core mandate of civil society work. However, given the extent of ethnic animosity in various parts of the country against those who did not vote for the predominant community's preferred candidate (victims from Kuresoi supply ample testimony about their suffering even after voting for ODM candidates), it is necessary that we ask how civic education might be done differently. If civil society organizations had made (good) use of soft power campaigns, it might just have been possible to counter, no matter how **minimally, the ethnic jingoism that so polarized the country.**

At another level, the sms content available from informants does not seem to fall within the strict sense of the term 'hateful'; a lot of it is mockery. However, such ridicule seems to easily invite prejudice, but it is difficult to sustain the argument that people killed because of sms. For that to happen, there has to have been other **factors at play. On the other hand, e-mail content had the tendency to be more** cantankerous and possibly more divisive. But if we go by one of the most basic tenets of democratic practice, then we must allow the exercise of free expression; e-mailers, sms writers and rumour-peddlers must be viewed through that lens. However, given that no one has so far been prosecuted for spreading election-related 'inflammatory' messages, it can only point to the absence of a (good) law that can be used to curtail/ penalize the phenomenon when it occurs. In the alternative, if such a law exists, then the police department and the Attorney General do not seem to have the desire to enforce it; one can surmise that this lethargy results from the lack of a political will to have the law applied. In this event, law enforcement institutions must as far as is practicable be delinked from manipulation by politicians through the executive. Thus, it would be possible to tame the excesses of those who abuse soft power media through prosecutions since, at the end of the day, citizens are likely to behave in a more civil manner where the legal system can enforce checks.

In relation to vernacular radio, it is necessary to have studies done on these **broadcasting stations to ascertain what their actual role was before, during and after** the events of December 2007. A lot of the 'evidence' that is offered to support claims that these stations fanned the violence is sketchy yet, at the same time, it cannot be convincingly claimed that nothing was going on in those spaces. A proper audit is **necessary to ascertain clearly how they fed the popular culture practices that were** carried on in other avenues.

Part of the difficulty of studying these stations or obtaining data about what was actually broadcast during the period in question has to do with the fact that those **who know the languages in which these radios operate are often unwilling to discuss** such content with 'outsiders'. Incidentally, the same is true even in academia. Thus, for instance, few people other than for instance Kalenjin and Luo speakers have **any idea about the broadcast content during the pre- and post-election period of** **either Kass FM or Namlolwe FM, respectively. Again, if we are to develop a candid** **picture about what went wrong and why it went wrong and how those pitfalls can**

be avoided in future to entrench a culture of democratic governance, and how all these popular spaces fed into each other, then it is incumbent upon academics and other researchers from all communities to help bring in the data to enable proper comparison to be done. In this regard, and given the prominence of the role that the Gikuyu, Kalenjin, Luo and Luhya played in the 2007 electoral contest, availing sms texts that were circulated by members of these communities would allow for wider interrogation of the totality of images about 'others' that were fed into the pool of popular culture.

On the whole, the flows of popular culture have immense potential for enabling citizen critiques of power and political processes with a view to solidifying awareness of democratic practices. From rumour to cellphone text massages, e-mail and web-based discussions, popular culture affords immense resources with which to process realities of everyday. On balance, however, whatever benefits may have derived from the deployment of soft power and popular media in the 2007 elections, they simultaneously had serious deleterious effects upon consumers, whether those who voted or, ironically, those that did not vote for various reasons.

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Appendix

Appendix 7.1: NARC's sms campaign 2002

1. Please send me Uhuru's photo urgently. We are playing cards and have no joker!!

2. Galileo-great mind

   Einstein-genius mind

   Newton-extraordinary mind

   Kibaki-mastermind

   Uhuru-never mind!

3. UMK - Uma Mawe Kabisa

4. KANU's presidential candidate's brain will be upgraded. Press down to continue. Upgrade now. Loading…Loading<System Error> Upgrade failed. No brain detected.

5. In Noah's Ark (NARC) after the rain (reign), God made a promise and sealed it with a Rainbow. Never 2 make his people suffer. Vote NARC!

6. Ecclesiastes 10: 1-6: A country is in trouble when its king is a youth and its leaders feast all night long. Vote wisely. Take this text seriously and pass it on.

7. *Wee Kibaki, ona woinika maguru na moko, gutiri theci ndirakunegera, ni hakiri ciaku ndirenda. Ngaguthura undongorie ona wi gitandaini* [Kibaki, even though your limbs are broken, I do not intend to give you a hoe, it is your brain I am after. I will vote for you to lead me even whilst you are bedridden].

8. *Muthuri aikariere gacuguma onaga haraya gukera kihii ki muti iguro* [A man sitting on a stool sees much further than a (uncircumcised) boy perched high up on a tree].

9. *Nchi ya watu wa Rainbow* [The rainbow country]. *Ni Nchi ya watu warembo* [it's a country of beautiful women]. *Kwa haki za akina mama pigia Bii Ngilu* [for the rights of women, vote Ngilu]. *Kwa mazingira pigia Mathaai* [for the environment, vote Maathai]. *Kwa katiba mpya pigia Karua* [for a new constitution, vote Karua].

10. *Yote yawezekana bila Moi* [all is possible without Moi] (Uhuru-New face, old danger). Vote Kibaki Vote a better Kenya (*si mwanzo mpya tu* [it's not only a new beginning]).

11.   Uhuru go, Uhuru come

Uhuru left, Uhuru right

Uhuru this way, Uhuru that way

Uhuru panda, Uhuru suka (sic) [Uhuru board, Uhuru alight]

Uhuru KWENDA! [Uhuru Go]

12.   I went to a VCT centre n was found to be NARC+ve. *Nawe chukua control ya maisha yako* [Take control of your life]. Chanuka [be enlightened], vote NARC.

13.   I can't hide this from u anymore. I really don't wanna hurt u but I feel it's better if I tell u b4 u hear it from someone else…Kibaki is the next President.

14.   4 billion to dubious contractors! NARC wants 3 billion for education. The choice is yours KANU for contractors or NARC for education! God bless Kenya.

15.   '*KANU ina wenyewe' Baba Moi, Mama Ngina, Mtoto Uhuru, maid Biwott, Watchmen Ruto na Sunkuli, Umbwa Kali Nassir. Kura ni kwa NARC nyumba ya wote. Merry Christmas* [KANU has its owners, Dad Moi, Mum Ngina, baby Uhuru, Maid Biwott, watchmen Ruto and Sunkuli, Dog, Nassir. Vote for NARC, a house for all].

16.   FACT: Uhuru was born in 1961 FACT: Kenyatta was released from detention in 1962 Question: How did it happen? Answer: Only Moi knows.

17.   Pray for Kibaki Pray for Kenya tonite, g'nite.

18.   Vote wisely today. Wisdom is NARC.

And as the results begun to drift in….

Can u smell that appetizing aroma? It is the aroma of jogoo [cockerel] casserole & jogoo choma [roast cockerel] over the Mwenge [flashlight] flame. God bless Kenya, Kibaki & NARC Bon apetit [good appetite].

19.   We have already voted and we are now at State House supervising fumigation of Kalenjin fleas and Gatundu jiggers. Forwarded by Nation FM Musketeers.

20.   Urgent! We need tough insecticides to clean State hse. It's infected with Baringo bed bugs, Gatundu fleas, Trans Mara geckos and Mvita ticks.

21.   Uhuru should've known the journey 2 the top starts at the bottom. The only time u start from the top is when digging a latrine or a grave, ama [or]?

22. I'm glad 2 announce death of KANU. Weakly born. He was father 2 grabbers, brother 2 riggers n husband 2 looters. Cortege leaves polling **morgue on 27 Dec.**

23. House 2 let @ Muthaiga 5 bedrooms master en suite. Owner moving to **Sate House.**

Appendix 7.2: Cellphone text messages in thematic clusters and stylistic categories, 2007 campaigns

1.   It is now confirmed that Kalonzo Musyoka will on 22 Dec 2007 step **down for Mwai Kibaki in exchange for Kshs 10 Billion and a VP's** position. That was expected. We have all along stated that Kalonzo **has always been a** Kibaki/PNU Grand Project dubbed the MIRRACLE. Kalonzo never intended to challenge Kibaki, leave alone trying to replace **him. That's why he and Kibaki are focused on bashing Raila in a one way focus. Indeed Kalonzo has proved to be untrustworthy.** He has betrayed everyone who he has associated with including his current supporters and Kenyans who thought he was an agent of change. ASHINDWE.-**message Luos are passing on.**

2a.   (there is also an e-mail version of this text) He is bold, he is a team **player, he is a liberator, and he is a panafricanist, a democrat with a national constituency.** He is Raila Odinga and he has what it takes to deliver Kenyans to the Promised Land. Join other Kenyans in supporting **this great son of Africa. Send this sms to 10 people.**

b.   **He is cold, he is a time player, he is a terminator, a destroyer, a demolist with an odd national constituency. He is Raila Odinga and he hasn't what** it takes to deliver Kenyans to the Promised Land. Join other Kenyans in stopping this great son of Africa. Today the people have spoken. Send **this sms to 10 people**

3.   **Raila strategized well, started campaigns early, propaganda, ethnicity, anti-Kikuyuism, youth vote, rebellion against age, etc.**

4.   This week's award goes to Ida Odinga who was at Kisumu bus stop today pleading with Kisiis not to leave. Our leaders must have the courage to finish what they start.

5.   If you read Raila back to front you get a liar (from the 2005 referendum).

Ethnicity's arithmetics

6.   (Lang'ata constituency) In '000': Luhyia 36,\kkyu 32, Luo 30, Kamba 6, Nubis 10, others >5 Total= 135k>Assume 80% vote i.e.110 Livondo **gets 70, Raila 40. So the guy is out as MP & there4 tech knockout for presidency!**

7.   **National Security Intelligence Report on 07 Election: Kibaki 5,599,000, 55.99%; Raila 3,109,000, 31.09 %; Kalonzo 1,209,000, 12.92%. Send** to 3 pple. U must wake up n vote 2 ensure Kibaki this win.

8a. NSIS latest polls leaked: With a 100% average turnout Raila 63% Kibaki 27%. With a 90% turnout Raila 58% Kibaki 33%. With a 80% turnout Raila 53% Kibaki 39%. 50% turnout RAILA 43% Kibaki 42%. Gema are 4.3m while the rest are 9.8m. To beat them our turnout has to be over 80% if theirs is 90% and the rest 40% like referendum, they win. Send this to all the ODM supporters. Come out and vote on 27th.

8b. **National secutity intelligence report on 07 election:** Kibaki = 5,599,000 (55.99%); Raila = 3,109,000 (31.09%); Kalonzo = 1,209,000 (12.92%). This may improve if people in central, south R/v and eastern turn out by 90%. Send 2 10 pple. We must wake up n vote in large numbers 2 ensure Kibaki wins this battle by a big margin.

9a. **Predicted** Kibaki-4,687,651=47.6%, Raila-4,303,817=43.7%, Kalonzo-865,996= 8.8%. Give up to 50,000 tolerance.

9b. Rumoured estimates; Kibaki 4,649,246=47.4% Raila 4,233,860=43.6% Kalonzo 875,293=9.0% Total 9,708,162=68% of registered voters. Kibaki wins by 365,149 votes. We should know *kesho*.

10. Breaking news: ODM rejects Njue's appntmt [appointment] as a **cardinal insisting it was not consulted and this's further manifestation** of tribalism. They say da pope would have considered Bishop Deya, **instead because of his work with miracle babies!**

Call to, and consciousness of, civic duty

10. **Voters (sic) turnout shall determine if** Kibaki gets reelected or not. Lets (sic) ensure all of us vote. Send this sms to everyone in your **phonebook.**

11. *NDETO ihana ta uu. 'Gema twina kura 6 million! Mwoiga Twathwo ni kihii na tucoke mung'etho? Umirai tucikirie Kibaki ciothe bururi ndugathwo ni kihii gia gutuma twikire inyatha na kinine indo citu ciothe. Tambia ndeto ino kuri andu 50 a gema kana makiria. Kura yaku niyo ikugiria bururi witu ucoke Misiri. Mwene Nyagah akurathime* (We in GEMA have 6 million votes, Do you want us to be ruled by an uncircumcised man to take us back to joblessness? Safeguard the kingdom. Let's ALL come out and give all the votes to Kibaki so that **we are not ruled by an uncircumcised man who will make us wear shorts** and plunder all our wealth. Send this to 50 or more GEMA people. It's your vote that will prevent our country from going back to Egypt. May **our God bless you).**

12a.   May our Good Lord shower u n ur family with His LOVE, may he surround u with a HEDGE OF PROTOECTION thru 2008. MERRY XMAS n VOTE WISELY.

12b.   (sudden awareness of the electoral process): May U have a Happy, **peaceful and prosperous 2008. Though delayed and not accompanied** by Form 16/16A I confirm these are Genuine prayers.

12c.   I take this opportunity to wish you and your loved ones a happy and **prosperous 2008. Further delays might be termed rigging and I don't** have any form 16 or 16a for the record. May the Almighty grant all your **prayers in 2008 and beyond.**

Sense of siege/impending doom/resignation

13.   e.g. Raila, and the Luo, as destructive-Raila Boy Profile: 1982-coup attempt; 1992-crippled Ford; 1997-killed NDP; 2002-Broke KANU; 2005-tore Narc; 2008-DANGER!!KILL AND BURY KENYA. U CAN STOP IT-VOTE WISELY,VOTE KIBAKI-SECURE YOUR FUTURE. **Send this message to as many as you can.**

14.   Woooi! Do you want to let the kingdom to go the Luos by failing to vote? **Vote for** Kibaki. Failing to vote is tantamount to voting for the Luo. Send this message to three of your friends from our Kikuyu community. Kibaki Tena.

15.   *Nindamwirire! O uria gikaina* (I told you so! Now whatever will be will be). It is everyone against Mt Kenya

16.   *Aai anga uthamaki niwathii iriaini, turi ona mwihoko* (Oh no it seems that power has gone to the lake, do we still have any hope?).

17.   This thing has gone 2 the wire n can go either way! Wil Jaluo's concede? **I sense chaos in the air!** If Kibaki wins, how wil he govern without MPs?

18.   This s madness we shld nt get into. To hell with both ODM n PNU!

19.   **Tis a sad day when a certified comedian, Walter Mong'are alias** Nyambane reminds people that what they r saying is being relayd 2 the world n no one can make sense of their shouting.

20.   *Ui!Ui! Ngai baba! Teithia nari iriuke na giting'oe ! Thaai! Thathaiya ngai thai. Ruroruma nyambo* (Oh! Oh! God our father! Help the snake to at least come back to life! Peace! Praise God. May the (Gikuyu) naition have a firm foundation.

21. For the first time, I felt this xtry breaking apart. Not a good feeling and **I hope** Kibaki knows how serious this is. The hateful mood out here is **unimaginable**.

22. *Mwaki niwagiakana! Kai tuguthie njira ya bururi wa sumali? Itikirai tu wira uthie na mbere! Why intimidate Kivuitu? Chungwa ni poa lakini Kura zimepanuliwa Meru. GOD HELP KENYA!* (**Fire has surely** erupted! Might we be headed the Somalia way? Please accept to have the work go on…the orange is good but the votes have been forced open in Meru…).

23. Just bn watching Al Jazeera; its unbearable! *Andu aitu marang'eo ta mburi!* [**our people are being slaughtered like chicken**] Where's mungiki? We need them!

24. Please remember to pray for our people all over Kenya. They are being **slaughtered**. *Tuombee* Kenya [let us pray for Kenya]

25. **Raila is implementing to the letter a Dick Morris strategy, already used** in Arkansas, US, Ukraine, Mexico and by extremist parties in UK. In Kenya, the script is: *Hype up ethnicity to win, demonize and isolate… *Hire pollsters to claim a massive lead, demoralize and scattle rival vote *Make constant claims of rigging to prepare ground for rejecting polls if defeated *Reject the polls result Ukrainian-style, get sworn in separately, and cite the flawed polls as evident *Prepare supporters for **protracted demonstrations in Nairobi and other major cities and take** over. Our counter-strategy as patriotic Kenyans. MAKE THIS PUBLIC & STOP HIS PLAN FOR CHAOS & DESTRUCTION. BE READY AND TAKE THIS TEXT SERIOUSLY AND PREPARE FOR ANYTHING AND PRAY.

26. SMS FROM VERY RELIABLE SOURCE 'QUOTE' ECK has been ordered **by State Hse to release the following results:** Kibaki---4,176,437; **Raila**---4,117, 323; Difference---59,114.Very reliable source Arise Kenya and **reclaim your country!** TOP PRIOROTY

27. **From Greek tragedy to greek farce! This surely isn't the outcome anyone** desired. Does Kivuitu have a watch

28. **This [killing and general anarchy] is tragic and just not the solution for** Kenya

29. *Nyumba ya Mumbi nindigicirie ni thu na niyaigire ngo ngirini. Nituthaithe Mwene Nyaga atuhe Njamba cia ita cingirangira Ruriri Na Athuri a Kigongona mangithinjira Murungu metie Thayu na utorania wa Njamba citu cia ita. Thaaaai Thathaiya Ngai Thaaai* [**The house of Mumbi is surrounded by enemies and yet we had discarded**

our armor. Let us beseech God to give us warriors who can protect the tribe and holy elders who can offer a burnt sacrifice to God to ask him for peace and victory for our warriors. Peace. Praise and peace to God. **Praise**].

30a. Before selling anything, confirm identity of customers. We r boycotting all transactions with ODM sympathizers. Tenants should be vetted, employees scanned, and all fish markets boycotted, psvs to vet passengers, hospitals to vet patients, shops to vet buyers and the boycott **continues! Lets c who suffers at the end.**

30b. (Response) R u boycotting harlot services too? What are we doing to each other? Aren't we all Kenyans?

31. *Turikunyarirwo ukai tucire niamu ita ritari ndundu rihuragwo na njuguma imwe [venue] thaa inyanya njumamothi 26/01/08. Ndugatire Andu a Rift Valley* (We have been tormented let us come **together since an army that is not united is usually beaten with one** throw of the club... on Saturday 26/01/08 at 2 pm).

32. Lets all come out today (27/1/08) and meet at [venue] to assist our brothers and sisters who have been forcibly (sic) evicted from their homes. Come with three others from NYUMBA YA MUMBI (3pm) **GREAT leaders from GEMA in attendance.** *THAAI THA-THAIA NGAI THAAI AMEN.*

Peace-prayer outbreak

33a. From Safaricom: In the interest of peace, we appeal to Kenyans to embrace each other in the spirit of patriotism, and exercise restraint **to restore calm to our nation.**

33b. From Celtel: The Government of Kenya advises you not to take part in any unlawful assembly that may result in violence!

33c. The Government of Kenya advises that the sending of hate messages inciting violence is an offence that could result in prosecution.

34a. Today is a day 4 prayers 4 those who are suffering, 4 those planning more **atrocities to freeze n c the face of God in those they treat as enemies, 4** us to repent coz our sins have brought a curse upon us n our families.

34b. HIGH ALERT! Let us form a Prayer chain today at 9.30 am praying for peace in the country & surely peace will prevail. Kindly pass this 2as **many people as u can.**

35. Fellow peace loving Kenyans this is a campaign against war mongerers (sic) and their instruments of destruction against their own people. 'Avoid **seeing (sic) KTN AND DO NOT BUY STANDARD NEWSPAPER YOU WILL SAVE YOUR COUNTRY FROM THEIR WELL CALLCULATED (sic) EVIL.' Circulate this countrywide.**

36. Only the dead have seen the end of war and the dead know one thing: its better to be alive...!

Tempered triumph

37. With victory in the bag we can deal with *njikia thui*. **God bless our** beloved president: God bless Kenya.

38. Welcome to PNU service. You are on KIBAKI TENA [Kibaki Again] tariff. Your current Balance is 5 years. The expiry date is 27-12-2012. Thanks for choosing PNU the better Option.

Hatred

39. No more innocent Kikuyu blood will be shed. We will slaughter them right here in the capital city. For justice to prevail, compile a list of Luos you know. We will give you numbers to text this information to.

40. Fellow Kenyans, the Kikuyus have stolen our children's future, we must deal with them in the way they understand better... violence!

41. sms received after Kone's death: 'Ru annoyed with Kipkalya Kones? How could he take a trip and fail to invite William Ruto with him? What are friends for? Damn it!!..ing. Vote for Dav'.

Stylistic strategies

Parody and the coded prayer template

42a.   I visited a VCT center n was shocked that I am +ve with the virus known **as** Kibaki tena. It has no cure. Even the ODM tablets prescribed by thomed doctors from Nyanza can't help. On diet, my doc advised me never to eat oranges but should eat lots of any other fruits esp. those of PNU species. The bad news:..You must infect very many other people. Just tell them about this virus. The good news: All those infected will be cured on the voting day.

42b. Just visited a VCT centre and the doctor told me that I am ODM positive! And he told me there's no cure when you are ODM positive not even

PNU tablets could cure. He actually told me to eat a lot of fruits and he **particularly stressed on one full ORANGE!**

43a.   4 Jaramogi so loved Kenya that he gave his only son Raila dat whoeva votes 4 him shal hv everlasting poverty, hunger, disease n die in pain. VOTE WISELY.

43b.   For Jaramogi so hated Kenyans that he gave his son Raila that whosoever believes in him shall leave in eternal slavery, hunger, diseases and die in pain. Look at Kibera, look at Nyanza. We do not need Kiberas and Nyanzas in the country. He is cold; he is a terminator, a destroyer, a **demon with an odd national constituency. He is Raila Odinga and he** hasn't what it takes to deliver Kenyans to the Promised Land. Join Kenyans in stopping this great son of Africa. Today the people have **spoken. Send this SMS to 10 people.**

43c.   For Jaramogi hated Kenyans that he gave his son Raila that whosoever believe in shall line in eternal slavery, hunger, diseases and die in pain. Look at Kibera, look at Nyanza; we do not need Kiberas and Nyanzas in Kenya!

44.   Hi good morning. The Lord has made my heart so restless for Kenya and He impresses upon my heart that He has anointed the next president already as Stephen and now the president is required to endorse him as God only allowed him 5 years during which time he has attained sterling **performance through the blessings God showered upon him.** Kalonzo is God-fearing–a man after God's own heart. Untainted, intelligent, young **and steady.** *Na kazi itaendelea...*[And the job will continue] **Raila's** hands are full of blood and voting him is an act of endorsing foreign **aggression. Remember 1982 coup. Read his book THE ENIGMA. We** must not sell the sovereignty of Kenya. Kenya is under siege and this is now injury time. Let's face it. Even if Kibaki goes back the danger of impeachment is as real as daylight. Did we learn from the referendum? Read Amos 3.7 The next thing will be a balkanised state of anarchy Kenya. Pray that this message gets to Kibaki and he acts in good time. God has promised Jeremiah 29.11 to Kenya. Pray that...

45.   *Nake Ngai akiira Ibrahim atiri, 'amba uthii uruithie muruguo, ucoke umurehe ndimurathime'! Kwoguo kihii gitingiathana Kenya!! Pamoja tuangamize kihii!* [And God told Abraham, 'first go and circumcise **your son, and then bring him to me to bless him'!] So a boy cannot rule** over Kenyans. Together let us eliminate the boy!) (incidentally, this correspondent voted for Raila but later expressed deep regret for having done so. His cousin from Kuresoi indicated that he had been given six ballots to put in the presidential box; he'd also voted for **Raila**).

46a. *X and his maramwendera xmas njega, na kazi iendeee* (X and his family wish you a Merry Christmas, and may the work continue).

46b. *Ngai thathaya Ngai, thiguku njega na kura ina maciaro* (God, peace, God. A merry holiday and may the votes be productive).

46c. As we celebrate this christmas day & preparing to fold the yr 2007, I wish you all the best 4 now & days to come. Merry Xmas & blesd new yr 08 & remember 2 vote wisely!

46d. (Against the background of electoral violence): May peace break into your home, thieves steal all your debts, love tick on your face, laughter assault your lips and problems forget your address! Happy new year!

47a. Your current balance is 10 hrs. Your renewal date is *Kesho* [tomorrow]. Thanx for staying with PNU The Better Option. Merry CHRISTMAS N A PROSPEROUS NEW YEAR *Kazi ikiendelea* [as the job continues].

47b. Your current balance is 5 years. Expiry date is December 2012. Thanks for staying connected to the better option, ODM.

47c. Current balance. 5 years expiry date 26/12/2012 now on Raila Tariff. Thanks for choosing ODM. *Kazi ianze* [let the job begin].

48a. (Obituary) It is with great shock that I am receiving the news of your dear. Take heart, life must continue, may his soul rest forever in Othaya.

48b. (Obituary) *Nimukumenyithio gikuu kia ODM. Arari nyina [ni ithe wa raila odinga, William ruto, najib balal, joe Nyaga, wycliff mudavadi] wa anake ana, kihii kimwe na kairitu kamwe. Aciarirwo itura-ini ria referendum na agithomera [thukuru nyingi] thukuru ya Dick Morris Academy. Niambirie guthinio ni mwiri [na agikoma thibitari mwanya mwanya] thutha wa kuria icungwa ributhu na agikoma thibitari. Mathiko ni ruciu mbiririra-ini cia Lang'ata. Andu ni maracemania pentagon house along orange street kuhariria mathiko. Ni Ngai waheanire na nowe wacokera. Ritwa riake rigocwo, Amen* (We announce the death of ODM. She was mother (or father to Raila Odinga, William Ruto, Najib Balala, Joe Nyaga, Wycliff Mudavadi) to four men, one boy and one small girl. She was born in the village called referendum and attended (various schools) one of which was Dick Morris Academy. She began ailing after which she was attended to and hospitalized in various hospitals after eating a rotten orange. The funeral will be held tomorrow at Lang'ata cemetery. Mourners are meeting at Pentagon House along orange street to make funeral arrangements. Just as God gave he has taken back. May his name be praised. Amen).

Allusion/Intertextuality

49. **A dubious Co. called Pentagon is peddling a fake drug called ODM claiming it cures more diseases than '***muarubaini***' (neem). If you take ODM, it makes u drowsy, sycophantic, partly blind & suffer from amnesia. Wite becomes black & Truth becomes lies. If untreated ODM's effect lasts 3 months after which u'll feel cheated, used and abused. To detox ODM, take PNU syrup that has been formulated by renown scientists with unrefutable track records.** *KAZI IENDELEE*!

50. Zuma was fired by Mbeki in 2005 same with **Raila.** No**w he is the President of ANC and by extension S.A. President in 2009. Raila is the Fourth President of the United Republic of Kenya by next wknd.**

51. Desperate 4 votes from sex workers, Kibaki has now declared Koinange street a full district, *ati ndio kazi iendelee*...[so that the job **continues**].

52. *Riu mwahotwo ndukugura nyama?* I will eat only if it has orange taste! (Now that you have lost does it mean you cannot buy meat?) I will eat **only if has orange taste!**).

53. Looks like this was free and fair and the future is orange!!!

54. Big changes. 16 ministers out!! Well! Seems we will have raila for president! *Mtavumilia kuwa wakenya?* (Will you bear being kenyans?).

55a. (Humor) Breaking Newz: Peter Marangi is painting state house Orange/ Have u heard Peter Marangi has already painted State house orange in **readiness 4 Raila?**

55b. I think democracy's an ass! On a lightr not, Peter Marangi says the orange color at State Hse ws only the undercoat. The final color is blue. **'laughing 2 kp frm crying'.**

55c. Hi. Kwani [so] the undercoat is taking forever to dry so that the final one may be applied? This waiting is getting onto everyone's nerves.

56. The sheng [slang] name for Maina is maish, Adhiambo is Adhis, true? Kariuki is Karis, Otieno is Ottis. Then doesn't it logically follow that Raila is...Rais?

Sayings and proverbs/Cultural construction of leadership

57. TIP Tip [Kalembe Ndile's Matatu party]? *Gema twina kura 6 million! Mwoiga Twathwo ni kihii na tucoke mung'etho? Umirai tucikirie Kibaki ciothe bururi ndugathwo ni kihii gia gutuma twikire inyatha*

na kinine indo citu ciothe. Tambia ndeto ino kuri andu 50 a Gema kana makiria. Kura yaku niyo ikugiria bururi ucoke misiri (We in GEMA have six million votes. Do you want us to be ruled by a boy who will make us go back to idling around? Come and let us all vote for Kibaki **so that the country may not be ruled by a boy who will make us wear** shorts and destroy our property. Spread the word to 50 or more GEMA people. Your vote will prevent the country from going back to Egypt.

58. *Muthuri aikariire njung'wa thingira-ini onaga haraya gukira kihii kihaicite muti iokana ona kihaicite kirima-iguru. Ndumiriri ino ni ikinyire kihii ti Raila* (A man seated on stool outside his hut tends to see further than a boy perched atop a tree or even a mountain. May **this message get to boy Raila**). **When I asked her what she had against** Raila, the correspondent indicated that for her it was personal; she had never dated and would never date a Luo, no matter how well-educated or wealthy because even if they might get the physical cut, the Luo **remain 'ihii' upstairs.**

Repetition

59. From the referendum: *Mwathani arokugitira kumana na maundu moothe ma mucukani ta mirimu, aici, arogi, thuya, nguha, mbuca, ndaa, ngunguni, na muno muno kiama kia ODM. Thayu wa Ngai* (May God keep you safe from all the doings of the devil such as illnesses, thieves, wizards, fleas, ticks, weevils, lice, bed bugs and especially the **ODM party. God's peace**).

Intimate messages/love note template

60. Am very disappointed with u. I just hope what I heard about you is not true coz everyone is talking about it. If the ruma is true, pls, pls, 4ur **sake, just do something about ur tainted image, and change for the better.** Now, tell me, is it true what people r saying, that u r really in ODM? VOTE KIBAKI! SAWA? [OKEY?] HAPI [happy] Madaraka.

61. Am very disappointed with u. I just hope what I heard about you is not true coz everyone is talking about it. If the ruma is true, pls, pls, 4ur **sake, and for the sake of people who care about you just do something** about ur tainted image, and change for the better. Umeaibisha not only your family but everybody who is related to you. Now, tell me, is it true what people r saying, that u r really in ODM? ODM? VOTE KIBAKI! SAWA? [OKEY?]

62.   (With dark humour) I didn't realize until today how great a friend you are. How caring, considerate, intelligent and sensible. Thanks for helping me fire Emilio. I owe you one. *Kazi kwisha kabisa*! [the job is over completely].

Vernacular sms: The construction of others as monsters

63.   *Kai kimbararigi gikuingira? Nitwathira. Wee kweri niuraikirie kura*? (So the chameleon will go through? We are done? Did you really vote?)

64.   *Urogio ni gikeno uingihirwo ni migate ona thota ona nyama ugie na kwendwo ni arata ona thu ona nyamu–cia mucii na cia githaka–especiari cia githaka uhutio handu uthure wambaki ugie na kumena njaruo ciothe-especiari raira–na wahota nyamu yothe iriaga thamaki (nyamu yothe iriaga iria ingi)–cori ndathii nambere ndigukuwici gundi naiti–a cori ndiramini meri krithmathi–meri krithmathi enda hapi niu yia–na kathi ienderee!* (May you be filled with happiness and have a bounty of bread and soda and meat that you may be loved by friends and foes and animals–both domestic and wild–especially wild ones so that you may be touched to vote for Kibaki and that you may have al Luo–especially Raila–and if you can hate all animals that eat fish (all animals that feed on others)–sorry if I go on I wont wish you a good night–sorry I mean Christmas–Merry Christmas and a Happy New Year–and may the work continue).

65.   *Turi mbere ta maniuru ma ndurume. Ngai niendete ruriri rwa Gikuyu na Mumbi. Uga uthamaki ni witu. Cokera ringi. Uga uthamaki urotuura. Uga irotoma: irotharara: irothii uguo na miri ya mikongoe. Tambia ndumiriri ino kuri nyumba itu.* (We are ahead much like a ram's snout. God loves the Gikuyu nation. Say the Kingdom is ours. Repeat. Say the kingdom lives long. Say may it perish: may it not prosper: may it **disappear like the roots of the Mukongoe tree. Spread the word among the people of the house**).

Sexuality, power and humor

66a.   Campaign can b fun! At dawn when ODM is already out, PNU men can still be heard from their bedrooms whispering; PANUA KAZI IENDELEE [open for the job to continue] while ODM-K men r still being told; niko wet, NIPATIE WIPER [Am wet, give me a wiper].

b)   **Why you should be in ODM. ODM women scream** *YAWA, YAWA, YAWA*

[please! Please! Please!] in praise of *Nyundo* [hammer] while men in PNU are busy telling their wives to *PANUA PANUA ili kazi iendelee* [open open for the job to continue].Women in ODM-K are so wet that **their men keep asking** *WAPI WIPPER*!!!! [Where is the wiper?].

67.   Under Kalonzo's government, sex will be legalized and free–plays on the stereotype of the Kamba as nymphomaniacal (see Evans Skuma's **booklet on stereotypes**).

68a.   With Ngilu (charity) in the pentagon, it becomes sexagon. No wonder they have been singing *bado mapambano* [the struggle is still on].

68b.   With Ngilu in the pentagon, the pentagon becomes sexagon. No wonder they have been singing '*bado matombano*' [intercourse has **not begun**].

69.   (There is an e-mail version of this) The Odinga Destruction Mercenaries **today announced that its changing it's emblem from an Orange to a** Condom. This is because it more accurately reflects its political stance: A condom allows for inflation, halts production, destroys the next generation, is intended to protect a bunch of pricks and gives you a **sense of security while you are actually being screwed!** *Kazi iendelee*!!! **[The job continues].**

70.   *Kibaki tena kazi iendelee, Raila uraisi bado angonjee, Kalonzo maskini ajikojolee* [Kibaki again, let the job continue, **Raila should wait for the presidency, Kalonzo is poor he can pee on himself].**

71.   Kibaki while addressing a big gathering at Lamu: '*Akina mama hapo mbele mtanipatia? Na Nyinyi akina baba huko nyuma mtanipatia? Na mimi nataka mara mbili tuu* [women will you give me the front, and you men will you give me the rear? I only want twice].'

72.   To ease the tension the country is going through, please make love to someone from a different tribe and name the child KIRAKA, i.e. KIbaki, RAila and KAlonzo.

73.   *Ndaguthaitha nama, mweri twendi sixi ndukanahaicane, na ndukanahaicwo niguo maru matikanathire ngirithi uremwo ni kwara raini mweri twendi seven. Merry Xmas* (In truth I beg you, don't have sex on the 26th December so that your knees will not lack enough fluid to enable you to stand in the queue on the 27th December).

74.   *Ona ndimu na marimau no matunda! Chungwa Moja, maisha bora!* [Even Lemons and Limes are fruits! One orange, good life] Have to go and have a beer!

75.   The *jamaas* [men] who looted tvs from ukwala supermarket are depressed. When put on, TV reads WELCOME TO UKWALA. No password to activate channels! (response: **may they get haunted even more by the things they stole**).

76.   Urgently: a cargo handler, able to move utensils and other items from state house to Othaya. Five years experience, Contact Lucy on: *lucykibaki@othayaxpress.com*

Acronyms

77.   PNU means: a) *Ponyoka Na Uhuru* [run with Uhuru], b) *Porojo Na Uongo* [Lies], c) *Panua Na Uiingie* [open and enter], d) *Pumbavu Na Ukabila* [stupid and tribalist], e) *Pora Na Utoroke* [steal and run away], f) Party of No Understanding.

78.   ODM means: a) One Dangerous Man, b) ODM means One Daring Man, c) (play on *Vijana Tugutuke* [youth be enlightened]) **O**-ne, **D**-angerous, **M**-an is what he is. W e can not trust him with our country. *Wakenya tuguke, Tunasema Kibaki Arudi Tena* [Kenyan get enlightened, we say Kibaki again]. Pass it on to at least 5 Kenyans. PNU!

Intermediality between sms and other modes (rumour, newspapers, radio)

79.   Kenyans be on the lookout. The NAIVASHA PRISON break was stage managed to release murder convicts to carry out special assignments for PNU. They want to hit between thur and wed next week. **Two have since been sighted with STANLEY LIVONDO at Hse with black gate no. 46B in Kyuna Drive.**

80a.   **Citi Hoppa buses ferrying unmarked ballot papers from Embakasi now:** KBA 993B, KAY 101L, KAZ 178R, KAY 005A, KAY 003A. Alert other democrats....Peugeot GK A279M, Toyota KAK 5202 and Landrover GK 570M R AT THIS moment loading marked ballot papers @ Embakasi. **Their destinations are not yet known. Sambaza (some of these registration numbers later appeared in *The Standard* newspaper).**

80b.   The APs have been trained to rig the elections by spoiling between 10 an 20 votes per polling centre that is cast in favour of **Raila**. **With close** to 30,000 centres all over the country, they hope to deny **Raila close to** 500,000 votes. They will target mainly the illiterate by volunteering to assist them. Please ensure everyone is informed that they should not accept any assistance from strangers...4ward to ODM Democrats.

80c. Kivuitu has bn summoned 2 state hse. Kibaki has refused defeat. Besides **rigging he plans 2b sworn in early.**

81. Voter turnout [today's Nation] Sigor 115%, Eldoret North 116%, Mosop 97%, Emgwen 103%, Baringo North 92%, Narok South 120%, Bondo 102%, Kisumu Rural 102%, Karachuonyo 94%, Rangwe 92%, Ndiwa 93%, Nyatike 95%, Mbita 95%. Highest in Central Province OTHAYA 90% (understandable) Highest in Meru Region Nithi 80%. Who then stole the vote? For once can't honesty, decency & commonsense prevail? ODM propaganda seems to have even fooled the int'l community who are broadcasting of 'stolen votes' thereby fueling genocide & ethnic cleansing & leave Kenya, Rwanda-style! Send to Kenyans, Diplomats, **Media Houses both int'l & local.**

Appendix 7.3: Rumour texts

1. If Kibaki does not resign and hand over power to Raila, both the US and Britain would send in troops to overthrow him in a manner akin to what happened to Saddam Hussein in Iraq in 2003.

2. The government had ferried Mungiki to cause mayhem in Nakuru and hence residents had started arming themselves in anticipation of this.

3. In the wake of violence when ODM wanted hold a rally at Uhuru Park to **swear in Raila as the people's President, it was rumoured that members of the Pentagon had been arrested.**

4. Martha Karua was viewed as being the stumbling block in the mediation process. The US, Canada, and other EU countries threatened not to issue a visa to anyone viewed in this light. When she did not travel to Austria, it was rumoured that she had been denied a visa on that basis. But she came out on the defence and even showed the media a copy of the visa saying that she only chose not to travel in order to nurse her **stresses in the country and that she had sent her Permanent Secretary to represent her. This was just a few days after the peace deal had been signed between** Kibaki and Raila. This caused a lot of excitement within the ODM zones as she was 'hated' overzealously due to her strong **support for** Kibaki and also for being a Kikuyu, who almost voted for Kibaki to the last man and that she kept on telling the ODM to go to court if they felt that the election had been rigged in favour of Kibaki **amidst ongoing peace talks.**

5. The marking of presidential ballot papers at Nginyo Towers in Nairobi in favour of Kibaki led to the storming of the building by the police and ODM operatives (This rumour was spread through phone texts).

6. **When Kalonzo 'ran away' with ODM-Kenya, it was rumoured that he had been paid millions of shillings to divide the party so that PNU could win.** Again when he quickly accepted the VP position it was rumoured that he had been paid to give legitimacy to an allegedly flawed electoral process, which he had admitted was flawed (both of these appeared as text messages).

7. Kivuitu paid millions to announce Kibaki as the winner of the poll.

8. **The Majimbo debate: the widespread rumuor about this was that people** would need passports to travel from one province to another. This was spread by PNU supporters.

9. The army was going to take over power if violence persists. This was a rumour spread mostly by ODM supporters who never contemplated being led by a Kikuyu for another five years. They found satisfaction in the army ruling rather than a Kikuyu. What had Kibaki done that warranted this hatred? (promoted tribalism and ethnicity in resource distribution and employment into senior government positions, no new **constitution as promised, etc**).

10. **Lucy Kibaki had shot her son, Jimmy, on the hand** [some versions say he was shot in the groin] when he allegedly requested his father to leave **the presidency to Raila**. On her long absence from public view after the elections, it was rumoured that she had become manic depressive after **'shooting' her son and she had to be hospitalized abroad under the care** of Dr David Silverstein, the former president's physician.

11. Appointing of novice commissioners to the ECK, appointing of judges towards the election period and increasing of salaries of civil servants were rumoured to be incentives to induce them to work in favour of the **incumbent president.**

12. **Raila had gone to South Africa to consult a Sangoma. He failed to win the elections because he didn't follow to the letter the Sangoma's** prescription: import expensive new furniture for use at State House. Once the PNU people learnt about this, they instructed the Customs **people at Mombasa not to clear the ship carrying the consignment into the port.**

13. The Nation newspaper is never bought in Kisumu because the Luo were instructed not to buy it since it is owned by rich Kikuyus.

14. **The Commissioner of Police and the Chief of General Staff had resigned** as they believed the polls had been rigged.

15. Kibaki was sworn in hurriedly because Oburu Odinga had already organized a one million man march to State House and invited 'the **Russians' to guard the swearing in of his brother as president.**

16. Uganda PDF soldiers/UPDF were burning down buildings in Kisumu **and killing people in Nyanza.**

17. A city preacher had prophesied about the death of 5 MPs–four from ODM and one from PNU. Cf. *Daily Nation* article **'We need prayers'**, 23 June, 2008 p13. col.6, 'letters to the editor' by Mercy Chebet.

18. **Raila has promised the Luo that if he becomes president they will no longer pay rent.**

19.   If the ODM came to power, all professional Luo men would be given a grant of Ksh 200,000 to enable them marry beautiful hardworking Gikuyu women, even if the latter were married. These women would **be transported to Luo Nyanza to hybridize Luoland with their genes.** Professional Gikuyu men like Prof. Ndung'u of CBK, Michael Waweru of KRA, education PS Prof. Karega Mutahi and Finance PS would be **transferred to work in Nyanza to show the locals how to put up and manage economic enterprises in the region.**

Appendix 7.4: List of e-mail texts

1.   *Kimenyithia!!! Kimenyithia!!!!* **(an obituary for ODM). 22 August 2007.**

2.   **This is getting personal. A pro-Raila/ODM. 27 September 2007.**

3.   Before you vote. An anti-**Raila. 16 October 2007.**

4.   PNU campaign fw: PNU campaign. Anti-ODM/**Raila. 2 October 2007.**

5.   Prediction for 2007 presidential election. Pro-Kibaki. 23 October 2007.

6.   Why Kenyans will not vote for **Raila. Judge for yourself. Share this with your friends. 28 October 2007.**

7.   **Raila Odinga parallels Idi Amin: Lets shun tribalism, whether anti-**Kikuyu or anti-Jaluo. 29 October 2007.

8.   The chilling secret (on the alleged MOU between **Raila and a section of** Kenyan muslims). 30 October 2007.

9.   Nine reasons why I will not vote for Raila Odinga. 30 October 2007.

10. Beware! Fake penta-goon orange juice. 19 November 2007.

11. (Disarmed) the rigging story and Kalenjin warriors. 11 January 2008.

12. **The haunting demons. 19 January 2008.**

13. Historicising self-determination. 26 January 2008.

14. *Gotab Kalenjin, ladies and gentlemen (bigap kutit), (an anti-Kikuyu e-mail allegedly circulating amongst the Kalenjin). 24 January 2008.*

15. *Please save our great nation. Anti-Raila. 7 February 2008.*

16. *KCSE post-election mid-term exam-Paper 1. A humorous look at*

> politicians' shenanigans and government absurdities after the elections, 21 February 2008.

17. Witness reports–the creation of the Kenyan genocide: Recruitment, training, indoctrination and operations of Kalenjin ethnic cleansing terror gangs. 12 February 2008.

18. ODM strategy: Executive brief on the position and marketing of the Orange Democratic Movement and 'the people's president-Hon. *Raila A. Odinga (received sometimes in February, 2008).*

Cartoon 1

Cartoon 2

Cartoon 3

Cartoon 4
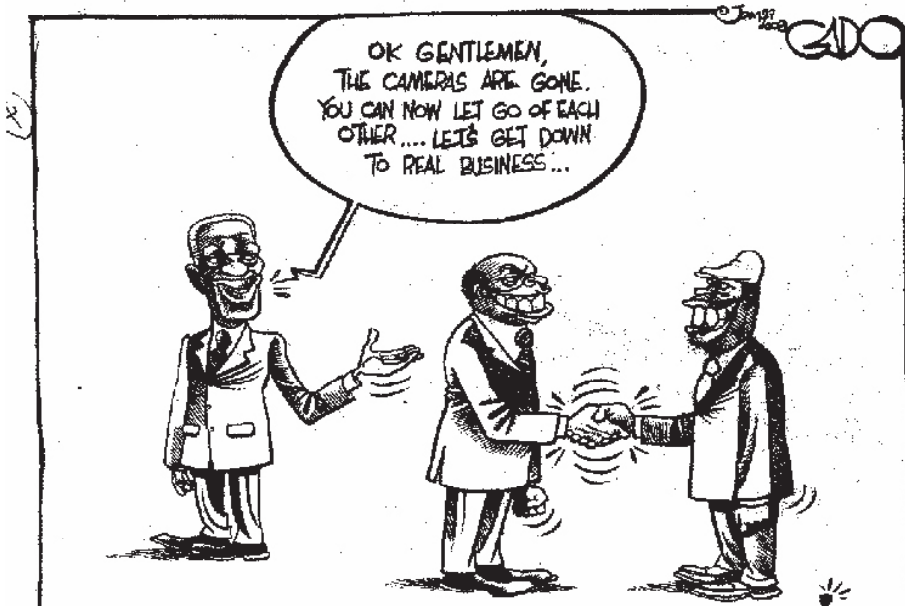
Cartoon 5
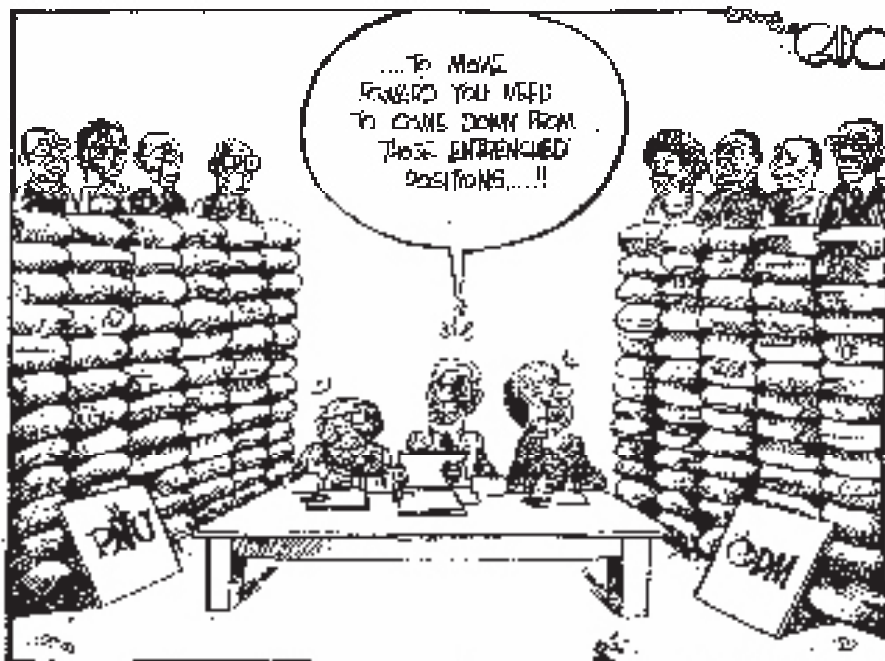
8 The Dynamics and Politics of Media in Kenya: The Role and Impact of Mainstream Media in the 2007 General Elections[1]

Kwamchetsi Makokha

Abstract

Kenya's 2007 general elections occurred in an environment of unprecedented media variety. While a robust media environment supplied important information and entertainment to the public, and provided social representation and a forum for debate, the media sorely failed to provide analysis of the election issues, and in that way play their watchdog role.[2] Most tellingly, in this regard, was the failure to provide independent verification of the disputed election outcome in the closely fought presidential race. This chapter examines the media as a public sphere for debate and contestation in a transitional democracy such as Kenya. It examines the circumstances that defined the role of the media in the electoral process in Kenya in 2007 and also examines the tensions between media ideals and political interests that shaped the communication environment before the elections. Concerted efforts on the part of political and other interests to control critical mass media through ownership, spending, official arm-twisting and influence peddling undermined the media's ability to play their analytical and watchdog roles, or even to act as independent and objective observers in the electoral process, thereby undermining their role in nurturing democracy. Uncoordinated and unregulated media pluralism, and the resultant increased information flow, appeared to deliver a less transparent electoral process than would be ideal.

Introduction

On the morning of 30 December 2007, two senior government officials summoned the chief executives and editorial directors of Kenya's three largest private newspaper and television companies to the Office of the President at **Harambee House in Nairobi**. The government officials instructed them to use their media to prepare the country for an unexpected election announcement.[3] The previous day, East and Central Africa's **media giant, the Nation Media Group, had reportedly lost all its data, in spite of its** heavy investment in covering the election and relaying the result. It had, as a result, stopped broadcasting any election results on its television platform, NTV, **and radio, Easy FM, other than those supplied by the** Electoral Commission of Kenya. The **company's management would later retract incomplete election results published in the 1 January 2008 edition of the** *Daily Nation*. Officially, the explanation for the loss was a computer glitch. Subsequently, the company made little or no effort to reconstruct its data, despite having the ability to do so. The other national television **stations**, Kenya Television Network (KTN), **Citizen TV and the state-run** Kenya Broadcasting Corporation's Channel 1, had also stopped broadcasting election results the previous night because of glaring differences between the figures they were receiving from their correspondents at constituency level and those the **Electoral** Commission of Kenya was releasing. The radio stations followed suit (ET, 2008a: 34-35). Besides the party agents posted to the 27,500 polling stations countrywide **and the tallying centres at the constituencies, there was no other source of election** results against which to compare ECK's data.

By 5.47 pm on 30 December when the ECK Chairman began to announce the official results of Kenya's presidential election in a special sealed room at the Kenyatta International Conference Centre (KICC), police had forcibly ejected all journalists **from the tallying centre. The signal went out on the Kenya Broadcasting Corporation** (KBC), and was subsequently picked up by other media.

After the hurried swearing-in of the Party of National Unity's Mwai Kibaki as **President, and right in the middle of a media conference by Orange Democratic** Movement's presidential candidate Raila Odinga, which television stations broadcast in real-time, the government banned live radio and television transmissions. The special and exceptional reputation Kenya's media had enjoyed for maintaining their independence and freedom, even without legal or constitutional protection, had abruptly ended. Until then, Kenya's media, considered largely free, had been repeatedly held up as the exceptional African example (IFJ, 1994:14).

The incongruity of media organizations releasing different poll numbers ostensibly collected from the same polling and tallying centres countrywide, and the discrepancies between them and those from the ECK raise important questions **about the professionalism and independence in the sector.**

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[3]Personal communication.

As the country teetered on the brink of civil war, the media, even under the restrictions of official bans on live broadcasting, spent considerable column inches and airtime preaching a return to peace while restraining themselves from publishing or broadcasting anything that might exacerbate an already dire situation. **Reporters Sans Frontiers, Article XIX and the** International Media Support observed:

> *[T]he ban was only partially followed, was poorly defended by the authorities and not lifted until February 4 (IMS, 2008:1).*

The chain of events culminating in the ban of live broadcasts, and its subsequent lifting called into question the role and impact of the media in the 2007 elections.

Role of Mass Media in Democratization Processes

A free media is one of the indicators for measuring the legitimacy of elections and the state of democracy in general. Although democracy is mostly manifest in the holding of periodic elections, suffrage is legitimate only if the conditions under which it is exercised enable people to freely express their opinion in choosing their government. Democracy is underpinned by the existence of a public sphere; that space of institutions between the private interests of everyday life in civil society and the realm of state power (Leys, 1999).

The principles of the public sphere presuppose the existence of freedoms of speech and assembly, a free press and the right to participate fully in political debate and decision making. Traditionally, the public sphere 'involved open debate of all issues of general concern in which discursive argumentation was employed to ascertain general interests and the public good' (Leys, 1999), as a way of helping voters to make an informed choice about political platforms and candidates.

Technology and economics have increasingly positioned the media as the main intermediary between the 'basis' of society and its leadership. The media have come to represent that public sphere where the rights to free speech, debate and enquiry are exercised, hence their pre-eminence in elections.

Doris Graber (2001) has argued that media coverage is the very lifeblood of politics because it shapes the perceptions that form the reality on which people base their political actions. Thus, yielding the public sphere to the media has created its own challenges, since media can only play this role effectively if they are robust and sufficiently established as a plank of the institutional infrastructure that supports democracy.

Early scholars have argued that the media always take on the form and colouration of the system in which they operate (Siebert *et al.*, 1956:1), a postulation that has been recently supported by Douglas Kellner (2007), who writes that:

> *Media roles have been transformed from facilitating rational discourse and debate within the public sphere into shaping, constructing and*

> *limiting public discourse to those themes validated and approved by media corporations ... The interconnection between a sphere of public debate and individual participation has been fractured and transmuted into that of a realm of political information and spectacle.*

However, Jack Snyder (2000) has observed that in democratizing states, media are a marketplace of ideas and guarantee debate only if the supply of information is not constricted, the demand for that information is not controlled through market segmentation, and journalistic institutions that guarantee professionalism and independence thrive. These social expectations spring from evolving theories of the media, the most current of which Denis McQuail (2005) has summarized as:

(i)   *The market model*: It is based on the libertarian theory of the press; it identifies press freedom as the freedom to own and operate the means of publication without state permission or interference. It emphasizes the individual and individual's needs. Under this model, the public sphere is served by the operation of a 'free marketplace of ideas'. It assures accountability through free market policies and minimal self-regulation.

(ii)   *The social responsibility model*: It insists that the right to publish is accompanied by obligations to the wider society that go beyond the personal interest, with accountability mechanisms to the public clearly in place. Under this model, responsible media are expected to maintain high standards of self-regulation, and government intervention is not ruled out while defining public interest as being organized in a way that recognizes these as part of their responsibilities. Public service broadcasting can be located within this model.

(iii) *The professional model*: It recognizes that freedom and democracy are the fruits of many years of struggle. They can, thus, only be guaranteed by the media and journalists, since their primary concern is to serve the public's need for information and comment while providing platforms for the expression of diverse views. The institutional and professional autonomy of journalism is the best guarantee of an adequate check on those in power.

(iv)   *The alternative media model*: This represents a wide range of non-mainstream media, placing emphasis on smallness of scale, grassroots organizations, participation, community and the rights of sub-cultures.

This set of theories has pruned and subsumed the authoritarian model, in which the state decides what news the media can publish, and the development journalism model, where negative stories are downplayed and positive ones promoted because of the consequences that accrue to each.

There is consensus that the media, in whatever model, play at least six critical roles in a democracy, or in the democratization process–they give information, provide analysis, offer social representation, extend an open forum for discussion,

entertain and play the role of watchdog (McQuail, 2005; Watson, 2003; Kupe, 2008). These roles are underwritten by the expectation that the media will enjoy editorial **independence from their ownership, the state and commercial interests and conduct** themselves in accordance with the code of conduct for journalistic practice. These expectations are critical in a transitional democracy, such as Kenya is.

Although these roles are assigned mostly from without the media, internally, within the profession, the International Federation of Journalists sets the standard against which the media themselves agree to be measured (IFJ, 1994:37):

> *An election cannot be judged to be free and fair if state or private monopolies overwhelm the news scene and do not give citizens a representative and balanced picture of the campaign. Or if journalists do a poor job.*

A study of the environment in Kenya before and after the 2007 general elections suggests that the public sphere was mediated by a poorly regulated private media, and a biased state-owned media in an environment where policing of professional conduct was weak. These deficits shaped the role and impact of the media on the **elections, and in turn resulted in the loss of credibility for the media and increased** public clamour for their regulation and even control.

Several factors may account for this less than stellar performance of the **mainstream media in the 2007 elections. They include, among others, media** plurality rather than diversity in both ownership and control, low thresholds of **professional conduct, an increasingly public relations-mediated political reporting,** and commercial communication in the form of advertisements. This chapter examines the impact of these variables on the performance of the mainstream media in securing Kenya's democratic public sphere.

Kenya's Mainstream Media and the Democratic Public Sphere

Despite the overuse of the term 'mainstream media', precise definitions are scant in scholarly discourse. The Oxford English Dictionary defines mainstream as 'normal or conventional ideas, attitudes or activities'. In the context of the media, the term is used to refer to the creation of a confluence or coming together of attitudes (Watson, 2003).

Noam Chomsky (1997) cynically distinguishes between the mass media–which are popular in nature, focus on entertainment and sports to distract the people–and the elite, agenda-setting media, which weigh the serious issues. In Kenya, the mass media are also the agenda-setting media and, therefore, such a distinction is superfluous.

In the Kenyan context, mainstream media refers to those channels that are **accessible to the greatest proportion of the population because of the commonality** of their professional pursuits. For a long time, the mainstream media in Kenya has

grouped together the English and Kiswahili language newspapers, and radio and television stations with a national reach. Rapid developments in the media sector have blurred the lines somewhat.

Today, mainstream media includes the Nation Media Group's newspapers (*Daily Nation* and *Sunday Nation*, *Taifa Leo* and *Taifa Jumapili*, *Daily Metro*, *Business Daily* and *The East African*), radio stations (Easy FM and Q FM), and television station (NTV) and the Standard Group's flagship, *The Standard*, together with its television station, KTN. It also includes the national broadcaster, Kenya Broadcasting Corporation's radio and television services in English and Kiswahili, and Radio Africa Group's newspaper, *Nairobi Star,* and its radio stations KISS 100FM and Classic 105FM, and Royal Media Services' Citizen Television and Radio Citizen, and the Kenya Times Media Trust's *Kenya Times* and Kalamka Publications' *The People* newspaper.

The emergence of local language radio stations–some of them owned by companies that also run mainstream media outlets–that have a strong listenership has tempered this neat classification between mainstream and alternative. Individually, the local language radio stations only reach pockets of the population but combined, they command up to 62 per cent national listenership (Steadman, 2008). The sheer bulk and diversity they represent qualifies them into the loose classification of mainstream media.

By the time Kenya went to the elections in 2007, the mass media were the gateway to a large swathe of the population. A 2008 survey conducted just weeks after the elections found that 7.4 million households in Kenya each had at least one radio set, and 3.2 million owned a television set. Another 4.8 million people were reported to have read a newspaper at least the previous day (Steadman, 2008).

Media have consistently enjoyed a great deal of public trust, as evidenced by opinion poll findings, which found that the majority of Kenyans relied on radio, television and newspapers for information to make political decisions (Strategic Public Relations and Research, 2007; Steadman, 2008).

Expanding Democracy, Shrinking Media Space

Kenya's current mainstream media began either as private business to serve colonial interests or as state enterprises to spread government propaganda. Asian trader Alibhai Mulla Jeevanjee established *The East African Standard* in 1901 before selling it to individuals keen to use it to serve settler community interests. The colonial government later established the Kenya Broadcasting Service in 1928 to serve the settler interest, and later followed it with a television station in the 1950s (Karanja, 2000 and Okello, 2000). These two would be the precursors of the privately-owned Standard Group and the state-owned Kenya Broadcasting Corporation (KBC).

Independence in 1963 came after the emergence of a privately-owned newspaper that styled itself as the voice of the newly liberated African nation. The Aga Khan IV's Nation Newspapers Limited–the precursor to the Nation Media Group–had just been born. As *The East African Standard* struggled to find a voice in the newly independent African state, the *Nation* gained ground rapidly as the voice of the common citizen.

Prevailing media theory placed emphasis on development journalism. The media were expected to help the government tackle the challenges facing the country, then identified as poverty, disease and ignorance. It was a role the media not only embraced but also exceeded and turned themselves into praise choristers for the government.

A common myth peddled in discourses on media in Kenya is that they have championed freedom and democracy. Repetition has turned this myth into near-canon. Mitch Odero (2000) lays bare the coupling of the local mainstream media with the government in a complicity that did much to undermine the ideals of freedom and democracy than promote them. Be that as it may, Kenya has continued to be regarded as a beacon of hope in Africa and an emerging democracy on the continent, not so much because of the quality of its elections, respect for individual liberties or its reputation for justice, but more because of its vibrant media. The country's media were critical to establishing genuine multiparty democracy in 1992, as the BBC World Service Trust acknowledges:

> *A long and intensifying tradition of media freedom, courage, investigation, innovation and professionalism played a major role in the public and political debate that ended one party rule in Kenya (Adan and Deane, 2008: 8-9).*

Yet, not all media in Kenya were agitating for plural politics and greater public participation in government. Media have only been agents of democracy insofar as they have remained unfettered by government control or the interests of capital. For example, the champions of pluralism were mostly foreign media, such as the British Broadcasting Corporation (BBC), Voice of America and the privately-owned Nation Newspapers, which paid a heavy price for its agitation. The latter, which later expanded to become the Nation Media Group, was denied frequencies and a licence for radio and television broadcasting for years (ET, 2007a) even as the then ruling party KANU awarded itself one through the Kenya Television Network. The government still controlled the publicly-funded KBC and the Kenya News Agency (KNA), while the ruling party-owned Kenya Times Media Trust, acquired in 1983, and published *Kenya Times* (Ochieng', 1992). President Daniel arap Moi also acquired a direct interest in the country's oldest and second largest newspaper, *The East African Standard*. The media that were controlled by powerful political elite exercised their power through the boards of directors to appoint editors who would do their bidding while maintaining the pretence of independence.

Those inclined to speak on the side of freedom were constrained by the fact that Kenya does not have a media policy. Until 2008, the licensing and operation of newspapers, radio and television stations as well as Internet portals was haphazard and not guided by any constitutional, social or legal philosophy. Rules on cross-media ownership, local content, regulation of media practice were still in discussion. Several proposals to create a Freedom of Information Policy, revise the current but outdated Information, Communication Technology Policy and the Cultural Policy are underway, but in no way near actualization.

Although the Constitution, under section 79, provides for freedom of expression, there appears to be more derogation that undermines freedom of speech and expression than there are provisions to promote it. There is no specific clause in law to protect media freedom in Kenya. On the statute books, there are at least 15 laws that affect the media–all of them negatively. They include the **Public Order Act, the Defamation Act, the** Preservation of Public Security Act, the Books and Newspapers **Act, the Media Act, the** Kenya Communications (Amendment) Act, among others.

The government owns and operates the national broadcaster, KBC, together with **the** Kenya News Agency. Private media have the most vibrant newspaper, television **and radio operations, followed by religious groups. Community media has remained in its infancy for many years, and less than 10 radio stations in this cluster are on air.** Even these are struggling commercially and do not command as strong a following **as their commercial, local language counterparts.**

The absence of a constitutional, legal and policy framework has forced Kenya's media to evolve their own norms and default philosophy, borrowing from the experiences of the West. In this regard, state-owned media seem to run on the authoritarian model, private media on a combination of the market and social **responsibility models, and the emergent local language radio stations on a cross of the latter two.**

As Kenya has continued to democratize, the assumption has grown that the media–being the champions of democracy–would also become freer (Ochillo **and Wanyande, 2007). The contrary appears to be the case. Ten years after the** reintroduction of multiparty politics, Kenya's Parliament passed the **Miscellaneous** Amendment Act of 2002, a law that required publishers to post a prohibitively expensive bond as insurance against libel.[4] This bond effectively locks out small start-up publishers from the media market. Investments into other media channels such as radio and television require huge capital investments in terms of licences– estimated at Ksh 50 million each–and running costs, and a new law now requires that broadcasters reapply for frequencies every year.

After the 2002 elections, in which the country's party of independence–KANU– **was routed from power, the limitation of media freedom became much more legalistic**

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[4]The law requires each publisher to post a Ksh 1 million (US$13,000) bond.

and structured, a departure from the arbitrary and unpredictable actions that had characterized attacks on the press before. Notably, the government chose not to end any of the numerous subversion and sedition court cases against journalists.

In 2003, state agents arrested *Sunday Standard* editor David Makali and charged him with the theft of a video tape of an alleged police interrogation. The court would acquit him several months later when it held that information obtained by the police belonged to the public and could, thus, not be deemed to have been stolen if it was used for the common good.

At the beginning of 2004, police charged another journalist, Kamau Ngotho, with criminal libel for publishing a story that exposed the links between old corruption networks and the new government. The criminal libel law is a relic from the country's colonial past, which had never been employed before. International pressure forced the government to drop the charge altogether, but another journalist, Mburu Muchoki, would be convicted and jailed in 2007 under the same law for allegedly slighting then Justice Minister Martha Karua–this despite an earlier commitment from the Attorney General that it was not his policy to prosecute criminal libel cases. Muchoki's newspaper, a weekly newssheet with a circulation of less than 5,000 copies, was ordered to pay the Minister Ksh 5 million over another libel suit.

In May 2005, First Lady Lucy Kibaki had stormed the Nation Media Group's offices at night to protest at what she termed as negative coverage of her family. She assaulted a photojournalist, who was later forced to flee to exile fearing for his life (ET, 2008a).

> *As this subtle shift from strong-arm control tactics to more thorough legal interventions was taking place, the media was also beginning to reflect the politics of the time–highly factionalised along political and ethnic lines. Much of the mainstream media got sucked into alignments with the different political factions (Adan and Deane, 2008:9).*

When the country went to the referendum on the Proposed New Constitution, at least one major media company–Royal Media Services–which controlled a national television station, a national radio station and up to 12 local language radio stations–openly supported the 'Yes' vote on the question. The other media, though operating as though independent and impartial, were faulted for partisan coverage of the referendum campaigns (KNCHR, 2006).

In official circles, the bitterness with the media over the referendum loss remained without palliation for a long time. The exposes of corruption and a host of embarrassing incidents involving the powerful did not sit well with the government. By March 2006, when the government raided the printing press of *The Standard* and its sister television station, KTN, and put both out of commission for hours, official displeasure with pesky media had become too apparent to ignore (ET, 2007a).

Libel awards had become a heavy drain on media companies' budgets. And to add insult to injury, the government, which is easily the biggest spender, withdrew all

its advertising from *The Standard*, albeit briefly (IREX, 2007). **Reporters Without Borders**, an international press freedom lobby, issued a statement that called the government's advertising boycott of *The Standard* 'not just a low blow,' but a move that is 'aggravating the climate of tension between the government and the **Standard Group and will fuel mistrust**.'

Media watchdogs around the world observed these disturbing developments in Kenya and issued an increasingly damning verdict. Every year, from 2004 to 2007, Kenya received a downward trend arrow for rolling back media freedom, failing to **be transparent about corruption, or directly assaulting the media (Freedom House,** 2005, 2006 and 2007).

By August 2007, a mere four months to the general elections, Parliament had passed a Bill creating a media law that would require the registration of journalists, the **disclosure of sources should stories become the subject of judicial proceedings, and** adherence to a government-approved code of ethics. Although the President struck out the clause requiring journalists to disclose their sources, the message had been received loud and clear–the law could be employed to the media's disadvantage.

On 12 December 2007, **just two weeks to the general elections, during a** **presidential reception for recipients of state honours at** State House, a television cameraman was attacked as he filmed a *faux pas* perceived as a slight on the First Lady, **assaulted and his tape destroyed. The media organization complained to the** Media Council of Kenya, but the matter remains unresolved to date.

Political Economy of Kenya's Media

Mass media are tolerated in society because of the belief that they represent public interest. Beneath this idealistic expectation is the uncomfortable reality that media are businesses that require considerable capital investments and often provide a handsome return. They are also linked to political interests that have a symbiotic relationship with business survival.

Since media space is a scarce resource, access to it and its use determines power relations between individuals and institutions. Media access, in this case, is not limited only to having intermittent use of the facility, but also implies ownership **and a measure of control (Herman and Chomsky, 1988).**

Although private investment preceded the state in media ownership in Kenya **with the founding of *The African Standard* in 1902, the establishment of sound** broadcasting in 1927 (Karanja, 2000; Okello, 2000) by the government gave it **superior access to the population to any other media. As the *Taifa-Nation* newspapers** began operations in Kenya in 1958, the government was getting ready to set up television services through its broadcaster in two years' time.

Through the state-run broadcaster, the government for many years held radio and television in a vice-grip, constantly sending out a stream of propaganda that perpetuated its interests while restricting debate and dissent. Private media offered variety, but only insofar as their messages did not contradict their survival or prosperity as businesses.

Since mass media present only a highly selective choice of events that are newsworthy from the continuous stream of occurrences, it is necessary to examine those who control them and the criteria they use to make their choices.

Access and Use of Public-owned Media

No media enterprise in the country commands an audience as large, diverse and national as the state-owned KBC. Yet, a charge often laid at the doorstep of the corporation is that it hardly serves its audiences and, instead, uses them as sponges for state propaganda. The government also controls the Kenya News Agency, which gathers information right up to the district level and supplies it to KBC and to private local and international media. All the agency staff are government employees.

KBC, which broadcasts in English, Kiswahili and 18 other local languages represents the best and yet least utilized opportunity to give voice to the people of Kenya, while ensuring that they receive the information they need to reach their decisions.

The law that established it requires KBC to perform the following functions, among others:

(i)   Provide independent and impartial broadcasting of information, education and entertainment.

(ii)   Provide an external broadcasting service for reception in countries outside Kenya.

(iii)   Conduct its broadcasting services with impartial attention to the interests and susceptibilities of the different communities in Kenya.

(iv)   Provide facilities for commercial advertising and for the production of commercial programmes.

(v)   Include in its sound and television programmes a daily service of news.

(vi)   Keep a fair balance in all respects in the allocation of broadcasting hours, such as between different political viewpoints.

(vii)   In consultation with the Electoral Commission of Kenya, during the campaign period preceding any presidential, parliamentary or local government election, allocate free airtime to registered political parties participating in the election to expound their policies.

These functions have been observed more in breach than in practice. Over the years, KBC has distinguished itself as a monotonous government mouthpiece. Questions about the impartiality and fairness of its broadcasts still linger. In the run-up to the 2002 general elections, for example, opposition leaders threatened to storm Broadcasting House and to take control of its studios if KBC's stations did not accord their campaign as much airtime as they did the then ruling party, KANU.[5]

After the elections, the new government appointed **Wachira Waruru to head the corporation but transferred him to a less glamorous job after its defeat in the referendum on the** Proposed New Constitution. He had ostensibly failed to give sufficient support to the government side during the heated campaigns (ET, 2007a). **The change in leadership at the corporation put paid to any hopes of reforming the station into a public broadcasting service.** The managing director and the editor-in-chief, both appointed less than six months to the general elections, were not perceived to be independent or even interested in protecting the independence of **the national broadcaster.**

Established under the Kenya Broadcasting Corporation Act, the state-owned radio and television service draws funds from the common purse, but is additionally required to fight for its share of advertising revenue with private media companies. **Commercializing KBC has only deepened the media injustice it has perpetrated over time. Allowing those who can pay to control public media has undermined pluralism** and further marginalized those that are already disadvantaged, while creating an avenue for the financially well-heeled to hog public space. The requirement for KBC **to play in the commercial league has corrupted the original purpose for which it was** created and subverted the principle of equal access.

The geographical and linguistic disparities that inhere to the formation of the Kenyan nation have further only dramatized the failings of public service broadcasting. Add to that the social and economic disparities attendant to a developing country, and the information gap that exists is a willful perpetuation of the dominance of one class over the rest.

Community Media

Community media, which would traditionally fill the lacuna left by state-owned media in providing information and empowering citizens, is still under-developed in Kenya. Because community connotes tribe, licensing media in this sector has been painfully slow, **perhaps for fear that it would promote ethnic nationalism (Githaiga, 2000).**

What little that has been licensed is concentrated in areas that are already well served by state and private media. The Communications Commission of Kenya's list of companies that were allocated radio frequencies in 2006/07 betrays this shortcoming

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[5]*Daily Nation*, November 2002.

as shown in Table 8.1. The list shows a bias for universities and other institutions of higher learning, which are not representative of the communities that host them.

By the time Kenya went to elections in 2007, the operational community radio stations included Radio Mang'elete in Kibwezi, Pamoja FM in Nairobi's Kibera, Rarieda's Radio Maendeleo, and Koch FM in Nairobi's Korogocho. No studies have been undertaken to map their reach and influence, but it is unlikely to be significant. Their programming has been decidedly apolitical, a factor that could have turned away audiences hungry for political information and debate. Though Adan and Deane (2008) have praised community radio for their peaceful messages, their refusal to engage with the salient politics of the day could have undermined their credibility and authority.

The failure to support and license a robust community media has yielded to private media encroaching on this sub-sector by using local language to appeal to specific communities, but without doing much to entrench the philosophy that drives community broadcasting.

Table 8.1: Community radio frequency allocations for 2006/07

Broadcaster	Frequency	Location
Koch FM	99.9	Korogocho, Nairobi
SIDAREC	99.9	Pumwani, Nairobi
Sarakasi Trust	99.9	Kawangware, Nairobi
Pamoja Development Centre	99.9	Kibera, Nairobi
St Paul's Theological University	99.9	Limuru, Nairobi
KIMC	104.7	Nairobi
Masinde Muliro University	103.9	Kakamega
Maseno University	98.1	Maseno
Radio Maria Kenya	88.1	Murang'a

Source: Communications Commission of Kenya Annual Report 2006/07

Ownership, Access and Control of Private Media

Private investors have a huge stake in Kenya's media. The Nation Media Group, which publishes four daily newspapers and a regional weekly one, also runs a television station and a radio service. It also owns a newspaper, a TV and radio station in Uganda, besides three newspapers in Tanzania. Its principal shareholder, His Highness the Aga Khan IV, is the spiritual leader of the Ismaili Muslims and a major investor in health care, hospitality, farming, banking and insurance and education. The group is also planning to expand to Rwanda and Ghana (ET, 2008c).

The Standard Group, owned by the family of former President Daniel arap Moi and for a while fronted by his long-time aide, Joshua Kulei, publishes *The Standard* and runs the television channel, KTN. It is the tip of an iceberg of a business empire that spans farming, banking, manufacturing and export business.

The other media giant in Kenya, Royal Media Services, owns and runs Citizen TV, Radio Citizen and 12 other radio stations broadcasting in local languages. Its owners also have interests in banking, farming and manufacturing.

The fourth largest player is the newest entrant to the media market in Kenya, Radio Africa Group, which owns the *Nairobi Star* and the influential radio stations Kiss 100FM, Classic 105FM, East FM and Radio Holdings.

Kameme FM, a local language radio station owned by Regional Reach, has a new sister in the television station, K24. *The People* newspaper is associated with politician Kenneth Matiba, who also has extensive business interests. *Kenya Times* previously belonged to the former ruling party, KANU, but appears to have fallen into private hands (ET, 2007b). Capital FM is associated with businessman Chris Kirubi, who also has a stake in the business television channel, CNBC Africa. He also has interests in real estate, manufacturing and banking.

A large proportion of mass media in Kenya is in private hands. These media are, thus, beholden to religious, ideological/political, donor or business interests. Although these interests often overlap with the public good, a gap still exists in the provision of information that is free of slant, bias or colour.

The operations of private media in Kenya can be understood within the context of the propaganda model postulated by Edward Herman and Noam Chomsky (2002), which uses five filters to exclude ideas that do not support an elite intellectual hegemony.

Politically Connected

The Aga Khan, who owns the Nation Media Group, packs a lot of influence as the spiritual leader of the Ismaili Muslims globally. On visits to Kenya and to many other African countries, he is received as a Head of State. His interests in expanding his business empire have tempered his relations with African governments. The most telling episode in recent times was the apparent understanding he reached with Uganda's President Yoweri Museveni to put Nation TV back on air (ET, 2007b) after it was switched off in response to its reporting.

The Standard Group, too, is owned by the family of former President Moi, who endorsed Mwai Kibaki's candidacy for a second term. The Moi family has extensive business interests that would require state protection.

In the expanding media space where the government has been liberalizing the airwaves, radio and television licences have tended to be concentrated in the

hands of those that already own media enterprises and are politically connected, as Table 8.2 shows.

Table 8.2: Radio frequency allocations as at 2007

Face	Company	No. of frequencies allocated
Samuel K. Macharia	Royal Media Services	60
Chris Kirubi	Capital Group	11
Henry Otiende	GO Communications	10
Joshua Kulei	Kalee Ltd	9
Edward Budohi	Neural Digital	8
Patrick Quarcoo	Radio Africa Group	7
Chris Murungaru	Bridge Media	7
Sheila Amdany	Toads Media	6

Source: Reconstructed from ET, August 2007: 31-32

As mentioned earlier, Samuel K. Macharia's media empire had endorsed the affirmation vote for the Proposed New Constitution in 2005, and was thereafter viewed as being close to the clique in power. Royal Media Services took deliberate steps to adjust this perception by hiring Wachira Waruru, who had been moved out of the KBC, in an attempt to give the stations in its stable a more professional look.

Chris Kirubi, who owns Capital Group, is an old friend and business associate of President Kibaki, while Joshua Kulei, former President Moi's one-time personal assistant, was weighed down by baggage in the form of corruption cases in court. As already mentioned, Moi endorsed Kibaki's candidacy for a second term in 2007. Chris Murungaru, on the other hand, served as minister in the powerful national security ministry and was considered a key ally of Kibaki.

Neural Digital has been linked to Raila Odinga, the ODM presidential candidate in 2007.

Although Patrick Quarcoo is a Ghanaian and thought to be disinterested in local politics, it is instructive that the Radio Africa Group, which he heads, has found a suitable chairman in a scion of one of the influential families in Kenyan politics, Kiprono Kittony.

A strong link appears to exist between the business interests that own media or receive licences to use the radio frequency spectrum, on the one hand, and the political elite on the other. When media are in the hands of narrow political or business elite, they are open to manipulation by the owners through methods ranging from direct orders to toe a particular line, to subtle ones such as appointing editorial boards and leadership that would support the desired political view.

In an environment where media ownership is unregulated to guarantee diversity, the media can cease to be a vehicle for rational discussions that feature the full range of political, social and cultural perspectives.

Capture by Private Interest

The increased corporatization of the media in Kenya has inextricably linked them to other investments in the economy, thus severely compromising their ability to protect public interest in and of itself. The profile of media ownership in Kenya in the run-up to the December 2007 elections is a picture of conglomeration.

Since commercial media live off advertising, their interests are beholden to sustaining and growing audiences. Issues that appear controversial and have the potential to scare away audiences–and thus advertisers–are often sidelined.

Private media in Kenya are in business for profit. In fact, it has been argued that media that do not run profitably find that they are unable to be effective. Although the growth of newspaper circulation has been sluggish in recent years, media organizations in Kenya have continued to rake in profits because their major source of revenue for a long time has been advertising. Steadman (2008) found media advertising revenue to be at Ksh 17 billion a year.

Radio and television, which are mostly free to air, rope in audiences whom media companies in turn sell to advertisers keen on reaching as many potential customers as possible. Revenues for radio and television are almost exclusively from advertising. This means that the audience that television addresses and covers tends to be the same as that the advertisers are interested in–consumers of one product or the other. What this means is that in the event a major issue arises that does not affect consumers *per se*, the media will most likely ignore it.

Advertisers are not always subtle, especially in Kenya. Major corporations have withdrawn advertising or threatened to cut off media spending when confronted with negative coverage (ET, 2008a). When big corporations perceive political competition as likely to result in loss of business advantage, reduction in profits or policy change that does not favour them, they can exercise their influence to whip media into supporting or undermining candidates.

Since private business leaders have preferences about the kind of political choice they would like the country to make, they are wont to leverage the spending power–directly and indirectly–with the media to obtain the kind of exposure that they desire.

Sourcing

Reliance on the 'beat' system of gathering news, i.e. being dependent on press releases and statements from elites as a steady stream of information continues to be the norm

in Kenya. It is highly efficient, cost-effective and dependable, but it also frames the news in a manner that excludes insight from non-conventional voices and sources.

In the Kenyan context, the assignment of reporters on 'tribal beats'–where they are essentially expected to use their shared ethnicity with political and state officials to obtain information–not only undermines claims to professionalism but often **turns journalists into tacit participants in shaping the news agenda through their identity.**

Additionally, political parties and governments have set up public relations units staffed by some of the most experienced and well trained journalists to anticipate the kind of coverage their parties are likely to receive. They actively seek to direct this coverage. The presence of political public relations seems to make news coverage easier, but only at the cost of excluding those that do not have such operations.

Generation of Flak

Complaints against, and general harassment of, the media have characterized the Kenyan landscape under the single party era, and later the KANU regime in the multiparty state. The systematic generation of flak to criticize the media for their work was turned into an art from 2003 when President Kibaki came to power. The **media were routinely accused of being irresponsible and unpatriotic in focusing on** shortcomings in government rather than 'positive' stories.

When it appeared that this strategy was not working, the tenor of these criticisms changed slightly to egg the media into covering business and 'development' more **than 'mere politics'. The result was the creation of more business-oriented media** products such as radio and television programmes, magazines and even a daily newspaper, *Business Daily*, even though public consumption is low.

Dominant Ideologies

Media often play cheerleader to established and dominant ideology, in Kenya's case **about nationalism and the unitary state, the primacy of unity and economic growth** *vis-à-vis* federal or regional systems and a social agenda. People or institutions that introduce agenda that are radically different from the dominant ideology are often **shut out, denigrated or ridiculed.**

Liberalized politics may have brought with it a more robust and plural media, but they have not necessarily ensured its accessibility, freedom or commitment to working in the interest of the public. In fact, the media have remained a tool in the hands of **entrenched political interests keen to direct public discourse on a single track.**

This control is maintained through the appointment of journalists whose worldview is known to be in tandem with that of the interests that control the

media and, therefore, the dominant ideology. By the time Kenya went into the 2007 general elections, **the editorial boards of the leading mainstream media were** packed with individuals who, either because of their ethnicity or suspected political leaning, **would perpetuate the dominant ideology dictated by the media owners.** There was a continuous leadership change at the editorial and managerial levels at **the national broadcaster, KBC, and at the country's leading media organizations, including Standard Group, Nation Media Group and** Royal Media Services (ET, 2007a,b; 2008a).

International Media

International media have a robust representation in Kenya because of the country's centrality as a travel and business hub for the region. Nearly 30 international news agencies cover the continent, or at least the East African and Horn of Africa region, out of Nairobi for their home audiences in Europe, Asia and America. The most visible **of these are the** British Broadcasting Corporation (BBC), whose radio programming is widely available in Kenya and its television services accessible to cable subscribers, **Cable News Network (CNN), Sky News and Al Jazeera, which are rebroadcast by** local stations. The big international newspapers in the United Kingdom–such as the *Guardian* **and the** *Financial Times*–and those in the United States–*The New York Times*–often report on Kenya when events pass through the filter of their scale of **international news. International news agencies such as Reuters, Associated Press, Agence France Presse, the Chinese News Agency,** Xinhua, the German television **agency, ARD, and the Japanese Agency,** Kyodo, are other notable players in the powerful foreign correspondents club in Kenya.

Driven by news values that aim to satisfy their home audiences in Western capitals, the international media based in Kenya have depended on the national media to point them to where the local news is. They have then deepened their analyses of situations and buttressed them with interviews to give their readers, listeners and viewers a vista into Kenya.

In those instances where they have ventured out to seek stories that are not generally the fare of the national media, they have been constrained into framing the events they witness into a paradigm that is comfortable for their audiences, long inured to the image of Africa as the home of war, famine and disease (Behr, 1999; Nolen, 2007).

Even then, the perception that international media are impartial and disinterested in internal politics has enabled them to bring a clinical, if disinterested, perspective to the coverage of local events. The BBC's radio service, and the **Voice of America and** Radio Deutsch Welle are popular in Kenya as sources of credible information. They are highly respected and enjoy a loyal following locally, even though there is a recognition that they operate within frames that have the potential to distort

events. Whenever the public has felt that its national media were constrained in providing a true picture of events at home, foreign media have filled the credibility gap (Odero, 2000).

Media Performance in the 2007 General Elections

Background to elections coverage

By the time Kenya went to the polls on 27 December 2007, a code of practice for journalism was part of the just enacted Media Act 2007. The code revolved around the principles agreed on by the Society of Professional Journalists, which entail seeking and telling the truth as wholly as possible, acting independently of all interests, minimizing harm to sources, consumers and the innocent, and being accountable to sources, professional colleagues and consumers (SPJ, 1996).

James Watson (2003) defines the notion of professionalism in the media as the standard requiring journalists to position themselves outside the action, be objective, impartial and balanced. This means that journalists must not take sides; they must not reveal their personal biases or show any form of sympathy or empathy.

In the run-up to the 2007 elections, the Media Council of Kenya and the Kenya Editors Guild had launched *The Guidelines for Election Coverage in Kenya*, which re-emphasized the need to observe journalistic ethics. The guidelines also advised that private media had an obligation to avoid being swayed or influenced by the owners, the government, advertisers, patrons or any other organization through direct or indirect pressure.

Later in the year, some 600 journalists and staff working for radio stations received ethics training under the auspices of the United Nations Development Programme (UNDP), as well as a host of media civil society organizations.

Even then, many journalists often expressed concerns about their inability to divorce themselves from the electoral process, largely because of what they perceived as lack of justice in the way the media covered political parties and candidates. As early as August 2007, independent media tracking of political coverage for the main political actors appeared skewed heavily in favour of President Mwai Kibaki. In August alone, pollster Steadman Research found that Kibaki led the other candidates not just in the number of mentions in print and electronic media, but also in positive exposure. It appears that President Kibaki was the media's favourite candidate, going by the tonality of the coverage he received (ET, 2007c).

By mid-October 2007, long before election day could be known, the Orange Democratic Movement felt constrained to write to the Nation Media Group complaining about the coverage it was receiving. ODM said in its letter: 'The Nation Group is not meeting the required standards of objectivity, fairness and balance in its reporting of ODM events, particularly *vis-à-vis* those of the Party of National Unity.'

The party also wrote to the Electoral Commission of Kenya chairman, Samuel Kivuitu, complaining about the preferential treatment PNU was receiving on the national KBC against none for itself. Yet, editors and managers—the media gatekeepers—while acknowledging the numerous challenges they faced, revealed in separate interviews that they strove to uphold their professional code of conduct even in the face of severe pressure from a cross-section of political interests (ET, 2008a).

In order to dispassionately establish how the media performed their roles, research for this study was conducted through key informant interviews, a study of background material, analysis of content in the print and electronic media for the period preceding the elections, together with a study of content and sample content analysis on thematic lines.

Independence, Fairness and Balance

Responsible media can be noted through the deliberate steps they take to minimize harm in an electoral contest. The effect of these steps can be studied through the outcomes that contestants have in accessing equal or proportional media airtime and space in which they prosecute their case or rebut accusations.

Content analysis of print and electronic media in the run-up to the 27 December 2007 general elections paints a picture of caution, subtle preferences and, sometimes, blatant favouritism.

Four separate media monitoring studies conducted over the election period provide similar results. The UNDP study by **Strategic Public Relations and Research** to monitor fair and accurate media coverage found that attention was largely focused **on the three leading presidential candidates:** Kalonzo Musyoka, Mwai Kibaki and **Raila Odinga.**

National radio was the most coveted medium for anyone seeking advantage in reaching the largest number of voters. Although most stations broadcasting to a national audience did not show any obvious preferences, the privately owned **Citizen TV and Radio Citizen, and the state-owned** KBC gave more coverage to Mwai Kibaki and his PNU than to any other candidate. They also positioned him and his party better and gave a positive slant to stories about them. The two also happen to be the **stations with the widest reach.**

The European Union's elections observation mission monitored campaign coverage between 22 November 2007 when party nominations began and the eve of the election on 26 December 2007. It found that the PNU enjoyed more coverage on all national media across all the three major platforms—radio, newspapers and television. For radio, considered the medium with the widest reach, the PNU took the lion's share of coverage across all the stations, as Table 8.3 illustrates.

Table 8.3: National radio coverage (%) for political parties

Station	PNU	ODM	ODM-K
KBC National (Swahili)	72	11	4
KBC General (English)	76	14	6
Radio Citizen	45	29	12
Easy FM	52	34	12
Kiss 100 FM	44	43	7

Source: EU Election Monitoring Report, 2008

The Party of National Unity buttressed the advantage it enjoyed in earned radio airtime with spending on advertising. The EU's monitoring report showed that PNU had 74 per cent of all the paid-up radio advertisements against 20 per cent for ODM and 1 per cent for ODM-Kenya.

Studies carried out in 2007 showed that KBC blatantly favoured the incumbent **President Mwai** Kibaki and his PNU, thus affording him and his party platform **greater access to the audience than any other candidate**.

An analysis of KBC's coverage of election campaigns by both its English and Kiswahili services revealed a high level of bias and granted a combined total of 76 per cent of coverage to the PNU coalition partners against 13 per cent for ODM, 5 per cent for ODM-K, 6 per cent for the other parties combined (CAPF, 2008). The verdict on its performance from the Electoral Commission of Kenya chairman, **Samuel** Kivuitu, quoted in the same report, was singularly unflattering:

> *KBC has let us down as taxpayers. In an election year, reporting should show competition. It cannot be that others (candidates) are so stupid that they have nothing which can be reported.*

The lack of professional distance between the management and the government-**appointed board at** KBC continued to compromise editorial independence to the detriment of public interest. Public service broadcasting organizations can only fulfill their mandates if they are guaranteed sufficient funds for their work. In return for this independence, they must be accountable to an oversight authority. There was **neither such independence nor accountability at the national broadcaster. In fact,** KBC was heavily indebted (ET, 2007a).

Overall, the three presidential candidates received most of the print and electronic media coverage, with the other candidates getting token mentions. Although the UNDP study did not detect open bias for or against any of the three main candidates in the leading national newspapers, television and radio stations, preferences were **still discernible (Strategic Public Relations and Research, 2008).**

The national newspapers, considered the more thoughtful and professional media (Adan and Deane, 2008), appeared to balance the amount of space they dedicated to covering each of the three leading parties and candidates, according to this study. Local language radio stations, on the other hand, showed open preferences for the parties and candidates they perceived to be favourites among their listeners.

The EU election monitoring report found that although the major newspapers appeared even-handed in their coverage of the political parties relative to each one's strength, it was still possible to detect unfair advantage, as Table 8.4 shows.

The study by African Woman and Child Feature Service and the Coalition for Accountable Political Financing made similar findings with regard to the coverage that each of the three candidates received (Table 8.5) in the four national newspapers.

Table 8.4: Proportion of coverage (%) for parties in the print media

Party/Media	Nation	Kenya Times	Standard	People
PNU	54	53	55	56
ODM	29	33	30	28
ODM-K	12	8	10	5

Source: EU Election Monitoring Report

Table 8.5: Coverage of presidential candidates' in the print media, December 2007

Presidential candidate	Newspapers (space in cm²)			
	Nation	*Standard*	*People*	*Kenya Times*
Mwai Kibaki	34,882	29,122	26,530	24,582
Raila Odinga	32,932	31,987	21,849	20,205
Kalonzo Musyoka	16,842	20,981	19,966	16,976
Pius Muiru	750	827	3,974	1,272

Source: Coalition for Accountable Political Financing (2008)

The researchers noted:

> *This selective coverage not only blurred and obfuscated the line of contest in the presidential contest but deliberately denied the voters an opportunity to make informed choices based on the information provided by the media. Overall, the print media abdicated its role of being a neutral arbiter and a source of illuminating information in the electoral process (CAPF, 2008).*

The study concludes, rightly, that even though the leading newspapers dedicated their first 10 pages to election-related news, many voters may have gone to the **polling booths without a full understanding of the electoral process, the candidates** and the issues that had been canvassed in the campaigns. Nonetheless, it notes **that the issues that emerged in the electoral period included clamour for a new** constitution, equity of opportunity and access to resources, free secondary education, and economic federalism. The CAPF study also noted that the media covered opinion polls extensively, and the fact that they predicted that it would be a close race. The **campaign timetable was published, alongside updates on the electoral process up** to voting day.

This pattern is repeated for the television stations, as shown in Figure 8.1. Additionally, the EU monitoring report found that PNU outspent ODM and ODM-Kenya on television advertising, commanding 72 per cent of the advertisements against its rivals' 28 per cent and 1 per cent, respectively.

Figure 8.1: Television coverage of presidential candidates in 2007
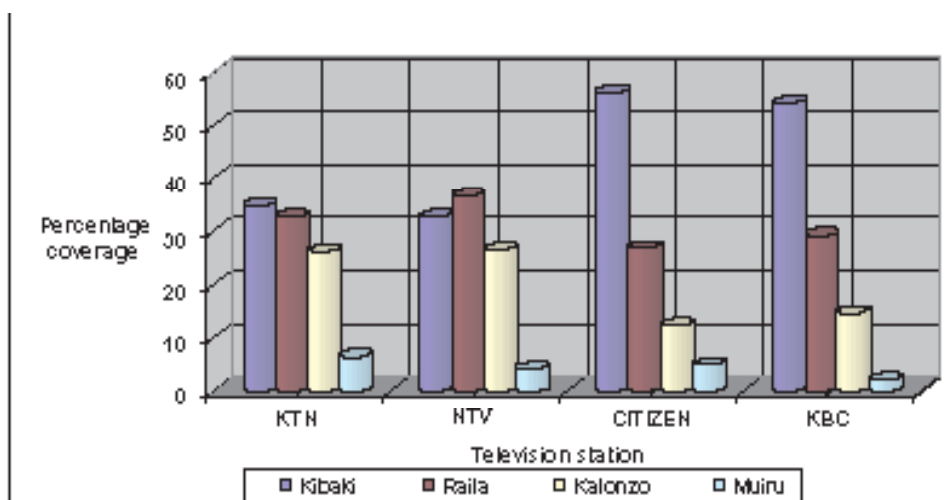
Source: Strategic PR & Research (2008)

One study, by Twaweza Communications (2008), examined bias and fairness, based on the amount of space allocated to political parties after the elections. Figure 8.2 shows the amount of space the *Daily Nation* **dedicated to the ODM,** *vis-à-vis* that given to the PNU/ODM-Kenya coalition in February 2008.

While the study of the frequency and proportion of coverage a candidate or party receives in the media is illuminating in showing who had more access than the other, it is not necessarily an objective measure of fairness or bias. Media agenda is constructed on the basis of a highly selective sample of newsworthy events from a **continuous stream of occurrences (Mazzoleni and Schulz, 1999). The proportion of** a candidate or party's media exposure can result from bias, just as easily as it can

result from activity and imagination. Since media are a limited resource, free market proponents would insist that those with the most interesting, important, meaningful and relevant news receive coverage.

Figure 8.2: ***Daily Nation's*** **coverage in cm² and tonality for ODM and PNU/ODM-K in January and February, 2008**
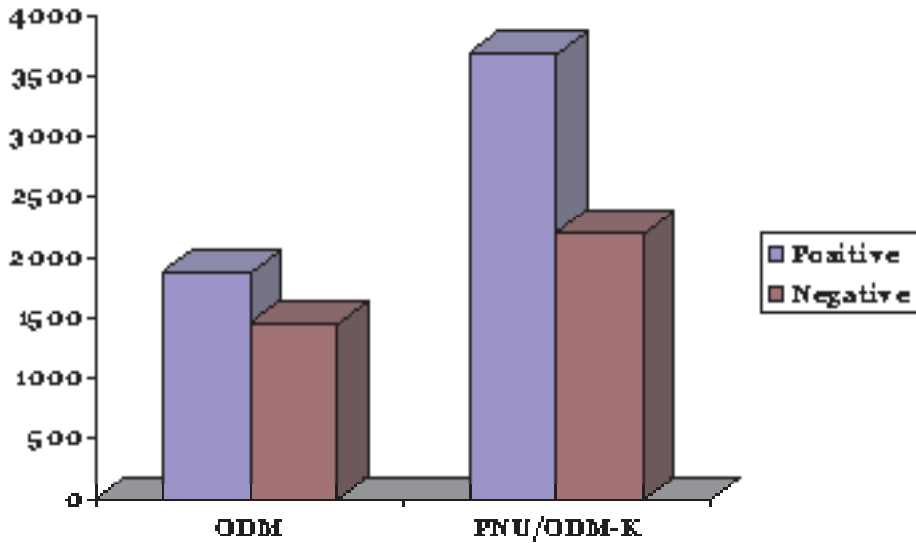
Source: Twaweza Communications (2008)

Unless there is a fundamental renegotiation of news values as they are understood and defined, it would be unreasonable to hold the media–especially those with a commercial interest–to a nebulous standard of fairness and balance at election time. There is nothing wrong with private media showing bias if that furthers their interest. Holli A. Semetko (2008) recognizes that exposure might increase visibility but it is important to also examine valence or tonality.

Besides, different media have varying resources at their disposal. Therefore, comparing the amount of space that one outlet gives to a candidate to what another provides might not be an objective measure of reality. Further, various media have different sizes of readerships and audiences. Excess coverage in a low circulation newspaper or low audience station is unlikely to match even a little exposure in a medium that has a wide reach.

For anyone to assign definite political advantage to a candidate or party based on media exposure, one would have to take into consideration the reach of the media and the impact that such coverage has. An examination of the type of coverage each media organization provides is more likely to betray its perception of what it considers the election to be all about, rather than its fairness.

Seeking and Reporting the Truth

All mainstream media organizations in Kenya covered the election campaign extensively and sent out teams to polling stations across the country to observe and record voting, identify difficulties and how the Electoral Commission of Kenya was dealing with them.

One of the most significant observations made by the media was the poor organization at polling stations. Voters failed to find their names on the electoral roll, among them presidential challenger Raila Odinga. When the first polling stations began to announce the election results, television stations picked them up and began to stream the figures on their screens. Television coverage continued non-stop from polling day until 29 December, on the eve of the announcement of the presidential election results.

The release of election results had started out as a race between the top two private television stations until 28 December when NTV began to fall behind. The election database manager that the Nation Media Group had created was slowing down. As if by coincidence, the media organization's polling agents, correspondents and staff covering the election in parts of Eastern and Central Provinces could not be reached on telephone.[6] By 11 p.m. on 28 December 2007, the program had crashed, and with it the Nation Media Group's presidential election results. A team of two senior editors appointed to investigate the crisis put the failure down to a technical fault (ET, 2008a).

Although KTN's tallies were fairly accurate, they began to markedly differ from those of the ECK. The management then instructed the newsrooms to only broadcast ECK data. The country moved from a saturation of election coverage to an information blackout, and this at a time when disputes over the integrity of the results had already been made public.

Historian David Throup has pointed out the inconsistencies between the headlines in the two leading newspapers, the *Nation* and *The Standard*, and the sloppy handling of the election news coverage:

> *The carelessness and irresponsibility of newspaper reporting added further confusion. The Nation reported on Saturday morning that Odinga was still far ahead of Kibaki although Kibaki had pulled back 200,000 votes from the reports in the international media (Throup, 2008:294)*

Although violence had started on a small scale before the announcement of the election results for the presidential race, it was the declaration of Mwai Kibaki as president and his subsequent swearing in that touched off a wave of violence that claimed scores of lives in the first few hours. Live television and radio broadcasts

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[6] Personal communication, 2008 and ET, March 2008.

would be banned, ostensibly because–in the words of the government's Director of Information–they were broadcasting 'embarrassing items' on 30 December 2007. From then, short text messages took over.

Media attention shifted from then on to the violence. A report by **International Media Support, Article XIX and** Reporters Without Borders commended the Kenyan media for not fanning the violence but in the same breath faults them for failing in **their public duty:**

> *Editors and journalists tried to calm passions and encourage reconciliation, ... (b)ut the risk they took in doing this was to fail in their duty to report the facts, present them to those involved in the events and let the public judge the result (IMS, 2008).*

The Kenyan media adopted a joint editorial line on 3 January 2008, with the **daily newspapers publishing the same editorial, '***Save our Beloved Country***' on** their front pages. Television stations also streamed the headline and private radio stations broadcast the editorial. The radio and television stations also broadcast joint prayers. The fear to exacerbate the violence and ethnic division informed the heavy self-censorship witnessed in the media in the period after the elections. No **journalist wanted the media in the ignominious role of** Radio Television Libres des **Mille Collines (RTLM) during the Rwanda genocide.**

The international media, on the other hand, maintained a sense of proportion and journalistic duty in reporting the Kenyan election and the dispute and violence that followed it. Though criticized for portraying the violence graphically and framing the conflict as tribal, the international media coverage of these events awoke the world to the horror of what was going on in Kenya.

As such, access to the media as a marketplace of ideas were apparently nuanced by who controlled them–in terms of ownership and management—and the activity levels of individual political actors. Gender, ethnic and political diversity in the management media could have mitigated against bias. Access to the media was not as free as it should have been for all parties and candidates.

Media Accountability

One of the hallmarks of a responsible functioning media is accountability. Media that pursue public interest and derive the benefits that accrue from this enterprise must be able to explain their decisions to their sources, their consumers and other stakeholders.

There were huge accountability gaps in the Kenyan media that invited official **interference in the form of laws and policies. In October 2007, less than two months to the general elections, the** Media Council of Kenya was inaugurated. Its remit was **to regulate the media, mediate in disputes between the media, the state and the public, and enforce the journalistic code of practice.**

Under the law, the Media Council was required to set up a complaints commission to deal with any disputes. Given that the council itself came into operation two months to the elections, there was no complaints commission. Aggrieved parties **had only the recourse of complaining directly to the Media Council. Its predecessor,** the voluntary Media Council of Kenya, had dispatched with the complaints before it using mediation. The new statutory council resorted to using peer influence when complaints were raised. The effectiveness of this mechanism is also proof of its danger. The chairman of the Media Council cites the case where the government **complained about** KTN airing information about the posting of **Administration Police to certain electoral areas (ET, 2008a). Although the station stopped airing** the information, the Head of the Public Service would later acknowledge that indeed the government had posted the police officers as party polling agents.[7]

The fact that the Media Council was a statutory organ by the time Kenya went into the 2007 elections undermined its ability to deliver professional accountability by running interference through a peer influence system. State-controlled mechanisms of media accountability are not always conducive to democracy because they are open to abuse. It has been argued that the media themselves need to put in place procedures and demonstrate attitudes and levels of performance that ensure that the highest standards of professionalism and levels of probity and accountability **are upheld (Tettey, 2006).**

Many mainstream media set up election desks, but there is scant or no evidence **that they put in place such deliberate procedures and measures to ensure that their work was professional and met the highest standards of probity and accountability. In the absence of formal and enforceable accountability rules, journalists and editors** could have chosen to be accountable to a variety of interests–ethnicity, media ownership, the government and the ruling party or even personal gain where they received favours or payments. The readers, listeners and viewers were not among **those the media felt a need to account to.**

Media Framing of the 2007 General Elections

Scholars have sharpened the definition of media framing to the emphasis placed on a subset of potentially relevant considerations causing individuals to focus on **those considerations in constructing their opinions (Druckman, 2001). Journalists present news content within some familiar frame of reference. The audience is thought to adopt the frames of reference that the media offer and to see the world as it is presented to them (McQuail, 2005). The more sceptical James Watson (2003) says a frame consists of a collection of stereotypes that people rely on to respond** to events.

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[7]Report of the Commission of Inquiry into the Post-Election Violence, 2008, Government Printer.

Although it is useful to assess the 'collection of stereotypes' that characterized the media's presentation of the 2007 election, it is important to make a cautionary note of the limitations of framing effects. James Druckman's experiments showed that framing effects occur when citizens delegate to ostensibly credible elites to help them sort through many possible frames. 'Perceived source credibility appears to be a prerequisite for successful framing' (Druckman, 2001).

Three Frames for the 2007 Elections

An examination of the content in all the newspapers published at election time in 2002 and still printing in 2007 when Kenya went to the polls again provides an interesting study of how media attention and emphasis shifted or remained the same over the five-year period.

The four newspapers that covered the 2002 elections–*Daily/Sunday Nation, The Standard, Kenya Times* and *The People*–were still in business in 2007. The headlines of all their election coverage for December when campaigns officially begin and culminate in elections were selected, classified and then coded on the basis of three thematic areas–campaign issues, the electoral process and general campaign events, statements and personalities' stories.

Headlines are a reliable measure of a story's theme, its tone and subjects because of ethical requirements of journalism now in use long before the Media Act 2007 came into force. The following criteria were used to define the clusters of analysis:

(a)   *Campaign issues*: This cluster included stories that covered party manifestos and candidate campaign pledges, including responses to them. Also included were attempts to tackle problems facing the community or the country, even if they might not be on any platform.

(b)   *Electoral process*: Stories about the when and how the election would be held as well as fears, warnings, appeals and complaints of unfair advantage. Hurdles foreseen in delivering a free and fair election also made this cluster. Disruption of campaign rallies, candidates being barred from certain areas, abuse of state resources, and police action against perpetrators of electoral fraud were placed in this cluster.

(c)   *Campaign events*: This cluster consisted stories about what candidates and parties were doing and saying to attract attention and voters to their side. They included broadsides, verbal attacks against opponents and character assassination and testimonials.

Although these clusters emerged on their own from an examination of the data, they expose the proportion of attention the media paid to critical campaign issues and their discussion *vis-à-vis* the provision of entertainment for their audiences by highlighting political events.

Table 8.6: Comparative thematic breakdown of media coverage in 2002 and 2007

Newspaper	% of election coverage 2002			% of election coverage 2007		
	Events	Issues	Electoral process	Events	Issues	Electoral process
The Nation	41	14	45	32	33	35
The People	51	17	32	59	10	31
Kenya Times	78	8	14	36	24	40
The Standard	59	10	31	52	15	33

Source: Author's content analysis of 2002 and 2007 election coverage

Figure 8.3: Aggregate newspaper coverage for the 2002 and 2007 elections
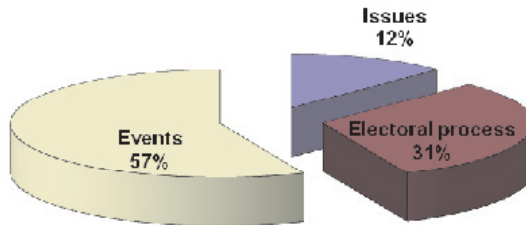
Source: Author's content analysis

It does also show if, in the estimation of the media managers, there were sufficient concerns about the electoral process to warrant special attention.

Across the board, with the exception of *The People*, the print media increased coverage of campaign issues as a proportion of the total space allocated to elections in 2007 from what it was five years earlier. Still, in no instance did the coverage of issues in 2002 and 2007 exceed either of the other two clusters–events and electoral process.

While the major issues profiled in the media from the 2002 election had been free primary education, reviving the economy, empowering women and tackling corruption, in 2007 corruption was most frequently reported, followed by poverty alleviation, ethnicity and women's empowerment. In 2002, questions and concerns about the electoral process trumped electoral drama and campaign issues in the

Nation, which had the largest daily circulation,[8] accounting for nearly half of all its election coverage. It was still the newspaper's most featured issue in its election coverage in 2007, even though the proportion had slightly reduced from the 2002 heights. *Kenya Times'* focus on electoral processes increased nearly threefold from its 2002 figures, *The Standard's* numbers on that score remained the same, while *The People's* dropped slightly. Together, the aggregate coverage of electoral processes was only second to focus on events.

In both 2002 and 2007, the print media appeared to be fascinated by campaign events and politicking. This reportage reflected media partiality to sideshows, drama and speechifying at the expense of the critical issues that should have shaped the election.

There is little or no evidence of independent validation of the various campaign platforms presented in the 2007 general elections. The titles of the commentary and editorial stories captured in this study fell short of meeting this expectation. Instead, claims were made and countered. In this regard, therefore, media access to and use of the media was critical as it provided the only opportunity to correct distortions of a political party's message by an opponent and to debunk opposing policy proposals and programmes.

A study of the headlines in each category reveals a pattern where media coverage is attributable to a political actor. The upshot of this is that the media either deliberately refused to insert themselves in the electoral process, or merely provided a platform for political actors to sell their issues. It has been argued that the media are often simply out of their depth when it comes to analyzing campaign issues. This position is not borne out by hiring practices at major media organizations. New recruits into journalism now have a first degree as a minimum, and often also possess post-graduate training.

From the headlines examined in the electoral period in 2002 and 2007, there is little evidence of the media using the pool of talent at their disposal to break down policy proposals for public debate, or validate electoral platform claims or commercial communication claims with regard to elections. In fact, political actors appear to have been allowed free rein to lay into each other and rubbish proposals without an umpire. The media appear to have retired into the role of facilitating discussion rather than leading it.

It is possible to draw inferences between the editorial bent of the major media organizations and the political affiliations of their owners, but conclusions from such a correlation would remain in the province of hypothesis, since proof would be nigh impossible to obtain.

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[8] World Association of Newspapers, 2000, shows that *Nation* was selling 220,000 newspaper copies a day, while *The Standard'*s circulation stood at 60,000. Kenya's circulation figures are a closely guarded secret and the figures available through informal sources are likely to be highly inflated or depressed.

Effects of Media Performance on the 2007 General Elections

The media landscape in Kenya before the 2007 elections was unregulated and skewed in favour of the various interests that held political power on account of ownership, ethnicity and internal competence gaps. Although the media provided a public sphere, it was by no means neutral or accessible to all. The public-owned media were a captive of the interests of the ruling class. The private-owned media were intricately linked to various factions of the same political class.

Faced with a powerful private media that were outside conventional methods of control, paying for advertising provided a chink through which someone could get past the filters that stopped messages deemed undesirable to the political and business elite.

Paying their Way

Advertising costs in Kenya are steep. A study by **Steadman Research of a sample** of the top two radio and TV stations and the daily newspapers in Kampala, Dar es **Salaam and Nairobi based on their audiences found that to reach the same number** of people in Kenya, it costs twice the price in Uganda and many more times in **Tanzania (ET, 2007b).**

The 2007 elections provided the media with the highest advertising spending ever. PNU spent Ksh 189 million on media and publicity, against ODM's Ksh 152 million and ODM-Kenya's Ksh 6 million. Additionally, there is a curious additional Ksh 9 million that PNU reportedly spent on 'facilitating' journalists–usually a euphemism for bribery (CAPF, 2008). Five years earlier, the total electoral spending on advertising was a mere Ksh 66.2 million.

As dear as advertising is, it can still be placed beyond reach as was the case in Kenya during the 2007 elections. Private media locked out certain messages–even if they were paid for–because they considered them inflammatory and unfair.[9] A similar incident in 1992 when the Nation Newspapers turned away advertising from **presidential candidate** Kenneth Matiba provoked him to start *The People* newspaper the following year. **The decisions to deny politicians and political parties access to** advertising space were not deemed as even-handed or predictable.

Off the Radar

There are often times when the ownership of large media organizations is kept off from day-to-day decision making, hence giving the managers great say over what position to take. Despite having published editorial policies that proclaim **independence and fairness to all, media organizations are, ultimately, managed by**

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[9] Nation Media Group published its advertising rules in November 2007, barring advertisements of certain types. The policies of other media houses on acceptance or rejection of advertising material **appeared** *ad hoc.*

people with their individual interests and biases. Jean Kamau (2005) argues that the Kenyan media seem to have defied the model where owners define what their publications or stations say.

The expectation that journalists will be 'professional' and leave their personal prejudices and biases out of their work is unrealistically optimistic. Professionalism in the media has been nurtured into a myth but, in reality, it is only a description of conformism within an organization. The myth is created for public consumption and must, therefore, be believed by those who propagate it–they must anchor the production of that myth in the status quo (Watson, 2003).

Politicians were not averse to employing bribery, ethnic empathy and personal friendships to acquire favourable media coverage. It is instructive that after the election, many journalists who were expected to call their newsrooms in Nairobi with election results in the constituencies they were covering went dark on their editors, surfacing only after the ECK had released its own figures.[10]   Additionally, several journalists were retained as consultants for various campaigns without declaring the fact to their newsrooms.

Whatever could not be fixed this way entered the realm of grey communication evident in leaflets, posters, email, short text messages and other informal channels to reach voters without the strictures of journalistic ethics. The remarkable use of the Internet, short text messaging and local language radio is a result of the strictures that the media imposed on debate through rules and costs.

Local Language Media

Politicians and political parties appropriated and used local language radio stations to rally and organize their supporters. Local language radio stations began in Kenya as music and entertainment channels. Over time, their audiences have forced them to morph into arenas for public debate. They have, in many instances, become the voices that had been suppressed for decades.

Although the most vibrant local language radio stations are almost exclusively private-owned, they have come to occupy the space that should rightfully have belonged to community media. They have become the voice of the community. Wachira Waruru, the managing director of Royal Media Services, is on record as saying about the demands of their audience in terms of political leaning:

> *We were serving specific communities and each has its own political orientation so some of them only wanted to hear one side of the story. Objectivity and neutrality is often seen in those areas as a sign of hostility–people say you have to be with them 100 per cent (Adan and Deane, 2008:6).*

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[10] Personal communication, 2008, and ET, 2008.

In these stations, where most workers had not received formal journalism training, politicians were able to exploit ethnicity and personal interest more powerfully than in the mainstream media. The media analysis of the European Union's election monitoring mission found that with the exception of **Lake Victoria FM and Ramogi FM**, Kass FM and Kiss 100FM, all the radio stations gave PNU more coverage regardless of perceived areas of support.

Table 8.7: Coverage (%) of political parties on local language radio

Station	PNU	ODM	ODM-K
Ramogi (Dholuo)	27	55	14
Egessa (Ekegusii)	48	37	10
Inooro (Gikuyu)	71	17	7
Kameme (Gikuyu)	71	17	7
Kass (Kalenjin)	28	52	8
Mulembe (Luhya)	46	32	14
Musyi (Kamba)	48	28	17

Source: Reconstructed from EU Election Monitoring Report

Impact of Media Coverage of the 2007 General Elections

Changing fortunes

Election years are usually good for business in the media. They bring in high advertising revenue because of increased interest and also generate income for newspapers through direct sales. Although the money came in higher volumes in 2007, the benefits did not seem to last beyond the election.

Even as the media have borne their tribulations, they have continued to enjoy unusually high levels of public confidence. Two opinion polls commissioned by the International Republican Institute six months apart in 2006 found that the public had extremely high confidence in the media, with between 81.5 per cent and 78.9 per cent of the respondents saying they trusted the media (Oriare, 2006). Table 8.8 breaks down the trust levels for each media channel for June 2006 and November 2006. The station with the least scores, Capital FM, which broadcasts mostly to urban centres, still obtains 30 per cent approval.

Steadman Research's findings in 2007, which showed that President Kibaki was receiving the lion's share of media coverage across the board, seem to have put his main rival, **Raila Odinga, in the position of the underdog**. Yet, it is

instructive that the increased media coverage for Kibaki and his party, and heavy spending on media buying did not seem to have a direct and noticeable impact on their popularity.

Table 8.8: Rating trust levels of various media houses

Media	Strongly trust (%)		Somewhat trust (%)		Neither trust nor distrust (%)		Somewhat distrust (%)		Strongly distrust (%)		Don't know (%)	
NMG	42.3	40.3	38.9	33.4	6.9	8.4	3.8	6.0	2.0	4.3	5.5	7.4
SG	46.8	46.1	32.7	28.1	7.0	7.1	4.1	5.2	2.5	4.1	6.4	9.0
RMG	34.6	33.9	26.1	23.4	11.7	10.9	10.1	10.6	11.8	13.8	5.4	7.0
Kiss FM	24.7	19.0	26.1	22.8	10.9	12.1	5.4	5.6	4.2	5.4	27.1	33.5
Capital		11.8		20.9		12.7		5.7		5.8		41.1
KBC		34.4		25.4		11.8		11.1		11.5		5.0
Local language stations	36.2	40.4	29.7	21.7	12.1	11.8	6.8	5.7	6.5	8.5	7.8	11.0
Religious stations	54.7	44.6	24.5	19.8	6.3	9.1	1.8	3.9	1.6	4.1	9.6	17.4

Source: IRI Opinion polls, June and November 2006

Losing influence

The perception of bias in the media has had an unprecedented effect on audiences and readership. National newspapers were reported to have lost half of their sales as a result of political turbulence and the depressed economy (ET, 2008b). The Nation Media Group's newspapers were reportedly shunned in areas that supported ODM because of their perceived bias towards PNU, forcing the company's chief executive to travel to Kisumu for a meeting with the business community.[11] The *Nation's* newspapers had to be flown to Kisumu and Eldoret because their transporters safety could not be guaranteed on the roads. *The Standard*, also perceived to be sympathetic to ODM, has lost favour in PNU strongholds, and with it its meager circulation there (ET, 2008a).

The mainstream media in Kenya emerged from the 2007 election mortally wounded. Although surveys in 2008 and 2009 (Steadman) show that the media continue to enjoy the highest public confidence when compared to other (failed) institutions such as parliament, the police and the electoral commission, they have lost the moral high ground they once occupied.

Instructively, the decision to take a joint editorial line and run the headline, '*Save our Beloved Country*' on 3 January 2008 did not have the desired effect of ending

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[11] Personal communication, 2008.

the violence that was quickly escalating. It would take a political deal to end the fighting and carnage, nearly two months later.

The media have been severely criticized for their role in shaping the aftermath of the elections. They were accused of providing propaganda, incitement and inflammation of tribal tensions. The government even attempted to form a taskforce to investigate the conduct of the media and their role in the post-election crisis. The media successfully fought off this move, with the Media Council of Kenya setting up a parallel taskforce to investigate what happened. Nothing has been heard of it since (ET, 2008a).

Conclusion

The perceived skewed coverage that issues, parties and candidates received and the **public backlash against some media in the aftermath of the 2007 elections highlight** the need for public interest media that provides information, sets agenda and listens to the people. Much of the public sphere in Kenya has been captured by elite discourse. **In order to redress this, there is need to create legal and institutional frameworks to protect and promote the right to know and the right to disseminate one's opinions.** Public service broadcasting and community media should be nurtured as a way of **countering elite dominance.**

While private media fulfils an important role in underwriting diversity, its excesses **should be checked through regulation of cross-media ownership and further opening** up of the investment space. It should also be required to dedicate a portion of energies and resources to the pursuit of genuine public interest. The diversity of the private media–as well as the public ones–must stretch beyond the traditional concepts to embrace ethnic and racial diversity in hiring and coverage of issues. Employment practices in the media must take cognisance of the sensitivity of the industry by **paying journalists wages and emoluments that insulate them from bribe-payers and** other influence peddlers.

The uncertainties that attend private investment in the media need to be alleviated by the passage of freedom of information legislation, and the creation of a policy on entry and exit from the market. Professionally, journalists need to be encouraged to develop mechanisms for accountability that place the reader, listener and viewer at the centre of their practice. The media cannot legitimately claim to pursue accountability on everybody's part when it is not accountable itself. The **appointment of public editors and media ombudsmen can mitigate some of the** excesses witnessed in the elections period. This would help the media to deal with the difficulties experienced in assigning reporters to their ethnic beats. Failure to establish serious self-regulation mechanisms in the media appear to have given the government the excuse to repeatedly meddle in the media through legislation, most **of which hardly succeeds.**

The role of the Media Council of Kenya needs to be trimmed so that it can concentrate on the manageable and the achievable. At present, it is charged with media monitoring, policing training, enforcement of journalistic codes of practice, and advising the government. These roles seem unwieldly for a young media council.

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PART IV:
THE POLITICS OF NUMBERS

9 History, Politics and Science of Opinion Polls in Kenya

Odera Kiage and Kwame Owino

Abstract

This study was borne out of realization that opinion polling is increasingly becoming mainstreamed in Kenya's electoral politics and is evolving to be part of the democratization process despite the controversies surrounding it. The study assesses the history and manner in which opinion polls have been used in Kenyan politics and the impact thereof by focusing on both the technical dimensions of opinion polling in past elections and the political and public influence that may have gone into that process.

As a barometer for gauging public views and ascertaining perceptions, opinion polls are not new in Kenya. Their existence dates back to early 1960s, when the first attempts were made to apply British statistical election polling techniques in Kenya, with variable results. The first polls carried out during the pre- and post-independence Kenya up to late 1980s were more or less 'push polls' done in the guise of research. The goal of such polls was to influence voters through misinformation about certain candidates, particularly by the then ruling party KANU. Polls based on valid scientific methods became increasingly important when multiparty politics re-emerged in Kenya in early 1990s. Since then, polling has continued to be applied especially in the period preceding general elections. More intense and regular deployment of opinion surveys in Kenya's political arena thus correlates highly with the legal changes that also reduced the hegemony of a single party. In this respect, widespread use of properly conducted opinion polls is in itself an index of the degree of political and democratic development.

Opinion polls are both praised and maligned in the Kenyan political system. Responses to the results of the polls have become almost predictable; candidates or political parties that receive improved approval are often more willing to publicly accept the validity of the polls and vise versa. Indeed, since 1992, political parties have often casually dismissed the validity of polls on account of poor understanding and the unwillingness to accept the predictive value that any poll may have despite their credibility. The multiparty democracy opened political competition and called for a rise in the number of scientific opinion polls as indispensable parts of public instruments to guard the democratic space, thus the emergence of independent opinion polling research firms outside direct government control. Polls during the periods preceding the 1992 and 1997 elections acted as a mechanism for surfacing various views and political preferences of Kenyan citizens but were never accurate enough to predict the poll margins. The accuracy and credibility of the polls increased during the third liberalization phase, which saw the 2002 pre-election and exit polls accurately predict the general election outcome. Unlike the elections in 1992 and 1997, opinion polls were taken more seriously in the general elections of 2002 and 2007. The competency of the polling firms has improved with time, in addition to the continued exposure of politicians and the public to the reasons and value for polling.

Opinion polls are critical in shaping and transforming peoples' attitudes and perceptions. Properly conducted and disseminated, polls have given the general public an opportunity and voice to be heard. Thus, they have opened up political space and presented information and, therefore, choices to the electorate as a reliable way for their voices to be heard by the government and policy makers.

An evaluation of pollsters' methodologies, sampling frames and execution of the surveys largely reveal that there is a good understanding of the research and sampling techniques required to fully and competently undertake scientifically valid opinion polls in Kenya. There is also a good degree of reliance upon the infrastructure and information provided by the Kenya National Bureau of Statistics (KNBS) and census data and the voter registers as maintained by the electoral commission. In particular, during the 2007 general elections cycle, one media house sponsored a series of opinion polls for the three months preceding the elections. Because four different polling firms were used, this worked as a quality check on one another. The closeness of the poll results for these diverse firms suggests that they were using suitable methodologies to arrive at similar findings. However, given the known capacity of some of the firms and the cost of representative

surveys, it is not possible for the study to verify whether all the firms were able to prepare ground logistics and personnel to conduct national polls on a weekly basis as witnessed in 2007.

The 51 pre-election polls conducted in 2007 established that even though there was a tight race between Raila and Kibaki, Raila was well ahead in six provinces compared to Kibaki's favourable rating in only two provinces. The IRI 2007 exit poll also revealed that Raila was ahead of his opponent by 6 per cent points. It can thus be concluded that presidential vote tallying in which President Kibaki was declared the winner was grossly mismanaged, critically undermining the ability of the pre-election polls to predict the winner and margin between the two leading presidential contenders in the 2007 elections. Whereas the study's purpose was not to settle this matter, the use of polling as an accurate measure of elections outcome (read 2002 pre-election and exit polls) were greatly compromised.

Introduction

An *opinion poll* is a method of analysis for drawing inferences about the attitudes or behaviour of a population by studying a random sample of persons from that population. Opinion polls were used as early as 1824 by two newspapers, the *Harrisburg Pennsylvanian* and *Raleigh (NC) Star*, to test the strength of political candidates. These were 'straw polls' in which haphazardly selected groups of citizens were asked their opinions to see which way the 'political wind' was blowing. In 1920s and 1930s, the *Literary Digest* became famous for its huge political polls. It sent as many as 18 million postcards to potential voters in the United States, asking their preference among presidential candidates. As many as 2 million replies were received but, despite their immense size, these samples had two sources of error. The list of people to whom postcards were sent were biased (that is, they were not representative of all citizens) because they excluded many people of lower socio-economic status. Also, those who replied were a self-selected sample; individuals who took the trouble to return the postcard were often more extreme in their opinions than the average citizen.

Generally, public opinion polling has somewhat matured in Kenya but not to the level found in the developed world, where big polling organizations such as Public Opinion Strategies, Gallup, Rasmussen, Zogby, Ipsos-Public Affairs, MORI, Harris, NOP, ICM, and System 3, among others, are well-funded by leading media houses. Locally, Steadman (Gallup), Consumer Insight, Strategic Public Relations and Research Limited (SPR&R), Infotrack (Harris), and Centre for Independent Research (CIR) are some of the leading polling firms that have perfected and conducted polls in the run up to the 1992, 1997, 2002 and 2007 general elections. Other institutions that have conducted polls in past elections in Kenya include the Media Institute (MI), Institute of Education in Democracy (IED), Research International (RI), Public Universities Research Team (PURT), International Republican Institute (IRI), Afrobarometer Surveys of Michigan State University (MSU), among others.

According to Hornsby (2001), opinion polling on electoral, political, social and economic issues in Kenya has in the 45 years gone through at least six distinct phases during this period, beginning with early post-independence period when the British electoral norms were still dominant, through the single party era to the first polls of 1992, 1997, 2002 and the maturity stage exhibited by the 2007 pre-election polls.

Phase I: Early Pre-and Post-independence polls in Kenya (1960s-1968)

As a British colony, the early 1960s saw attempts to apply British statistical election polling techniques in Kenya with variable results. Bennet and Rosberg's book on the 1961 elections reported a sample survey conducted of a specified constituency, Central Nyanza, in which 261 voters were surveyed (Bennet and Rosberg, 1961).

Voters were selected based on location, age, occupation, among other factors. This gave a result reasonably similar in overall terms to the final result, but quite different in actual percentage, a consequence of a large percentage of voters (30% plus) who refused to state their preferences. It made clear that location was a key variable, stressing that:

> *... Argwings-Kodhek's major support was in the central and northern part of the constituency, for he had family ties in Gem and Alego locations... Odinga completely dominated his home location of Sakwa...Since the locational boundaries coincided fairly accurately with former tribal boundaries amongst the Luo and Baluhya, the survey clearly demonstrated the importance of parochial voting' (Bennet and Rosberg, 1961: 159-163).*[1]

The survey also revealed a relatively high level of awareness of individual candidates, while the knowledge of their party affiliation was poor. The candidates' policies and past services were cited as the most important factor influencing their voting preferences, with education and land problems the most commonly cited issues (Bennet and Rosberg, 1961).

There was also a Gallup-type of poll survey conducted in January 1961 in Central Nairobi seat, which gave Tom Mboya of Kenya African National Union (KANU) 67.5 per cent of the votes against Martin Shikuku's 25.6 per cent and Munyua Waiyaki's 7.0 per cent (Bennet and Rosberg, 1961). Mboya actually captured 90 per cent of the vote, again showing that while polls could predict the winner, they could not predict the margin.

This study could not determine whether any polls were conducted during the 1963 independence general elections, but Hornsby (2001) in his earlier review of opinion polls in Kenya admitted that there was at least one conducted by then.

Polls continued to be conducted in post-independence Kenya and after multiparty democracy. A company called Marco Surveys carried out several independently commissioned polls. The Yale-Yoper Collection of Foreign Polls records four opinion polls conducted in Kenya in the period 1964-1966, one by Marco Surveys in 1964, another by Market Research in 1965 and two others in 1966, one by INRA and the other by USIA.[2] The opinion polls were immediately halted, for reasons unknown but almost certainly related to the state's attitude to political competition once the Kenya People's Union (KPU) was founded in 1966 and political competition became more clearly 'issue based'. Kenyatta never had any intention of opening his government to fair competition for votes with the Odinga-led KPU, or in taking any particular account of opinion of democratic elections. The Kenyatta government from 1966 until his death in 1978 was a near-absolutist monarchy, and state repression and electoral fraud were extensively used in 1966-1969 to ensure that KPU was never a threat to the regime's survival.

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[1] Website-statlab.stat.yale.edu/SSDA/rpofor.html.

Phase II: Single Party State Polls in Kenya (1969-1991)

With the disbandment of KPU in 1969, Kenya became once more a *de facto* one party state. As a result, the most visible and 'entertaining' form of opinion polling—the horse race between parties and candidates—became otiose. There were still opportunities to seek the public's view on political and social issues, and to inquire on the popularity of particular candidates in specific constituencies, but these opportunities were rarely taken. In general, the Kenyan government during the single party era had little or no interest in the opinion of its citizens on any policy issue, bar those considered 'social' rather than political or economic (such as divorce law). As stated, for example, by Makali (1996), Kenya's political culture had historically been undemocratic, characterized by low political awareness and socialization, intense ethnic antagonism, low political morality, routine electoral fraud, lack of accountability, physical insecurity, corruption and apathy. This left little space for solicitation of public opinion in any form.

What opinion-canvassing there was took place informally through the network of politicians and civil servants who provided the transmission belt from the centre to the periphery of the country, and also fed back to the leadership the views and strength of views of local communities on key problems facing them (particularly those relating to agriculture). Indeed, general elections themselves were a form of opinion polling—a non-binding method of expressing the nation's views on the conduct of events.

The control of the media exercised by the government until the combination of democratization and the physical development of independent, mobile analysis, communications and transmission media (faxes, mobile phones, computers) in the early 1990s meant that they did not, in general, set an agenda divergent from that of the dominant coalition, and where they did so, it was with a specific objective and set of 'masters' in mind. As stated by Karuru (1996: 131), 'The control of the media by the government and the political party in power basically curtailed the effectiveness of the media to the extent that the media did not reflect the interest of the society.'

The 1969 and 1974 elections saw no polling of any sort, and books on politics in the 1970s and 1980s make no reference to opinion polls at all. In 1979, in the brief interregnum of openness after Moi's accession, the *Weekly Review* attempted to conduct a serious constituency by constituency write-in polls, but its publication so angered the new government that it temporarily cancelled all the advertising in the magazine (Ochieng, 1992). This may have related to the regime's plan to rig out a few of Moi's troublesome opponents. An attempt to do this again in 1983 when attitudes had hardened among KANU elites after the failed 1982 military coup attempt was immediately discarded.

There were some opinion polls conducted in Kenya in the 1970s, but they were never published in the press, as far as can be determined. In 1974, Dick Berg-Schlosser

carried out a survey on political participation among the seven largest ethnic groups (Berg, 1982: 401). There was also an opinion poll of sorts carried out in 1979 and in 1983 in Nakuru Town and Kangema Constituencies.[2]

An interesting but little publicized survey was conducted in 1973-1974 of constituents in Kenya to determine their attitude to the legislature in comparative terms and to determine how much constituents actually knew about the National Assembly and their Members of Parliament (MPs).[3] According to the poll, 4,128 constituents were sampled using the electoral districts as the first segmentation. Fourteen (14) districts were selected based on representation of urbanization, industrialization, geography and 'other cultural or ethnic characteristics', and 150-300 adults were then sampled in each district, randomly selected from the voter registration lists (Kim *et al.*, 1984).

Personal honesty and hard work were seen as key attributes of an MP, followed by the ability to understand the common man and a good education. Constituents believed very clearly that explaining the views of the people of the district and getting government projects for the district were the single most important jobs for the MP. The survey asked questions about what characteristics constituents felt MPs should have, and how well they matched against these qualities. The results showed that 75 per cent of those sampled believed that MPs were less than honest, and they were also criticized as unable to understand common people and for failing to work hard. Finally, the survey revealed a lower level than elsewhere of understanding of the history and the role of the National Assembly, but a higher level of awareness of the background and characteristics of individual MPs. The poll report noted that:

> *The evidence suggests that Kenyans know a great deal about what individual members of their legislature do, but very little about what the legislative institution does. This cognitive discrepancy appears to be due to Kenyans' preoccupation with the extraction of scarce government resources, a tendency characteristic of a subject culture, and their view of MPs as the principle agents of resource allocation (Kim et al., 1984).*

The comments could probably be applied with little variation 25 years later. The importance of resource allocation in an MPs role is, incidentally, one reason why the 'bandwagon effect' may be particularly influential in Kenya. A study by the Institute of Civic Education in Democracy (ICAD) with funding from USAID Kenya and Konrad Adenuer in 2002 also revealed similar findings on the role of legislators.

From the late 1970s until 1992, all work on voter opinion appears to have ceased. There is no indication that the Moi government was particularly concerned with understanding public opinion at any point in this period.

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[2] The Politics of Land, Elections and Democratic Performance in Kenya: A case study of Nakuru District', IDS Working Paper No. 512, Nairobi 1985 p.46.

[3] This was part of the larger USAID-funded programme.

Phase III: Polls in Kenya: Multiparty Democracy and the 1992 Pre-Elections Polls

The introduction of multiparty democracy in December 1991 and the subsequent 1992 general election witnessed a flowering of independent media. For the first time, the concept of a true published opinion poll came into being in Kenya. However, because of the partisan nature of much of the media of the time, and the lack of confidence in the ability of the media to present results without distortion or skew, the opinion polling that took place was consistently discredited by those groups who would normally support opinion polling and had most to benefit from it, the political parties. Almost all political actors believed that the various opinion polls prepared and presented prior to the 1992 general elections were deliberately distorted or manufactured to serve direct political ends, especially to over-estimate the support of one candidate and, therefore, to encourage voters to back the 'winning horse' (Throup and Hornsby, 1998).

Although opinion polls did, therefore, play a role in the elections, it was a minor one compared to that of the polling in European countries where opinion polls themselves are a key item of election news. In the United Kingdom 1992 elections, for example, in four weeks there were 50 opinion polls on voting intentions, almost all carried out by the five big opinion polling organizations, namely: Gallup, MORI, Harris, NOP and ICM and were funded by 14 different media organizations, 11 of which were newspapers (Butler and Kavanagh, 1992). In Kenya, by contrast, in 1992 there were no professional opinion pollsters at all and no newspaper willing to fund them. It was not until 2002 when professional pollsters began in earnest to focus on Kenya.

There were three types of pre-election polls in the run up to the 1992 general elections in Kenya. The first were the write-in polls conducted mainly by pro-opposition news magazines, particularly *Society* and *Finance*, which '...respectively predicted massive wins for their favoured candidates, Odinga and Matiba (Throup and Hornsby, 1998: 370).' These akin to 'push polls' were generally only responded to by politically active supporters of the particular candidates supported by the magazine, and were of no statistical validity at all.

The second type of poll was that conducted by a single independent body, the National Election Monitoring Unit (NEMU). NEMU produced two polls during the 1992 elections. The first, published in the *Daily Nation* of 7 December 1992, predicted correctly that Moi was the front runner and would receive 28.3 per cent of the vote, Kibaki 27.1 per cent, Matiba 15.0 per cent and Odinga 10.8 per cent with another 16.5 per cent undecided. A slightly higher percentage of people would have voted for KANU, the DP and FORD-Kenya as parties than for their presidential candidates, while Matiba was more popular than his party, a suggestion that was to prove right. The survey was stratified by age and sex, conducted by Kenyan volunteers from a sample of 812 households and 1,000 eligible voters from 44 (originally planned to be

Table 9.1: Prediction of presidential votes (NEMU, 1992)

Province	Moi	Kibaki	Matiba	Odinga	Others	Undecided
Central	1.8	43.5	40.6	0.0	1.2	12.9
Coast	48.6	16.2	2.7	9.5	1.4	21.6
Eastern	29.9	41.8	3.7	0.7	0.0	23.9
Nairobi	26.1	23.5	18.3	13.9	0.0	18.3
Nyanza	22.3	22.4	1.0	43.7	0.0	17.6
Rift Valley	35.3	26.5	9.8	10.8	0.0	17.6
Western	54.8	0.0	12.2	7.0	0.0	26.1
Total	28.3	27.1	15.0	10.8	0.3	18.5

Source: National Election Monitoring Unit, 1992

50) constituencies in 36 districts. North Eastern Province was excluded, and Nyanza and Rift Valley Provinces were incomplete.[4] The poll predicted presidential votes are shown in Table 9.1.

The NEMU polls were bitterly criticized by almost everyone. J. W. Onyango in *Society*, for example, dismissed them as statistically 'null and void'. He pointed out that the polls could not be, as had been claimed, statistically random since to do that required access to the registers, which were not yet available; that the sample size was unclear; and that NEMU had not stated when the interviews had been conducted; and finally the survey had to be biased because NEMU was politically partisan, favouring the DP.[5]

Some of these criticisms were unjustified as the survey had been carried out on the basis of the Rural Household Survey, which had just been completed. The legitimate concerns in this survey were that it was ethnically unrepresentative; it neglected North Eastern Province (the Somalis); it had a rural bias and the likelihood that the survey included a number of unregistered people and, therefore, did not correctly reflect the political opinion of registered voters.[6] Both NEMU's first and second poll also showed that Moi and Kibaki were running near neck and neck, a result which was wholly wrong and likely to represent systematic bias as the final vote revealed a more than 15 per cent gap between the two.

KANU also privately commissioned at least three polls. The best poll of the elections statistically was not officially an opinion poll at all but constituency by

[4] *Daily Nation*, 7 December, 1992, p.1, 3.

[5] *Society*, 21 December, 1992, p.1.

[6] The ESOMAR (European Society for Opinion Polling and Marketing Research) rules specify that opinion polling organizations must ensure that the population profile used is that of electors eligible to vote rather than all adults.

constituency predictions published by the *Weekly Review* of 24 December 1992, which gave Moi 33 per cent of the presidential vote, Kibaki 24 per cent, Matiba 21 per cent and Odinga 20 per cent. These figures were extraordinarily accurate within 200,000 votes of final figures for all candidates, except for **Kibaki**. They were accompanied by parliamentary predictions, which had 77 seats for KANU, plus 38 too close to call. Although the *Weekly Review* was emphatic that no poll had taken place, there are some indications that they were actually based on an official KANU study.[7] The Executive Club for Moi (a KANU-funded lobby group) also carried out a series of three polls, including one on Christmas eve, which revealed both the minority nature of KANU's support and yet its good chance of victory. This poll predicted a KANU parliamentary victory by 103 seats to 33 for FORD-Asili, 23 for FORD-Kenya and 19 for DP. This was also not far from the truth, though it underestimated the DP's chances. Part of KANU's campaign supported Matiba in preference to Kibaki in order to split the Central Province vote. The polls' presidential prediction were far less accurate, correctly estimating the results for Matiba and Odinga but massively inflating Moi's vote (more than doubling the final poll by adding about 2.5 million imaginary votes) and halving Kibaki's for the same reason. The five polls identified gave the results as shown in Table 9.2.[8]

Expressing this numerically, we can see the way ECM appears to have added about 2.5 million votes to Moi's totals, and halved Kibaki's.

The 1992 polls, therefore, correctly predicted the winner but little else. Most of the polls were methodologically flawed or deliberately falsified. They were primarily funded by political actors, not the media, and were not generally carried out by professional opinion polling firms. The results of these polls were way off, particularly the EMC poll 1, 2 and 3, which placed Moi on the lead with over 4 million votes while his actual was slightly below 2 million. One can, therefore, conclude that the results of such polls were either deliberately falsified, or applied wrong survey methodology.

What can be gleaned from these polls in political terms is that during the campaign, Matiba and Moi probably gained votes at the expense of Kibaki and to a lesser extent Odinga.

Phase IV: Opinion Polls and Surveys (1993-1997)

The first multiparty parliament of 1993-1997 and the gradual emergence of a norm of multiparty democracy were associated with a growing acceptance of the validity

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[7] 22 *Weekly Review*, 25 December 1992.

[8] See Throup and Hornsby (1998), p.371. The results of the second NEMU poll were unavailable.

[10] *Daily Nation*, 7 December 1992, p2.

[11] This was the official reported result, not the actual re-totalling of individual constituency votes, which differed by up to 100,000 votes due to accidental mis-tabulations or deliberate errors, increasing Moi's apparent vote by 110,000 or so and reducing Matiba's by 35,000.

Table 9.2: Summary of five polls conducted in 1992

Candidate	1st NEMU Poll[10]	ECM Poll 1	ECM Poll 2	ECM Poll 3	*Weekly Review* 24 December	Actual Presidential Results [11]
Moi	28.3%	4,257,940	4,302,653	4,322,399	1,955,100 (33%)	1,962,866 (36.3%)
Matiba	15.0%	1,141,097	1,171,966	1,175,498 (21%)	1,242,900 (26%)	1,404,266
Jaramogi Odinga	10.8%	983,478	932,806	917,703	1,196,700 (20%)	944,197 (17.5%)
Kibaki	27.1%	693,982	559,972	559,972	1,417,600 (24%)	1,050,617 (19.5%)
Undecided	18.5%	-	-	-	-	-

of the concept of independent media. Almost all of the most partisan opposition press journals went under, but the broadening of media access, the development of the electronic media (including the Internet) and the liberalization of the economy encouraged the growth of research organizations carrying out consumer surveys for advertising and product marketing purposes, which would later extend their interest into politics.[11] This period saw the birth of polling firms in Kenya, but with little activity from the pollsters.

There seems to have been no electoral polls carried out at all during the 1993-1997 period, in stark contrast to the total dependent on 'polls ratings' seen among some politicians in developed democracies. However, there was one survey on political issues. This was carried out in 1994 by CLARION, funded by DANIDA, on corruption in Kenya, which included, among other techniques, a survey of ordinary peoples' attitudes to corruption using face-to-face interviews and call-back questionnaires (Kibwana *et al.*, 1996). This was, however, based only on respondents in Nairobi, Makueni and Machakos and therefore, while interesting, could not claim to be a national survey or poll. According to the poll, 92.3 per cent of respondents felt that corruption was rife, and every sector of the country apart from the church and the private sector was seen as corrupt. About 92 per cent of the sample considered officers in government service as corrupt. A majority of respondents (59.9%) felt it was impossible to get a job without paying a bribe, and almost the same percentage

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[11] Consumer Insight offer opinion polling and consumer surveys, but there is no evidence of them ever having actually carried out an opinion poll in the run up to 1992 and 1997 elections. RIEAL (Research International) also offers opinion polling services, but Strategic PR seemed to be the dominant player in straight commercial market place in Kenya until their split, with one of the Directors joining the *Daily Nation* newspaper as a research manager.

(59.3%) was willing to bribe in order to get a job. This survey, while not directly considered politically influential, confirmed the fears of the European donors of the pervasive nature of corruption in Kenya. Causes were seen by ordinary people as ineffective laws (42.1%), the political leadership (25.6%), poverty (15.7%) and sin (10.7%). About three-quarters (75%) of the respondents felt that Kenyans were not equal before the law. It was also claimed in the same research that government attitude towards the media fuelled corruption, because of the government's tendency to repress efforts to expose corrupt practices and the regular disruption and harassment of the independent news media. Such wide concern about corruption certainly encouraged the growing strength of corruption as a political issue but, as the various scandals of the 1990s showed, few among the opposition were immune from the taint of corruption.

1997 Elections Polls

The 1997 elections saw more sophisticated use of polling than 1992, though the polls suffered from the usual political scepticism, methodological issues and allegations of downright fraud. Very few 'issues' were raised during the opinion polls, which were mainly 'horse races' without inquiring too deeply into the reasons for the voting patterns. This reflected the continued sectional and ethnic nature of the political appeals and voting process. Indeed, as the Finnish observation team suggested:

> The topics coming up in the campaigns were largely personalized and ethnically determined...the parties' economic agendas-if indeed they had ones—were invisible or were not debated in concrete terms. In addition, defections from one party to another (and often back again) were quite common...[12]

Barring deliberate fraud, the pollsters were generally accurate in predicting the winner–Moi was consistently 10 points or more clear in polls, as he was in the final election. Kibaki's vote, however, was consistently under-estimated.

The first opinion poll of 1997 was never published. This was conducted by **Strategic PR and funded by the Finnish Embassy over the period 9-15 August.**[13] This poll used a massive sample size of 20,000 voters, sampled based on 1992 registration figures by province. All 63 districts were sampled, and an unusually detailed analysis done. Within this, 139 constituencies were then sampled using both random and 'purposeful' measures. A structured questionnaire was then used to ascertain voting intentions and to investigate some reasons behind voting intentions. Age, gender, education and religion responses were analyzed. The respondents were 65 per cent male and 35 per cent female, a dramatic skew caused primarily by women's

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[12] Elections in Kenya, 1997, from the view point of Human Rights and Democracy, Report of the Finnish Human Rights Monitoring and Election Observation Team, 23 February 1998.

[13] Pre-election opinion poll, 9-15 August 1997, conducted by Strategic Public Relations Limited.

reluctance to express their views on the presence of their husbands. The survey also massively over-estimated likely turnout, as 98 per cent of those sampled said they were going to vote, against an actual turnout of just under 70 per cent. The results were as shown in Table 9.3.

Table 9.3: Strategic/Finnish poll results, August 1997

Province	Moi	Kibaki	Matiba	Wamalwa	Ngilu	Raila	Others
Nairobi	21.4	2.4	14.7	8.0	19.3	18.6	5.5
Central	15.0	35.6	38.1	1.0	6.1	2.7	1.5
Eastern	40.3	15.9	8.8	7.8	23.3	4.9	4.1
N. Eastern	66.8	12.1	6.4	7.4	4.0	3.2	0.0
Coast	62.6	7.5	4.0	4.3	12.6	5.8	3.7
R. Valley	63.7	9.0	10.6	4.4	2.7	6.1	3.5
Western	34.5	1.9	2.3	43.3	3.1	11.9	3.0
Nyanza	23.1	2.2	2.1	4.9	5.0	55.4	7.3
Total	37.2	11.6	11.0	8.1	8.7	15.0	3.9

The poll massively underestimated Kibaki's final vote, showing 11 per cent of the vote to Matiba, almost all of which ended up with Kibaki when Matiba did not stand. Inside their demographic segmentation, Moi was much more popular among older and less educated voters, with Raila and Ngilu more popular among the young. Wamalwa and Ngilu were the 'intellectuals' candidates, while Raila was most popular among those with secondary education but who had not gone to university. Desirable qualities for a president were also sampled, showing that voters wished to elect religious, courageous, well-educated, accountable and nationalist politicians, and felt that militancy, being female, and being of the same tribe as the candidate were not criteria they judged important. Their actual voting pattern was to prove rather different.

The Finnish poll also made parliamentary predictions for 144 seats and civic predictions, but being incomplete and conducted several months before the candidates were finally known, their utility was limited.

The Institute of Education in Democracy (IED) as in 1992 carried out two pre-election polls during the run up to the 1997 elections. The first was published as an advertisement in the *Daily Nation* of 5 December 1997. The survey was conducted between 29 and 30 November 1997 and polled in 42 of 210 constituencies, stratifying constituencies by province. Constituencies were distributed between rural, semi-rural and urban areas.

The poll correctly showed Moi was set to win, with less (less accurately) 25 per cent or more of the vote in 7 or 8 provinces. According to this poll, 6 per cent of those interviewed identified Matiba as their preferred candidate, even though he was not standing, and 11 per cent reported themselves undecided, a very high figure

indicating that Matiba national constituency had not been captured.[14] Kibaki was more popular among men while Moi was more popular among older people, and the opposition among the youth. The importance of the rural/urban gap and of education as a political predictor was also noted. Moi was more popular among rural voters with little formal education, and Raila was also popular among those with only primary education. Kibaki, and particularly Ngilu were more popular among the highly educated. However, presidential candidates were still expected (correctly) to draw most of their support from home ethnic groups.[15] The popularity of others (including Martin Shikuku) was negligible.

Table 9.4: IED poll results (%), November 1997

Province	Kibaki	Matiba	Moi	Wamalwa	Ngilu	Raila
Nairobi	22.2	1.7	27.4	7.3	18.8	1.7
Central	62.9	3.3	9.0	1.5	3.3	0.3
Eastern	10.6	0.4	33.4	0.6	45.9	1.5
N. Eastern	11.6	12.8	40.0	0.0	3.5	0.0
Coast	2.2	0.0	71.6	3.5	8.0	4.5
R. Valley	6.3	1.4	69.6	5.4	5.8	2.4
Western	0.0	0.0	36.7	47.9	0.5	0.7
Nyanza	7.1	0.0	27.6	1.2	4.5	55.1
Total	13.7	6.0	40.8	9.2	12.2	11.1

This poll, as usual, received critical response from political circles. While it was quietly commended by some, it led to a bitter reaction from Raila Odinga, who accused IED of being used by KANU.

> *Even if Moi gets 10 per cent in Nairobi, he must have rigged the elections! Who is behind IED? Kenyans must be told! It is lying to Kenyans and laying the foundation for KANU's rigging strategy.[16]*

Polls consistently revealed that some politicians were either self-deluding or knowing their position was weak, desperately 'covering' to ensure their vote did not haemorrhage further to either opposition candidates.

The second poll was carried out on 20 December 1997 and again published as an advertisement in the *Daily Nation* of 25 December. IED again polled 42 constituencies, which were then randomly sampled, selecting 1,500 households nationally, 36 per constituency.

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[14] 23 per cent of Central Province respondents had not decided on whom to vote for and 20.1 per cent in Nairobi.

[15] The Kisii vote for Kibaki was also presaged in the poll, which predicted that 37 per cent of the Kisii would vote for Kibaki. He actually received 48 per cent.

[16] Raila Odinga, quoted in *Sunday Nation*, 28 December 1997, p.2.

The results of this poll were similar to that of the first poll. Moi's lead fell to 40.2 per cent from 40.8 per cent and he was predicted to take 25 per cent of the vote only in the five provinces he actually did manage to achieve that. **Kibaki's support rose massively from 13.7 per cent to 20.8 per cent—the pro-Matiba floating vote seemed to move to Kibaki and the educated and urban votes. Moi was more popular among older rural voters.**[17]

As can be seen from the final results, the IED poll was extremely accurate for Moi and Wamalwa. Where it was incorrect was its over-estimating Ngilu's and Odinga's performance and under-estimating of Kibaki's. In fact, this accurately represented the swing in the last week of campaign when a number of pro-Ngilu voters started to drift back to DP and Kibaki completed his capture of the undecided Gikuyu vote.[18]

Table 9.5: IED poll results (%), December 1997

Province	Kibaki	Matiba	Moi	Wamalwa		Ngilu	Odinga	Others Undecided
Nairobi	32.1	0.0	20.2	11.5	17.9	11.9	0.0	6.3
Central	74.9	0.0	12.3	0.3	7.3	0.8	2.5	1.4
Eastern	11.3	0.0	30.1	0.5	53.7	0.0	0.2	4.2
N. Eastern	4.3	0.0	84.8	4.3	6.5	0.0	0.0	0.0
Coast	5.7	0.4	71.8	0.9	12.8	6.6	0.4	1.3
R. Valley	15.1	0.0	71.9	4.4	1.1	2.7	2.5	2.4
Western	0.0	0.0	40.9	53.8	0.0	0.0	2.1	3.1
Nyanza	9.4	0.0	24.8	1.4	2.1	60.0	0.4	1.8
Rural	21.6	0.0	43.6	9.1	9.1	12.4	1.4	2.5
Urban	18.5	0.2	30.2	6.4	6.4	17.0	1.1	1.8
Total	20.8	0.0	40.2	8.4	13.0	13.5	1.3	2.7

In the *Standard* of 28 December 1997, an organization calling itself the Public Universities Research Team (PURT) predicted a massive Moi win with 49.24 per cent, Kibaki with 16.17 per cent, Wamalwa 12.65 per cent, Raila 10.50 per cent and Ngilu 9.28 per cent. This was produced in a paid advertisement on *Sunday Nation*, the day before the elections. The advertisement claimed it conducted polls in all the 210 constituencies between 12 and 23 December, with 200 respondents randomly sampled in each constituency.[19] This would imply more than 40,000 voters were sampled, the largest poll in the history of Kenya. It was almost certainly untrue. The report did not fully explain the sampling method, nor did it list the undecided votes.

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[17] All from advert IED made in the *Daily Nation*, 25 December 1997.

[18] The reason for the Odinga difference of 2.6 per cent is less clear.

[19] *East African Standard*, 28 December 1997, pp.1-2.

This poll falsely suggested that Moi's vote was 25 per cent larger than it actually proved to be, and Kibaki's vote was cut down to 16 per cent. It is likely that this was again 'bandwagonning', an example as in 1992 of KANU's team advertising their likelihood of victory as a means of demoralizing or scaring those who were wavering into voting for the 'winning team'.

Table 9.6: PURT Results 12-23 December 1997[21]

Province	KANU	DP	NDP	SDP	F-Kenya	F-Asili
Nairobi	24.16	28.80	10.92	15.64	8.92	1.11
Central	19.08	66.43	0.60	8.63	0.21	0.36
Eastern	37.36	24.12	2.66	27.02	3.76	1.27
N. Eastern	49.57	31.51	8.16	4.44	4.46	1.86
Coast	67.58	11.18	3.64	14.51	1.35	0.00
R. Valley	65.98	17.18	3.05	5.25	6.41	0.72
Western	40.12	2.35	2.52	3.02	47.8	3.97
Nyanza	38.31	5.98	41.60	9.30	3.27	0.54

There were at least four polls that took place during the campaign, though information on them is sketchy. On 28 December 1997, the *Kenya Times* reported yet another opinion poll, which predicted 'landslide victory for KANU'. This was reported without any information about its origin, authors or methodology, or even the name of the pollsters. It could well have been an internal KANU poll. This gave Moi 42.1 per cent, Kibaki 20.1 per cent, Ngilu 19.1 per cent, Odinga 10.0 per cent, Wamalwa 6.2 per cent and 2.5 per cent for others. It also predicted 119 seats for KANU, DP 36, NDP 19, FORD-Kenya 13, Safina 9, SDP 8, FORD-People 5, FORD-Asili and KSC 1 each.[21] It was reasonably accurate, though it again over-estimated SDP's chances and under-estimated Kibaki's. In parliamentary terms, it overstated KANU's chances, but was pretty close for the DP and NDP, and under-estimated the impact of SDP in Ukambani and Central Kenya.

The *Kenya Times* claimed in passing that in December, Safina had conducted a poll predicting a Kibaki win with 1,871,030 (30.0%), Ngilu 944,659 (15.1%) and Wamalwa 897,248 (14.4%) and Moi and Odinga unspecified, but presumably sharing the remaining 40.5 per cent. Though too incomplete to use, this was the only 'poll' of the whole campaign to correctly estimate Kibaki's true performance (30.0%).

There were two other polls commissioned by the *Nation* during 1997 on likely election outcomes. These were a pre-election survey on constitutional reform in

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[21] The PURT report as quoted in the *Standard* does not specify whether it is referring to presidential candidates or parliamentary.

[21] *Kenya Times*, 28 December 1997, pp.1-2.

September and a pre-election opinion poll conducted in December 1997, both conducted by the newly-founded Strategic PR and Research Ltd. No publications data on the latter could be found.

Finally, there was mention of a Gallup poll conducted at the end of the 1997 campaign that suggested that Moi would lose to either Kibaki or Ngilu in a run-off, but this could not be traced in any publication.

The lessons learnt from 1997 were that polls were reasonably accurate predictors, but were still politically sensitive, subject to misuse and abuse. Overall, they correctly predicted Moi's victory, but the margin was narrower than expected mainly because of a shift from Ngilu to Kibaki in the last two weeks of the campaigns.

Opinion Polls Since 2000

In November 2000, the IRI commissioned a poll conducted by Strategic PR and an American pollster, looking at voter opinions on the direction Kenya was heading, and the issues it was facing. The poll sampled 3,000 voters between 30 November and 3 December using province as the primary sampling frame, then representative districts, with randomly selected constituencies, random points, households and individuals.[22] Respondents were interviewed at home in their preferred language. This revealed that voters were very dissatisfied with the direction the country was heading, with poor economic conditions a primary driver of this dissatisfaction (74% of the survey said the economy was 'poor' or 'very poor'). Unemployment, poverty and food security were cited as the issues most concerning to them. There was a lot of dissatisfaction with the party system, with political parties blamed for increasing tribalism (60% agreed with this statement), and nearly one third of voters wished to return to a single party system. The majority believed, however, that multipartyism was necessary to provide diversity of viewpoints and a choice of leadership. Awareness of and support for constitutional reforms was very strong. The results indicated that no group actively involved in the reform process could claim an unqualified mandate. As in the earlier surveys, corruption was considered a very large problem. Almost everyone felt that corruption in the police, national government leaders, the provincial administration, the judiciary and the civil service was common. Two-thirds thought corruption in the electoral commission was common.

This survey also investigated some of the issues influencing voter behaviour. Nearly two-thirds said the most important factor in deciding for whom they would vote was the candidates' personality (69%), political party (23%), and ethnicity (8%). This result was quite surprising, and required further investigation, as 67 per cent of voters also said they had no party affiliation. This was one of the few surveys published that gave full demographic information on its survey sample, including age, education (92% with some), gender (56% male) but also religion (11% Muslims) and

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[22] Fact Sheet, IRI Kenya political survey results, 14 December 2000.

ethnic group. Their selection was clearly designed to create a representative view of ethnicity, at least at the national level, as their percentages were not far from those of the nation as a whole.

This IRI-funded and organized poll was updated with a second survey, conducted on a similar basis, in May 2001, following the ground-breaking opinion-polling workshop in Nairobi.[23] Strategic PR&R again conducted the poll using 2,968 voters and asking many key questions about people's attitude to key political issues of the period. It revealed widespread pessimism about the state of the country, the economy and prospects for growth and change, with 61 per cent of voters believing the country was heading in the wrong direction (a slight improvement from 75 per cent in December 2000), especially in Central and Coast provinces, and 68 per cent of voters dissatisfied with the way the country was being governed. Governing institutions were widely criticized, with only parliament (the populist arm) being ranked as having performed 'well' by a majority of voters (54%) and the majority of voters rating the presidency and the judiciary as having performed poorly. Muslims were far more positively inclined to the presidency than Christians.

The majority of voters in every province and 65 per cent of voters overall rated KANU has having 'done poorly', with Western Province being the most positively inclined, a surprising result. Men were more critical of KANU than women and the young were more critical of the ruling party than the old.[24] The majority (53%) of those surveyed said that opposition parties had done poorly as well, with the most negative views coming from the KANU-dominated Coast, Rift Valley and North Eastern provinces.

The poor state of the economy was the major factor affecting voter attitudes. The poll segmented and reported demographic data and variances with, for example, young voters more dissatisfied with the state of the economy than older people, Christians more dissatisfied than Muslims, those in formal employment more dissatisfied than the unemployed, and men more dissatisfied than women. Additional questions on a possible Truth and Reconciliation Commission revealed that 75 per cent of Kenyans favoured such a commission, and most did not believe a blanket amnesty for economic crimes as planned by the government was appropriate. Questions on national elections revealed that election fraud and violence and intimidation were major issues by voters. The most frequently cited issue in deciding how to vote was 'corruption', followed by 'unemployment' and 'poverty and food security' all likely to be anti-KANU votes. However, corruption was only seen as a major problem at the national level, not at all locally, reflecting an ambivalence voters feeling towards what was classed as 'corruption' at one level but as 'reaping the fruits of Uhuru' or 'looking after those who supported you' at the local level.

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[23] Confidential Memorandum from B. Cullo to IRI, 13 June 2001.

[24] Exactly the same relationship was found, for example, in the 2000 Senegal election opinion polls. See 'Democratic reform, transition and consolidation: Evidence from Senegal's 2000 presidential election', Vengroff R., Magala M., in *JMAS 39,* 1 (2001) pp 145-146.

Finally, there was strong support for decentralization and devolution but less support for a full federal (*Majimbo*) system of government, with only Coast and Rift Valley (the original KADU home areas) having a narrow majority favouring *Majimbo*. In addition to these questions, there was an unpublished poll on voting intentions 'if a general election were to be held tomorrow', which gave KANU a 34 per cent showing, down from its actual poll of 40 per cent in 1997.

Finally, a poll was conducted in February 2001 dubbed 'State of the Nation' poll: Report on the baseline survey for civil awareness'. This was carried out in an alliance between a South African polling firm, Strategy and Tactics, and Research International in Kenya, a firm more known for its commercial consumer surveys. This surveyed more than 8,000 voters, with at least 500 per province. The results of the survey were not made public or published in the mainstream media.

Since 2000, financial support for opinion polling by the Nation Media Group has tapered off. The other main newspaper, the *East African Standard*, owned by figures closely allied to the then ruling party, consistently declined to participate in any opinion polling, since polls favouring the opposition were unacceptable to its owners, and polls favourable to the government unacceptable to its readers. The electronic and broadcast media showed no interest in commissioning polls.

Phase V: 2002 Pre-election Opinion Polls

The 2002 general elections in Kenya saw an increased number of polling introduced to the political scene compared to those conducted in 1992 and 1997. A number of these polls were conducted by Consumer Insight and Strategic PR and Research, with funding from International Republican Institute (IRI), Nation Media Group and the Media Institute (MI), which had won a grant on governance and polling from USAID-Kenya. In total, ten pre-election polls were conducted in the run-up to 2002 elections.

Trend Analysis of the Pre-Election Polls (October 2001-November 2002)

A poll dubbed the Kenya Constitutional Review Poll published in the local press on 25 October 2001 was conducted between 7 and 11 October 2001 and commissioned by the International Republican Institute (IRI). It was the first among the ten pre-election polls and it revealed that 71.8 per cent of those polled wanted a new constitution before the end of 2002 to pave way for the general elections under a new constitution.

In response to what party they were likely to vote for in the 2002 general elections, 29.6 per cent of the respondents indicated they were likely to vote for KANU. DP came second with 22.8 per cent while another 12.2 per cent indicated they would

vote for NDP, 6 per cent for SDP, 5.9 per cent for FORD-People, 5.3 per cent for FORD-Kenya, 4 per cent for NPK and 2.9 per cent for FORD-Asili.

Table 9.7: Strategic Polls: Party preference by province, October 2001

Party	Nairobi	Nyanza	Central	Coast	N. Eastern	Eastern	R. Valley	Western	Total
SDP	9.4	6.3	6.0	3.8	2.8	8.1	5.6	3.2	6.0
DP	15.4	10.1	54.3	10.1	30.6	35.4	19.7	8.6	22.8
KANU	26.8	18.0	16.3	46.2	27.8	23.9	39.2	41.7	29.6
NDP	20.8	45.8	1.4	8.2	13.9	2.2	6.2	5.9	12.2
F-Asili	0.7	0.4	8.2	0.6	-	1.9	4.5	1.1	2.9
F-Kenya	4.0	3.9	2.1	0.6	13.9	1.6	3.9	25.7	5.3
NPK	6.7	-	1.8	5.1	8.3	13.7	1.9	_	4.0
Shirikisho	0.7	-	-	7.0	-	0.3	0.2	0.5	0.8

Table 9.8: Strategic Polls: Party support (%) by province, December 2001

Party	Nairobi	Central	Coast	N. Eastern	Eastern	R. Valley	Western	Nyanza	Total
SDP	3.3	3.4	2.0	3.5	6.1	2.6	0.3	6.3	3.6
DP	13.8	43.3	7.1	17.5	26.6	19.1	3.9	1.8	18.2
KANU	30.1	20.4	50.4	52.6	28.9	37.2	39.2	27.5	32.9
NDP	19.7	2.9	5.2	17.5	3.3	7.8	6.2	35.0	11.2
F-Asili	1.3	0.7	2.4	0.0	1.8	1.4	10.7	0.2	2.3
F-People	0.0	1.6	0.4	0.0	0.4	3.5	0.6	12.5	3.1
F-Kenya	5.4	1.6	0.8	5.3	0.2	3.5	29.4	4.0	5.6
None	22.6	24.2	27.4	0.0	20.1	22.6	8.0	11.8	19.1
F-Asili	1.3	0.7	2.4	0.0	1.8	1.4	10.7	0.2	3.1
NPK	0.4	0.7	0.8	0.0	9.4	0.1	0.3	0.0	1.8
Shirikisho	0.0	0.0	2.8	0.0	0.2	0.0	0.0	0.0	0.3

In the presidential race, from a field of 13 potential presidential candidates, Mwai Kibaki held a tenuous lead with 21.1 per cent followed by Raila Odinga who came second with 15.8 per cent of the votes (Table 8.9). Of the four potential KANU candidates, Musalia Mudavadi was ahead with 12.2 per cent against 6.3 per cent and

6.2 per cent for Uhuru Kenyatta and George Saitoti, respectively. Charity Ngilu and Simeon Nyachae scored 8.1 per cent and 6.6 per cent, respectively. Wamalwa Kijana scored 4.8 per cent and James Orengo 3.6 per cent of the votes. It is important to note, however, that Kibaki was the only DP candidate tested in that survey versus KANU's four (4) potential candidates who garnered a total of 26.1 per cent against Kibaki's 21.1 per cent, respectively.

This poll, as usual, received criticism from political leaders. While some parties such as the DP and NDP endorsed the poll and said it generally reflected the feelings of majority of Kenyans, it led to a bitter reaction from the then KANU Secretary General, Joseph Kamotho, a day after the report was launched (*East African Standard*, 26 October 2001). Kamotho said IRI was not competent to carry out the survey because it lacked necessary facilities to gauge the views of Kenyans. He asked 'What competence do IRI and SPRR have to conduct such an opinion poll?'

The second poll that was never released to the local press and dubbed *'The Kenya National Poll on Electoral Process'* was carried out between 30 November and 5 December 2001. It was commissioned by IRI and the objectives were to monitor and evaluate the Electoral Commission of Kenya (ECK) and office of the Registrar of Persons on voter registration exercise, identify problems encountered in acquiring Identity Cards (IDs) and investigate electoral malpractices and related violence, among other factors. It also asked pre-election questions on party support. The poll indicated that KANU was the strongest party (32.9%) followed by DP (18.2%). In third place was the defunct National Development Party (NDP) with 11.2 per cent. Others were FORD-Kenya (5.6%), SDP (3.6%), FORD-People (3.1%), FORD-Asili (2.3%), National Party of Kenya-NPK (1.8%), PICK (1.8%), Safina (0.4%), Shirikisho (0.3%), Saba Saba Asili (0.2%), Labour Party (0.1%), KNC (0.1%), and KENDA (0%).

2002 Pre-election Polls

The year 2002 witnessed major political realignments never seen in the history of Kenya politics. On 18 March 2002, Raila Odinga disbanded the NDP to merge with the ruling party KANU and form what was then called New KANU. Raila, who became the New KANU's Secretary General, reported on that day that the merger between KANU and NDP had created a strong political force that would never be shaken. Indeed, what emerged was a strong political party such that the opposition was left with two choices: of uniting or be made increasingly irrelevant in the 2002 elections. Three weeks after the merger between KANU and NDP, IRI commissioned Strategic PR to conduct a third poll dubbed 'The Kenya National Elections: Presidency and Constitutional Review Poll'. It was conducted between 7 and 10 April 2002 and again the findings were never published or released to the press for public consumption. This poll indicated that KANU had benefited immensely from its marriage to Raila's NDP. The party then adopted a new tag 'New KANU' which, according to the IRI

April poll, enjoyed overwhelming support (53.8%) in the country and was bound to win elections without much opposition from the other 46 political parties. The performance of other parties in this poll was as follows: DP (17.2%), FORD-People (10.1%), FORD-Kenya (4.3%), SDP (3.8%), Saba Saba Asili (2.1%), NPK (1.9%), Shirikisho (1.3%), Safina (0.8%), and FORD-Asili (0.6%).

Table 9.9: Strategic Polls:Presidential candidate's preference by province

Candidate	Nairobi	Coast	Western	Eastern	R. Valley	Nyanza	Central	N. Eastern	Total
Ngilu	10.8	8.9	4.3	20.1	5.4	1.1	6.3	8.6	8.1
Raila	25.0	15.3	7.5	1.9	10.6	52.1	4.9	17.1	15.8
Kibaki	12.8	12.1	7.0	33.1	18.1	1.8	50.4	20.0	21.1
Nyachae	2.0	1.9	1.6	2.8	6.5	24.8	1.4	5.7	6.6
Wamalwa	3.4	1.3	26.2	0.9	4.1	2.8	1.1	5.7	4.8
Saitoti	0.7	3.2	4.8	10.8	9.7	1.4	5.6	2.9	6.2
Orengo	7.4	2.5	0.5	5.6	2.2	5.0	3.2	-	3.6
Musyoka	2.0	1.3	1.1	5.6	1.1	-	0.7	-	0.7
Mudavadi	14.2	21.0	36.9	5.0	15.3	4.6	1.1	8.6	12.2
Matiba	2.7	-	-	0.6	4.1	-	9.5	5.7	2.9
Nyong'o	-	-	-	0.3	0.2	2.1	0.7	-	0.5
Mugo	-	-	1.6	0.3	1.5	-	0.4	-	0.6
Uhuru	5.4	5.7	1.1	6.8	6.7	2.8	12.3	11.4	6.3
Others	13.5	26.7	7.5	6.2	14.5	0.7	2.1	11.4	9.5
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Note: Bolding indicates 25% was achieved by the candidate in the province

It is worth noting that New KANU enjoyed majority support in Nairobi (68.1%) and tied with DP in Central Province, both at 38 per cent.

The respondents were also asked to name who they would vote for if elections were held then. Those likely to vote preferred: Mwai Kibaki (17.4%), Raila Odinga (14.9%), Musalia Mudavadi (12.9%), Uhuru Kenyatta (11.2%), Simeon Nyachae (8.8%), George Saitoti (7.9%), Charity Ngilu (4.7%), Kijana Wamalwa (4.1%), James Orengo (3.8%), Katana Ngala (3.0%), and Kalonzo Musyoka (2.6%).

The fourth poll commissioned by the Media Institute (MI) brought together all media houses (Joint Media Polling Group). Prior to the actual polling, MI organized a training for the senior media editors and reporters on opinion polling reporting. The training was conducted in Machakos and facilitated by university lecturers and

Strategic PR pollsters. The result of this poll was published in all the local print and electronic media, except the *Daily Nation* and Nation TV, for unknown reasons.

Figure 9.1: Party support (%), December 2001
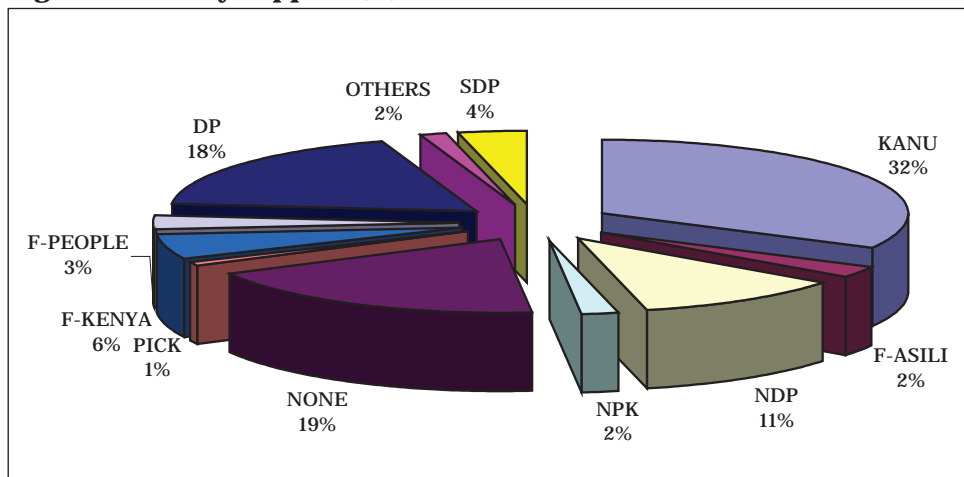
The Media Institute poll indicated that 55.8 per cent of those who were likely to vote reported that they would support New KANU compared to 28.6 per cent who would support the National Alliance of Kenya (NAK), 7.8 per cent FORD-People and 2.4 per cent SDP.

Table 9.10: Strategic Polls: Party support by province, 2002 (%)

Party	Nairobi	Nyanza	R. Valley	Eastern	Western	N. Eastern	Coast	Central	Total
New KANU	68.1	59.6	59.9	43.9	38.1	61.8	57.6	38.0	53.8
DP	10.1	2.9	21.7	23.7	12.4	17.6	12.7	38.0	17.2
F-People	5.0	22.1	9.6	6.7	7.1	14.7	5.1	3.3	10.1
F-Kenya	1.7	1.1	1.1	2.0	35.4	0.0	2.5	2.5	4.3
SDP	5.9	8.8	2.5	2.0	0.0	0.0	2.5	4.1	3.8
NPK	4.2	0.0	1.6	4.3	0.9	2.9	0.8	0.8	1.9

The poll further revealed that 53.5 per cent of those who would support NAK were supporting the candidature of Mwai Kibaki as the most suitable candidate for NAK Party followed by 20.4 per cent for Kijana Wamalwa and 13.5 per cent for Charity Ngilu. 92.7 per cent of those who would support FORD-People reported

that Simeon Nyachae was the most suitable candidate for the party followed by Paul Muite (2.8%). 45.6 per cent of those who supported SDP fronted for James Orengo as the most suitable candidate for SDP followed by Charity Ngilu with 14.0 per cent. 29.6 per cent of those who were supporting New KANU said Uhuru Kenyatta was the most suitable candidate for New-KANU followed by Raila Odinga with 27.3 per cent, Musalia Mudavadi 18.9 per cent, George Saitoti with 14.0 per cent, Kalonzo Musyoka 4.8 per cent, and Katana Ngala 2.8 per cent.

Figure 9.2: Support for presidential candidate, April 2002
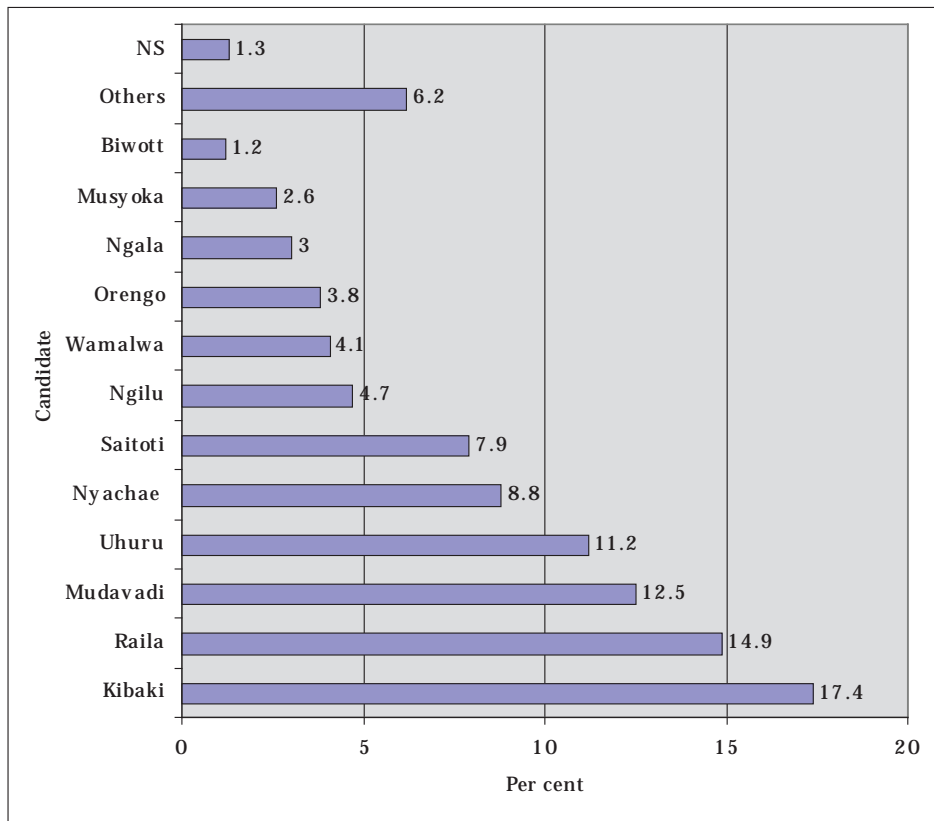
Moi's Choice and its Influence on KANU's Loss in 2002

The struggles over the Moi succession contributed significantly to the erosion of the ruling party's internal cohesion and, hence, its eventual electoral clout. The merger between the National Development Party (NDP), led by Raila Odinga, in March 2002 played a critical role in this disintegration, as it effectively marginalized several of Moi's most loyal lieutenants. Apart from replacing the party's long-serving Secretary General Joseph Kamotho with Raila, the merger created four vice-chair positions, bringing in prominent Cabinet ministers to fill the posts, but excluding the lone incumbent, Vice President George Saitoti. In retrospect, these changes were seen as part of Moi's private plan to control the party's presidential nomination process. It set

the stage for the unintended destabilization of the ruling party from within. Odinga's ascent appeared to have convinced his supporters that he was destined to receive Moi's blessing as KANU's presidential candidate. Moi's surprise announcement in July, while on a campaign tour in Mt Elgon, that the youthful Kenyatta was his personal choice to succeed him effectively splintered the ruling party.

Table 9.11: Cross analysis of candidate preference (%) for presidency by province, April 2002 (Strategic polls)

	Nairobi	Nyanza	R. Valley	Eastern	Western	N. Eastern	Coast	Central	Total
Kibaki	7.9	3.9	18.1	27.8	10.1	14.3	10.4	34.2	17.4
Raila	23.1	45.1	16.9	2.4	3.4	5.4	8.0	3.9	14.9
Mudavadi	24.0	6.1	14.7	4.4	36.3	19.6	10.8	2.7	12.9
Uhuru	4.8	5.2	10.7	16.2	4.0	5.4	11.6	22.4	11.2
Nyachae	3.5	22.7	7.8	6.1	4.6	21.4	4.8	5.5	8.8
Saitoti	7.4	2.5	8.8	11.4	6.7	1.8	6.8	10.7	7.9
Ngilu	5.2	2.7	4.9	8.3	2.7	3.6	3.2	4.8	4.7
Wamalwa	1.7	1.1	2.3	1.3	22.6	0.0	3.6	0.9	4.1
Orengo	4.4	5.4	2.9	4.4	3.0	3.6	5.2	2.5	3.8
Ngala	1.7		1.7	0.7	1.5	3.6	22.9	0.7	3.0
Musyoka	1.3	0.5	1.6	9.2	0.6	5.4	1.6	2.1	2.6
Biwott	1.3	0.2	3.2	0.0	0.6	8.9	0.0	0.2	1.2
Others	12.2	4.3	5.3	4.2	3.0	7.1	10.4	8.2	6.2
Not Stated	1.3	0.2	1.0	3.7	0.9		0.4	1.1	1.3
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

The above figures compare well with the August poll, which indicated that 55.8 per cent of those polled reported that they would support KANU, compared to 28.6 per cent who supported the National Alliance of Kenya (NAK), 7.8 per cent FORD-People and 2.4 per cent SDP. The KANU total votes in September-October poll was 58.9 per cent.

Analysis of the poll shows that 33.0 per cent of those who supported KANU (Rainbow Alliance and candidate Uhuru) reported that George Saitoti was the favourite candidate for KANU followed by 32.8 per cent for Uhuru Kenyatta, Raila Odinga (21.8%), Kalonzo Musyoka (10.0%) and Moody Awori (2.5%).

When asked to name their most preferred presidential candidate irrespective of party affiliation of the candidate, Mwai Kibaki was the favourite scoring 25.6 per cent and George Saitoti was second with 22.7 per cent. Others were Uhuru Kenyatta

(17.6%), Raila Odinga (16.6%), Simeon Nyachae (8.5%), Kalonzo Musyoka (5.4%), James Orengo (1.3%), Moody Awori (1.1%), Martin Shikuku (0.7%) and Joe Donde (0.5%). A trend analysis of the Media Institute and IRI polls to determine how Kibaki amassed 25.6 per cent is important at this stage. The poll commissioned by the Media Institute in August 2002 had indicated that Uhuru was the leading presidential contender with 17.1 per cent and Kibaki was trailing him with 14.9 per cent. In October, after Kibaki had formed an alliance with Wamalwa Kijana and Charity Ngilu under the National Alliance Party of Kenya (NAK), his support went up from 14.9 per cent to 25.6 per cent and Uhuru's support remained constant at 17.6 per cent. In the August poll, Wamalwa scored 5.6% and Ngilu 5.2% and when these figures are added to Kibaki's August score of 14.9 per cent, he gets 25.7 per cent, which translates to his score in the October 2002 polls.

Figure 9.3: First presidential preference among voters (Media Institute poll, August 2002)

%	17.1	14.9	14.8	12.8	11.7	7.1	5.6	5.2	3.8	2.1	2.1	1.5	0.7
Candidate	Uhuru	Kibaki	Raila	Saitoti	Mudavadi	Nyachae	Wamalwa	Ngilu	Kalonzo	Ngala	Orengo	Matiba	Nyagah
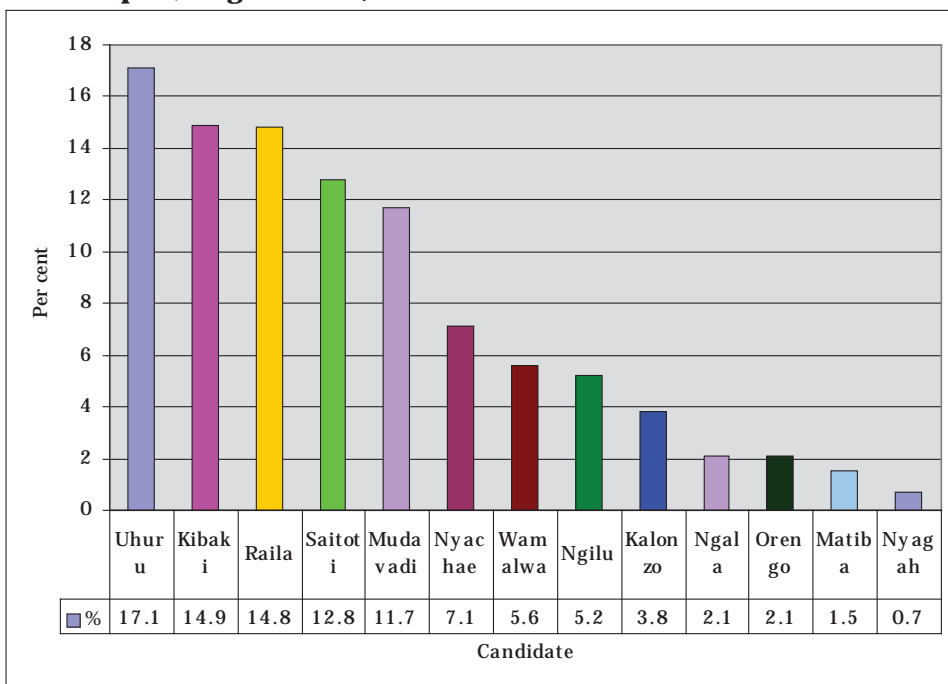
The fifth poll that was commissioned by the Media Institute was conducted between 28 September and 1 October and the results published in some of the local dailies on 7 October 2002. This was a week to the Kasarani II where Uhuru was to be endorsed as the KANU nominee. The results of the Media Institute October 2002 poll could have served as a warning to KANU and Moi over the 2002 elections. The results were the most interesting and gave the relatively accurate forecast of the 2002 general election results. The poll indicated that even though New KANU was then the strongest political party in Kenya with popularity at 58.9 per cent, the Rainbow Alliance (a splinter from KANU) led by the likes of Raila, Saitoti, Kalonzo

and Awori was the most popular political grouping in the country by then. The Rainbow Alliance enjoyed the highest rating in Kenya at 38.8 per cent compared to the opposition alliance of DP, FORD-Kenya and SDP, dubbed as the NAK (31.4%), KANU Uhuru faction (20.4%) and FORD-People (7.5%). The opposition alliance NAK and FORD-People read the mood in the country right and then chose to join the Rainbow Alliance/LDP at Uhuru Park on 14 October to form NARC, where Raila made the famous pronouncement, '*Kibaki Tosha*'.

Figure 9.4: Party support, September-October 2002
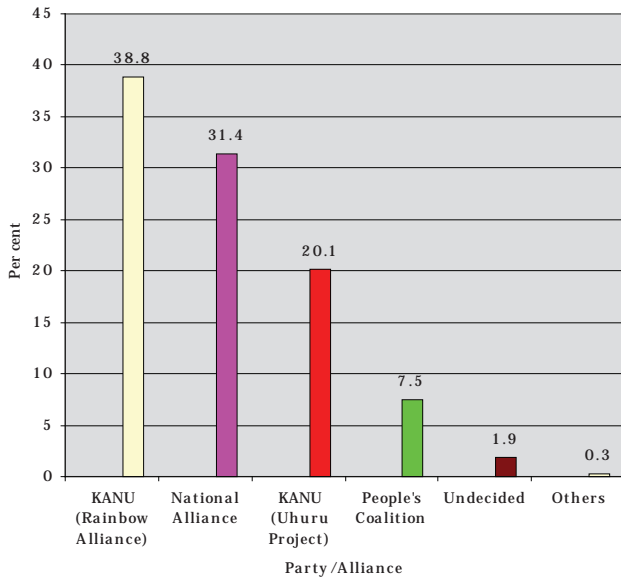
Figure 9.5: Most suitable presidential candidate for KANU, September/October poll
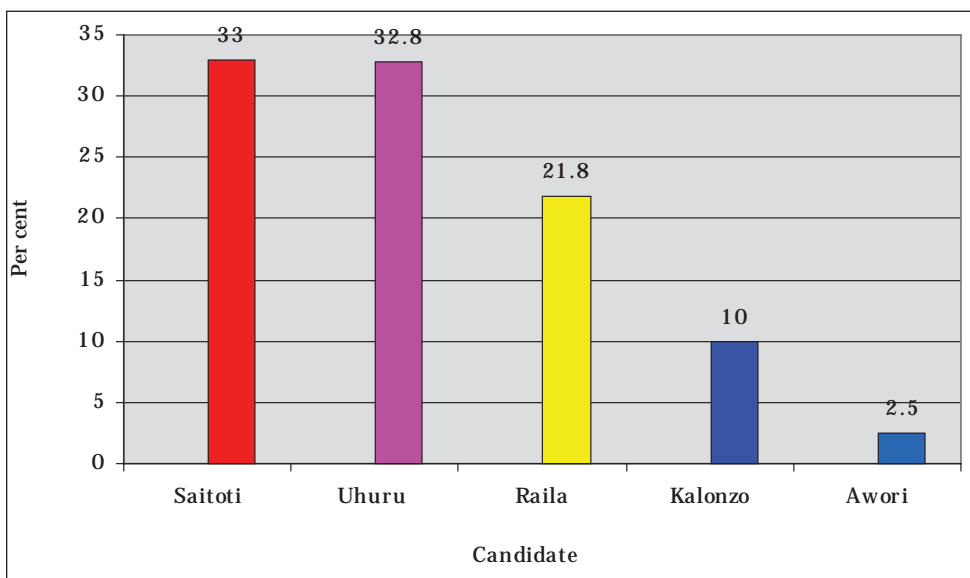
According to the October MI poll results, a straight race between Kibaki and Uhuru would have yielded a landslide victory for Kibaki with 67.5 per cent to Uhuru's 26.7 per cent.

Figure 9.6: Most preferred presidential candidate (Media Institute, October 2002 poll)
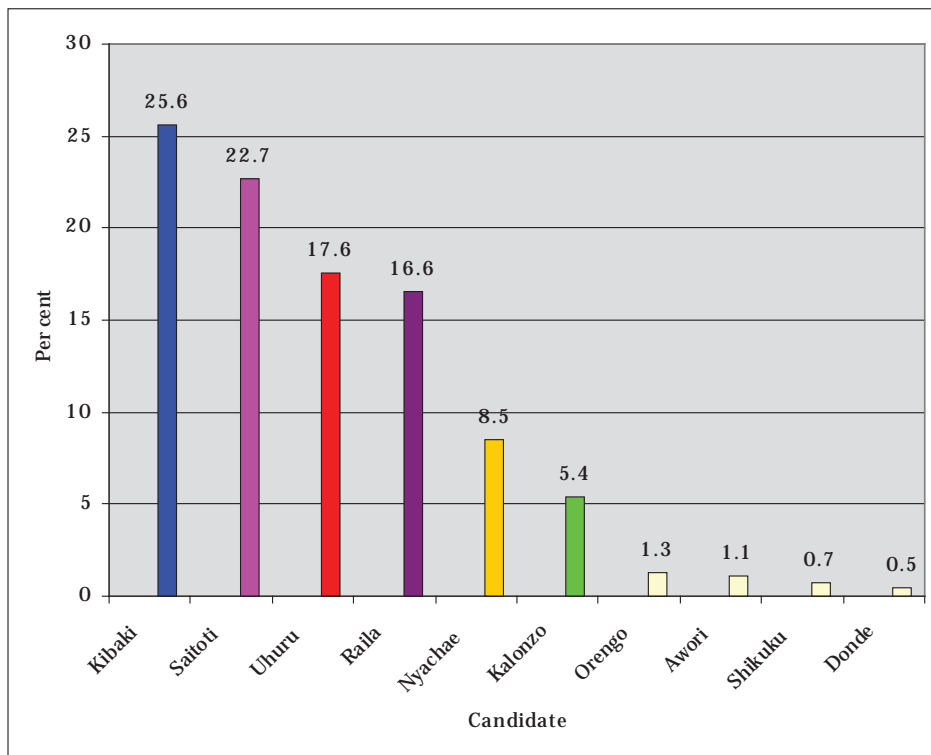
The International Republican Institute (IRI) commissioned the last pre-election presidential and party opinion poll to gauge party popularity and that of the presidential candidates. It was conducted between 17 and 20 November 2002 and the results were published in the local and international press on 10 December 2002. The poll indicated that the opposition National Rainbow Coalition (NARC) was set for a landslide win in the 27 December 2002 general elections. The poll established that 65.8 per cent of those interviewed would vote for NARC at parliamentary level compared to 22.7 per cent for KANU, 8.2 per cent for FORD-People and 1.4 per cent for SDP. In the presidential race, the poll predicted that Mwai Kibaki was headed for victory with a clear lead of 68.2 per cent support across the country. Uhuru was second with 21.4 per cent, Simeon Nyachae was placed third with 8.2 per cent and James Orengo with 1.5 per cent. As usual, the poll was widely criticized by politicians in Kenya and the then ruling party KANU's Director of Elections called the poll a 'sham'. He had not read or seen the report at the time of making the statement! Other KANU officials dismissed the results saying they were doctored to please

the International Republican Institute (IRI), which they accused of favouring the opposition party NARC. FORD-People's presidential candidate said 'All polls are interesting, but the IRI November Poll was more of a historical document. It is a photograph of the situation almost a month ago, and not an accurate one at all'. The FORD-People leader, who was addressing his supporters in his own constituency, told them to disregard the poll results, terming them as part of campaign propaganda against his presidency. He said the results were aimed at influencing the elections in favour of candidates from a particular community. Nyachae reported 'The decision on who becomes Kenya's next president was to be made by 10.4 million registered voters in Kenya but not 3,000 street urchins who were allegedly interviewed by IRI pollsters'. His actual score in the presidential elections were lower at 5.9 per cent (2.3%) less than 8.2 per cent what the IRI poll had indicated for him.

November IRI Poll Report

Party vote

The IRI poll revealed that 65.8 per cent of those interviewed indicated they would vote for NARC at parliamentary level. 22.7 per cent would vote for KANU, 8.2 per cent for FORD-People and 1.4 per cent for SDP.

Figure 9.7: Uhuru vs Kibaki presidential race (Media Institute, October 2002 poll)
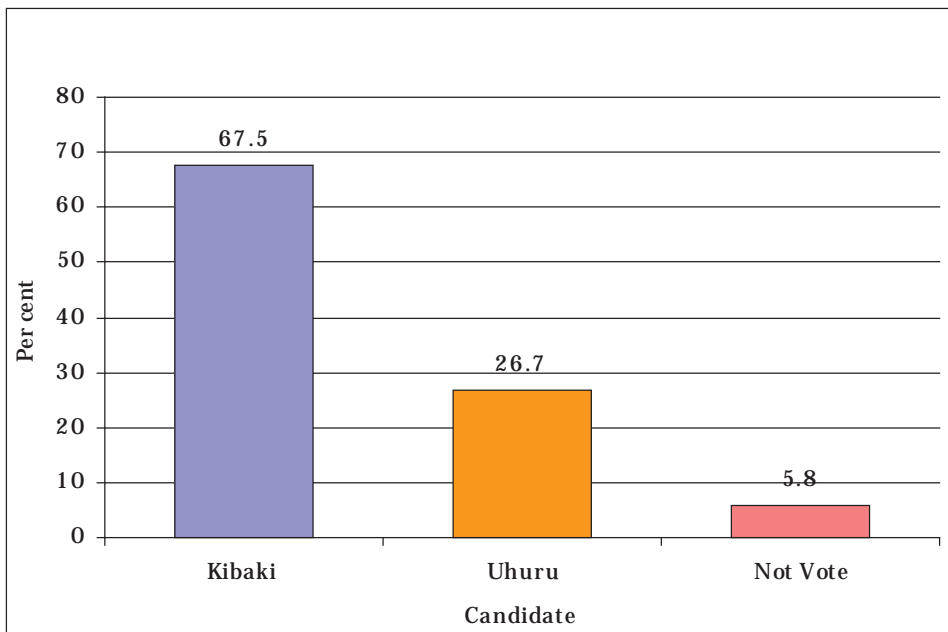
IRI Exit Poll on 27 December 2002

The International Republican Institute (IRI) commissioned Strategic Public Relations and Research to conduct an exit poll on 27 December 2002. This was the first time polls of this nature were being conducted in Kenya. A total of 5,473 voters were interviewed in 55 constituencies spread across the eight provinces of Kenya. By their own nature, exit poll questionnaires were administered among the people who had voted as they left the polling stations. Exit polls are a snap-shot of how people voted.

Figure 9.8: Party vote in general elections (November IRI poll report)

	NARC	KANU	FORD PEOPLE	SDP	Others
Series1					
Series2	68.2	21.7	8.1	1.4	0.6
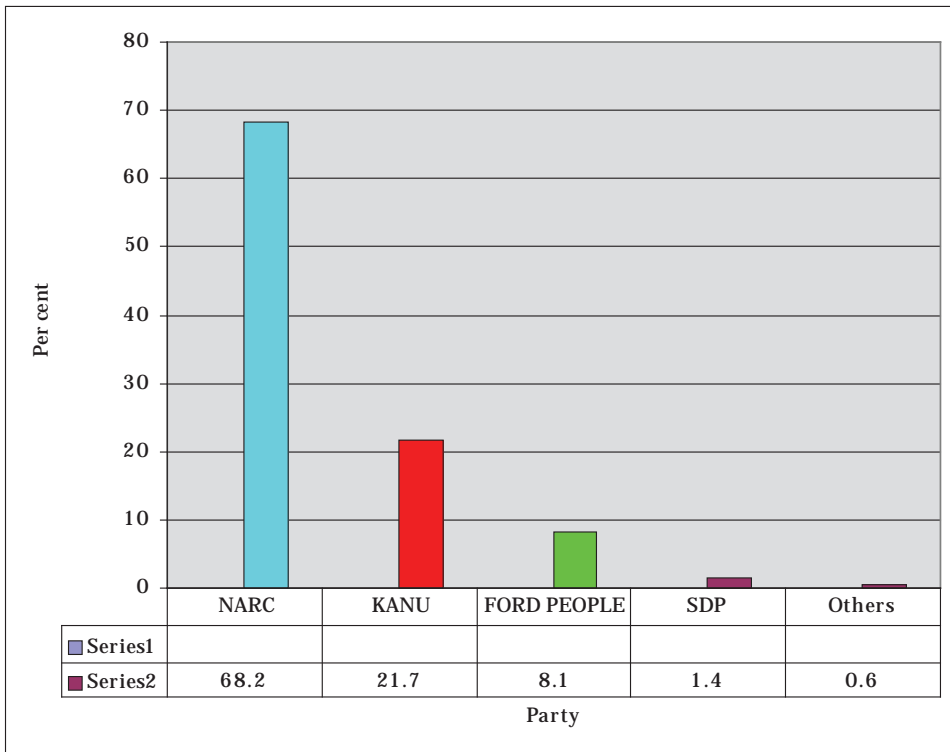
The key findings of the exit poll was that an overwhelming majority (67.1%) of voters interviewed in the 2002 exit poll indicated that they voted for Mwai Kibaki in the presidential race compared to 26.9 per cent who reported that they voted for Uhuru Kenyatta, 4.9 per cent for Simeon Nyachae and 0.6 per cent for James Orengo and 0.2 per cent for David W. Ng'ethe.

Parliamentary party vote

About 59.4 per cent of those interviewed reported that they voted for NARC at parliamentary level, 25.1 per cent for KANU, 6.9 per cent voted for FORD-People

and 4.1 per cent for Safina, 2.9 per cent for SDP and 1.7 per cent voted for the smaller parties (Sisi kwa Sisi, Shirikisho, FORD-Asili, etc).

Table 9.12: Electoral outcome of party preference (%) by province in 2002

Party Support	Nairobi	Nyanza	R. Valley	Eastern	Western	N. Eastern	Coast	Central	Total
NARC	76.9	63.0	61.3	82.1	67.0	49.2	70.9	66.9	68.2
KANU	16.7	6.3	31.3	14.0	22.3	42.6	23.2	29.5	21.7
FORD-P	4.8	30.3	5.3	2.8	5.5	8.2	2.5	1.8	8.1
SDP	1.2	0.5	1.5	1.0	3.8	0.0	2.5	0.8	1.4
Others	0.4	0.0	0.7	0.0	0. 0	0.0	0.0	0.0	0.6

Presidential exit poll analysis

The IRI exit poll was conducted in 55 out of the 210 constituencies in Kenya. The selection of a representative sample of polling stations/locations is essential for the success of any exit poll. At best, it is important to know that a polling station is in a particular clan or authority ward that vote in a particular way before they are included in the sample.

Figure 9.9: Vote for president in 2002 elections (IRI exit poll)

	Kibaki	Uhuru	Nyachae	Orengo	Ngethe	Others
Series1	67.1	26.9	4.9	0.6	0.2	0.3
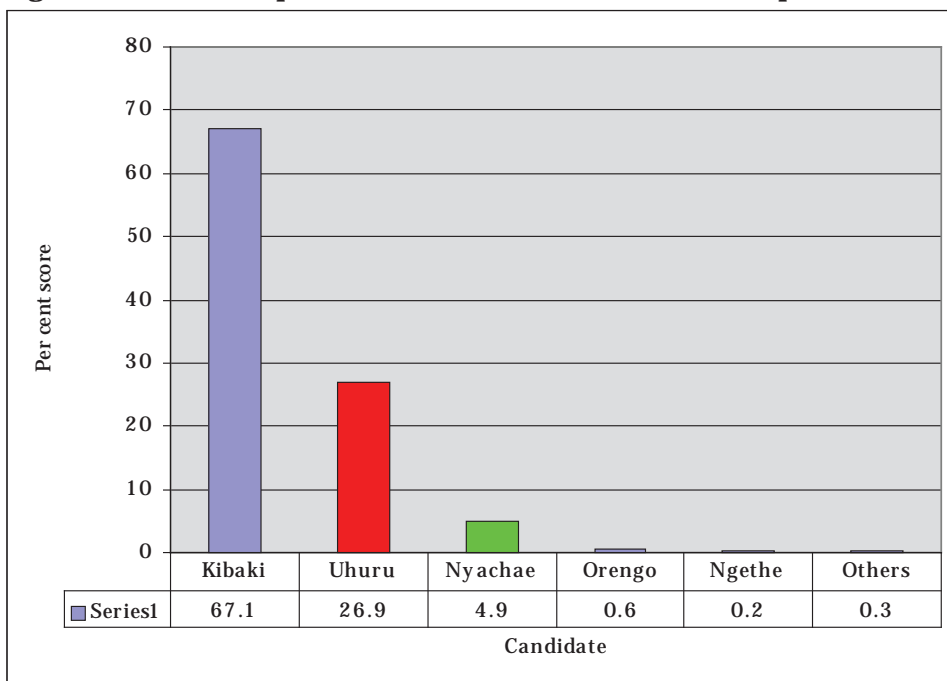
Even though the 27 December 2002 exit poll produced results that were considerably closer to the actual outcome than the November IRI pre-election poll, the results were biased towards the NARC presidential candidate.

Table 9.13: Strategic Polls: Presidential vote (%) by province

Presidential candidate	Nairobi	Nyanza	R. Valley	Eastern	Western	N. Eastern	Coast	Central	Total
Kibaki	76.0	68.5	57.1	71.0	75.5	35.1	73.9	67.4	67.0
Uhuru	19.5	10.6	39.1	26.4	18.1	64.9	22.4	34.5	27.0
Nyachae	2.5	19.1	3.7	1.4	3.5	0.0	3.2	0.6	4.9
Orengo	1.2	1.6	0.1	0.5	1.3	0.0	0.0	0.0	0.6
Ng'ethe	0.0	0.2	0.0	0.4	1.1	0.0	0.0	0.3	0.2

While the previous polls in Kenya would never claim to have accurately predicted the outcome of elections, the 2002 pre-elections polls were able to get reasonably close to the share of the votes cast, which is what polls try to measure. The poll conducted by Strategic PR between 17 and 20 November 2002 was fairly accurate within the set margins of error of (+ or - 5%) at 95% confidence level. It revealed that 65.8 per cent of those interviewed would vote for NARC at parliamentary level, 22.7 per cent for KANU, FORD-People (8.2%), SDP (1.4%) and others (0.6%). In the presidential race, the poll gave the NARC presidential candidate, Mwai Kibaki, a clear lead of 68.2 per cent of the votes cast over other presidential contenders followed by Uhuru in second place with 21.4 per cent, Simeon Nyachae in third with 8.2 per cent and James Orengo with 1.5 per cent.

Lessons Learnt from 2002 Pre-election and Exit Polls

The lessons learnt from the Kenya 2002 pre-election and exit polls conducted by pollsters was that polls can be used reasonably and accurately to predict the outcome of general elections with predictable margins. Overall, the polls correctly predicted Mwai Kibaki's victory at 62 per cent, Uhuru Kenyatta 31 per cent and Simeon Nyachae 5 per cent. The exit poll was the most accurate, giving Kibaki a clear lead at 67.1 per cent and garnering the constitutional 25 per cent requirement in all the provinces. The poll results were within the acceptable error margin.

Another remarkable lesson was that politicians only support poll results that favour them. A good example is the MI August Poll, which showed that Uhuru was ahead of Mwai Kibaki in the presidential race. The poll was widely praised by KANU officials who later turned to criticize the IRI November Poll, which predicted NARC winning the 2002 general elections.

Table 9.14: Strategic polls: Parliamentary party vote (%) by province

Party Support	Nairobi	Nyanza	R. Valley	Eastern	Western	N. Eastern	Coast	Central	Total
NARC	71.0	54.0	55.5	66.1	66.5	38.7	60.8	52.5	59.4
KANU	19.1	12.2	32.9	22.0	27.4	51.4	24.8	27.6	25.1
FORD-P	3.3	19.1	5.1	2.5	4.2	9.9	7.5	5.8	6.9
Safina	2.9	0.6	4.7	4.0	0.0	0.0	2.4	12.5	4.1
SDP	1.2	13.8	1.0	1.2	0.3	0.0	1.1	0.8	2.9
Others	1.9	0.2	0.8	4.2	1.6	0.0	3.4	0.9	1.7

Figure 9.10: 2002 exit poll and official presidential elections results
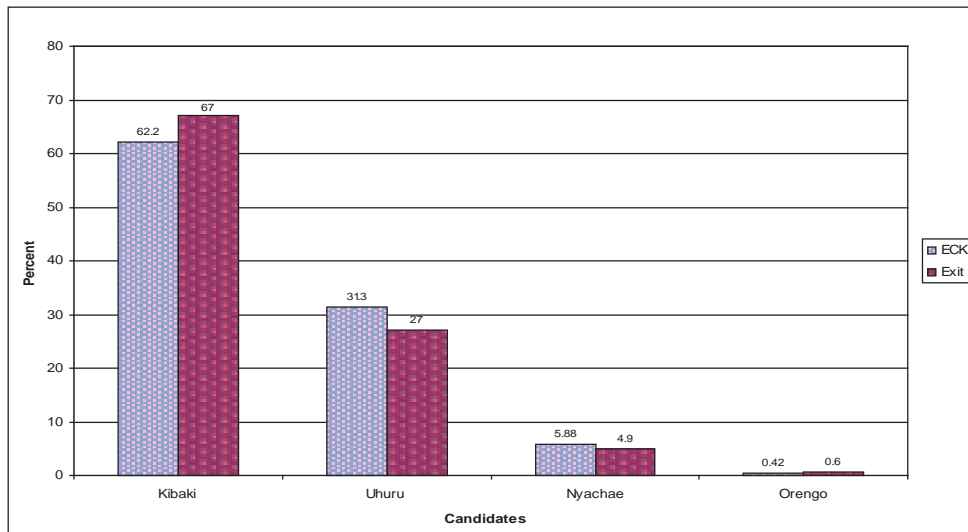
Media houses seem to support poll results better when involved in the preparatory stages or where they are the ones who commission the poll. Also, poll results need to be published immediately the data collection, analysis and report writing is complete to be accepted as reflecting the status quo and to avoid the criticism of being historic in nature. Also important to be included in the poll outcome is the survey methodology.

Lastly, the 2002 poll results were well received by members of the public as opposed to the 1997 polls. This is an indication of public confidence in the polls.

Table 9.15: Number of voters who reported voting for presidential candidates by constituency (IRI exit poll 2002)

	Vote for President						
	Kibaki	Uhuru	Nyachae	Orengo	Ng'ethe	Others	Total
Makadara	91	7	2	0	0	0	100
Westlands	81	34	5	0	0	0	120
Kasarani	79	28	2	2	0	0	111
Lang'ata	119	14	3	1	0	0	137
Githunguri	20	94	0	0	0	0	114
Kabete	93	42	0	0	0	0	135
Gatanga	55	53	0	0	0	0	108
Mwea	72	19	4	0	0	0	95
Mathioya	59	14	2	0	0	0	75
Kandara	94	15	0	0	0	0	109
Nyeri Town	85	7	0	0	0	0	92
Kinangop	50	47	0	0	0	0	97
Likoni	71	12	3	0	0	0	86
Mvita	96	34	1	0	0	0	131
Msambweni	50	18	4	0	0	0	72
Bahari	98	25	6	2	0	0	131
Mwatate	33	14	0	0	0	0	47
Dujis	33	22	14	5	0	0	74
Isiolo North	31	8	4	3	0	0	46
North Imenti	82	20	0	0	0	0	102
Ntonyiri	42	54	5	0	0	0	101
Runyenjes	89	15	0	0	0	0	104
Gachoka	47	11	0	0	0	0	58
Machakos	103	28	0	0	0	0	131
Mwingi North	90	4	0	0	0	0	94
Kitui Central	75	8	0	0	0	0	83
Makueni	102	19	3	0	0	0	124
Kapenguria	23	37	1	0	0	0	61
Saboti	86	26	3	0	0	0	115
Laikipia West	82	36	0	0	0	0	118
Keiyo South	26	28	0	0	0	0	54
Eldoret East	33	52	0	0	0	0	85
Baringo North	22	25	1	0	0	0	48
Aldai	37	15	8	0	0	0	60
Kipkelion	39	45	9	1	0	0	94

Chepalungu	25	34	6	0	0	0	65
Nakuru Town	130	24	2	0	0	0	156
Molo	85	32	7	0	0	0	124
Rongai	53	23	2	0	0	0	78
Kilgoris	16	17	4	0	0	0	37
Kajiado North	98	6	2	o	o	o	106
Lurambi	104	15	0	0	0	0	119
Butere	57	16	2	0	0	0	75
Nambale	56	19	9	3	0	0	87
Lugari	75	22	7	3	0	0	107
Kimilili	96	4	3	0	0	0	103
Sabatia	49	36	3	1	3	0	92
Gem	81	2	0	7	0	0	90
Rarieda	78	1	0	0	0	0	79
Kisumu Town	110	12	1	1	0	0	124
Rangwe	103	2	0	0	0	0	105
Migori	104	6	0	0	0	0	110
Kuria	26	42	5	0	0	0	73
Nyaribari Masaba	4	7	64	0	0	0	75
North Mugirango	13	5	76	2	0	0	96
	3,651	1,255	273	31	3	0	5,213
%	67.7	26.9	4.9	0.6	0.02	0.00	100.00

Source: International Republican Institute (IRI), 2002

Table 9.16: Comparison of the exit poll and official results of presidential elections in 2002 (ECK official results vs IRI exit poll 2002)

		Total	Nairobi	Coast	N/Eastern	Eastern	Central	R/Valley	Western	Nyanza
Kibaki	Exit	67	76.00	73.90	35.10	71.00	67.40	57.10	75.50	68.50
	ECK	62.21	76.48	62.77	28.09	72.53	68.96	43.23	76.30	61.39
	Difference (ECK-Exit)	-4.79	0.48	-11.13	-7.01	1.53	1.56	-13.87	0.80	-7.11
Uhuru	Exit	27	19.5	22.4	64.90	26.40	34.50	39.10	18.10	10.60
	ECK	31.31	20.78	33.36	67.06	26.17	30.26	53.25	21.53	7.59
	Difference (ECK-Exit)	4.31	1.28	10.96	2.16	-0.23	-4.24	14.15	3.43	-3.01
Nyachae	Exit	4.9	2.50	3.20	0.00	1.40	0.60	3.70	3.50	19.10
	ECK	5.88	2.40	3.21	4.55	0.76	0.43	3.10	1.37	29.74
	Difference (ECK-Exit)	0.98	-0.10	0.01	4.55	-0.64	-0.17	-0.60	-2.13	10.64
Orengo	Exit	0.6	1.20	0.00	0.00	0.50	0.00	0.10	1.30	1.60
	ECK	0.42	0.24	0.42	0.23	0.33	0.14	0.26	0.51	1.13
	Difference (ECK-Exit)	-0.18	-0.96	0.42	0.23	-0.17	0.14	0.16	-0.79	-0.47
Ng'ethe	Exit	0.2	0.00	0.20	0.00	0.40	0.30	0.00	1.10	0.20
	ECK	0.17	0.82	0.22	0.06	0.22	0.20	0.11	0.27	0.13
	Difference (ECK-Exit)	-0.03	0.82	0.02	0.06	-0.18	-0.10	0.11	-0.83	-0.07

Table 9.17: ECK presidential election results 2002

Province	Kibaki	Uhuru	Nyachae	Orengo	Ng'ethe	% turnout
Nairobi	76.49	20.78	2.40	0.24	0.08	42.00
Coast	62.78	33.36	3.21	0.42	0.22	42.12
N. Eastern	28.01	67.06	4.55	0.24	0.06	57.82
Eastern	72.51	26.17	0.76	0.34	0.22	60.78
Central	68.96	30.26	0.44	0.14	0.20	66.11
R. Valley	43.24	53.26	3.12	0.26	0.11	60.82
Western	76.31	21.54	1.37	0.52	0.27	57.12
Nyanza	61.39	7.59	29.75	1.33	0.13	55.60
% Total	62.20	31.32	5.88	0.42	0.17	57.18

Figure 9.11: Trend analysis of 2002 pre-election and exit polls
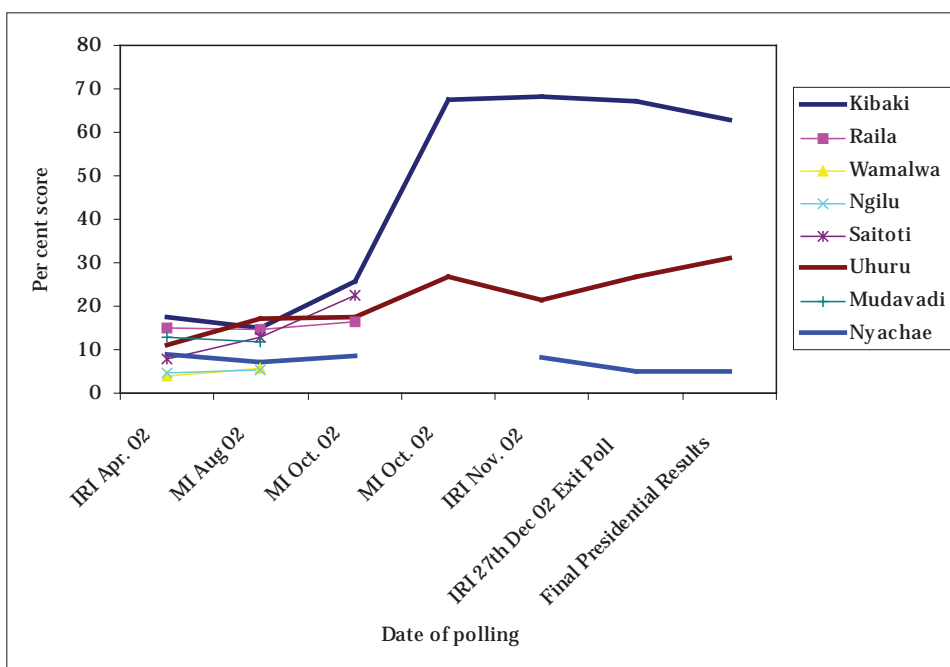
2003-2006 Afrobarometer IRI Survey in Kenya

The first Kenya Afrobarometer poll was conducted at a most unusual time, September 2003, exactly eight months after the 2002 elections. Afrobarometer contracted the Centre for Independent Research (CIR) to conduct the country's first Afrobarometer survey. This national sample survey included 2,398 interviews in all eight provinces of the country, yielding overall results that were accurate to within +/- 2 per cent at a 95 per cent confidence level. Overall, the survey findings clearly captured the palpable sense of almost unbounded optimism and hope that permeated Kenya in the days and months preceding the 2002 elections. The reform agenda saw NARC split into two soon after it formed the government in 2003. On some of these issues, the public gave clear guidance on its wishes. The public was unified in support of constitutional reform. Even with a new government in power, 81 per cent agreed that constitutional reform was still necessary to strengthen democracy in Kenya.

2005-2007 Opinion Polls

From the year 2005, Steadman started conducting quarterly polls on the popularity of candidates. The Steadman quarterly polls conducted between 2005 and 2006 showed Kibaki, Raila and Kalonzo performing well in the presidential polls.

Of the two polls conducted in the last two quarters of 2006, Kibaki was on the lead with 41 per cent and 42 per cent in July and October, respectively. During the same period, the Orange Democratic Movement (ODM) was rated the most popular movement in Kenya but without a clear candidate for the party. Kalonzo's rating then in the two polls was at 20 per cent while Raila was third at 13 per cent in July and 14 per cent in October 2006. Other candidates were Uhuru at 5 per cent and Ruto 3 per cent in both polls.

Rise of Raila and Fall of Kalonzo in the Pre-election Polls

From the preferred presidential candidate in the pre-election polls in 2006 when Raila dismissed the polls as not being based on the 'good looks', Kalonzo was rated as high as 20 per cent by the pollsters. This was during the days when the two were key figures in LDP. Raila-Kalonzo rivalry began in 2005 when LDP held its grassroot elections and later transformed to Orange Democratic Movement of Kenya (ODM-K) where their conflict became more pronounced. Two camps emerged in the run-up to the party elections, with each fighting for the supremacy for the ODM-K preferred party presidential candidate. On realizing that Raila was strong in LDP, Kalonzo defected to the Labour Party of Kenya (LPK). With his trusted ally, Daniel Maanzo being in possession of the registration papers, Kalonzo literally outsmarted Raila and took full control of ODM-K in August 2007 while Raila and other Pentagon members (Najib Balala, Musalia Mudavadi, William Ruto and Joe Nyagah) took refuge in the original ODM.

Table 9.18: CIR/Afrobarometer results for party support by ethnic region

Home language/Ethnic group (share in sample)	NARC (52%)	KANU (4%)	LDP (5%)	Unaffiliated (31%)
Kalenjin (12%)	10	47	10	11
Kamba (11%)	16	5	11	6
Kisii (6%)	4	0	1	4
Pastoralists* (9%)	7	21	8	7
Luhya (15%)	15	7	7	19
Luo (12%)	10	1	60	13
Miji Kenda (4%)	4	2	1	7
Kikuyu (20%)	21	14	1	19
Meru (6%)	7	2	0	5
Other	6	1	1	9

Do you feel close to any particular political party? If so, which party is that? (%)

*Includes Maasai/Samburu, Turkana, Somali and Borana.

Table 9.19: Trend analysis of the Steadman 2005-2006 pre-election polls

Poll date	Kibaki (%)	Raila (%)	Kalonzo (%)	Mudavadi (%)	Ruto (%)	Uhuru (%)
July 2006	41	13	20		3	5
October 2006	42	14	20		3	5
March 2007	51	17	14	2	2	2
April 2007	44.3	18.7	15.3	2.7	2.6	3.5
June 2007	45	28	14	4	3	4
July 2007	45	25	11	3	2	2
August 2007	42	25	11	8	6	1
August 2007	47	36	13	1		1
September 2007	38	47	8			
13 October 2007	37	53	8			
23 October 2007	39	50	8			
9 November 2007	41	45	11			
17 November 2007	41.4	40.7	14.7			
21 November 2007	42	45	11			
23 November 2007	43.3	43.6	11.4			
7 December 2007	42	46	10			
18 December 2007	43	45	10			

Source: Steadman SPEC Barometer Quarterly Polls

In March 2007, Kibaki was at his best rating ever in the polls at 51 per cent. The same poll established that Kalonzo's popularity was plummeting at a very fast rate as he scored 14 per cent, with Raila gaining the support of Kenyans and was placed second at 17 per cent. The April 2007 polls showed Kibaki's rating take a downward trend. He was placed first with 44.3 per cent to Raila's 18.7 per cent and Kalonzo 15.3 per cent. Between June and July 2007, Kibaki's rating stagnated at 45 per cent while that of Raila continued to rise further, thus hitting the 28 per cent and 25 per cent ratings in June and July, respectively, with Kalonzo continuing to perform dismally at 14 per cent in June and 11 per cent in July 2007.

Weekly Pre-election Polls: Tracking the 2007 Presidential Elections in Kenya

September 2007 marked the beginning of weekly polls. The weekly polls were commissioned by Nation Media Group and conducted by three different pollsters, namely: Strategic Public Relations and Research (SPRR), Consumer Insight, and Infotrack (Harris). In total, twelve (12) pre-election polls were conducted by the local pollsters.

Kalonzo's fall in the poll rankings began after he started drifting from Raila in March 2007 when it became clear their differences were irreconcilable. ODM-Kenya split into two in August 2007, with one faction (ODM-K) led by Kalonzo while the rest of the 'Pentagon' members joined the original ODM. KANU led by Uhuru Kenyatta left the Orange coalition to join the Kibaki re-election campaign in late mid-September 2007. The August 2007 split of ODM-K marked the turning point for Kalonzo's good rating in the polls and his nationwide rating continued to decline.

The August 2007 polls showed Kibaki's popularity taking a downward trend at 42 per cent and 47 per cent while Raila continued to gain momentum from 25 per cent to 36 per cent with Kalonzo stabilizing at 11-13 per cent before plummeting further to reach his worst rating ever at 8 per cent between September and October 2007. Raila was elected the ODM presidential flag bearer on 1 September 2007, which showed his nationwide support rise from 36 per cent to 47 per cent in September and eventually reaching his best ever rating at 53 per cent, according to the polls released on 13 October 2007. As a result, Raila held a 16 per cent lead over Kibaki in October 2007. This was Raila's largest lead since he assumed the front-runner position.

Afrobarometer Poll on Ethnicity and Violence in the 2007 Elections in Kenya

During the first half of December 2007 in the run up to the elections, the University of Oxford, in collaboration with researchers from the Michigan State University and the University of Connecticut conducted a detailed survey of voter intentions,

Figure 9.12: Trend analysis of pre-election polls, July-October 2007
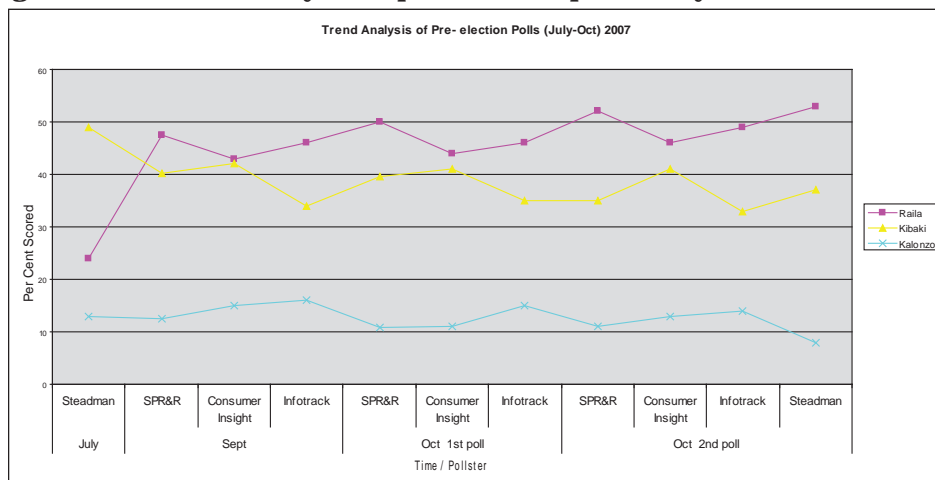
attitudes towards violence, corruption, and performance of leaders, political party preferences, ethnicity and socio-economic characteristics. The data were based on a sample of 1,207 eligible voters, who were interviewed in 76 of Kenya's 210 electoral constituencies between 30 November and 7 December 2007. The study established that if the presidential elections had been held between 30 November and 7 December 2007, Raila Odinga of ODM would have received 46.5 per cent of the vote, with Mwai Kibaki (PNU) receiving 40.1 per cent. A third presidential candidate, Kalonzo Musyoka (ODM-K), would have received 8.3 per cent. About 2.8 per cent of respondents refused to answer and 1 per cent were undecided. Beyond likely voters, most of those who were still undecided on whether to vote at all were inclined in favour of Raila.

Interpreting voting intentions in the parliamentary election is more complex. Asked about their party of choice, respondents named a total of 25 parties. The ODM was favoured by the largest proportion of those intending to vote, at 42.4 per cent. A further 33.4 per cent favoured the Party of National Unity (PNU) and 6.2 per cent opted for ODM-Kenya.

Analysis of the 2007 Pre-election Polls

While the validity of the 2007 polls in Kenya has been questioned all over the world, the quality of opinion polls conducted in Kenya in the run up to 2007 general elections reported very consistent and similar findings (with minor variations). The polls were precise and representative of the situation on the ground. The polls applied random stratification sampling, which have been used over time in developed democracies to predict voting behaviour. Valid random probability produce valid estimates/findings that could be generalized for the entire population with known error margins and

confidence level. The pre-elections pollsters gave information on the methodology, including sample sizes, margin of error and dates when the actual polling took place. Further, they predicted a close race among the front runners and gave similar and consistent results over the period running from September 2007 to December 2007 as discussed in the subsequent charts that follow.

Of the 50 pre-election polls conducted between 29 September to 17 December 2007, 36 polls commissioned by Nation Media Group and another 15 done by Steadman (Gallup), Raila led in 50 out of 51 polls while Kibaki led in only one. During this period, Raila's lead in all the polls was on a double digit (10% plus) according to the Strategic and Infotrack polls, and on single digits based on the Consumer Insight polls from sample sizes of 1,700 to 3,000. Of the polls conducted by Steadman during the same period, two of their polls indicated Raila holding a 10 percentage point over Kibaki but later reduced to single digits in November and December. The Steadman poll released on 30 November 2007 (poll conducted from 17 to 19 November among a sample size of 2,709) placed Raila at 43.6 per cent and Kibaki 43.3 per cent with another 11.0 per cent favouring Kalonzo. Similarly, a Gallup poll released on 22 November (interviews conducted between 25 October and 10 November) had Raila lead in the race at 45 per cent, Kibaki 42 per cent and Kalonzo 11 per cent.

The other consistent result as depicted by the polls was the regional support for the three main presidential contenders. The polls revealed that Kibaki enjoyed over 90 per cent support in Central Province and 48 per cent in Eastern Province but failed to command majority elsewhere. Kalonzo's major support came from his home province of Eastern Province where he achieved above 50 per cent. By contrast, Raila was supported by majority of the voters in five provinces oscillating between 80-90 per cent in Nyanza, and 70-80 per cent in Western. The other four provinces where Raila's rating was above 50 per cent were: Nairobi, North Eastern, Coast and Rift Valley. The figure below further reveals that even though Rift Valley voters somewhat supported Raila's presidency, this kept on wavering and sometimes running as low as 33 per cent as shown by one of the Consumer Insight polls.

According to the last pre-election poll released by Steadman on 17 December 2007, Raila expanded his lead, garnering 45 per cent over Kibaki's 43 per cent and Kalonzo 10 per cent. Other polls released during the same time by SPRR and Infotrack placed Raila well ahead of Kibaki with a 10 percentage point: SPRR Raila (46%), Kibaki (36%) and Kalonzo (17%); Infotrack Raila (45.8%), Kibaki (35.9%) and Kalonzo (16.4%); and Consumer Insight Raila (42.8%), Kibaki (40.8%) and Kalonzo (14.1%). Generally, the polls showed that the gap between the two front runners: Raila and Kibaki was getting narrower but placing Raila ahead in the race with 2 per cent to 10 per cent point range ahead of his main challenger in the 27 December 2007 presidential elections.

From the above analysis, Kibaki's support was mainly from his backyard Central Province, where his popularity was above 90 per cent and about 50 per cent in

Eastern Province. The trend analysis of the polls revealed that Kibaki had difficulties attaining the constitutional requirement of 25 per cent votes in Nyanza, Western, North Eastern and Coast Provinces.

From the graph generated from the poll results of Steadman, SPRR, Consumer Insight and Infotrack, Raila was ahead of Kibaki by a margin between two and three percentage points or more. It shows that before the split of ODM-K, Kibaki performed better in the polls but was later outdone by Raila from August 2007.

Like the 2002 pre-election polls, the 2007 polls were roundly criticized by the political party leaders, including President Kibaki who while on a trip to Mombasa called on Kenyans not to be 'deceived' by the Steadman and other polls because they did not reflect the truth about the country's political scene. The President accused the media of bias as they favoured the opposition.

Figure 9.13: Raila's support by province, September-October 2007
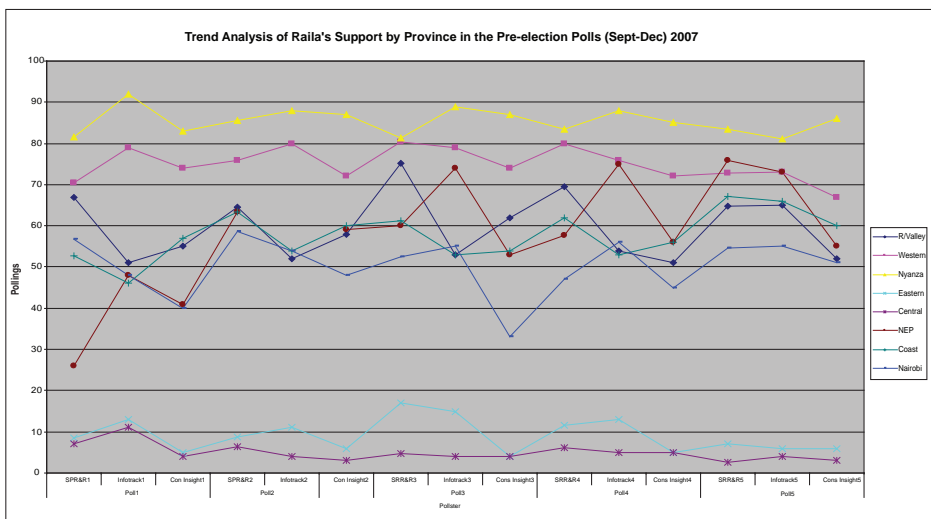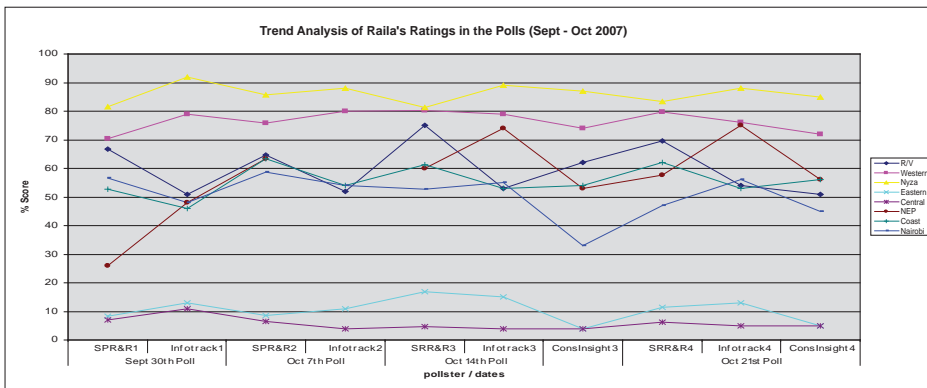
Figure 9.14: Kibaki's support by province, September-October 2007
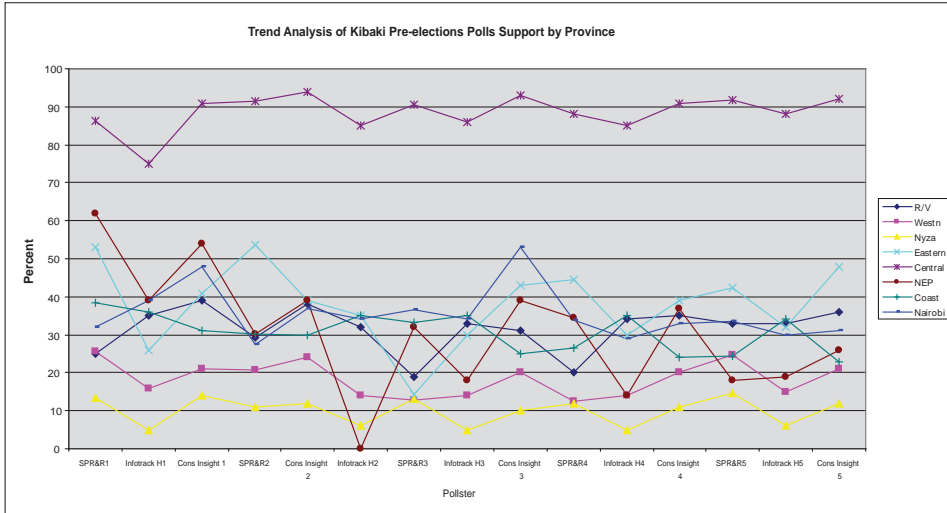
Final Pre-election Polls

The final polls in any elections are normally regarded by the press and public alike as relatively accurate forecast of the actual results. From the different pollsters who conducted pre-election polls in Kenya, the results were as shown in Table 9.21.

While there were variations between individual polls of the sort that are always expected, the average picture was fairly clear. From the six pollsters, Raila was a head of Kibaki in the presidential race from a closest margin of 2 per cent for Consumer Insight and Steadman, Strategic 10 per cent, Infotrack 9.9 per cent, Afrobarometer 6.4 per cent and IRI 5.9 per cent.

The IRI exit poll conducted on 27 December 2007 showed that ODM leader, Raila Odinga, won the presidential race (*Daily Nation*, 22 July 2008). Raila won the December polls by a 6-point margin over President Kibaki, according to a USA-sponsored Election Day survey of voters. The exit poll was first reported by *McCarthy Newspaper* on 14 January 2008.[25] IRI had stipulated that the findings could not be divulged for at least six months following the election.

According to the researchers, 5,495 Kenyans were interviewed as they left voting stations in 67 of 71 districts. The poll showed Raila got 46.07 per cent of the vote compared to 40.17 per cent for Kibaki and 10.22 per cent for Kalonzo. The poll had a margin of error of 1.32 percentage points, meaning its finding of a six-point victory for Raila is statistically reliable.

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[25] *McCarthy Newpapers*, "Kenyan president lost election", US Exit poll indicates.

Table 9.20: Pre-election polls 2007 in Kenya

	Poll 1, 29-30 September 2007				Poll 2, 6-12 October 2007			
Candidate	SPRR	Infotrack	Consumer Insight	Steadman	SPRR	Infotrack	Consumer Insight	Steadman
Kibaki	40.2	34	42	38	39.6	35	41	37
Raila	47.4	46	43	47	49.6	46	43	53
Kalonzo	12.4	16	15	8	10.8	15	15	8

	Poll 3, 14 October 2007				Poll 4, 20-21 October 2007			
Candidate	SPRR	infotrack	Consumer Insight	Steadman	SPRR	Infotrack	Consumer Insight	Steadman
Kibaki	35	33	41		35	31	40	
Raila	52	49	44		51	52.2	43	
Kalonzo	11	13	11		11	14	14	

	Poll 5, 28 October 2007				Poll 6, 4-9 November 2007			
Candidate	SPRR	Infotrack	Consumer Insight	Steadman	SPRR	Infotrack	Consumer Insight	Steadman
Kibaki		32	39.1		35	32.2	40.6	41
Raila		50	42.1		50	51.3	41	45
Kalonzo		14	15					

	Poll 7, 11 November 2007				Poll 8, 17 November 2007			
Candidate	SPRR	Infotrack	Consumer Insight	Steadman	SPRR	Infotrack	Consumer Insight	Steadman
Kibaki	38	31.8	41		39	37	41.4	
Raila	49	50.2	42		49	47	40.7	

Candidate	Poll 11, 7 November 2007				Poll 12, 14-17 December 2007			
	SPRR	Infotrack	Consumer Insight	Steadman	SPRR	Infotrack	Consumer Insight	Steadman
Kibaki	39	39.2	40.4	42	36	35.9	40.8	43
Raila	43	43.7	43	46	46	45.8	42.8	45
Kalonzo	18	15.2	15	10	17	16.4	14.1	10

Figure 9.15: Trend analysis of the 2007 presidential polls race in Kenya

Candidate	Poll 9, 23 November 2007				Poll 10, 30 November 2007			
	SPRR	Infotrack	Consumer Insight	Steadman	SPRR	Infotrack	Consumer Insight	Steadman
Kibaki	39	36.1	39	43.3	38.4	38.4	40.4	
Raila	49	44.2	42	43.6	43.2	43.9	39.5	
Kalonzo					17.5	15.9	15	
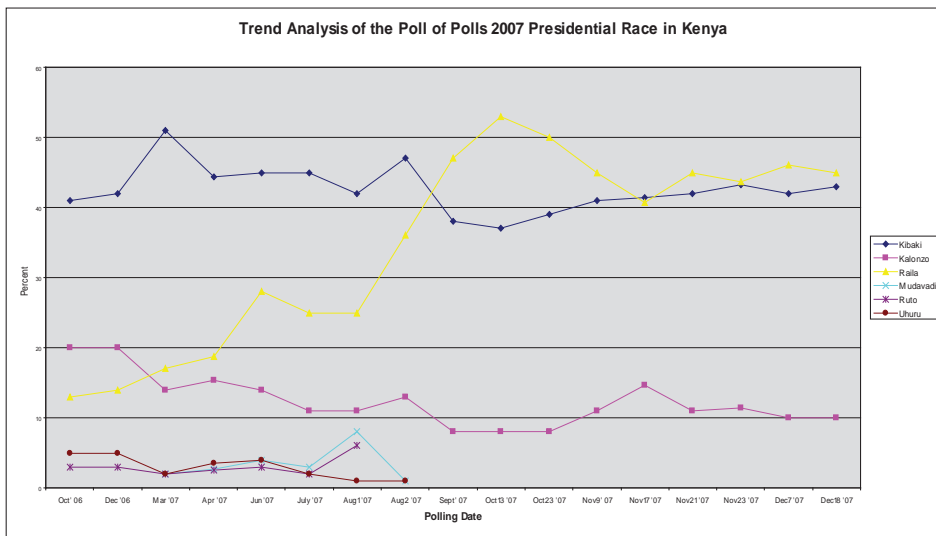
Exit Poll Findings: Was the Official Result of 2007 Presidential Elections in Kenya Valid?

Exit polls are a specific application of opinion research on election day. They are used to provide a quick forecast of the outcome of an election, the description of the voters and their motives. They have become more common all over the world as they give fairly accurate prediction immediately after poll closing time. Because of

Table 9.21: Results of last pre-elections polls in 2007

Candidate	Poll 9, 23 November 2007			Poll 10, 30 November 2007		
	Strategic PR	Steadman	Infotrack	Consumer Insight	Afrobarometer	IRI Exit poll
Kibaki	36.o	43.0	35.9	40.8	40.1	40.17
Raila	46.0	45.0	45.8	42.8	46.5	46.07
Difference (%) between						
Raila and Kibaki	10.0	2.0	9.9	2.0	6.4	5.9

their accuracy, they may be used in new democracies as away of spotting possible electoral malpractices and discouraging those who may be considering cheating in elections.

Was the 2007 presidential election outcome valid? A number of stakeholders, including a big percentage of Kenyans, think otherwise. Many agencies, including the most senior officials of the disbanded ECK, reported not being aware of who actually won the 2007 presidential elections in Kenya. The European observer mission reported that the polls fell short of acceptable democratic standards and process. The findings of the pre-election polls in Kenya, if to go by, gave compelling evidence of decisive vote miscount or massive irregularities of the 2007 presidential elections.

What does the IRI exit poll tell us about the possibility of fraud? The exit poll established that Raila got 46.07 per cent of the vote compared to 40.17 per cent for Kibaki. In addition to doubting the official outcome of the presidential vote, the survey questioned whether President Kibaki actually met the requirement of winning at least 25 per cent of the ballot in five provinces. The IRI exit poll indicated that Raila had approximately 6 per cent in the popular vote and that he led within the polls margin of error (-/+1.32). The discrepancies between exit poll results and official ECK returns cannot plausibly be attributed to sampling error alone. At superficial level, the discrepancies can plausibly be attributed to vote tallying miscount. Alternatively, they can be attributed to some form or forms of error in the survey, most often a differential propensity, or Raila and Kibaki voters to lie in the polls or non-response bias. They could also be attributed to some combination of miscount and polling error. These alternative hypotheses do not evaluate themselves; analysts must bring other evidence and arguments to bear. Traditionally, exit polls have been close to 2-3 per cent accurate. Because exit polls are a good research tool for vote fraud analysis, this study compared official presidential results and exit poll findings by province in 2007 to establish the level of fraud in the eight provinces, which could have influenced the final poll outcome.

Table 9.22: Comparison of IRI exit poll and official results, 2007

Exit poll and offical results

		Total	Nairobi	Coast	North-eastern	Eastern	Central	Rift Valley	Western	Nyanza
Raila	Exit Poll	46.07	54.55	67.16	76	7.18	2.54	54.63	72.68	83.42
	Official	44.1	43.96	59.37	47.51	5	1.89	64.66	65.82	82.33
	Difference (Official-Poll)	-1.97	-10.59	-7.79	-28.49	-2.18	-0.65	10.03	-6.86	-1.09
Kibaki	Exit Poll	40.17	33.08	24.58	17	42.54	91.91	41.17	24.17	14.67
	Official	46.38	47.69	33.12	50.53	50.25	96.87	33.47	32.16	16.88
	Difference (Official-Poll)	6.21	14.61	8.54	33.53	7.71	4.96	-7.7	7.99	2.21
Kalonzo	Exit Poll	10.22	6.58	7.2	7	46.85	3.5	1.87	2.48	1.02
	Official	8.92	8.06	6.53	2.34	43.7	0.65	1.39	0.69	0.28
	Difference (Official-Poll)	-1.3	1.48	-0.67	-4.66	-3.15	-2.85	-0.48	-1.79	-0.74
Other/RTA	Exit Poll	3.53	0.58	1.06	0	3.43	2.05	2.33	0.66	0.89
	Official	0.61	0	0.1	0.1	0.1	0.1	0.1	0.1	0.1
	% registered voters	100	8.92	8.24	2.21	16.61	15.3	23.49	10.95	14.23
	Poll sample	5495	517	472	100	905	828	1285	604	784
	Margin of error	1.32	4.31	4.51	9.8	3.26	3.41	2.73	3.99	3.5

Table 9.23: Official ECK results (ECK website)

Party	Candidate	Votes (ECK)	Government website	%
PNU	Mwai Kibaki	4,578,034	4,584,721	46.000
ODM	Raila Odinga	4,352,860	4,352,993	44.000
ODM-K	Kalonzo Musyoka	879,899	879,903	9.000
KPTP	Joseph Karani	21,168	21,171	0.200
KPP	Pius Muiru	9,665	9,667	0.090
WCPK	Nazlin Omar	8,624	8,624	0.087
SSA	Kenneth Matiba	8,049	8,046	0.081
CCUP	David Ng'ethe	5,976	5,976	0.060
RPK	Nixon Kukubo	5,926	5,927	0.060

Evaluation of the Scientific Methods and Polling Guidelines Applied by Pollsters in Kenya

There are worldwide bodies associated to various polling firms. Among these are the Association of Market Research Professionals (ESOMAR) and the World Association for Public Opinion Research (WAPOR). WAPOR was founded in 1947 and has over 500 members in more than 50 countries. The objective of these international bodies is to ensure that polling organizations apply proven scientific methods, which can

Figure 9.16: Exit and official presidential election results, 2007
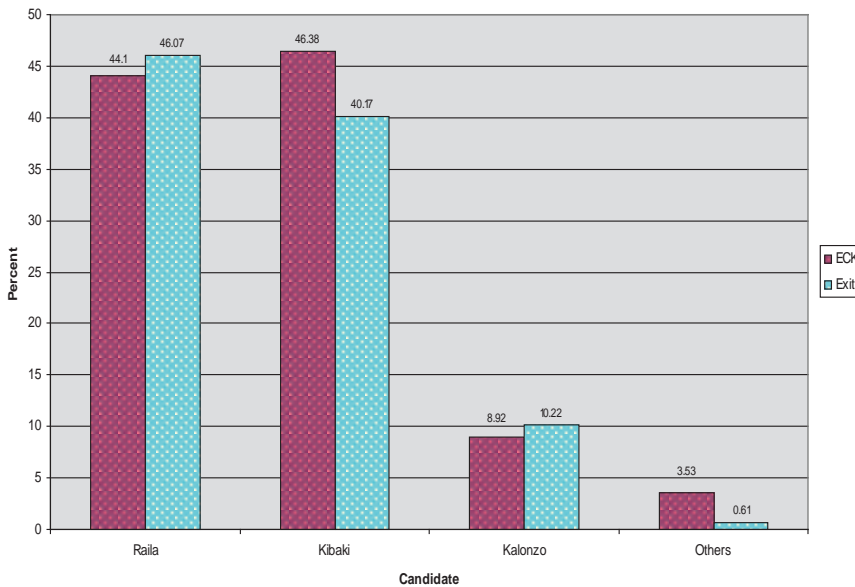
measure with internationally set standards. Steadman Group is a member of Gallup International Association. Additionally, the group is also a member of WAPOR and the ESOMAR while Infotrack is associated to Harris Polls. This therefore means the local firms adhere to international code of ethics and practices regarding opinion polling as stipulated by ESOMAR/WAPOR guidelines. Strategic PR and Research is also well known for its high quality surveys, having spearheaded polling in Kenya since 1997 and has been involved in polling than any other pollster locally. The other polling firm that has been in the scene since 2002 is Consumer Insight, but its scientific rigour could not be determined.

The objective of scientific method is to ensure that polling organizations apply proven scientific methods, which can measure with internationally set standards and that they conform to the existing guidelines on practical aspects of conducting pre-election and exit polls. The general rule is, the greater the number of people interviewed, the more likely the prediction will be accurate. Everything else being equal, an election poll of 100,000 people out of 14 million registered voters in Kenya is more likely to produce accurate results than a poll of 1,000 out of the same number of registered voters. The national polling organizations in the developed world use small national samples under 2,000 that predict quite accurately for the entire electorate. Another important aspect in polling is the selection of research respondents. Those interviewed should be selected through random sampling. This is usually done to lessen the possibility of allowing any 'unaccounted for' bias or characteristics of those being interviewed to influence the results.

Opinion Polls Sampling Methods in Kenya Compared to the Developed World

Scientific methods of polling were introduced in the US in 1936. The method had been used in business since 1920s by three different polling pioneers, namely: George Gallup, Elmo Roper and Archibald Crossley. All the three correctly predicted Roosevelt's victory and, thus, launched scientific opinion polling towards its subsequent great popularity. They used the quota method of sampling in which individual members of the sample are chosen in accordance with a quota so as to roughly match the national population on factors such as the geographic area of the country, urban versus rural residence, sex, age, race and socio-economic status.

A major problem with the quota system is that interviewers are allowed discretion in choosing the individual respondent within the quota categories. This discretion introduces a possible source of bias because the resultant sample can largely omit some type of people, such as those difficult to contact. A much better method is the probability method of sampling in which specific respondents are chosen by random selection methods. The result of this method is that no type of individual is systematically omitted from the sample, and the likely amount of error in the resultant data can be calculated.

Scientific laws have established that no matter how large the population being studied (from small city to a whole country), the size of the sample is the main factor that determines the expected range of error in a probability sample. Most current polls use samples ranging in size from 1,000 to 3,000 individuals. A sample of 1,500 individuals has an expected (that is 95% certain) margin of error of plus or minus 3 per cent, and larger samples only yield slightly smaller errors.

In Kenya, nearly all polling organizations use probability methods in selecting their samples, with some agencies adopting both probability sampling together with quota methods. This, to some extent, affects the quality of their results if weighting of data is not applied at the analysis stage. To ensure that every registered voter is given equal chance of being included in the sample, methods of random selection are used at every stage of the sampling. The sample frames are stratified based on two factors: administrative province, and residential locality (urban or rural). The area stratification increases the likelihood that distinctive constituencies or language groups are not left out of the sample. The urban/rural stratification is a means to make sure that these localities are represented in their correct proportions. Stratification is further done to ensure that there are proportionate cases in each province to make generalizations about its registered voters and general perception in each province.

The other observed weakness in the existing methodology applied by pollsters in Kenya is the lack of a criterion for selecting primary sampling points (Enumeration Areas-EAs). EAs should be selected from each stratum using the probability proportional to population size (PPPS) method. This method would ensure that larger (i.e., more populated) polling stations have a proportionally greater probability of

Table 9.24: Distribution of votes by province in 2007 (ECK 2008)

Province	Kibaki	%	Odinga	%	Kalonzo	%	Others	%	Votes cast	Registered voters
Nairobi	313,478	47.7	288,922	44.0	52,974	8.1	1,845	0.3	657,219	1,275,021
Coast	197,354	33.1	353,773	59.4	38,881	6.5	5,909	1.0	595,917	1,045,629
N. Eastern	97,263	50.3	91,440	47.2	4,498	2.3	333	0.2	193,534	315,664
Eastern	835,481	50.4	83,575	5.0	726,782	43.8	13,229	0.8	1,659,067	2,516,998
Central	1,741,086	97.0	34,046	1.9	11,702	0.7	7,215	0.4	1,794,049	2,186,315
R. Valley	818,445	33.5	1,580,880	64.6	33,863	1.4	12,300	0.5	2,445,488	3,358,285
Western	312,300	32.2	639,246	65.9	6,729	0.7	11,417	1.2	969,692	1,564,854
Nyanza	262,627	16.9	1,280,978	82.4	4,470	0.3	7,160	0.5	1,555,235	2,041,686
Totals	4,578,034	46.4	4,352,869	44.1	879,899	8.9	59,408	0.6	9,870,201	14,304,452

Table 9.25: Reviewing discrepancies in exit and official results

25% x 5 province rule

		Total	Nairobi	Coast	North-eastern	Eastern	Central	Rift Valley	Western	Nyanza
Raila	Exit Poll	46.07	54.55	67.16	76	7.18	2.54	54.63	72.68	83.42
	Official	44.1	43.96	59.37	47.51	5	1.89	64.66	65.82	82.33
	Difference (Official-Poll)	-1.97	-10.59	-7.79	-28.49	-2.18	-0.65	10.03	-6.86	-1.09
Kibaki	Exit Poll	40.17	33.08	24.58	17	42.54	91.91	41.17	24.17	14.67
	Official	46.38	47.69	33.12	50.53	50.25	96.87	33.47	32.16	16.88
	Difference (Official-Poll)	6.21	14.61	8.54	33.53	7.71	4.96	-7.7	7.99	2.21
Kalonzo	Exit Poll	10.22	6.58	7.2	7	46.85	3.5	1.87	2.48	1.02
	Official	8.92	8.06	6.53	2.34	43.7	0.65	1.39	0.69	0.28
	Difference (Official-Poll)	-1.3	1.48	-0.67	-4.66	-3.15	-2.85	-0.48	-1.79	-0.74
	Margin of error	1.32	4.31	4.51	9.8	3.26	3.41	2.73	3.99	3.5

Table 9.26: Exit poll and official results

Exit poll and official results

		Total
Raila	Exit Poll	46.07
	Official	44.1
	Difference (Official-Poll)	-1.97
Kibaki	Exit Poll	40.17
	Official	46.38
	Difference (Official-Poll)	6.21
Kalonzo	Exit Poll	10.22
	Official	8.92
	Difference (Official-Poll)	-1.3
Other/RTA	Exit Poll	3.53
	Official	0.61
	% registered voters	100
	Poll sample	5495
	Margin of error	1.32
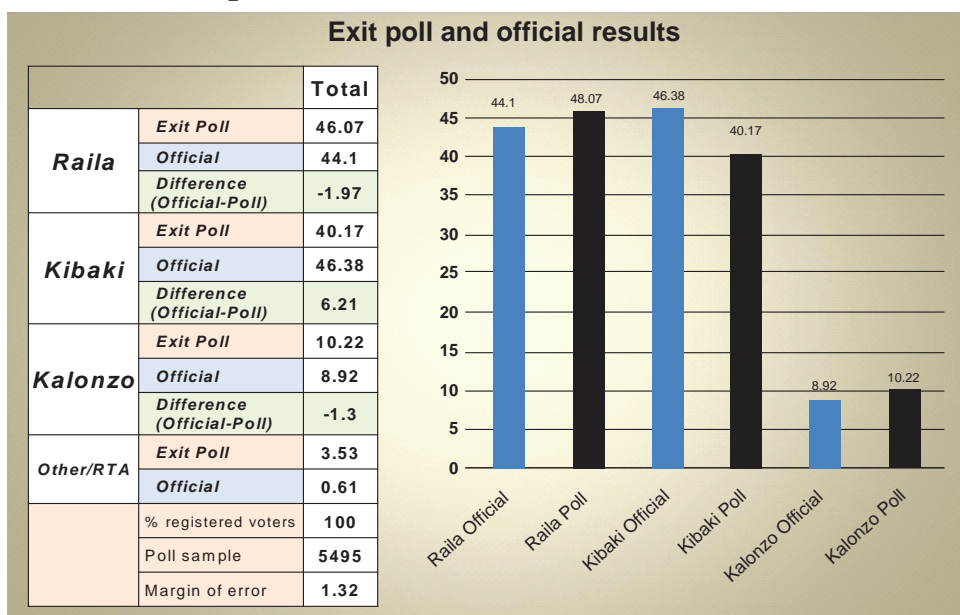
being chosen into the sample. This procedure is currently not in place and is left to the discretion of the research assistants sent to interview the respondents to make arbitrary choices of the sampled areas and eligible respondents in the households for interview. The only institution found to have ensured the PPPS criterion is applied is Afrobarometer in its bi-annual surveys in Kenya. The same firm also applies weighting at the analysis stage, which no other pollster in Kenya uses.

Table 9.27: Direction of differences by candidate

		Total	*Nairobi*	*Coast*	*North - eastern*	*Eastern*	*Central*	*Rift Valley*	*Western*	*Nyanza*
					Differences that depressed Kibaki tally ─────					
Raila	*Exit Poll*	46.07	54.55	67.16	76	7.18	2.54	54.63	72.68	83.42
	Official	44.1	43.96	59.37	47.51	5	1.89	64.66	65.82	82.33
	Difference (Official -Poll)	-1.97	-10.59	-7.79	-28.49	-2.18	-0.65	10.03	-6.86	-1.09
Kibaki	*Exit Poll*	40.17	33.08	24.58	17	42.54	91.91	41.17	24.17	14.67
	Official	46.38	47.69	33.12	50.53	50.25	96.87	33.47	32.16	16.88
	Difference (Official -Poll)	6.21	14.61	8.54	33.53	7.71	4.96	-7.7	7.99	2.21
Kalonzo	*Exit Poll*	10.22	6.58	7.2	7	46.85	3.5	1.87	2.48	1.02
	Official	8.92	8.06	6.53	2.34	43.7	0.65	1.39	0.69	0.28
	Difference (Official -Poll)	-1.3	1.48	-0.67	-4.66	-3.15	-2.85	-0.48	-1.79	-0.74
	Margin of error	1.32	4.31	4.51	9.8	3.26	3.41	2.73	3.99	3.5

Table 9.28: Differences that depressed Raila tally

		Total	*Nairobi*	*Coast*	*North - eastern*	*Eastern*	*Central*	*Rift Valley*	*Western*	*Nyanza*
					Differences that depressed Raila tally ─────					
Raila	*Exit Poll*	46.07	54.55	67.16	76	7.18	2.54	54.63	72.68	83.42
	Official	44.1	43.96	59.37	47.51	5	1.89	64.66	65.82	82.33
	Difference (Official -Poll)	-1.97	-10.59	-7.79	-28.49	-2.18	-0.65	10.03	-6.86	-1.09
Kibaki	*Exit Poll*	40.17	33.08	24.58	17	42.54	91.91	41.17	24.17	14.67
	Official	46.38	47.69	33.12	50.53	50.25	96.87	33.47	32.16	16.88
	Difference (Official -Poll)	6.21	14.61	8.54	33.53	7.71	4.96	-7.7	7.99	2.21
Kalonzo	*Exit Poll*	10.22	6.58	7.2	7	46.85	3.5	1.87	2.48	1.02
	Official	8.92	8.06	6.53	2.34	43.7	0.65	1.39	0.69	0.28
	Difference (Official -Poll)	-1.3	1.48	-0.67	-4.66	-3.15	-2.85	-0.48	-1.79	-0.74
	Margin of error	1.32	4.31	4.51	9.8	3.26	3.41	2.73	3.99	3.5

Other weaknesses observed was when Steadman unilaterally changed its polling methodology in an attempt to suit certain political groups. This happened midstream in the run up to the 2007 general elections when they argued that one method was favouring a certain political party, hence had to change its sampling strategy. Because opinion polls are so valuable in democracies, those who conduct and report them must be consistent, transparent and accurate. They must disclose their methodology and provide realistic interpretations of their data. The code of international association

of opinion researchers underscores the importance of responsible and unbiased reporting of opinion poll results to the public interest.

Impact of Polls on Voting Behaviour in Kenya

Public opinion polling is a critical force in shaping and transforming the citizens' attitudes and perceptions. Properly conducted and disseminated, survey research gives the general public an opportunity for its voice to be heard. Through opinion polling research, politicians, the media and other interested groups have access to accurate measures of public attitudes and intentions. So far, the impact of opinion polling appears to have been generally positive. It has clearly opened up political space and presented information and, therefore, choices to the electorate. This was clearly exhibited by Kenyans in 2007 as they yarned for the opinion poll results to establish how their preferred presidential candidates performed in the weekly polls. Media houses also recorded increased sales on the days they published poll results.

Scientific polling is among the most successful political developments in Kenya in the 21st century. Polls have helped guide policy by giving decision makers impartial information about what the public wants. The polls also alert the public to their own hopes, desires and political goals. They are mirrors, permitting individuals to understand where they fit into the public system. Media reports of the results of opinion polls tell readers and the general citizenry that their opinions are important, and can sometimes be more important than the opinions of the political elite. Further, polls provide politicians with ammunition to debate and open up and generate debate on political issues.

The desire for and professionalism of opinion polling in Kenya has undoubtedly increased over the last few years, and has certainly flourished since 1997, taking advantage of the political space created by the weakened state of the government. In the words of ESOMAR, the European opinion polling professional society:

> *The more direct the link established by the institutions of a country between its citizens and the nation's political direction, the more opinion polls are in demand.[26]*

There have also been protests from polling bodies, for example about the manner in which their data has been presented to the public.[27] There are still concerns about the bias of pollsters, and about the uses to which polls can and should be put. Furthermore, not all media houses have accepted that polling is a valid or valuable subject for discussion. The concept of an independent research body is not fully accepted, with frequent allegation, for example, that pollster X is inclined towards

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[26] www.esomar.nl/guidlines/opolls.html.

[27] The Esomar code specifies that if a research organization knows that a particular client will not fairly present opinion poll results in the published version of the finding, they have a responsibility to stop carrying out polls for that client.

political party B. The competitive and personalized nature of factional politics in Kenya also personalizes and creates conflicts and cleavages on even technical issues. Furthermore, the number of organizations commissioning polls and carrying out polls is still too small that pollsters do not have a stable and guaranteed source of income.

Contribution of Opinion Polling to Democracy in Kenya

Any assessment of the contribution of opinion polling in Kenya must recognize that some countries have had a longer experience with opinion polling. The connection of opinion polling to democracy is first illustrated by the fact that opinion polls are most often a critical tool used in more developed democracies. Their existence in any society for the purposes of understanding political or other social information is only possible in countries that fall within the democratic spectrum. In the broad survey carried out in this study, it was realized that open and non-restricted collection of perceptions and facts on national or other matters is virtually absent in non-democratic countries. Judging also from the number of registered firms that carry out opinion polls, it is clear that countries at the more advanced end of the democratic spectrum, such as the United Kingdom, the United States of America, Canada, Australia and Japan tend to have a larger number of polls conducted on an annual basis in addition to registered corporations and firms undertaking that work on a regular basis. Related to this is the fact that the duration and total turnover by these firms in respect to the assessments and instruments for carrying out opinion polls is equally advanced and numerous.

In Kenya, the increasing number of polling firms constitutes a definitive and dependable sign of a country's move towards a more democratic state.

An Index of Democratic Preferences

Since the repeal of clauses in the Constitution of Kenya that had restricted political organization outside a single political party, every period of general elections has seen the publication of opinion polls. Opinion polls during the periods preceding the 1992 elections and the subsequent general elections have acted as a mechanism for surfacing various views and political preferences of Kenyan citizens. This is especially important because polling firms concentrate on polling Kenyan adults who express the intention to vote during the elections. To that extent, polls have become an effective barometer of public opinion. These political preferences are varied and are manifestations of the understanding of citizens regarding issues such as constitutional reforms, specific legal intentions, the role of government and issues of overall government performance. As a barometer, opinion polls serve two purposes in terms of overall predisposition towards a candidate or political configuration or on an issue of public policy. In effect, his barometer may entrench

democracy by distilling the opinions of Kenyans of various professional or other material affiliations.

Political parties in Kenya have come to understand the need to keep themselves informed of public sentiments in respect to areas of policy or legislation. This explains the interest shown by the contending parties in the results of opinion polls in 2007. While the comments made in formal and informal discussions by political party spokespersons in some instances reflect their ignorance of the methodology and the scientific basis of the polls, it is instructive that the polls cannot be ignored altogether.

Political Communication

The significant contribution of opinion polling to Kenya's political and policy landscape is that the ubiquity of polls and the regular nature of their presentation have made them a very potent tool for political communication. The increased use of polls in the period before presidential elections has made them a critical part of the pre-election landscape. Other polls included in this study show that Kenyans have steady preferences in areas such as the expectation of the qualities of leadership and necessity to fight corruption, but are amenable to persuasion in other areas. Thus, opinion polls provide an opportunity for discerning interest groups and political parties to leverage political communication. The evidence for this is seen in the fact that political parties placed anti-corruption and poverty as the priority issues during the elections in 2002 and 2007, because they have consistently resonated with the public.

Forensic Tool for Detection of Electoral Fraud

As a carryover of the single party era of political organization and participation, elections in Kenya have had a high tendency for irregularities and outright fraud. Indeed, since the first multiparty elections in 1992, the number of election petitions in Kenya has often been in a range of 20-30 per cent of the 210 contested constituency elections. As this study has stated in earlier sections surveying the history of polling in Kenya, Kenyans in general and political parties in the opposition have often been concerned not only with the institutional infrastructure available for managing elections, but also with the possibility of systematic electoral fraud as witnessed on a larger scale in the 2007 presidential elections. Thus, opinion polls have found positive use in the entrenchment of democracy where exit polls have been used as mechanisms for detection of electoral fraud. This study has found no empirical estimates of the degree to which this may have prevented such electoral fraud, but it is clear that the main political parties tried to confirm the results of presidential contests through exit polls. As the trend analysis in this study has confirmed, the IRI and other firms carried out pre-election and exit polls to confirm the results of polls in the general elections of 2002 and 2007.

Nascent democracies with a degree of freedom benefit from the use of opinion polls as a forensic tool because the poll data is expected to be consistent with the overall electoral results. In Kenya's case, whereas the results of the elections were disputed in 1992 and 1997, the outcomes of the elections were largely within the range and suggested that fraud may not have been as widespread as it had hitherto been. The 2007 presidential election outcome went against the numerous pre-election polls and the exit poll results as discussed in this study.

Regarding all these factors, it may be stated that on the balance of facts, the reemergence of opinion polling in Kenya advanced the right of political organizations and individuals to communicate and receive information. The broad availability of that information has provided opportunities to inform political and policy decisions. On the other hand, because scientific polling reveals preferences that allow for independent action by political agencies, it is also clear that the results of opinion polls may be used in attempts to manipulate the public. Constant opinion polling may reveal prejudices that parties could exploit in mobilization of votes.

Statistics Act 2006: Implications for Opinion Polling in Kenya

From the standpoint of rights, opinion polls may fall under the right to information acquisition and its dissemination. It is, therefore, reasonable to consider that all polling organizations are participating in information acquisition and dissemination in a manner consistent with constitutional rights to compile and disseminate information. Thus, the work of firms and institutions undertaking opinion polls in Kenya could be reasonably argued to be in the public interest and justifiable under broad constitutional principles inspite of the lack of an explicit law.

As part of broad reforms in the public sector, the legislature passed the Statistics Act 2006 and it became effective from September 2006. The law provides for the conversion of the Central Bureau of Statistics to the Kenya National Bureau of Statistics (KNBS) with the express authority to collect, compile and analyze and publish statistical information.[28] The statute establishes the KNBS as a corporate body with powers to undertake national statistical collection, compilation, analysis and publication. A Board of Directors is established with powers to formulate and monitor the policies and functions of the KNBS. This Board of Directors would appoint a Director General as the principal manager and chief executive of the institution.

In order to systematize and reform the workings of the national statistical offices, the new law is altogether defensible. Having acknowledged that the priorities of KNBS are funded from public and other sources, the law has made an allowance for external institutions to collect and analyze information. Section 18(1) and (2) contemplates this but provides that any agency that seeks to collect data at a national, regional or

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[28] Government of Kenya (2006), The Statistics Act 2006, in Kenya Gazette Supplement No. 61 (Acts No. 4) p.75.

local level must seek approval from the board and submit its plans to the board three months in advance of the intended survey. The intention, therefore, is to make the Board of Directors of the KNBS the primary reference body before any institution or individual that collects information in Kenya. This is clearly an unreasonable requirement that could make it unduly onerous to collect information by polling firms or other institutions.

To start with, it is sometimes difficult to foresee the subject of polls that far in advance, in addition to the fact that there is no obligation placed on the institution to respond to such an application within a reasonable or any timeframe. The collective implication of this arrangement is not only to hinder the possibility for undertaking surveys on dynamic issues, but it is also procedurally untidy to require competing data collection firms to seek the permission of the KNBS, which may be their competitor in such endeavour. It appears that the effect is to try and preserve the monopoly status of KNBS in respect to all data collection and analysis in Kenya. Apart from the quest to preserve the monopoly status of KNBS, these provisions imply that the right of Kenyans to collect and analyze information is effectively reduced and, to that extent, these clauses together result in an attempt to curtail freedom of information gathering and dispersal (Oloo, 2006). Due to the high number of regular surveys carried out by firms in the private sector, it appears unlikely that this requirement has been fully adhered to and, hence, it may have been observed more in breach.

In addition to the clauses in section 18 above, section 19(1) to (4) grants broad authority and discretion to officers of KNBS to enter into premises and demand information in the possession of any individual or institution through a notice. The summary effect here again is the possibility of misapplication of this discretion to unreasonably conduct searches and seize data and personal and proprietary information. This section leaves open the possibility that private information either collected or generated by an individual or firm may be nationalized entirely at the behest of the authorized officers of the KNBS without the prior need to justify such need through a court of law. Instead, section 19(4) places the responsibility and burden on the person on whom a demand is made to provide evidence that KNBS or its officers are not authorized to receive such information. This extreme application of the clauses has not occurred, but its existence is sufficient reason to fear that it may be used against citizens of Kenya undertaking private activity.

Section 24 of the statute introduces criminal sanctions for failure to comply with a demand by tagging this as obstruction. The criminal penalty for this obstruction is a fine not exceeding Ksh 100,000 and or imprisonment for a period not exceeding 12 months. In all, these sanctions show that there is a dangerous introduction of serious sanctions to preserve the monopoly of a state agency in the publication and access to information, on the one side, and the reduction of the right of individuals to generate and disseminate information that they have gathered. In the view of these authors, these serious sanctions and the constraints that have been placed on independent

research and polling has not been applied at the extreme end but make the Statistics Act a curious piece of legislation. This is because it places very little pressure on a public agency to ensure that useful and accurate information generated by public funds is available in the public domain and, instead, places onerous restrictions on private institutions and researchers on the collection, analysis and dissemination of information.

Therefore, the Statistics Act 2006 is subject to abuse and is drafted in a way that compromises public interest in diverse sources of and access to information. Fears that the government agency may invoke the restrictive clauses to impede access to information and ensure that only approved versions of survey information is placed in the public domain persist. This was not clearly evident in the last elections but the clauses were not invoked then. Indeed, any attempt to resort to extreme and strict enforcement of sections 18 and 19 of the Statistics Act 2006 may be found incompatible with section 79 of Kenya's Constitution if it were challenged in Kenyan courts.

Conclusion

While opinion polls in Kenya are not necessarily new, their resurgence after 1992 has introduced a science-based mechanism for improving political communication and for safeguarding the integrity of democratic processes in Kenya. As this survey has shown, the ability to use them as a tool for democratic development is affected both by the insufficient communication of their limits and purposes by the sponsors and the miscommunication that results from poor translation of their results. All this considered, opinion polling remains a positive tool for democracy in Kenya and they reveal the changes in political opinion, participation and responses to initiatives of political institutions that include government. There is remote but real possibility that certain legal prescriptions in the Statistics Act 2006 may hinder the free use of opinion polls for the purposes outlined above, but the same prescriptions have neither been used nor challenged at this moment. Finally, this study has demonstrated that opinion polls in Kenya have been reasonably good predictors of the outcomes of electoral contests and the distribution of positions in the legislature. As a result, they are gaining recognition by political parties as instruments that may be used to craft policy messages and to receive feedback regarding the same. Scholarly dedication to the understanding of their deployment in Kenya will ensure that the public will understand the nature of opinion polls and the degree to which they are useful to the development of democratic institutions and behaviour.

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10 Was it Rigged? A Forensic Analysis of Vote Returns in Kenya's 2007 Elections[1]

Karuti Kanyinga, James D. Long, David Ndii

Abstract

Unprecented political violence engulfed Kenya following confusion over the announcement of the presidential election results amidst claims of rigging in the December 2007 general elections. Vote counting progressed amidst cries of malfeasance by several observers. The Chairman of the Electoral Commission of Kenya (ECK) himself cast aspersions on the results by announcing incomplete or contradictory figures. The vote count ended in chaos but the ECK announced the incumbent President Mwai Kibaki of PNU as the winner. The opposition, Orange Democratic Party (ODM), declined to accept the result. This confusion sparked protests and violence across the country. This chapter notes that electoral fraud is usually hard to prove, making it attractive to parties. Further, claims of rigging usually come to the fore because incumbents are unwilling to give up power and opposition parties claim rigging only when they lose elections. But was there evidence of rigging in the 2007 presidential election in Kenya? This chapter addresses this question using a variety of techniques and data sources, including election forensics. The various statistical methods employed in this discussion reveal startling anomalies in the vote count. Large discrepancies exist within the ECK's final results, and in particular when presidential election is compared to parliamentary and civic results as well as when compared with other data sources, including vote counts from the media, past voting patterns and an exit poll. Some of the statistical methods employed here produce a large number of dubious ballots enough to have altered the outcome of the presidential result. The analysis generally shows that the final result was highly suspicious, anomalous, and biased in favour of Mwai Kibaki/PNU.

Introduction

In December 2007, Kenya conducted its fourth multiparty elections since the return of multiparty democracy in 1991. Confusion over the announcement of the presidential election results and subsequent claims of rigging sparked protest and violence, tragically resulting in over 1,000 deaths and displacement of over 600,000 people within Kenya and to neighbouring countries (Commission of Inquiry into the Post-Election Violence, 2008).

As the counting of votes progressed after polls closed on the evening of 27 December 2007, members of political parties, accredited observers—both domestic and international—as well as civil society organizations and ordinary citizens lodged allegations of rigging (European Union, 2008; Independent Review Commission, 2008; International Republican Institute, 2008; Kenyans for Peace, Truth, and Justice, 2008). Commissioners of the Electoral Commission of Kenya (ECK), including its Chairman, cast aspersions on the results by announcing incomplete or contradictory figures for some constituencies, and blaming the delay of results from certain constituencies on returning officers who could not be reached (Bengali, 2008).

The vote counting ended in chaos on 30 December 2007; the police violently closed the national counting centre. Hours later, the Chairman of the Electoral Commission of Kenya announced the results, giving victory to the incumbent, President Mwai Kibaki of the Party of National Unity (PNU). A country hitherto known for stability and prosperity in a volatile region erupted. Underscoring the failure of the ECK in maintaining legitimacy of the count, parliament disbanded the ECK within one year of the election following recommendations by the Independent Review Commission (IREC).

Is there in fact evidence of rigging in Kenya's 2007 election? Although scholars frequently assume rigging in nascent democracies, few studies attempt to systematically uncover its causes, dynamics, or consequences outside of a few cases. This is surprising given that the international community continues to devote substantial resources to monitor elections, and Western donors frequently require free and fair elections as a prerequisite for development assistance (Bjornlund, 2004; Chand, 1997; Laakso, 2002). It is also surprising given the deleterious effects of rigging, including political violence, which now seems commonplace in African elections following allegations of fraud in countries such as Kenya, Ethiopia, Nigeria and Zimbabwe.

Electoral fraud is of course hard to prove and, therefore, remains attractive to parties especially in situations where democratic consolidation is yet to take root and where political parties are yet to institutionalize. In transitional democracies such as Kenya's, the problem appears particularly nettlesome given weak institutions, a lack of independence and transparency on the part of electoral management bodies,

and the inability of international and domestic observers to monitor all aspects of the count from polling stations and constituencies, to the final official tally.

Adding to the problem are incumbent political leaders who appear unwilling to give up power at any cost, and opposition parties that claim rigging only when they lose or boycott contests altogether. The credibility of arguments made by any side in a contest is obviously suspect, requiring new statistical techniques and standards of evidence to demonstrate the presence and extent of fraud.

In Kenya, specifically, the predicted closeness of the presidential race before the election may have contributed to an irresistible temptation on all sides–both the government/Party of National Unity (PNU) and the main opposition/Orange Democratic Movement (ODM)–to participate in fraud. The final and well-publicized public opinion poll released by the Steadman Group declared the presidential race 'too close to call', with ODM garnering 45 per cent of the intended vote while PNU registered 43 per cent (Cheeseman, 2008). This narrow margin suggested the importance of turnout and left the contest essentially a toss-up. This, on its own, aroused unprecedented political anxiety.

This chapter uses a number of statistical methods to probe the likelihood of deliberate attempts to alter vote counts. From the outset, such a study incurs numerous challenges. No one methodology or piece of data that we use definitively 'proves' fraud. Nor can an examination of numbers prove malevolent intentions–or any intentions–on the part of electoral administrators. Last, using data whose validity has been challenged creates important limitations to a study of this kind.

This discussion uses a variety of techniques and data sources, including elections forensics, to reveal startling anomalies in the vote count that at the very least support the widely heralded recommendation of massive reform for the ECK (Independent Review Commission, 2008). Various kinds of discrepancies exist within the ECK's final results, and when compared with other data sources, including vote counts from the media, previous voting behaviour, and an exit poll. A problem in any one of the areas highlighted below is worthy of scrutiny and ought to encourage reform. Importantly, the analysis shows that the magnitude of location of suscpicious votes produced enough anomalous ballots to swing the outcome of the presidential contest, potentially undercutting democratic rules, practices and institutions in Kenya.

This chapter also reviews extant scholarship on the scope of previous cases of fraud, including techniques used to study it. While this remains an under-studied area of political science, particularly with respect to African elections, newer scholarship on effects of various voting technologies, the effects of observers on rigging, and forensic analyzes of elections results all point to a bourgeoning interest in the study of fraud.

The discussion begins with a brief account of how events unfolded in Kenya, before presenting analysis of the results. First, an examination of 'Forms 16', or

the forms indicating the final tally from polling stations at the constituency level, produces a number of problems in how these forms were filled out and submitted. These constituency counts often do not match the final certified data. Next, we turn to results reported by media houses compared with official results, and highlight a number of discrepancies. Last, we look at two problems of voter turnout. Suspiciously high turnout may have helped to inflate totals for candidates. Moreover, differences in turnout between the presidential and parliamentary elections result in a number of potentially problematic ballots that were enough to have swung the result of the election. While all of these data highlight relevant discrepancies, we find that the differences in parliamentary and presidential turnouts provide the best evidence that alterations were made to vote totals, and that this mattered to the declaration of the winner.

It is important to stress what our analysis can and cannot say about the potential for rigging. Once again, statistical tests in this vein are helpful in highlighting a number of irregularities based on prior voting behaviour in Kenya, and suggesting whether these irregularities tend to bias in favour of any one candidate, and whether or not by enough votes to switch the result. While we do find a consistent bias in favour of President Kibaki, statistical analysis cannot source malfeasance by any one party, candidate, or individual. It does, however, underscore a number of problems that existed within the ECK and ought to urge policy makers and politicians to undertake serious reforms in the creation of new electoral institutions in Kenya, including the newly formed Independent Interim Electoral Commission (IIEC).

The Study of Electoral Fraud

Scope

Electoral fraud emasculates efforts at democratization and erodes democratic gains by threatening to curtail political and economic progress. In Africa especially, democracy remains fragile, and problems in one country frequently produce regional crises. The international community's attempts to negotiate diplomatic solutions to post-election crises arising from fraud have only proved partially successful so far in Kenya, and hugely problematic in Zimbabwe.

Following Riker (1982), Lehoucq (2003) casts voting as a classic social choice problem of how best to translate preferences into outcomes as voters head to the polls and cast ballots. No voting process is likely to adopt rules that are not at least controversial and unacceptable to some actors. But even so, egregious electoral mismanagement and manipulation can block the preferences of citizens and produce destabilizing outcomes such as protest and violence and undermine the efficacy of democratic institutions.

Despite its deleterious effects, fraud remains rarely studied in political science. Academic perspectives on the causes and nature of rigging remain under-theorized,

and data collection from 'third wave' democracies such as those in Africa proves difficult. Moreover, it is not always clear what fraud is or how to measure it. 'Fraud' may include artificial attempts to bloat registries, infractions with respect to electoral laws, classic 'stuffing and burning' of ballots, vote-buying, or undue influence over electoral commissions (Alvarez *et al.*, 2008; Lehoucq, 2003).

Some of these techniques prove more successful and decisive than others, and enjoy a rich history in the development of democracies. In fact, most work on fraud has involved past American elections (Argersinger, 1985; Campbell, 2003; Cox and Kousser, 1981), including specific historical case studies examining voting irregularities in Kentucky in 1905 (Campbell, 2003), Texas in 1861 (Baum, 1991), South Carolina in 1876 (King, 2001), and early 20th century Pennsylvania (Mayfield, 1993).

But even modern and established democracies have problems translating voting preferences into fair electoral outcomes. More recent studies of US elections have examined how various voting technologies produce anomalous results. Figures of the nation-wide exit poll from the 2004 election projected a victory of about 3 per cent for the Democratic Party candidate, John Kerry, against incumbent Republican President George W. Bush. Bush went on to win by 2.5 per cent. While the accuracy of the exit poll was initially blamed (Edison and Mitofsky, 2005), statistical analyzes reveal that the more likely explanation for differences comes from the unusually high errors created by optical scanners, punch cards, touch screens, and mechanical voting machines (US Count Votes, 2005). The simple act of registering and counting ballots can, therefore, matter greatly to who wins an election.

Kiewiet *et al* (2008) and Alvarez and Katz (2008) study the various problems associated with the introduction of direct-recording electronic (DRE) voting, specifically the use of touch-screen or 'ATM'-like technologies that have recently been introduced across the US. Even though these new forms of ballot casting may not suffer direct manipulation as such, they do create problems for voters who are not used to using the technology, and therefore do not always accurately reflect intended vote choice.

While established democracies may incur technological challenges, blatantly unfair practices seem a permanent feature of races in emerging democracies. In Latin America, electoral malfeasance has possibly occurred in Argentina (Sabato, 2001), Costa Rica (Lehoucq and Molina, 2002), Guatemala (Sloan, 1970), Columbia (Posado-Carbo 1997, 2000), Mexico (Simpser, 2007) and Peru (Mucke, 2001).

Elections in the former Soviet bloc have produced not only frequent rigging, but a variety of post-election protests against incumbents who are perceived to have stolen an election and a host of 'coloured revolutions', including in Ukraine, Georgia, Serbia, and Kyrgyzstan (Tucker, 2007). Interestingly, even in Russia's 2004 presidential election where Vladimir Putin's re-election was not in doubt, forensic analysis shows the potential for artificial vote productions by local elites (Myagkov *et al.*, 2008).

African elections remain under-studied, even though many countries produce dubious contests. Allegations of fraud have been consistently lodged against Robert Mugabe in successive electoral rounds in Zimbabwe (Makumbe, 2002; 2006), and in Ethiopia (Abbink, 2006; Harbeson, 2005) and Nigeria (Berber and Scacco, 2009; Collier and Vicente, 2008; Herskovits, 2007). It took 18 months of adjudication following Nigeria's problematic election in 2007 to arrive at a final court decision that left President Yar'Adua in office (Ige and Usigbe, 2008).

Methodologies

The difficulty in studying fraud has produced variegated methodologies to measure its nature and extent. One standard technique is to study allegations of fraud made to legislatures and courts. Lehoucq and Molina's (2002) eminent study of fraud in Costa Rica draws upon petitions lodged against parties to Congress in the period 1901-1946. This helps them to create a unique dataset of 1,300 individual accusations geographically and longitudinally dispersed to test hypotheses about the impact of social structure and institutions on the incidence and nature of electoral malpractice. This technique has also proved important for the study of US elections, where Bensel (2003) examines appeals made to the United States House of Representatives in the mid-19th century.

However, appeals to legislative or judicial institutions by contestants in many countries are not likely to prove fruitful, as legislatures are partisan and courts lack autonomy and capacity. While courts have decided disputes in local parliamentary cases in Kenya, the ODM decision not to pursue an election petition is credible. Attempts to pursue petitions against the former President Moi, including by the current incumbent Mwai Kibaki, failed to get off the ground simply because court officials were unable to penetrate the presidential security to serve the orders. Not surprisingly, PNU's insistence that ODM take the dispute to the courts was seen by many as a cynical ploy. Harbeson (2005) underscores this problem in his study of Ethiopia, where nearly 300 opposition petitions were made following problems in many of Ethiopia's constituencies in 2005. The commission tossed out about 165 of the cases, and investigated the rest. Subsequently, they decided to rerun 31 races, 20 of which produced new winners, all of which favoured the ruling party.

The presence of international observers may also contribute towards quantifying the level and impact of artificial vote productions and subtractions. For Armenia's 2003 election, Hyde (2007, 2008) performs a field experiment in which observers are randomly assigned to polling stations. She estimates the effects of international observers by comparing polling stations where observers visited to those where they did not, and finds that international observers reduced fraud by about 6 per cent in the polling stations they frequented during the first round of voting.

Unfortunately, the ECK does not provide polling station level results that would allow the comparison of stations with observers and those without to measure any reductions in rigging from the presence of observers. And while the European Union—the largest international mission—visited 752 (of 27,555) polling stations, the Kenyan Domestic Election Observation Forum (KEDOF) had 17,000 monitors (European Union, 2008). However, their work was mismanaged and some of their observers were not impartial.

Hyde's insights are important as they provide a replicable model for observers of any election, and given the amount of monetary and technical support that international organizations provide for election observations, understanding whether and how they are effective should be an important aspect of impact evaluations.

Other scholars have pursued 'elections forensics', which are 'methods... based on statistical tools and are intended to examine elections after the fact' and meant to '[focus] on the recorded votes, asking whether there are significant anomalies' (Mebane, 2008: 162). This focuses specific attention on 'outliers' or areas where totals do not accord with assumptions of voting behaviour, either based on previous results or totals from similar areas.

As an example, Myagkov *et al* (2008; 2009) study county-level vote totals using econometric analysis of outliers to estimate levels of fraud in Russia, with data from 1995-2004. They find that party agents may inflate vote totals even when the winner is not in doubt before an election. Ansari *et al* (2009) use official returns to examine outliers by focusing on previous turnouts and voting behaviour in Iran, comparing results from 2005 to those contested in 2009. They find suspicious turnout scenarios, including those where actual votes exceed registered voters, and implausible vote swings towards President Mahmud Ahmadinejad. We follow in this vein and believe the variety of forensic methods that we employ provides a robust picture of the extent and nature of fraud.

One specific forensic technique is the application of 'Benford's Law', which states that while digits in a number should occur with equal frequency, experiments show that when asked to generate a series of numbers, human subjects tend to produce patterns to the digits they create (Mebane, 2008). Mebane (2008) examines the second to last digit in returns from the various US elections, but finds little evidence of irregularities. When comparing returns from elections in Sweden and Nigeria, Berber and Scacco (2009) find that the digit results from Sweden conform to a normal distribution that is analogous to the digits having been produced at random in an election without allegations of fraud. In a race with widespread accusations of fraud, Nigeria's 2004 election, they find consistent biases in the digits produced, suggesting artificial production of returns. This method is once again difficult to employ in Kenya given that results from the level at which vote totals were initially recorded—polling stations—are not made public.

The Case of Kenya

A variety of studies already exist examining the conduct and results of ballot counting for Kenya's 2007 elections. Of course, this election was not the first in which parties and candidates attempted rigging. Party primaries are frequently understood to incur a significant amount of rigging, and Throup and Hornsby (1997) argue that fraud was not only a feature of parliamentary races in the one-party state in the Kenya African National Union (KANU) era, but also after Kenya's reintroduction of multiparty elections in 1992, which allowed incumbent President Daniel arap Moi to retain power.

Other studies of Kenya's 2007 election have produced a variety of insights. Chief among these is the report produced by the Independent Review Commission (IREC). In it, the investigative body enumerates numerous mistakes in the management and operations of the ECK. It finds problems with everything from the voter's register to the structure and rules governing the ECK. However, IREC argues that the problem with this election was not about its management alone, but also involved the complicity of the Kenyan public. 'Though the ECK is primarily responsible for the flaws in the 2007 general elections, Kenyan society has long condoned, if not actively connived at, perversion of the electoral process' (IREC, 2008: 10). However, their assertion blaming 'Kenyan society' is unsubstantiated and unsupported with any kind of data.

IREC also examines results from 19 of 210 constituencies in which it discovers a wide variety of errors that it attributes to problems of data entry and aggregation. This is a disturbing trend that the commission ascribes to simple math errors, but may also show deliberate and widespread attempts at fraud. However, for scholars of fraud, numbers do not demonstrate intent (Mebane, 2008). That is, whether an ECK worker simply fails to add correctly or purposefully misrepresents vote totals cannot be proven with numbers alone.

Unfortunately, the 19 constituencies they choose to study were not scientifically selected but rather chosen purposively. Therefore, conclusions drawn from that sample cannot be projected to the population of constituencies. The conclusions of IREC tell us very little about the scope or breadth of fraud for all the 210 constituencies.

Other journalistic and qualitative investigations have relayed various aspects to how the counting of ballots took place and why suspicions arose with respect to rigging. Throup (2008) argues that early announcements from ODM strongholds contributed to the expectation that ODM was headed for victory over PNU, even though PNU strongholds were not announced until later. But other accounts focus precisely on those constituencies that were announced late by the ECK. Bengali (2008) reports that observers inside of the ECK's headquarters claim that massive systematic fraud happened inside the commission, and that there was false

aggregation and subtraction of votes during the certification process. The *Standard on Sunday* (2008) also recounts the activities of various commissioners towards adding votes to Kibaki's total in his home region of Central Province after initial results suggested a likely victory for Odinga.

Gibson and Long (2009) provide the only analysis that relies upon an independent data source—a nationwide exit poll conducted by the authors—that puts to question the reliability of results published by the ECK. While the ECK declared Kibaki the winner without about 2 per cent of the vote, Gibson and Long's exit poll carries an unambiguous win for Odinga of 46.1 per cent to 40.2 per cent, a victory that falls outside of the poll's margin of error.[2]

Beyond this national total, the authors disaggregate their results by province and find important discrepancies across a number of locations, reproduced in Table 10.1. In seven out of eight provinces, the ECK awards more votes to Kibaki than Gibson and Long's exit poll. The differences are not always subtle—while the exit poll gives Odinga a victory in North Eastern Province of 76 per cent to Kibaki's 17 per cent, the ECK declares Kibaki the winner there with 50.3 per cent against Odinga's 47.2 per cent. Even factoring in sampling error from the poll, this difference is astounding.

When compared to the exit poll—a more valid and reliable source of data on how Kenyans voted—the ECK results are largely and consistently biased towards Kibaki. Aggregating differences between the official results and the exit poll, Gibson and Long find that Kibaki 'gains' 355,843 net votes from the ECK's tally compared to the exit poll while Odinga 'loses' 57,951 net votes, for a total of 413,794 net dubious ballots. Given that Kibaki won by a margin of 255,174 ballots, this result is more than enough to have swung the election.

The electoral rules in Kenya require that the winning presidential candidate receive the most nationwide votes, in addition to at least 25 per cent of the vote in five of eight provinces. Although the ECK results show that Kibaki met this requirement, Gibson and Long cannot confirm or deny this given that Kibaki's totals fall below 25 per cent in North Eastern, Western, and Nyanza, but still within the margin of error. Odinga meets the 25 per cent requirement without question, passing the bar in all provinces except for Central and Eastern.

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[2]The authors conducted the exit poll in conjunction with the International Republican Institute (IRI), who did not release its results initially. While IRI originally questioned the poll's methodology, they ultimately found it valid and investigations have revealed that they were most likely under pressure from the US State Department not to release the poll, which showed an Odinga victory (Gettleman and McIntire, 2009; Rothmyer, 2008). Observers long assumed that the Bush administration and their Ambassador to Kenya, Michael Ranneberger, preferred a Kibaki victory (*ibid*).

Table 10.1: ECK and exit poll comparison of Odinga and Kibaki results (%)

		Total	N. Eastern	Nairobi	R. Valley	Coast	Western	Eastern	Central	Nyanza
Kibaki	ECK	46.4	50.3	47.7	33.5	33.1	32.2	50.3	96.9	16.9
	Exit poll	40.2	17.0	33.1	41.2	24.6	24.2	42.5	91.9	14.7
	Difference	6.2	33.3	14.6	7.7	8.5	8.0	7.8	5.0	2.2
Odinga	ECK	44.1	47.2	44.0	64.7	59.4	65.8	5.0	1.9	82.3
	Exit poll	46.1	76.0	54.6	54.6	67.2	72.7	7.2	2.5	83.4
	Difference	-2.0	-28.8	-10.6	10.1	-7.8	-6.9	-2.2	-0.6	-1.1
Margin of error +/-		1.32	9.80	4.31	2.73	4.51	3.99	3.26	3.41	3.50

Source: Gibson and Long (2009)

The Study Approach

Although various techniques have been developed in studies of electoral management to analyze the potential for fraud, we limit our scope of investigation to Kenya and utilize election forensics to enumerate and locate the possible artificial addition and subtraction of ballots. Examining and aggregating from multiple data sources, we find that anomalous results are consistently biased in **Kibaki's favour, and by enough to have changed the result of the election.**

Our analysis points to massive problems with how the ECK conducted Kenya's 2007 elections. While the creation of electoral commissions proved important towards the management of elections by shifting the certification of results away from legislatures and towards non-partisan bureaucracies (Lehoucq, 2003), the Electoral Commission of Kenya reminds us that these commissions do not always operate autonomously or without problems. Although designed to be staffed according to the Inter-Party Parliamentary Group (IPPG) agreement of 1997, in which all parties consulted, the ECK proved malleable to incumbent influence. President **Kibaki replaced 19 of 22 commissioners with PNU sympathizers less than a month before the election** (Bengali, 2008; Branch and Cheeseman, 2009).

Electoral commissions only operate as credible third party certifiers of elections if they are not beholden to party interests. Given incumbent control over such institutions, they are likely to commit fraud in ways that occur at the level of the commission—most notably in the final tally and certification of the result. This technique typically sidesteps monitors, although the international community has consistently advocated for African countries to adopt these institutions, without seriously considering their effects.

Simpser (2008) argues that the presence of international observers may actually increase incentives for parties to develop new, less detectable methods of rigging. Because observer missions continue to rely upon visiting polling stations as their main activity, as opposed to also directly observing the activities inside of commissions themselves, manipulation inside of a commission may prove the preferred strategy, especially of incumbents. The European Union observer mission reported that they were initially denied entry to the ECK's national tallying centre in Nairobi, and only granted intermittent access as the count progressed (European Union, 2008).

The Electoral Commission of Kenya not only suffered problems of staffing, but also of operations and management. IREC found massive deficiencies in the bureaucratic design of the commission, and confused or unclear lines of delegation between actors at the local and national level. The rules governing announcement of results proved particularly problematic; revealing partial and incomplete results on live television and to the media confused citizens and perpetuated rumours.

Of course, an electoral commission is not the only agent responsible for the conduct of elections and, therefore, not the only body capable of creating problems.

This study's analysis shows other potential sources of fraud. Parties themselves are capable of attempting fraud locally, particularly through the standard method of artificially inflating totals ('stuffing'), deflating totals ('burning'), or otherwise changing results. This may occur during polling station level counts, where party agents decide to switch ballots or totals. This can be a common feature in a candidate's home area, where people pretending to be agents of various parties all in fact support that region's candidate. These activities may also include voter intimidation or vote-buying.

The closeness of the race–known to both parties before the election due to highly publicized public opinion surveys (Cheeseman, 2008)–surely made attempts at rigging attractive to all sides. In particular, a close election and potential loss threatened the power of an entrenched incumbent class that, in a country such as Kenya, not only produces political upset but also large economic losses where the political and business class overlap.

Taken together, part of our analysis clearly demonstrates either a lack of competency or blatant attempts at fraud by ECK officials at headquarters and local levels, although it is impossible to attribute motives and mistakes to specific individuals. Officials applied different standards for various forms, in addition to producing differences between vote totals on constituency forms and those ultimately announced by ECK headquarters.

Other kinds of data, while suggestive of irregularities, are suitable for analysis, but fail to assign blame to anyone specifically. Certainly we cannot rule out the possibility that in addition to problems with the ECK, parties and local operatives engaged in malfeasance, as confirmed by media reports. Our analysis of the differences in turnout between parliamentary, presidential, and civic races suggests the artificial production and subtraction of votes at the national level. We cannot confirm or deny who is responsible for these discrepancies–whether parties agents, local elections officials, or national officials. But this method accords with how the national count progressed and with anecdotal evidence from ECK headquarters where party agents and commissioners artificially added votes to Kibaki's totals in those constituencies that were announced late. Related, comparing ECK results to media results from the Kenya Television Network (KTN) results in disparities, but fails to explain why. KTN's job was to relay the totals announced by the ECK at the constituency level, not conduct their own count. Therefore, KTN and ECK results should match perfectly, yet we emphasize the important differences that exist across both tallies.

Taken together, an important limitation of our approach is what we miss by conducting forensic statistical analyzes, as opposed to more local qualitative studies. While we can describe broad anomalous patterns that appear in the data and examine outliers, we do not have the rich anecdotes and narratives that would arise from a more journalistic approach by investigating individual polling stations, party agents, or commissioners. Fortunately, an array of investigative pieces have

attempted this and provide important material towards understanding how attempts at manipulation were made at the local level and inside of the ECK's headquarters (Amran, 2008; Bengali, 2008; *Standard on Sunday*, 2008; Throup, 2008).

Kenya's 2007 General Elections

The 2007 elections pitted incumbent President Mwai Kibaki of the Party of National Unity (PNU) against his main challenger, Raila Odinga, of the Orange Democratic Movement (ODM). A third candidate, Kalonzo Musyoka of a splinter faction ODM-Kenya (ODM-K), ran behind both leading candidates.

While Odinga consistently polled ahead of Kibaki in the weeks before the election (Owino and Kiage, this volume), the race remained close and parties worked hard to mobilize their supporters. ODM raised various accusations before election day claiming PNU would attempt to prevent a legitimate ODM victory, in particular by rigging Odinga out of his Lang'ata parliamentary seat (effectively disqualifying him for the presidency) (*Standard on Sunday*, 2008). ODM protested loudly upon the replacement of the ECK commissioners by Kibaki just a few weeks before the polls.

Despite these warnings, international observers remained largely sanguine about the prospects for a legitimate contest. US Ambassador Michael Ranneberger declared ten days out that he expected a 'free, fair, and transparent' election (Ombuor, 2007). Perhaps because the 2002 contests had run smoothly under the direction of Chairman Samuel Kivuitu, observers predicted a similar run for 2007. However, the massive support and projection of victory for Kibaki and his widely popular NARC coalition in 2002 never put that election in doubt. Kibaki took 62 per cent of that vote to Uhuru Kenyatta's 31 per cent (Electoral Commission of Kenya, 2002).

Although voting itself remained mostly calm and peaceful on the day of the 2007 election, confusion and delay over the announcement of electoral returns by the ECK created a sense of unease, unrest, and eventually violence. While the count began after polls closed on the evening of 27 December, by the next night (approximately 9:37 p.m.), ECK Chairman, Samuel Kivuitu, began to communicate potential problems at his press briefing, stating: 'I hear there is a communication problem that phone lines have been blocked, even in my office right now I cannot ring out but I can receive.'

By 4 a.m. on 29 December, William Ruto of ODM alleged that his party agents in Meru District in Eastern Province reported that electricity had been cut off and that they were prevented from certifying results by signing various certification forms. In a statement, he asked, 'Could the [ECK] explain why ODM agents have been refused to sign the forms by the presiding officers and on what basis will ECK announce results without ODM's agents' participation?'

Both parties ratcheted up the intensity of dialogue throughout the day on 29 December, and at about 1:30 p.m., Musalia Mudavadi of ODM held a press conference

to formally announce ODM's presidential results from their counting centre and declare Raila Odinga the winner with 4,215,437 votes to Kibaki's 3,748,261. PNU responded with different totals and a Kibaki victory with 4,533,181 votes to Odinga's 4,206,062. Interestingly, this difference is close to the margin that Kivuitu eventually announced.

At this time, KTN suspiciously stopped relaying presidential election results as controversy built over claims of rigging. Kivuitu announced that he had received complete results from 180 constituencies, but as Odinga's lead diminished to 38,002, ODM continued to assert irregularities.

By 5 p.m. on 29 December, Kivuitu expressed concerns to the media regarding delayed results, saying that his office was unable to contact some constituency returning officers. At about 7:50 p.m., ECK commissioner Jack Tumwa announced that the ECK and representatives from ODM and PNU would scrutinize results overnight.

Shortly after 5 p.m. the following day, 30 December, Kivuitu attempted to hold a press conference in which he announced the final results from remaining constituencies and, therefore, the presidential winner. Scuffles between ODM and General Services Unit (GSU) officials broke out, shutting down the press conference. ODM held their own press conference in which they highlighted discrepancies in the presidential count from select constituencies, but at about 5:30 p.m. in an undisclosed location inside of ECK headquarters in Nairobi, Kivuitu announced Kibaki's re-election with a victory of 225,174 votes.

Table 10.2 presents the official ECK results from the election with both percentages and raw vote totals. Table 10.3 lists those constituencies that were declared 'problems' by either or both the ECK and ODM, with reasons given by ODM (as reported in The *Daily Nation*). The constituencies listed here by the ECK were those declared problematic by Kivuitu on 29 December at 5 p.m.

While the warning and objections raised by the ECK and ODM are cause for concern, we do not limit our analysis to these constituencies only. Rather, we look for a host of systematic discrepancies across all constituencies. Since accusations made by a political party may be motivated by the desire to appear aggrieved, we assume that cheating may have occurred in any of Kenya's 210 constituencies, not just the ones highlighted by ODM. This does not mean this was in fact the case—in fact, the data suggest otherwise. However, it does mean that our search for outliers is independent of the accusations made by political actors and instead relies upon previous data and assumptions about voting behaviour, which we explicate below.

By itself, the admission by the ECK that 62 constituencies (30% of the total 210) incurred challenges in communication and relaying results is startling. The objections raised by ODM (48 constituencies, 23%) are more focused on constituencies where they believed they had evidence to show conflicting figures between various forms

Table 10.2: 2007 presidential election final ECK results

	Kibaki	Odinga	Musyoka	Others
Nairobi	313,478	288,922	52,974	1,845
	48%	44%	8%	0%
Coast	197,354	353,773	38,881	5,909
	33%	59%	7%	1%
North Eastern	97,263	91,440	4,498	333
	50%	47%	2%	0%
Eastern	835,481	83,575	726,782	13,229
	50%	5%	44%	1%
Central	1,741,086	34,046	11,702	7,215
	97%	2%	1%	0%
Rift Valley	818,445	1,580,880	33,863	12,300
	33%	65%	1%	1%
Western	312,300	639,246	6,729	11,417
	32%	66%	1%	1%
Nyanza	262,627	1,280,978	4,470	7,160
	17%	82%	0%	0%
Total	4,578,034	4,352,860	879,899	59,408
	46%	44%	9%	1%

Source: Electoral Commission of Kenya (2008)

or other problems of documentation filled out by ECK officials, to encourage further analysis of those forms and figures produced by the ECK.

Forms 16 Submitted to ECK

First, we conducted a forensic audit of all 209 Forms 16.[3] Examination and scrutiny of the ECK's Forms 16 are at the crux of arguments for electoral reform. Forms 16 hold the tallies from all of the polling stations within a constituency, and therefore list the final presidential tallies at the constituency level. A number of problems existed across the submission of these forms.

Not all returning officers used the same form and none of them followed a standard format with candidate names pre-printed in the same order. Therefore, every sheet followed a different method of listing the candidates and their totals. Many of the candidate names written in by the returning officers were difficult to read, as were the total votes per candidate. This makes tallying more difficult and potentially prone to errors. Two forms had no signature from returning officers,[4]

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[3]The analysis using the 2007 elections data excludes Kamukunji Constituency, since presidential results were cancelled there.

[4]Ndia and Eldama Ravine, although it is important to recognize that ECK officials in Nairobi could have appended signatures to forms where they were missing and so the existence of a signature is not proof that the returning officer provided it.

six forms were not dated[5] and one form listed 'December 20th' as the date,[6] and 39 forms (or 19% of constituencies) never received a stamp from ECK headquarters showing that the Commission never officially received the results in Nairobi. Some forms also included totals that had been crossed-out and revised, which may have been accurate corrections from prior mistakes made by the returning officers, but which may have also led to confusion and led observers to think that the vote totals had been artificially altered.

Important differences exist between the numbers given on the Forms 16 and the results published by the ECK in final form. Twenty-four constituencies had discrepancies on Kibaki's totals. In 21 of these constituencies, Kibaki registered more votes in the original tally (on the Form 16) than were ultimately published by the ECK, totalling 30,668 votes. In three, he registered more votes in the final tally than he did on the original forms, totalling 9,296 votes. The total difference in votes is, therefore, 39,964 and the net difference or 'loss' between original Forms 16 and the final ECK results of 21,372.

Odinga's differences in totals occurred in 27 constituencies (18 overlap with Kibaki's differences in totals). In 21, he registered more votes in the original tally than were ultimately published, totalling 8,257 votes. In six, he registered more votes in the final publication compared to the original tally, for a total of 11,216 votes. The total difference in votes is 19,473 and a net 'gain' of 2,959 votes from the original to the final tally.

Aggregating all of the vote differences for the two main candidates between Form 16 results and those published by the ECK does not produce enough of a difference to have changed Kibaki's official victory. However, the fact that **Kibaki and Odinga 'won' and 'lost' votes between the two tallies suggests problems at the constituency count, the ECK publication, or both.**

Because Forms 16 are supposed to represent the final certified tally produced by constituency returning officers, no differences should exist between a Form 16 and what ECK headquarters publish in the final instance, assuming the count is correct. Analyzing the differences between Forms 16 and ECK data does not allow for attribution as to whether sins of omission or commission exist with returning officers, ECK officials at headquarters, or both. Nor does it uncover potentially nefarious motives–the mistakes, after all, could have been honest and not made to artificially alter vote totals. However, the discrepancies produced in 34 (17%) constituencies in this election are alarming and underscore gross incompetence in the management of the tally by the ECK.

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[5] Laikipia West, Laikipia East, South Mugirango, Bomachoge, Bobasi, Kitutu Masaba.

[6]Mukurweini; a date seven days before the election.

Table 10.3: 2007 problem constituencies identified by the ECK and/or ODM

Province	Constituency	ECK	ODM	Reason given (ODM)
Nairobi	Makadara	Yes	Yes	Conflicting figures
	Kamukunji	Yes	No	
	Starehe	No	Yes	Conflicting figures
	Dagoretti	Yes	No	
	Embakasi	Yes	No	
Coast	Changamwe	Yes	No	
	Kisauni	Yes	No	
	Likoni	Yes	No	
	Mvita	Yes	No	
	Msambweni	Yes	No	
	Kinango	Yes	Yes	Conflicting figures
	Bahari	Yes	No	
	Magarini	Yes	No	
	Garsen	Yes	No	
	Galole	No	Yes	Conflicting figures
	Voi	No	Yes	Conflicting figures
North Eastern	Dujis	No	Yes	Conflicting documents
	Lagdera	No	Yes	Conflicting documents
	Fafi	Yes	No	
	Ijara	Yes	Yes	Conflicting documents
	Wajir North	Yes	No	
	Wajir West	Yes	Yes	Conflicting documents
	Mandera East	No	Yes	Conflicting documents
Eastern	Isiolo North	Yes	No	
	Isiolo South	Yes	No	
	North Imenti	Yes	No	
	South Imenti	Yes	Yes	Conflicting figures
	Igembe South	No	Yes	No supporting documents
	Igembe North	Yes	Yes	No supporting documents
	Tigania West	Yes	No	
	Tigania East	Yes	No	
	Nithi	Yes	No	
	Tharaka	Yes	Yes	Conflicting figures
	Manyatta	No	Yes	Conflicting figures
	Runyenjes	No	Yes	Conflicting figures
	Mutito	Yes	No	
	Kangundo	Yes	No	
	Kathiani	Yes	No	

Province	Constituency	ECK	ODM	Reason given (ODM)
	Mwala	**Yes**	**No**	
	Mbooni	**Yes**	**No**	
	Kilome	**Yes**	**No**	
	Makueni	Yes	Yes	Conflicting figures
	Kibwezi	**Yes**	**No**	
Central	Kinangop	No	Yes	Conflicting figures
	Ol Kalou	Yes	Yes	Conflicting figures
	Kieni	No	Yes	Conflicting figures
	Mathira	No	Yes	Conflicting figures
	Mwea	No	Yes	Conflicting figures
	Gichugu	No	Yes	Conflicting figures
	Ndia	No	Yes	Conflicting figures
	Mathioya	No	Yes	Conflicting figures
	Kandara	**No**	**Yes**	**No supporting documents**
	Githunguri	No	Yes	Conflicting figures
	Kiambaa	Yes	Yes	Conflicting figures
	Limuru	**Yes**	**No**	
	Gatundu South	No	Yes	Conflicting figures
	Juja	No	Yes	Conflicting figures
Rift Valley	Turkana South	Yes	Yes	Conflicting figures
	Turkana Central	**Yes**	**No**	
	Kacheliba	**Yes**	**No**	
	Kapenguria	**Yes**	**No**	
	Baringo East	**Yes**	**No**	
	Baringo Central	**Yes**	**No**	
	Laikipia West	No	Yes	Conflicting figures
	Laikipia East	**Yes**	**No**	
	Naivasha	Yes	Yes	Conflicting figures
	Nakuru Town	Yes	Yes	Conflicting figures
	Molo	**Yes**	**No**	
	Rongai	No	Yes	Conflicting figures
	Subukia	No	Yes	Conflicting figures
	Kajiado North	Yes	No	
	Ainamoi	**Yes**	**No**	
	Buret	**Yes**	**No**	
	Sotik	**Yes**	**No**	
Western	**Malava**	**Yes**	**No**	
	Emuhaya	Yes	No	
	Kimilili	Yes	Yes	Conflicting figures
	Webuye	No	Yes	Conflicting figures

Province	Constituency	ECK	ODM	Reason given (ODM)
	Bumula	No	Yes	Conflicting figures
	Funyula	Yes	No	
Nyanza	Muhoroni	Yes	No	
	Rangwe	Yes	No	
	Ndhiwa	Yes	No	
	Kuria	No	Yes	Conflicting figures
	Bonchari	No	Yes	Conflicting figures
	Nyaribari Masaba	No	Yes	Conflicting figures
	Nyaribari Chache	Yes	No	
	Kitutu Chache	Yes	Yes	Conflicting figures
	South Mugirango	Yes	Yes	Conflicting figures
	Bomachoge	Yes	Yes	Conflicting figures
	Bobasi	Yes	No	
	Kitutu Masaba	No	Yes	Conflicting figures
	West Mugirango	No	Yes	Conflicting figures
	N. Mugirango	No	Yes	Conflicting figures

Source: Press statements by ECK and the Daily Nation

Media Analysis

An innovation that helps contribute legitimacy to results certified and published by electoral commissions is to have media houses monitor results as they are announced at the constituency level. In this way, media monitoring can act in a similar fashion as parallel vote tabulations (PVTs).[7] However, unlike PVTs, which check a statistical sample of returns (through the scientific selection of polling stations) and, therefore, incur a sampling margin of error, the media results were the same tallies at the ECK and, therefore, should match exactly. That is, the media were not conducting separate and independent counts of ballots, but rather recording results as they were announced in each constituency.

While the major media houses were present at constituency counts (including the government owned Kenya Broadcasting Corporation, Citizen, and KTN), only KTN released their results, and then not completely. It remains unclear why the media houses would position themselves on the ground tallying results as communicated by the ECK without releasing complete results. KTN claims to have had a problem with their database server. In this section, we present results comparing KTN's count to the ECK's official results for the data they do provide. Citizen released results from

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[7]PVTs have been conducted worldwide and are a well-regarded statistical check against official results (Bjornlund, 2004). While a PVT had been conducted in Kenya's 1997 election, none of the international and domestic observer missions conducted one for 2007. In lieu of that, the only independent source of data remains the Gibson and Long exit poll, discussed above. The Institute for Education in Democracy also may have conducted an exit poll, but their results have never been released

Table 10.4: ECK results compared to KTN results

(a) Constituency differences between ECK and KTN results

	# of constituencies with differences	# of constituencies with incomplete/ no results (KTN)	# of constituencies with no differences
Nairobi	4	4	0
Coast	10	2	9
North Eastern	7	0	4
Eastern	8	7	21
Central	9	1	19
Rift Valley	23	11	14
Western	15	0	9
Nyanza	17	0	15
Total	93	25	91

54 out of 210 constituencies (26%), which are hard to analyze given their level of incompleteness.

Table 10.4a represents discrepancies by province between results announced by the ECK at the constituency level as reported by KTN, with the final results published by the ECK. The columns list the number of constituencies where any discrepancy existed between the tallies, constituencies where KTN had incomplete results or did not release results, and constituencies where there were no differences. While 44 per cent of constituencies (91) did not report a problem, in 45 per cent (93) there was not mutual verification between KTN and ECK numbers. This is alarming as it suggests the potential of counting or reporting errors in almost half of the constituencies.

Table 10.4b shows the amount 'added' between KTN's result and ECK's final published figures, and the amount 'subtracted' for all three candidates. That is, the 'addition' categories are those where the totals for the ECK were higher than what KTN reported from the constituency count, and the 'subtracted' categories indicate where the final ECK report had fewer votes than initially reported by KTN.

The first striking statistic is the total number of votes produced by differences in KTN and ECK figures across the three main candidates: 208,208. Although this is only about 2 per cent of the total vote, it should be nearly zero, and yet it closely approximates Kibaki's margin of victory (225,174 votes).

The second point to notice is that all three candidates had votes added and subtracted between the two counts. Third, the biggest differences occurred for Kibaki, who gained 66,446 but also lost 31,889. This caused the greatest net vote gain among the candidates at 34,557. Odinga more or less gains (49,932) and loses (40,206) equivalent amounts of votes for a net gain of 9,726. Fourth, differences

(b) Ballot differences between ECK and KTN results

	Kibaki		Odinga		Musyoka		
	Added	*Subtracted*	*Added*	*Subtracted*	*Added*	*Subtracted*	*Total*
Nairobi	140	107	348	0	227	0	822
Coast	865	5,797	1,545	13,805	346	2,934	25,292
North-Eastern	1,477	0	1,651	214	556	95	3,993
Eastern	11,425	1,169	293	22	118	136	13,163
Central	18,628	376	2	233	37	80	19,356
Rift Valley	31,634	22,067	21,947	17,647	3,031	11,449	107,775
Western	2,056	2,310	1,811	4,725	131	307	11,340
Nyanza	221	63	22,335	3,560	162	126	26,467
Total	66,446	31,889	49,932	40,206	4,608	15,127	208,208
Net	+34557		+9726		-10519		

Source: ECK and KTN

were not just reported for the two main candidates: Kalonzo Musyoka had a total of 19,735 differences in ballots between media and ECK results.

Provincial Differences

While it may be the case that differences in vote totals for KTN and ECK resulted from errors in reporting or coding by KTN (as opposed to alterations by the ECK), such errors ought to be randomly distributed across provinces, without any clear bias. In other words, there should be no discernible pattern in the differences across location from simple data entry errors.

However, discrepancies in the media and official data are not spread randomly across constituencies, witnessed by the number of constituencies without differences and those with highly concentrated differences. In Coast, massive differences existed in Changamwe, where Kibaki lost 5,447 votes, Odinga lost 10,640, and Kalonzo lost 2,934 from the ECK result compared with KTN. In Siakago constituency in Eastern, the ECK added 10,858 votes to the initial KTN result for Kibaki. In Kibaki's home province of Central, the ECK added votes for Kibaki in Kinangop (10,000) and Limuru (7,601).

Rift Valley has the largest overall differences where in Molo[8] the ECK gives Kibaki 25,116 more votes than KTN gave him, but also 4,073 more votes to Odinga. In Mosop, Odinga earned 15,025 more votes and in Naivasha alone, Kibaki lost 20,024 votes. Odinga lost 10,000 votes in Kuresoi and 4,917 in Narok North. In

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8Molo remains a contentious constituency when it comes to discussions of fraud because the European Union highlighted it as one of their 'problem constituencies' with respect to its vote tally in their electoral observation mission report (European Union, 2008).

Nyanza, Odinga's home province, he gained 6,477 in Kisumu Town West and 6,561 in Nyaribari Chache, but lost 3,460 in Rangwe.

Moreover, the additions and subtractions created for Odinga's total more or less cancel each other out, with a net gain of 9,726 votes. However, Kibaki gains more generously, with a net addition of 34,557. The differences between what KTN reported and the ECK ultimately published produce a bias in favour of Kibaki's total.

While comparing media results to official results proves difficult given that many of the media houses provided only partial results and stopped reporting them while the count was underway, they do provide something of an imperfect parallel tally to final ECK figures. A total discrepancy of 208,208 votes between these two counts is indeed disturbing as it significantly alters the tally for the leading candidates. While these differences did not benefit only one candidate or by enough to have changed the result, 208,208 votes is a non-trivial number of ballots when there should essentially be no difference between the official and parallel media count. Moreover, the inability to examine KTN data from all constituencies means the differences highlighted here are most likely a lower bound on the total differences between the media and ECK ballot totals.

Overall Turnout

Suspiciously high voter turnout numbers in the presidential race caused grave concerns that 'ballot stuffing' of some form or another may have occurred in candidate's strongholds.[9] Most likely, this resulted from double-voting rather than literal stuffing of ballot boxes, but in any event results are suspicious, and not just from candidate strongholds.

Although it is ultimately difficult to base any arguments about turnout in one election to those in another, as is a function of many things, Table 10.5 provides a few lessons towards thinking about baseline turnout in Kenyan elections. First, turnout was not generally high in 2002. Central Province, the home region of both the leading candidates Uhuru Kenyatta and Mwai Kibaki, yielded the highest rate at 67 per cent. However, not even half of the voters in Nairobi and Coast voted. Second, the standard deviations for turnouts among constituencies in a given province are not large. The larger the standard deviation, the greater the variation in turnouts between constituencies in a province. The data from 2002 (with small standard deviations) show that in general, there are not significant differences in turnout between constituencies within a province across provinces in a 'normal' (i.e., no fraud) year.

Looking at the 2007 presidential turnout in Table 10.6, a number of important dissimilarities from 2002 become apparent. The right column shows that in every

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[9] This includes Central Province for President Kibaki and Nyanza Province for Raila Odinga.

Table 10.5: 2002 presidential turnout

Province	Rank	% turnout[10]	Standard deviation[11]
Central	1	67.13	5.50
Rift Valley	2	61.48	7.73
Eastern	3	61.29	6.37
North Eastern	4	58.70	5.93
Western	5	57.41	4.50
Nyanza	6	56.78	8.43
Coast	7	45.41	8.89
Nairobi	8	42.16	3.00

Source: Electoral Commission of Kenya (2002)

Table 10.6: 2007 presidential turnout

Province	Rank	% turnout	Std. Dev.	Difference between 2007 and 2002[12]
Central	1	83.18	3.47	+16.04
Nyanza	2	77.77	11.59	+21.00
Rift Valley	3	73.78	11.31	+12.29
Eastern	4	71.37	7.96	+10.08
Western	5	64.14	5.41	+6.73
North Eastern	6	61.40	7.44	+2.70
Nairobi	7	56.88	5.57	+14.72
Coast	8	54.83	9.58	+9.43

Source: Electoral Commission of Kenya (2008)

province, turnout went up, and by more than 10 points in five of eight. This is remarkable, although it is perhaps unsurprising that the highest gains were in Nyanza (Odinga's homeland) and Central (Kibaki's homeland) provinces.

Figure 10.1 shows the average turnout by province for 2007 compared to 2002. The square icon represents the 2007 turnout, whereas the triangle shows 2002. Each includes lines that go up and down from the average to represent one standard deviation. Figure 10.1 echoes the findings from Table 10.5 in that it shows an increase in 2007 turnout compared to 2002 for every province, as well as larger standard deviations in 2007.

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[10] This is the average per cent turnout of constituencies within a province.

[11] This is the standard deviation of constituency turnout within a province.

[12] This column subtracts the 2002 from the 2007 turnout percentages, so that positive numbers mean a greater turnout in 2007, whereas negative numbers would suggest lower turnout in 2007.

Figure 10.1: Average presidential turnouts by province for 2007 and 2002 (with standard deviations)
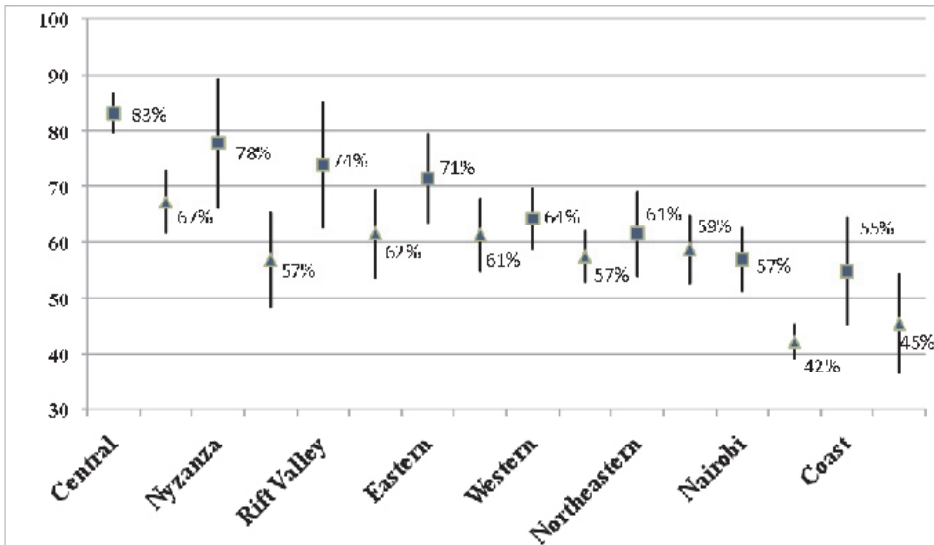
Square icons represent 2007 turnout; triangle icons represent 2002 turnout

Without Central and Nyanza provinces included, the two main candidates' homelands, the average is 63.74 per cent. This is still higher than the average from 2002 of 56.28 per cent. However, given the difficult nature of voting in a developing country such as Kenya, particularly in rural areas, and the likelihood of some dead voters still on registration rolls or those who are double-registered, turnouts that exceed 80 per cent appear problematic on the face of it.[13]

Are high turnouts in Central and Nyanza suggestive of rigging? Statistically examining the distribution of turnouts across provinces in 2007 helps us to arrive at potentially unrealistically high or low figures. The average turnout for all constituencies in all provinces is 70.67 per cent, with a standard deviation of 12.38. Standard deviation is a statistical measure of how a given variable (such as turnout) is 'spread' around its average. One standard deviation from the mean turnout gives us a maximum of 83.05 per cent and minimum of 58.29 per cent. One way to estimate anomalous turnouts is to consider anything beyond one standard deviation from the mean as suspicious. This translates into percentages higher than about 83 per cent and lower than about 58 per cent. However, this statistic alone does not help us determine what turnout seems realistic. Certainly, any turnout higher than 83 per cent or lower than 58 per cent would appear anomalous when compared to the

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13 It is impossible to quantify how many registered voters are in fact dead or double-registered without conducting scientifically sampled back-checks, a difficult task in Kenya given the problem of locating physical addresses of names listed on the register. Given massive reforms of the registry by the ECK, we do not assume this number is necessarily substantial, but we do recognize that voter rolls everywhere may contain these inaccuracies.

Figure 10.2: Average presidential turnouts for Central, Nyanza, and Eastern Province for 2007 and 2002 (with standard deviations)
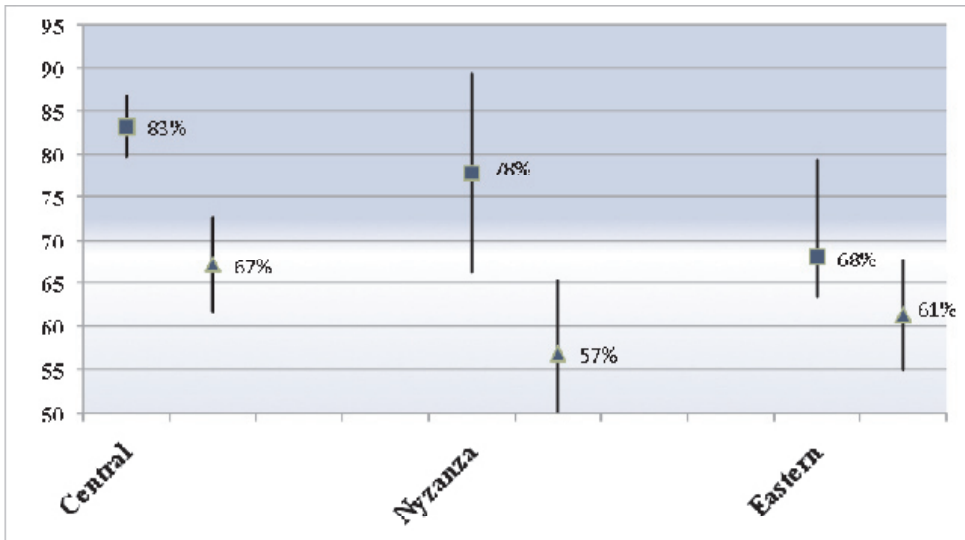
Square icons represent 2007 turnout; triangle icons represent 2002 turnout

distribution of turnouts. However, we recognize that further assumptions of voting behaviour may skew how to interpret these results.

The identities of the main candidates, in addition to the 'euphoria' from voters and hard campaigning, should have resulted in generally high turnout in a candidate's home region. In those areas, it becomes hard to attribute a large turnout to ballot-stuffing or levels of candidate support, or both. To better form a standard of 'suspicious' levels of voting, we need a picture of what turnout might have looked like in an area with high levels of support for a candidate, but without rigging.

To do so, we compare turnout in Kalonzo Musyoka's home region of Ukambani in Eastern Province to that of Kibaki (Central Province) and Odinga (the ethnically Luo parts of Nyanza Province). We expect Musyoka voters to be similarly 'euphoric' for his candidacy as voters in Odinga and Kibaki's areas. However, there have not been allegations of rigging by Musyoka or in his home region. This helps us to draw a baseline, or 'control' scenario that allows us to measure the mean turnout a candidate should receive in their home area without fraud.

To do so, Figure 10.2 compares turnouts in just the candidates' home regions, with the squares representing 2007 and the triangles 2002 (standard deviations included). Again, all of the turnouts from 2002 in Eastern, Nyanza, and Central are below 70 per cent. The darkly shaded area represents suspicious turnouts above the 70 per cent cut-off, where the totals from Kibaki's Central and Odinga's Nyanza mainly reside.

From those constituencies in Eastern Province that went for Musyoka, the average turnout rate is 67.66 per cent.[14] Interestingly, this is nearly identical to the turnout rate of 67.14 per cent in Central Province from 2002, the area from which both main candidates, Kibaki and Kenyatta, come from. Again, this suggests that candidates should expect around a 70 per cent turnout in their home regions, where ballots have not been artificially added to totals.

As such, anything above 70 per cent appears at least somewhat suspicious, and anything above 80 per cent should give cause for alarm. All the constituencies from Central fall above the high 70s; all of the constituencies in Nyanza fall above the mid 60s but with an average of 78 per cent. Levels below 50 per cent might also be quite unrealistic given previous voting patterns, and the general trend in the 2007 election. Therefore, we argue that votes above 80 per cent and below 50 per cent are suspicious and use that to structure an analysis of turnout.

Provincial Turnouts

Next, we aggregate vote totals from turnouts that appear too high or low. In Nairobi, turnout remained low in 2007 as it had in 2002, but only one constituency produced less than 50 per cent turnout: Dagoretti at 47.17 per cent, which represents a potential 1,614 votes subtracted from the minimum cut-off threshold. Coast Province produced consistently low turnouts, especially in the urban constituencies of Mombasa. 12,628 suspicious votes are produced from areas that Odinga won resoundingly, but turnout was less than 50 per cent. North Eastern and Western did not yield any suspicious turnouts. Eastern Province, the homeland of third place candidate Kalonzo Musyoka, results in four constituencies with problematic turnouts. Three of them—South Imenti, Runyenjes, and Siakago—come from areas with a majority of **Kibaki support**, however, producing 2,745 votes beyond the 80 per cent threshold.[15]

Central Province produces a number of potentially unrealistically high turnouts, even given its status as Kibaki's home region. Out of 29 constituencies, only five had turnouts below 80 per cent, the lowest being Juja at 73.3 per cent. The average turnout was 83.18 per cent, the highest for any province (and higher than the 67% from 2002, when both leading presidential candidates were from Central). The total votes from suspiciously high turnouts from Central, which all benefited **Kibaki**, are 60,628.

Fifteen constituencies in Nyanza—Odinga's home province—posted rates above 80 per cent and a total of 66,897 votes in Odinga favoured areas. The contested constituencies in Nyanza (heavily populated by the swing ethnic group Kisii) did not post unrealistic turnouts.

[14] We do not include the entire Eastern Province as Musyoka only polled well in concentration of constituencies there, primarily around his home in Ukambani.

[15] The remaining constituency-Masinga-is in a Musyoka territory and had a 45.5 per cent turnout, or 1,050 'too few' votes.

Analyzing turnouts in Rift Valley at the provincial level is hard since the province is not the home region of either candidate and its constituencies were widely contested between them. There was large variance in the turnouts in Rift Valley, with a mean of 73.78 per cent and standard deviation 11.31 per cent. Three contested constituencies register turnouts in the 40s, producing 4,071 'too few' votes.[16] In 17 Odinga-favoured constituencies, high turnouts produce 22,687 votes. In Kibaki favoured constituencies, high turnouts totalled 4,023 ballots. Therefore, constituencies with high turnouts heavily favoured a production of votes for Odinga.[17]

Taken together, large turnouts in their home provinces helped both candidates to about the same degree. It is hard to rely on total turnout though as indicative of fraud or rigging, given that the places one would expect high turnouts is where it might be easier for both sides to artificially inflate totals. However, even accepting a relaxed standard for a likely maximum and minimum turnout and setting Musyoka's home region as a control, a number of suspicious ballots are added and subtracted from the main candidates. The high and low turnouts by themselves are not biased towards either Kibaki or Odinga, however, and these were unlikely to have swung the result on their own.

Differences in Presidential and Parliamentary Turnout

We now turn to an analysis of the differences in turnout for the parliamentary and presidential elections. We believe an examination of outliers with respect to these differences produces the best evidence that rigging took place.

Kenya conducts three elections at the same time on the same day, with voters able to cast ballots for local civic councillors, their members of parliament, and the presidency. Voters cast these ballots consecutively in the same polling station. Each voter is given three ballots for the same purpose. There are also three separate ballot boxes in the polling room where each voter places the ballot after they have marked it.

The overwhelming majority of Kenyan voters cast ballots for all the three offices that they are offered the opportunity to elect. It is rare for a voter to cast a ballot for his/her preferred presidential candidate and ignore or decline to cast a ballot for his/her preferred MP and councillor.[18] Therefore, variances between the presidential and parliamentary election will arise primarily as a result of differences in the number of spoilt ballots in the two elections. There will also be a small number of abstentions–conscious or otherwise–from one or the other. On the whole, the difference is so

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[16] Given their contested nature, neither candidate obviously wins from a subtraction of votes.

[17] This may accord with results from Gibson and Long's (2009) exit poll, where the Rift Valley was the only province where Odinga performed better in the official ECK results than he did in the exit poll.

[18] This is confirmed by Gibson and Long's (2009) exit poll, with fewer than 0.1 per cent of respondents reporting drop-off between presidential, parliamentary, and civic votes.

low that it cannot alter the result of the presidential election. Moreover, differences that exist should be randomly distributed and roughly equal across constituencies. That is, some constituencies should not register large differences and others small differences; they should all be similar and follow patterns of voting behaviour that are particular to the nation as a whole.

Statistics for all the previous multiparty elections conducted since December 1992 support this.[19] If the differences in turnouts across the races do not reflect these patterns, we argue that outliers should be examined more closely as evidence of rigging. In both 1997 and 2002, the turnouts for the parliamentary and presidential races were almost identical. We use the 2002 elections as a baseline because that election did not carry claims of presidential rigging. Even though some made claims of rigging in 1997, we note that there was no marked difference between the total valid votes cast for presidential and the total valid votes cast for parliamentary candidates (except in about 10 constituencies where MPs were elected unopposed).

In 2002, for instance, valid votes cast for parliamentary candidates exceeded valid votes cast for presidential candidates in about 48 constituencies by a total of 114,000 votes. This is equivalent to 1.9 per cent of the presidential votes in those constituencies. However, two constituencies, Bomachoge and Kasarani, had unusually large variances, 40,000 votes between them or close to one third of the total.[20] If these two outliers are excluded, the variance is 74,000, equivalent to 1.2 per cent of the valid votes.

Ninety-six constituencies had variance in the other direction, that is, where presidential votes exceeded parliamentary votes. This amounted to 64,000 votes, equivalent to 1.07% (Table 10.7).

As is evident, the variance in the two directions almost cancels out, leaving about a 10,000-vote difference countrywide. This variance is consistent with differences in the number of spoilt ballots and a few (but rare) voters who may have purposefully voted for one office and not the other. Regardless of the reason, however, the variance could not swing the presidential election in 2002, where Kibaki won by about 30 per cent.

Going by the standard set in previous elections, a difference of around 1 per cent between the presidential and parliamentary valid vote is what we have taken to be normal. With this assumption, we analyze the differences in the 2007 turnout. The production of votes created by outliers in this way produces a number of anomalous ballots, and enough to have swung the election.

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[19] Even though the ruling Kenya African National Union (KANU) ran in some constituencies in 1992 and 1997 unopposed.

[20] This may be suggestive of parliamentary rigging in both of these constituencies.

Table 10.7: 2002 presidential exceeds parliamentary turnout

Turnout [21] threshold	Votes	As % of parliamentary	As % of presidential	Number of constituencies
Total	64,185	1.07	1.07	96
1 per cent	59,723	1.00	1.00	48
2 per cent	50,448	0.84	0.84	26
5 per cent	34,066	0.57	0.57	11

Source: Electoral Commission of Kenya (2002)

The difference between valid parliamentary and presidential votes in 2007 is startling. A review of the result produces a number of unrealistically high turnout variance. Figure 10.3 compares the number of constituencies that registered differences in turnout for 2002 and 2007. Regardless of the threshold chosen (5%, 2%, and 1%), a significant addition of constituencies registered differences in 2007. Comparing the two elections, variance of more than 5 per cent occurs in three times as many constituencies in 2007 (35) as in 2002 (11). Variance of 2 per cent or more also occurs with close to three times the frequency, 70 constituencies in 2007 compared to 25 in 2002.

Figure 10.3: Comparison of presidential and parliamentary turnouts from 2002 and 2007

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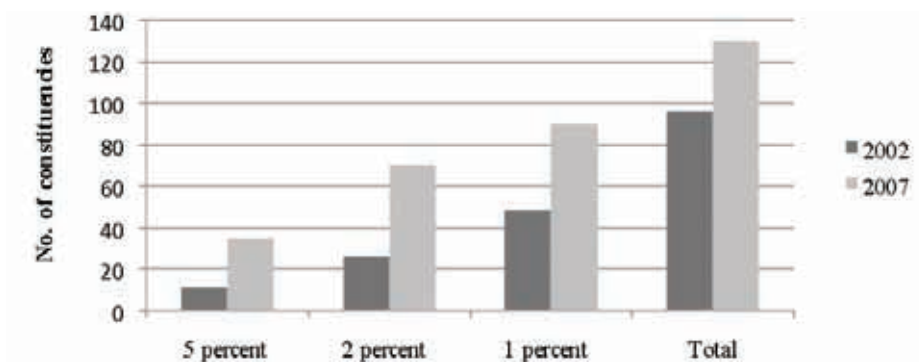
[21] Turnout threshold indicates various standards of differences in turnout between presidential and parliamentary races. That is, the 'total' row responds to the total difference between turnouts; the '1 per cent' row responds to a difference of 1 per cent between the turnouts, etc.

Table 10.8: 2007 presidential exceeds parliamentary turnout

Turnout threshold[21]	Votes	As % of parliamentary	As % of presidential	Number of constituencies
Total	325,131	3.41	3.29	130
1 per cent	318,176	3.34	3.22	90
2 per cent	304,963	3.20	3.09	70
5 per cent	237,572	2.49	2.41	35

Source: Electoral Commission of Kenya (2008)

In 2007, there are as many as 35 constituencies where the variance is above 5 per cent, which translates to over 237,000 votes. These constituencies include instances where the variance is above 10,000 votes. This is startling given that the average number of registered voters across the 210 constituencies is 67,833. Embakasi alone had a variance of over 30,000 votes, which is over 20 per cent of the total votes cast for president in that constituency. There are about 70 constituencies where the variance is above 2 per cent, implausibly implying that many people in these constituencies chose not to vote for an MP.

In 2007, the parliamentary election has 25 constituencies where the parliamentary vote exceeded the presidential vote by more than 2 per cent. Looking at raw votes, this disparity produces about 116,000 ballots. Factors responsible for this loss or wasting of presidential vote are not clear. Where did these votes go? Which presidential candidate—or even parliamentary candidates—benefited from this anomaly?

Votes that Might Have Altered the Outcome

If we add votes where parliamentary turnout was unrealistically high to ballots where the presidential turnout is unrealistically high, we aggregate total votes that

Table 10.9: 2007 parliamentary exceeds presidential turnout

Turnout threshold[21]	Votes	As % of parliamentary	As % of presidential	Number of constituencies
Total	130,547	1.37	1.32	69
1 per cent	126,936	1.33	1.29	43
2 per cent	115,469	1.21	1.17	25
5 per cent	105,727	1.11	1.07	16

Source: Electoral Commission of Kenya (2008)

we consider anomalous (Refer to Tables 10.8 and 10.9). The variance between the presidential and parliamentary ballots in the 2007 election is a total of 455,667 votes. This variance comprises two sources. One is 325,000 votes in about 130 constituencies where the presidential tally exceeds parliamentary tally, which is equivalent to 3.3 per cent of the total valid presidential votes. Two, it comprises 130,547 votes in 69 constituencies where parliamentary tally exceeds the presidential tally. This is equivalent to 1.4 per cent. By adding these two figures, one can see that a significant portion of ballots is produced by examining outliers in turnout.

Even if we allow for the 1 per cent difference between parliamentary and presidential results, there are still 445,112 anomalous votes produced between differences in turnout. Reducing this to 2 per cent produces 420,432, and at 5 per cent it produces 343,299. All of these significantly exceed Kibaki's margin of victory of 225,174. Allowing for a 1 per cent difference is the most realistic standard based on prior voting behaviour, which still produces 219,938 votes beyond what Kibaki needed to win. In sum, regardless of any of the standards we set, the number of conspicuous votes exceeds Kibaki's winning margin.

We have not attempted to apportion the suspicious votes to either presidential or parliamentary rigging. It would be surprising if shenanigans at the parliamentary level did not also occur. A parliamentary result may exceed a presidential result because parliamentary supporters 'stuffed' ballots in favour of a particular parliamentary candidate or because presidential supporters 'wasted' ballots (or reduced those of the presidential rivals), or some combination of the two. Similarly, a presidential vote may exceed a parliamentary vote because parliamentary votes were wasted, or presidential votes stuffed, or a combination. It is significant that in Lang'ata constituency, a clerk with the Electoral Commission of Kenya (ECK) stationed at a polling station where ODM's Odinga was a presidential and parliamentary candidate was arrested for hiding or stealing parliamentary ballots and failing to give them to voters. Certainly, this was meant to deny certain voters an opportunity to vote for one of the parliamentary candidates. It is also possible that this was done to give particular voters more ballots to cast for a preferred candidate. Whatever the method of adding or reducing presidential or parliamentary ballots, significant differences that exist between the two turnout figures are problematic.

It is important to note that our analysis is restricted to those constituencies where, on balance, the differences between stuffing, wasting, or even under-counting were great enough to produce abnormal variance in the turnout rates that appear in the official ECK results. There may in fact be a number of constituencies where either stuffing or wasting occurred in both races simultaneously and roughly to the same degree. For example, if both presidential and parliamentary candidates simultaneously stuffed ballots, the turnouts between the two races would increase together without differences between them. Similarly, if ballots were 'burned' in both races, the turnouts for both would be implausibly low. This method of studying

differences may, therefore, under-estimate the magnitude of rigging. Our analysis in an earlier section examines questionably large and low turnouts to address this problem.

Do differences in turnout appear to favour any candidate?

Figure 10.3 divides the proportions of suspicious turnout ballots between the candidates. Of the three candidates, Kibaki benefits the most with 27 per cent of those ballots coming from his stronghold constituencies. Odinga benefits the least with only 8 per cent. At first glance, it appears that Musyoka benefits with 13 per cent. However, in the absence of serious allegations against Musyoka, it seems more likely that these ballots helped Kibaki, who ran second in these constituencies. That is, Kibaki and Odinga won by such overwhelming percentages in their strongholds that any additional votes could only have benefited them. However, as a competitive second place finisher in Musyoka's strongholds, added ballots in those areas could have advantaged Kibaki instead of Musyoka.

Over half (52%) of the ballots come from contested areas, which makes it impossible to specify exactly how the votes created from these curious turnouts affected the final tally.

Table 10.10 lists the differences in presidential and parliamentary turnout allocated by candidate stronghold. It shows that between the three main candidates, the differences in turnout benefited President Kibaki the most, where he generated more than three times the number of dubious ballots than his lead challenger Odinga. Once again, the differences in Musyoka's strongholds are more likely to have benefited Kibaki. From those strongholds, Kibaki garners 138,906 extra ballots. That means Kibaki would have only had to garner 86,268 of the 180,784 votes (or 48%) from contested areas to create his margin of victory over Odinga.

Figure 10.4: Distribution of turnout differences by candidate stronghold
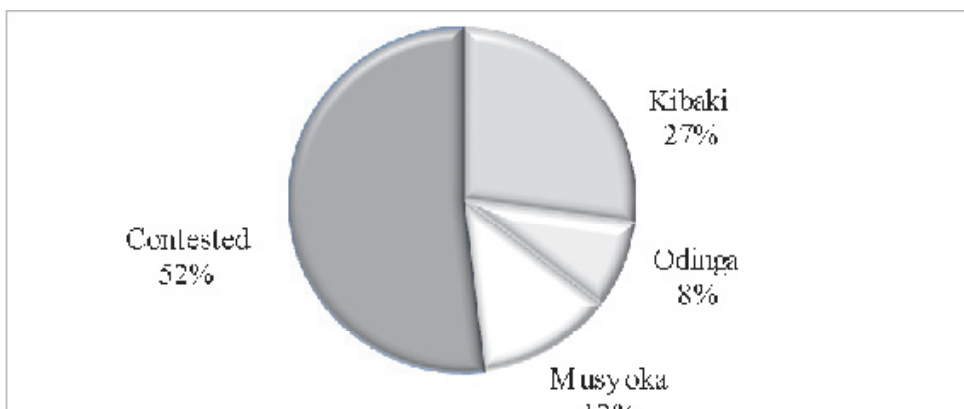
Table 10.10: Differences allocated to candidate strongholds

Strongholds	Parliamentary > Presidential	Presidential > Parliamentary	Total
Kibaki	65,692	28,905	94,598
Odinga	26,455	2,127	28,582
Musyoka	12,916	31,392	44,308
Contested	151,163	29,620	180,784

The fact that the largest number of suspicious ballots comes from contested areas reminds us that it is not always a candidate's home region that may be the source of electoral malfeasance. Areas that may be arguably harder to catch, given divided electorates in swing constituencies, present problems as well.

While lots of evidence points to the mismanagement of this election, the differences between parliamentary and presidential turnout provide the best evidence that systematic rigging took place to increase totals for Kibaki. Although our data does not allow us to specifically assign blame on party or ECK agents, differences in turnouts may point to changes made to vote totals at the ECK headquarters in Nairobi. Many of Kibaki's strongholds and contested areas in Eastern and Rift Valley provinces were announced late, which has always created suspicion that it was in these areas that ECK officials inflated totals in Kibaki's favour. However, while discrepancies in these kinds of turnout are alarming and of the magnitude to have produced an illegitimate winner, these data do not by themselves indicate whether alterations were made at polling station, constituency, or headquarters tallies.

Difference between Civic, Parliamentary, and Presidential Turnouts

We can subject civic turnout data to comparisons with both parliamentary and presidential turnouts, similar to the previous section, to demonstrate further irregularities in turnout numbers. We use the same standards of differences of 1 per cent, 2 per cent, and 5 per cent. For civic turnouts, we aggregate the number of votes from each ward in a constituency to develop a constituency civic turnout number, which is then compared to constituency-level parliamentary and presidential turnouts.

In the ECK's published results, numerous wards registered no vote tallies at all, given cancelled elections in those areas (a cause for concern by itself). We were, therefore, unable to include any constituency that had any missing ward results, which were 55 (26%) constituencies in total. Our results thus present a lower-bound on the magnitude of the differences.

Table 10.11: 2007 differences between civic and parliamentary turnout

Turnout threshold	Parliamentary >civic	Civic > parliamentary	Total
Total	172,260	198,735	370,995
1 per cent	139,935	171,485	311,420
2 per cent	117,661	150,209	267,870
5 per cent	80,261	106,094	186,355

Table 10.12: 2007 differences between civic and presidential turnout

Turnout threshold	Presidential >Civic	Civic >Presidential	Total
Total	221,105	156,711	377,816
1 per cent	184,087	137,607	321,694
2 per cent	156,938	123,784	280,722
5 per cent	95,441	95,898	191,339

Differences between civic and parliamentary turnout by themselves say nothing about presidential turnout, but they do suggest potential irregularities across ward and constituency results. Table 10.11 demonstrates important and large variations between civic and parliamentary turnouts. In total, the parliamentary turnout was 172,260 votes higher than the civic turnout. Using the fairly liberal standard of 5 per cent as an appropriate difference between the two, this produces 80,261 votes added to the parliamentary figure. Conversely, there were a total of 198,735 more civic votes than parliamentary votes. Keeping with the 5 per cent threshold, this creates 106,094 votes added to civic turnout numbers. The total produced by the 5 per cent cut-off is 186,355. The more realistic standard of 1 per cent from spoilt ballots and abstentions produces 311,420 lost ballots between parliamentary and civic counts.

Comparing the civic and presidential turnout numbers reveals important discrepancies (see Table 10.12). In 102 constituencies, presidential votes exceeded civic, and in about half as many constituencies (53), civic exceeded presidential. Accepting the more liberal cut-off of 5 per cent produces a total of 191,339 errant votes. Moving to a stricter 2 per cent threshold creates a total of 280,722 votes, enough still to have affected the winner.

Similar to our analysis of the differences between parliamentary and presidential turnouts, differences between civic, parliamentary, and presidential votes may be indicative of many simultaneous processes of the artificial production or subtraction of votes at the ward and constituency level. The large margins we present between civic and parliamentary/presidential turnouts further bolster our argument regarding

parliamentary and presidential inconsistencies. While some differences are likely to result from a few spoilt ballots and voters, with no preference over local council races, the gaps between turnout still remain problematic, and by a magnitude capable of producing a different winner at the presidential level.

Conclusion

An analysis of the vote totals from the ECK, in addition to comparisons with past voting and media data, demonstrate large discrepancies and problems with the tally announced by ECK Chairman Samuel Kivuitu. The problems in the Forms 16 alone are enough to require significant reforms of tallying and reporting ballot returns. Other inconsistencies between the official results and those produced by the media, and an examination of overall turnout and turnout differences between presidential, parliamentary, and civic results produce a large number of dubious ballots, and enough to have mattered towards who actually won the race. Kibaki's margin of victory over Odinga was only 225,174 ballots, and some of our analyzes highlight outliers and problem areas that cross this threshold in terms of the problem votes they indicate. Rather than proving fraud or placing the blame on anyone specifically, these results show that the official results are highly suspicious and that, unfortunately, Kenyans will never know who actually won the 2007 presidential election.

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PART V:
GOVERNANCE REFORMS AND MONEY IN POLITICS

11

The Unfinished Reform Agenda and the 2007 General Elections in Kenya

Tom Kagwe

Abstract

In Kenya, before the 1997 and also the 2002 general elections, efforts aimed at reforming the state had become a political buzzword. Demand for comprehensive policy and institutional change influenced and shaped organization of politics at both the local and national level. This contributed to the coming to power of a new government, the National Rainbow Coalition (NARC), on a reform platform following the December 2002 general elections. Within the first two years of the new administration, the reform agenda was still being pursued. Unfortunately, due to many reasons, especially the querulous factions and reformers mixed with non-reformers (conformists), the reform agenda was abandoned midstream. Thus, when the campaigns preceding the 2007 general elections approached, the agenda did not feature prominently, unlike previous elections. In 2007, the 'reformists' were split, issues were split, and also conformists were in the main competing parties and prevented paying of attention to the reform agenda. Kenya was at crossroads, with nowhere to turn, since both ways, it did not matter who won; the reform agenda had been overtaken by the pursuit of raw power. This chapter discusses the plight of reforms in the 2007 general elections by analyzing the main trends in discussions about reforms and how different actors, especially political parties, shaped their reform discourses.

Introduction

Over the last two decades, Kenyans have clamoured for political-legal reforms, especially comprehensive review of the constitution. The current constitution has weak checks and balances among the three arms of government, reserving excessive and unchecked powers in the executive arm, and the presidency to be specific. This situation has led some observers to describe the presidency as 'monarchical' or 'imperial'. So as to democratize this presidency, the constitutional reform process has been at the epicentre of the reform movement. Therefore, reference to reforms from the late 1990s has been synonymous with constitutional reforms. Illustratively, members of civil society organizations (CSOs) and other institutions have clamoured for reforming the constitution, which could open floodgates to reforming many other institutions, policies, political structures, and other laws.

The larger reform struggle can be traced backwards to days of colonialism. Indeed, this period saw the rise of nascent institutions (formal or informal), which clamoured for various rights that the colonial regime violated. The Nandi rebellion, the Mekatilili interventions, the Mau Mau freedom fighters, and many more speak volumes of the reform struggle, since they were primarily founded on the need to change the political system. Subsequently, there emerged labour movements, political parties and social-cultural groupings whose agenda was to better the welfare of members and consequently fight for their individual rights and democratic freedoms. While all these were seeking 'group rights' at that time, it is arguable that the 'common denominator' was to overthrow the colonial regime to pave way for better governance of their state by Africans.

Unfortunately, the removal of the colonial regime did not yield democratic change. There were no significant policy and institutional changes. For instance, the clamour at the constitutional talks in London demonstrated that as the British administration was leaving, there were still unresolved issues, which included redistributing 'White' farms among those that had been displaced in the then settler colony; minority rights in a federal state that found representation in the Kenya African Democratic Union (KADU); and the Somali who sought annexation of the Northern Frontier District. All three issues were shelved.[1] Further, while some level of autonomy was created through the *majimbo* system, the level of autonomy was not inherently secured in the Lancaster constitution. Through a series of amendments, that autonomy was challenged and later deleted from the constitution. Demand for reforms therefore has been growing throughout the post-colonial period.

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[1] It has been argued that Reginald Maudling, who presided over the Lancaster Talks, was unwilling to settle the Maa-speaking communities' claims to land, the issues of federalism as presented by KADU, and also the questions surrounding the annexation of District. A comprehensive constitutional conference was not achieved. For example, see Murugu Mute and Smokin Wanjala (ed) (2002), *When the constitution begins to flower*, Nairobi: Claripress.

The climax of the reform struggle came in the 1990s when CSOs, including lobby and pressure groups, put pressure to bear towards the Moi government to make some tangible reforms to the political system.[2] Through re-introduction of multi-party politics in 1991, changes in the electoral system both in 1992 and 1997, and also achievement of an Act of Parliament to rewrite the country's Constitution after the 1997 general elections, some reforms were instituted, albeit they were not the only reforms.[3] Unfortunately, between 1997 and 2002, not much was achieved in terms of constitutional, legal and institutional reforms. With regard to constitutional reforms, for instance, several Acts of Parliament were enacted and re-enacted, but all these were in vain and further complicated the already circuitous process. Further, other reforms aimed at altering the electoral system through creation of new constituencies were stillborn, to date.[4]

Further still, before the 'transitional elections' of 2002, the National Rainbow Coalition (NARC) made numerous pledges to reform Kenya, if and when they ascend to power.[5] Through the president's inaugural speech and the party manifesto, NARC committed to get rid off corruption, get a new constitution in 100 days, and to jumpstart and sustain economic growth, among other pledges.[6] Upon assuming power, the government made notable changes by introducing the Governance, Justice, Law and Order Sector (GJLOS) Reform Programme–hereinafter simply as GJLOS. Indeed, GJLOS is the most ambitious reform initiative led by the government, albeit that leadership by state has been contested since GJLOS is not founded on any government policy document such as legislation, a Sessional Paper or a Development Plan.[7]

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[2] The seeds of reform were planted way back in 1982 with the establishment of the **Kenya Law Reform Commission**, and revisited a decade later in 1992 when the Attorney General established 15 Reform **Taskforces with a mandate to review and update Kenya's laws. A more structured approach to the reform** process was added in 1998 when the Chief Justice appointed a Committee chaired by a judge of the Court of Appeal, Hon Justice Kwach to review and report on the administration of justice in Kenya, http://www.gjlos.go.ke/ accessed 22 August 2008.

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[4] The debates to create new constituencies and/or revise borders dogged both the Eighth and the Ninth Parliaments (between 1997 and 2007) but ended up being fruitless. The debate is still rife since it was again reintroduced in 2008 by the Vice President (see *Daily Nation*, Saturday 27 September 2008).

[5] **The elections were termed 'transitional' by many local and international observers, not to mention scholars. See for example,** Kenya Domestic Observation Programme (K-DOP) Report (2003); Nasong'o (2007).

[6] These will be discussed further in this study. For details of the pledges see NARC Party Manifesto. For **an analysis of the same, see Kibua** *et al.* (2005).

[7] See Maina (2005), and Government of Kenya (2007), which reveals that GJLOS is not latched onto the government's Medium Term Expenditure Framework (MTEF) process that is key to budgeting and **planning.**

Efforts aimed at reforming the state became a political buzzword, especially before the 1997 and also the 2002 general elections. Further still, within the first two years of the NARC administration, it seems the agenda was still being pursued. Unfortunately, due to many reasons, especially the querulous factions, and reformers mixed with non-reformers (conformists), the reform agenda was abandoned midstream. Thus, when the campaigns preceding the 2007 general elections approached, the agenda did not feature prominently unlike previous elections. Seemingly, while there was mention of constitutional reforms, economic recovery and political governance, the pursuit of raw power replaced the reform agenda in 2007.

This chapter traces at which point the reform agenda was abandoned as Kenyans headed to the 2007 elections. First, it interrogates why and how the reform agenda is usually connected to elections, but also shows why the 2007 elections abandoned reference to such an agenda. Second, it briefly captures those reform platforms that NARC sailed in with and continued with between 2003 and 2005 before their gradual death. This is critical since this interrogation contextualizes and demonstrates why the agenda did not feature prominently in the 2007 general elections. Finally, the study interrogates the reform agenda, if any, that was flouted between August and December 2007 by the main contending parties: Party of National Unity (PNU); Orange Democratic Movement Party of Kenya (ODM); and Orange Democratic Movement-Kenya (ODM-K).[8]

The chapter, therefore, discusses the plight of reforms in the 2007 general elections by analyzing the main trends in discussions about reforms and how the different actors, especially political parties, shaped their reform discourses. This discussion is based on secondary and primary data including interviews conducted with key informants within state and non-state institutions, especially those institutions that have been advocating for reforms in the last 10 years..

A major limitation experienced in collecting data for this study is the various meanings of reforms or the the various ways of viewing and perceiving reforms in Kenya. On the one hand, many state actors have continued seeing 'modernization' of institutions, especially under GJLOS, as 'reforms', which therefore translates to state actors seeing 'enhanced reforms' compared to former years. On the other hand, CSOs view transformation of the state from authoritarianism to a democratic state founded on the pillars of accountability as what constitutes 'reforms'. In this way, CSOs see that any of the reforms touted are but cosmetic, not fundamental to the realization of a functional democracy. Further, politicians also have their version of what reforms are; for example, they equate 'better management of the state' as 'reforms', while others see replacement of government by the opposition as 'reforms'.

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[8] This does not, however, foreclose interrogation of the other minor parties and the kind of agendas they pursued. Indeed, this study demonstrates where the reform agenda was, and also how CSOs and other players advocated for reforms too.

In this regard, while the concept has a clear meaning, theoretically, its practice and usage in Kenya demonstrates oscillation from actor to actor.

Context of Reforms

The Concept of Reforms

Reform is essentially both a process and content issue. As a process, reform encapsulates agitating for, or bringing about, desired changes to a system. As a content issue, reform is about removing errors of a system and replacing them with desired attributes that can bring about alteration and improvement to that system. To reform, therefore, is to amend, redress and/or seek remedy to a malfunctioning system. In the context of politics, it means that a political system that is authoritarian and/or patrimonial is replaced by one with democratic pillars of accountability, people-centred power, efficient and effective civil service, and powers that are checked and balanced, among others.

In the Kenyan context, reforming the political system has been touted as long overdue. This is because the Kenyan political system derived from the constitutional order has been a malfunctioning system that only harvests ills such as nepotism, impunity, corruption, unchecked powers, inequality, marginalization and exclusion, and all manner of ills. To enable this system bring about desired attributes such as inclusivity, equity and equality, accountability and also an expansion of the 'democratic space', Kenyans have both clamoured for a reformation of the state, but also have cited the contents of those reforms, which include: a functioning judiciary; an independent National Assembly; an economy that creates wealth and employment and redistributes the same; inclusion of previously marginalized and excluded groups into decision-making organs, and a host of other content issues.

Reforms and Elections

From early 1990s, triggered by the *Saba Saba* riots, many progressive lobby or pressure groups and CSOs have campaigned for reforming the political system before any elections are held. Before the 1992 general elections, Kenyans campaigned for the amendment of the constitution to provide for multi-partyism, an all-inclusive Electoral Commission of Kenya (ECK), and also the limitation of presidential terms to a two 5-year term, among other reforms.

In the run-up to the 1997 general elections, the catchphrase of no reforms…no elections gained a lot of supremacy, where major reforms such as constitutional overhaul were key among the desired reforms. Indeed, especially between 1997

and 1999, so many rallies were organized on the model of *saba saba*.[9] Further, this period also saw the parliamentary opposition join ranks with CSOs by advocating for a comprehensive review of the constitution, but the latter was still-born. Through the Inter-Parties Parliamentary Group (IPPG) deal that preceded the 1997 elections, the clamour for comprehensive constitutional review aborted. Nonetheless, some constitutional and other legal amendments provided some sense of reforms, where the political playing field was somehow leveled.

From this short history, it is evident that there are trigger factors that provide 'fuel' to clamour for reforms just before an election. Three inter-related factors could be postulated. First, is the nature of the state, where in-between election years, there is little or no constructive engagement between the populace and the state actors, especially the party in power or the political class in general.[10] Second, just before an election, a flurry of activities provide heightened political participation by citizens and also where the political elite or parties are desperate to either maintain power or ascend to power. Third, from the country's history, as founded in liberal tradition, political parties are busy parading manifestos, visions and also candidates who are concerned with recruiting members with a view to competing in the impending elections.

Through these inter-related factors, reform platforms are built and sustained, only to fizzle out immediately after the elections.[11] Unfortunately, within the context of these three is one factor that really triggers many Kenyans to participate in the later-day electoral processes of party primaries and campaigns: the anticipated 'economic incentives' through bribes. Indeed, looking at the entire electoral process that begins with voter registration and/or confirmation, continuous voter education, political party primaries, campaign periods, election day, vote counting and declaration of results, none receives more attention than party primaries and campaigns, where there is possibility of getting bribes from the aspiring politicians.[12] The Kenya Domestic Observation Programme (K-DOP) summarized the issue thus:

> *The electoral process represents the moment in which the vote has become a commodity that is valuable to both the seller (voter) and the buyer (candidate*

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[9] NCEC engaged citizens by directly organizing popular meetings in both rural and urban areas. As part of a conscious emotive dramatization, the NCEC called general strikes and held rallies on days whose dates coincided with the numerical notation of the calendar month. Each occurrence was then referred to by the Kiswahili reference to the month and date, thus *Saba Saba* for the events of the seventh of July, eighth of August (*Nane Nane*), tenth of October (*Kumi Kumi*) and so on (Katumanga, 1999).

[10] Makau Mutua argues that 'the country lacks effective structures and entrenched democratic norms to hold the political class accountable once the election is over'. See 'Agenda for the next government', in *Sunday Nation*, 23 December 2007.

[11] This issue is discussed in detail in a later section.

[12] See Catholic Justice and Peace Commission (CJPC), (2007). In this survey, when asked what reasons influence their voting, 21.8 per cent of the 1,600 respondents interviewed stated that they do so for a bribe or some other personal again. Interestingly, when asked to project what would influence their 2007 vote, 20.0 per cent still stated they have to be bribed to vote for a candidate.

and party) and is exchanged for mutual, albeit illegal benefit of the relevant parties. The seller gets some material gain and the buyer hopes to cash in on the vote to access power and the resources that go with it (K-DOP, 2003: 152-153).

Nonetheless, there has always been a connection between the clamour for reforms and the opportunities presented before elections. While the issue of bribery and ethnicity cloud judgements during electoral process, there is need to investigate why such elections have failed to transit Kenya from authoritarianism to a more democratic society, despite many years of clamour, from 1997 to 2007, as seen below.

Transitional Elections without Transformation

In the elections of 1992 and 1997, the government in power then, KANU, never lost until the 2002 elections, which many termed 'transitional elections'. Briefly, it was termed transition since NARC came to power and displaced KANU. Second, they were transitional because Moi's regime was replaced by President Kibaki's regime.[13] In 2002, CSOs such as the Kenya Human Rights Commission (KHRC) pointed towards such a transition when they urged Kenyans that in order to have a regime change, they should and must vote for president Kibaki (KHRC, 2002). As seen above, and as will be shown later in this study, this regime change did not amount to reformation of the state. The reform agenda was stifled as a result of many factors that are systemic or structural. These relate to questions surrounding the electoral systems, 'rules of the game' or even other exogenous factors such as ethnicity.[14] Further still could be the issue of political organization and mobilization as seen in political parties. These are highlighted below.

(i)   Ethnicity: Ethnicity has continuously remained present and definitely influenced the overall outcome of the 1992, 1997, 2002 and also 2007 general elections. Each contender and 'their' political party had a 'vote-bank' or 'ethnic vote' from where their voting base lied.[15] Ethnicity is, however, distinguishable from ethnic groups, where ethnicity amounts to

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[13] The regime change is not taken in using the liberal democratic sense, where conservatives replace liberal democrats, or labour parties are replaced by the social democrats. Within the African setting, Moi's patrimonial regime was replaced by Kibaki's. See Barnes (2004). Nonetheless, transitions are generally marked by more open spaces for competition in a multi-party setting, end of dictatorship, etc. Thus, the assumption is that elections play a crucial yardstick for a transition to occur. See Murunga and Nasong'o, (ed), 2007.

[14] In this study, 'ethnicity' is borrowed from Mafeje Archie (Unpublished). Mafeje is categorical that 'ethnicity' is authored by the political elite to manipulate people, and has no connections to African antiquity.

[15] For detailed analysis of the 'vote bank', see Joop de Wit (1996). For detailed analysis of the 'ethnic vote', see Long (2007).

political manipulation while ethnic groups are social identities that people acquire by historical accident.[16]

Ethnicity, rather than ethnic groups, is therefore key to understanding elections' outcomes and political organization. Politicians in Kenya have perfected the art of manipulating ethnic groups to consolidate their positions as leaders. They often play on ethnic sentiments, fears and sensitivities to secure their positions. In the same breath, the claims made by ethnic communities also correspond to political constituencies, and political participation has been primarily organized along communal and ethnic lines.[17] On the other hand, politicians rely on their ethnic patron-client network to sustain support. Politicians in NARC never abandoned the 'ethnic baggage' and this compromised reforms. NARC was a constellation of 'ethnic barons' organized in a patron-client relationship and, within the context of reforms, would protect and defend any of their own to stay in power or get into office. For example, the effort by the president to have a lean Cabinet was thwarted by 'ethnic bargaining' by the barons, resulting in the largest Cabinet of all time.[18]

(ii) Political mobilization: While politicians use ethnicity to mobilize and enhance both their political power and even wealth, and their clients, the masses are induced into distrust and fear of other ethnic groups, particularly those who belong to other political parties. Without democratic institutions with which people can identify, or competent security and legal structures that people can appeal to, these feelings further consolidate the position of leaders as ethnic spokespersons (Oyugi, 2002). It is the lack of political democratization that has made some scholars to argue that Kenyan elections have been largely 'transitory', rather than 'transformative' (Nasong'o, 2007). This issue is discussed further below.

(iii) Electoral rules and institutions: Related to the above, Kenya has undergone what has been termed 'political liberalization' since 1992, where many

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[16]   There have been broad discussions on the questions surrounding ethnicity and/or ethnic groups. Two schools of thought prevail: one which looks at ethnicity using 'social lenses', the other using 'political lenses'. Using the 'social lenses', ethnicity is not necessarily a bad thing, but has been politicized and has been called 'negative ethnicity'. See for example, Kameri-Mbote (unpublished). Second, using the 'political lenses', there are those who think ethnicity in itself is negative and hence the issue of 'negative ethnicity' does not arise (see Mafeje (unpublished) Kibua *et al.* (2005).

[17] See Kameri-Mbote (unpublished).

[18] Ford-Kenya leader, Musikari Kombo, was reported to have bargained in 2004 with the President to ensure more members of Ford-Kenya (read Abaluhyia) were named in the Cabinet. See *The Standard*, 24 July 2004.

political parties have emerged (at least 111) but 'political democratization' has not occurred.[19] For 'political democratization' to occur, there are two indicators. First, there is need to restructure the 'rules of the game', such as the electoral system (first-past-the-post) to make the political competition fairer and representative. However, what Kenya has had since 1992 has **been termed 'new game, old rules'. Second, there is need to restructure** institutions that govern elections (Nasong'o, 2007). For example, the Electoral Commission of Kenya (ECK) was single-handedly appointed by **President Kibaki without consultations with the other contenders, who** cried foul. This had implications and vindicated that the ECK was incapable of conducting and supervising free and fair elections in 2007 (KHRC, 2003; IREC, 2008).

The consequences of transitional rather than transformative elections are rather obvious and have been documented. First, incumbent regimes have been defeated **but the rules of the political game remain intact, as seen above. Illustratively, the transfer of power from KANU to NARC did not change the mode of politics founded on personal enrichment, primitive accumulation and ethnicity. Secondly, there is no strategic restructuring of the state, as currently constituted. This relates to the manner in which incoming regimes exercise authoritarian tactics, without changing an iota of the structural and systemic problems that muzzle press freedom and** violate human rights. Third, abuse of public office, conflict of interest and outright **corruption continue unabated on the part of the incoming governments, such as use of state resources and public service for campaigning for the power. All these are exhibits of what has been termed the 'paradox of transition without transformation'** (Nasong'o, 2007).

While many Kenyans still clamour for reforms before elections, and it is clear why reforms must be done before elections are held, it is still difficult to realize **these reforms before and also after elections as the environment is not conducive. Structures and systems of the electoral rules, not to mention players, are the same. Further, political parties seem to have proliferated, but it is a situation of liberalization** without democratization. While NARC was elected on a reform platform, the logic of **the structures and systems dawned on the government in the period after elections, as** briefly shown below, before looking at how these contributed to lack of a prominent reform agenda in the 2007 elections.

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[19] **This is the number of** political parties that participated in the 2007 general elections, but those registered **are more than 150. See** *The Standard,* Saturday 10 November 2007. There are more than 200 registered **political parties to date albeit after the full operationalization of the Political Parties Act (2006). This number is bound to shrink considerably since many cannot comply with the stringent rules therein, see** Nasong'o (2007).

Reforms Under NARC

The NARC government was elected on a reform platform. After 40 odd-years under Kenya African National Union (KANU), it was time for Kenya to take strides into a new era. Indeed, NARC had within it a constellation of reformers who previously were in the opposition or in the civil society. To capture the reform agenda within NARC, this section briefly shows three key issues within that agenda: constitutional reforms; anti-corruption; and also human rights under NARC. The intention is to demonstrate briefly where the reform agenda was lost and also show demonstrable resistance to reforms by various factions of government, through courts of law, and also through politicizing the constitutional review process. Further still, this section demonstrates that lukewarm reception to reforms within NARC itself, which still had anti-reformists, was indeed the straw that broke the camel's back.

The Reform Agenda: 2002-2005

The reform agenda was packaged in four ways: first, President Kibaki's inaugural speech, which set the pace for some of the reforms NARC would undertake; second, the NARC manifesto, which provided a solid background of the key areas the government would concentrate on; third, the Economic Recovery Strategy for Wealth and Employment Creation (ERS); and finally, within the plethora of bills that were written, hurriedly so, within the first year of NARC's ascending to power.[20] With these four, from its on-set, the NARC regime became synonymous to reforms. Three key planks of reforms were the constitutional review process; the anti-corruption agenda; and also the commitment to respect and protect human rights. These three are surveyed briefly.

Stalemate in Constitutional Reforms

In the build-up to the 2002 elections, NARC pledged to review and conclude the new constitution in 100 days. Of course NARC was up against KANU, which had misruled for close to 40 years and, hence, had no moral or legal authority to speak on constitutional reforms.[21] After NARC won with over 60 per cent of the vote, the process started with gusto, especially at the opening of the National Constitutional Conference (hereinafter Bomas). But the process was clogged midstream. Three critical factors inform that deadlock: politics, legal/court processes and general politicizing of contents and process of review.

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[20] The legislations include the Anti-Corruption and Economic Crimes Act (2003) and Public Officers Ethics Act (2004). Further still was the Constitution of Kenya Review (Amendment) Act (2001), which was to manage the constitutional review process.

[21] Under KANU, the constitution had been amended over 40 times, most times for the worse; KANU could not convince the electorate that it had an iota to reform anything.

Politically, reform battlefronts were drawn between the factions of National Alliance Party of Kenya (NAK) and Liberal Democratic Party (LDP), where the latter insisted on a parliamentary system, while the former seemed comfortable with the powerful presidency, since one of their own was the president. Indeed, a cursory glance at the presentation of NAK faction to the Constitution of Kenya Review Commission (CKRC) demonstrates that the party supported a parliamentary system of governance only to backtrack when they occupied the presidency. The drama at Bomas stole the constitutional reform struggle.

In terms of the legal bottlenecks, many went to court to challenge the legality of the review process itself; the law that guided the process; and lastly, the composition of delegates, among other things.[22] One such case was the *Timothy Njoya and Others Versus the Constitution of Kenya Review Commission and the National Constitutional Conference.*[23] On 25 March 2004, the ruling delivered in this case, among other things, asserted the right of every Kenyan to directly pass a verdict on the draft constitution through a referendum.

While the above ruling meant the review law was subject to amendment, this ruling sent the constitution-making process into uncertainty by raising doubts on the validity of the Bomas Draft. That is, while questioning the constitutionality of the Bomas Conference, the ruling failed to pass a definite verdict on the validity of the product of that conference, among other criticisms, which saw the ruling as legally wanting.[24] Further suits such as the Chambers of Justice meant that all debate on the Bomas Draft was deliberately stopped pending a court ruling.[25] Further, the Constitution of Kenya Review Commission (CKRC) was also halted from preparing its final report in yet another suit, titled *Kung'u and Others vs. Constitution of Kenya Review Commission.*

Third, when it came to politicizing the review contents and processes, this took the form of labeling issues 'contentious' throughout the process. While some issues, for example touching on the executive, legislature, judiciary, land (especially access to and inheritance of land by women), devolution, and transition were really issues that drew sharp divisions, many others were just misconceptions and misinterpretations. Equally, while there were other drafts written by bodies within the civil society, such as the Ufungamano Draft, the Kenya Private Sector Draft, Law Society of Kenya Draft, and so on which added value to the process, some brought total confusion about the legally-sound draft that sought to replace the current Constitution.

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[22] The Bomas Draft was adopted on 15 March 2004, pursuant to the law that guided the review process; that is, the Constitution of Kenya Review (Amendment) Act (2001), commonly referred to as Cap 3A. Nonetheless, many went to court to challenge the constitutionality of the Act.

[23] Miscellaneous Civil Application No.82 of 2004.

[24] See various legal opinions, which point towards this. For example, see Odoyo (2008).

[25] Miscellaneous Civil Application No. 394 of 2004. This suit was filed on 29 March 2004, and the parties obtained preliminary orders from the High Court, which stopped all action, debate and deliberations on the Bomas Draft.

As Kenyans headed to the national referendum in November 2005, a lot of **political skullduggery clouded the contents of the draft constitution. Indeed, the** process leading to the referendum was divisive, emotional and filled with political **intrigues, half-truths and blatant lies. Ideally, each Kenyan should have voted for or** against the proposed new constitution after either objectively reading or being civic **educated on the draft. This did not happen since even before many got a copy of the** **draft or were educated by civic education providers, politicians from both factions** **of government had started campaigning for either 'Banana' or 'Orange', resulting** in a polarized citizenry (Mutua, 2005). The resultant referendum led to the defeat of the draft constitution and, thereafter, numerous attempts aimed at jumpstarting the review were in vain.

With the above three perspectives, the constitutional reform agenda was lost **within the NARC regime. Generally, these three still catapulted into new dimensions** between 2006 and 2007 where, in an effort to deliver on the promise, many players **made some new promises or simply blamed each other, especially with the aborted** **constitutional review and the anti-corruption crusade. These reform messages are** discussed within the reforms agenda between 2006 and 2007 later in this study.

Fizzled Anti-Corruption Crusade

The NARC government came into power with a promise to 'zero tolerance' to **corruption in its manifesto. Quickly, it set up a legal regime and some institutions** to undertake the same. In early 2003, the government undertook the 'radical surgery' of the judiciary, which saw over 20 judges and 80 magistrates fired. Although this was the first bold attempt of its kind in Africa, serious questions were **raised.**[26] In 2003 too, the office of Permanent Secretary-Governance and Ethics was set up, and was directly answerable to the president. As early as May 2003, the government suspended about 1,000 public procurement officers after auditors found discrepancies and irregularities (AfriCOG, 2007). But within the same year, many had **started criticizing the legal regimes and also the institutions for being ineffective and** expensive to taxpayers. While, for example, the Minister of Justice and Constitutional **Affairs made a pledge to recover stolen billions that were stashed away in foreign** accounts, none of this had been realized by the time of the 2007 elections.

Further still, the 'ghost' of **Goldenberg haunted the anti-corruption crusade.** While a Commission of Inquiry was established to investigate the scandal, and which **received a lot of goodwill among the populace, the report was never made public** **by NARC.**[27] Moreover, while there was provision for declaration of wealth, those **declarations were kept under lock and key and even amendments proposed that**

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[26] Kibua *et al* (2005). The issue is highlighted more in the Introduction.

[27] The Commission headed by Appellate Judge Richard Bosire, handed over the report in 2006 but to date, the public has not known the findings and recommendations of the report.

those declarations should not be made annually but only once in two years, which made public question the motives behind such proposed amendments. Indeed, in September 2005, the Efficiency Monitoring Unit (EMU), which is a department within the Office of the President, revealed that the Act guiding the process had made serious assumptions; there was a lot of non-compliance, and a terrible lack of capacity to follow through, among other major bottlenecks (AfriCOG, 2007).

Before three years were over, NARC was dogged by the Anglo-leasing finance scandal, which implicated senior ministers of the NARC government. While there is no agreement what 'Anglo-leasing' means, as government insisted that it was a 'scandal that never was', there was serious evidence of shadowy companies supposedly providing security-related equipment such as forensic laboratories, implying that government ministers were caught in the intricate web of international scandals and old corruption networks in the security sector. Over 18 dubious security-related contracts came to the fore between 2004 and 2006, totaling about Ksh 2.7 billion, for enhanced immigration and passports control system (AfriCOG, 2007). The resultant effect was the resignation (read, stepping aside) of two ministers who were later re-appointed in 2006, meaning that the 'scandal' never was as far as government was concerned. The Permanent Secretary in charge of public ethics and governance fled into exile and never stepped in the country until September 2008.[28]

When it came to the fund-guzzling KACC, not much had been realized even as the country headed to the 2007 elections. In terms of restitution, KACC brought numerous civil suits but no actual monies were recovered, yet it operated at a Ksh 1.0 billion a year. In its reports to parliament between 2004 and 2007, there was nothing claimed back. When it came to prosecutions for criminal cases, KACC prosecuted 61 cases between 2003 and 2006 but only won 14 convictions (KACC, 2006). Worse still, some of those convicted were pardoned by presidential prerogative powers of mercy provided for in the Constitution of Kenya.[29] Further, a name synonymous with allegations of corruption in Kenya, Ketan Somaia was, for example, released two months after being convicted through a court decision.[30] KACC simply stated it was unable to pin down any senior person, especially a minister, for wrong doing.[31]

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[28] John Githongo came back and spoke in a pubic forum on 21 September 2008 to discuss his exile, corruption in government, but later went back only to resurface again and be handed over court papers defending defamation of some of the ministers implicated in the scandal. See Kenyan dailies between 30 September and 15 October 2008.

[29] See Section 27 of the Constitution. An example of those pardoned include Margaret Gachara, who was sentenced to be convicted for one year in August 2004 for abuse of office and corruption involving Ksh 21 million, but later pardoned on 11 December the same year, hardly serving even half the term (AfriCOG, 2007).

[30] Ketan Somaia and his co-accused, the former Manager of National Bank of Kenya, were jailed for 2 years in a scandal involving importation of taxi-cabs, but the Appellate Court made a decision in their favour (AfriCOG, 2007).

[31] The Director, Aaron Ringera, stated this on British Broadcasting Corporation (Freedom House, 2006).

President Kibaki's tough statement in 2003 about corruption in government, therefore, amounted to nothing since the 'sheep were sharing the same pen with the wolves':

> *They (the corrupt) are mistaken. The fight is now a key pillar of my government's contract with the Kenyan people...we seek an end to the days when those who had looted public property were being glorified. We seek an end to the days when those who live on ill begotten wealth are admired. We seek an end to the days when those who had looted public coffers were invited to use the proceeds of their loot for building churches and hospitals. We seek an end to the days when those who have bankrupted public institutions were elected to parliament and called honourable* (Jonyo and Owuoche, 2004).[32]

Generally, the 'war' against corruption was muddled with legal loopholes, an inefficient and ineffective KACC, and also lack of capacity and willingness on the part of the executive, legislature and judiciary, among other organs, to stop and/or punish corrupt individuals. While Kenyan citizens were willing and upbeat on stopping corruption by arresting traffic officers taking bribes on Kenyan roads when NARC took power, the government did not match this will with its own. Indeed, as 2007 approached, as seen below, some of the names synonymous with allegations of corruption in Kenya had been whitewashed and were campaigning vigorously for either PNU or ODM. Paul Kamlesh Mansuklal Pattni, a name associated with allegations of corruption in the Goldenberg scandal, openly supported PNU and also sought public office in Kenya.

Human Rights under NARC

The record on observance, respect and protection of human rights under the NARC regime is a mixture of good, bad and the ugly. The good is that reports indicated that between 2003 and 2006, Kenya recorded advancement in the protection of economic rights. The Economic Recovery Strategy for Wealth and Employment Creation (2003-2007) was framed within the NARC context to provide more jobs, opportunities and economic prosperity according to their manifesto. This strategy enmeshed the World Bank-led Poverty Reduction Strategy Paper (PRSP). Without doubt, Kenya's economy grew in leaps and bounds. However, wealth was not, and has not yet been, distributed. Reports by civil society institutions such as the Human Rights House Network argued that the government performed well in provision of education and health rights. Nonetheless, there was no policy framework that guided delivery of these rights, resulting in haphazard implementation of the services (Human Rights House Network, 2007).

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[32] Jonyo and Owuoche (2004).

In terms of political and civil rights, the government faired generally better than KANU but of course there were contestations about its respect for certain rights, especially freedom of association, movement and also right to express oneself. Civil and political rights such as freedom of media faced ugly incidents after the raid on the Standard Media Group in March 2006. While this was an isolated incident, the scale, complicity of state and also the manner of violation threatened the very edifice that NARC was elected upon. Worse still, the government introduced a **Media Bill of 2007**, which was not well received by members of the fourth estate and civil society. It was deemed as an attempt to further muzzle the media by requiring journalists **to name their sources of information, but the president stepped in by refusing to assent until that clause was deleted by the National Assembly (Human Rights House** Network, 2007).

Further reports by civil society actors such as the **Kenya Human Rights Commission (KHRC) depicted continuous violations of human rights, especially by the** Kenya Police Force, and to an extent what was termed as reversal of human rights gains that had been recorded in the early late 1990s and early 2000-2002. Police excesses such as extrajudicial killings/executions, illegal confinements and use **of excessive force by the agencies was cited as one of the most problematic human rights violations.**[33]

As all these were happening, the GJLOS reform programme existed to enable better protection and promotion of human rights. Between 2003 and 2006, the **Ministry of Justice, National Cohesion and Constitutional Affairs spearheaded (but did not 'own') the GJLOS reform programme, whose major tenets include: access to justice, better provision of police services, better treatment of inmates, setting up of the National Commission of Gender and Development, and strengthening the Kenya Law Reform Commission. Simply, GJLOS was to enhance the protection of human rights, including women rights, children rights, and also rights to the then** hitherto ignored groups such as prisoners, police and so on. Further, the **National Policy and Action Plan on Human Rights (NAP) process, which was underway from 2005 intended to provide a policy framework for the protection and promotion of human rights.**[34]

But, as Kenya approached 2007, many review reports of GJLOS indicated a **marked difference between 'promise and reality', where many challenges were cited in the review reports.**[35] For example, through the programme meetings, the KNCHR

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[33] See KHRC, Biannual Human Rights Report, various, between 2004 and 2007.

[34] NAP is derived from the 1993 Vienna Programme of Action, showing government's commitment to protect and promote human rights. Led by the National Steering Committee, this process is at the penultimate stage where a Draft Policy on Human Rights is ready for input by various stakeholders. Hearings in various provinces have been concluded, except in Coast, Nairobi and North Eastern (including upper Eastern Province).

[35] See Joint Review Meetings (JRM I to IV): Reports done under the auspices of GJLOS Reform Programme.

cited disconnects between what the Medium Term Strategy (MTS) proposes and what actually existed on the ground in terms of prisons reforms. KNCHR held that to reform the prisons, there is need for a wholesome intervention by the actors in the entire criminal justice system. Evidently, from prisons congestion arising from the court systems or poor prosecutorial decisions, to an archaic policy and regulatory framework, to lack of expansion of prison facilities and to societal attitudes that are founded on retributive rather than rehabilitative justice, the rights of these categories were rarely respected.[36]

Broad Observations

From the above, as Kenyans approached the 2007 general elections, it was quite clear that some major platforms of reforms on which NARC was elected were facing severe drawbacks. Three were critical: a constitution in 100 days; an anti-corruption campaign christened 'zero tolerance' to corruption; and some drawbacks in political and civil rights. Although these three were critical to settle the governance problematique that propelled NARC into power, as seen above, the government did not score well. Reversal in these three signaled some serious problems of how NARC would face the electorate. Fortunately, or unfortunately, NARC faced the electorate as three major parties: PNU, ODM and ODM-K. The three politicians leading these parties, who were jointly elected to deliver on these reforms, respectively, Mwai Kibaki, Raila Odinga and Kalonzo Musyoka faced the electorate as three different parties, with no accountability as to whether they were responsible for the delivery of the NARC 'dream'.

Three critical agendas to change governance in Kenya did not perform well under NARC. Institutions of state, and also the party system did not deliver. Without doubt, NARC far much outperformed KANU but NARC should be judged not against KANU but the reform agenda it espoused in its manifesto, campaigns and the resounding inaugural speech by President Kibaki when he was sworn in. Several assumptions made by NARC dawned on the party while in power. While the public were the most optimistic at any given time, and were ready to give the NARC government leeway to exercise its newly found victory, the public started tiring because of querulous factions within NARC, especially in the constitutional review process.

Second, power-sharing was not as smooth as expected by the two key factions, resulting from an unimplemented Memorandum of Understanding. This was more evident in the final years of the NARC administration; that is, after the referendum fallout. Third, NARC assumed that civil service and other institutions expected to deliver were willing to work with the party in power. This was not the case, as some

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[36] See, Minutes of the GJLOS Thematic Group Two, Democracy, Human Rights and Rule of Law, dated 10 March 2006.

of these institutions stifled the party's promises, whether advertently or not. The institutional capacities, organizational skills, and of course propensity among some key members of NARC to engage corruption were all assumed (Kibua *et al.*, 2005). Indeed, the summary statement given by Freedom House (in 2006) is:

> *The Kibaki government (undertook) many initiatives designed to promote democratic governance…The media, parliament, political parties and non-governmental organizations (functioned) with considerable freedom. Yet, political tensions, entrenched corruption, lack of specific reform results, and questions regarding the depth of government's commitment to reform, (raised) serious concerns about the state of Kenya's democratic experiment. The record is replete with expressions of good intent and stalled reform initiatives* (Freedom House, 2006: 2).

Indeed, there is no other way to summarize the context, performance and also results of Kibaki's first-term presidency.

Reform Agenda and the 2007 Elections

A Summary of 2006-2007

As the discussion above has indicated, NARC had splintered not only in the party structure but also through the ideology that led the reform movement. By 2006, NARC as a party was hardly in existence, only parts of it. However, this did not occasion any defection by any of the members who left.[37] After the referendum fallout, President Kibaki fired his Cabinet and replaced those who had advocated for the rejection of the proposed new constitution. Later on, in June 2006, the president formed a Government of National Unity (GNU), which was christened in some quarters as 'government of national impunity'—simply because some members of KANU who were very much vilified before the 2002 elections found their way back to government. Three things emerged. First, KANU, which lost some members to GNU without the party's consent cried foul and even went ahead to challenge this move by the president in courts of law.[38] Second, a mixture of former reformists and former conformists sat on the same table to deliver on reforms. This was an assumption on the part of GNU and, as shown below, nothing much could happen in such a mixture. Third, members of NARC took positions in the Opposition benches of the August House, and became the 'opposition' to GNU but without defecting from NARC.

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[37] No legal defection took place, as these members did not write to the Speaker of the National Assembly according to the Constitution of Kenya (Section 40). Nonetheless, they technically defected by association to new parties, including campaigning for the same, from the 2005 referendum towards 2007 elections.

[38] As KANU went to court, the Constitution (Section 16(2)) was clear. The President, to date, still has the powers to appoint ministers from the members of the National Assembly, not necessarily from any party in the Assembly. This Section was a result of the IPPG agreements of 1997.

In order to sustain and depict some sort of the reform agenda, the GNU concentrated on service delivery under the auspices of ERS and GJLOS reform programme. Vision 2030, for example, was mooted in 2006 and launched in 2007. On constitutional review, the President formed a panel of Eminent Persons in 2006, led by the seasoned diplomat Bethuel Kiplagat, to spearhead the search for a new constitution. Towards the 2007 general elections, it became apparent that a new constitution would not be realized. Some 'opposition' in parliament started advocating for minimum reforms but the government insisted that the new constitution was realizable. This was not to be. Further still, on the question of transitional justice, nothing much happened after the taskforce presented their report to Ministry of Justice and Constitutional Affairs in August 2006. Indeed, that presentation was preceded by formation of the GNU, whose mixture, as seen above, could not sustain the transitional justice questions. Political expediency had replaced the search for transitional justice. At least, within Ministry-led reform agenda, the policy formulation on human rights had taken a new shape where the NAP process was underway, as mentioned above.

In terms of corruption, the Goldenberg Commission wound up its sittings and its report in 2006 but the report was never publicized. KACC reported regularly on progress made in the anti-corruption front but was not convincing to the public. Human rights violations, especially by state security agencies, continued. However, on the socio-economic front, the government continued boasting of the average 3 per cent economic growth and reducing poverty levels, which had dropped from 52 per cent to 46 per cent.[39] As the 2007 general elections approached, the GNU took exceptional pride in the ERS for the economic recovery. However, the 'opposition' cried foul that they were responsible for drafting the ERS. Others dismissed reducing levels of poverty as a result of changed calibration of the past formulae of measuring poverty incidences.[40]

In the midst of all these, three major parties emerged: ODM-K, ODM, and PNU, in that order.[41] The latter was formed in October 2007 as an amalgamation of key parties that existed before, which included National Rainbow Alliance-Kenya (NARC-Kenya); KANU; Forum for Restoration of Democracy-Kenya (FORD-Kenya); and the Democratic Party (DP), among others. While PNU was registered as a party, members called it a 'loose coalition of parties', similar to what NARC was, when formed in October 2002. It is worth noting, however, that NARC still existed before the 2007

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[39] Government of Kenya (2007b). But these levels were challenged by other reports. For example, the United Nations Human Development Report 2007 indicated that 60 per cent of Kenyans were still living in poverty.

[40] See PNU Manifesto. NARC made progressive growth of 1.8 per cent in 2003 and was estimated to grow at 2.4 per cent in 2004. Nonetheless, the 'actual growth' of 4.3 per cent in 2004 was questioned by professional economists and business analysts (Kibua, 2005).

[41] While ODM was formed before ODM-K, the legal tussles that prevailed in early 2007 stifled ODM from getting a 'political god-father to spearhead it, until when Raila Odinga 'inherited' the party from the erstwhile 'owner' and unsuccessful politician, Mugambi Imanyara in October 2007.

elections but only led by one 'luminary' from the 2002 outfit (Charity Ngilu), who later joined ODM.

Be that as it may, armed with manifestos to sell their visions to the electorate, mixed messages of what each party will do when it forms government were floated.[42] Further still, some candidates provided individual 'visions', especially in ODM, which gave more insights on the subject of reforms.

Below is a candid analysis of the reform agendas and the agents who floated those reforms and why; context of those reforms; and eventually, whether the reform agenda was quickly abandoned in the pursuit of raw power. The sections below are divided into: economic governance, anti-corruption, institutional development under GJLOS, political structure, constitutional review, and the human rights agenda. All these are discussed with the view to show what the major parties and actors in the electoral process campaigned for. These are capped with some broad observations, which summarize this part of the study.

Economic governance

Without doubt, NARC inherited a ruined economy from KANU. All the parties in the campaign trail of 2007 took exception with economic growth as a key reform message. While NARC did wonders in reviving the economy, some parties took advantage of that history or simply dismissed it and proposed new ways. The GNU, and now PNU after October 2007, boasted of transforming the economy from a meager growth of 1.2 per cent in 2002 to an average of 3 per cent per annum and even projected a 7 per cent growth once elected back to office. Further, the taxes' revenues had increased tremendously, confidence of donors and local investors had increased, savings and investments especially in the stock market had increased, among other things (Gatheru, 2007). All these were clearly undertaken under NARC, not by the three-month old PNU, but the difference was not made clear. PNU took these as its reform messages and since this happened under President Kibaki, one key message was: *kazi iendelee* (let the work continue).

On the other hand, the ODM-K ingeniously stated that their economic platform would be to operate a 24-hour economy, with *jua kali* industries being graduated into cottage industries. Further still, ODM-K pledged a double digit consistent growth rate once elected into office.[43] On its part, ODM pledged also a double digit of 10 per cent

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[42] While manifestos have been used to depict reform messages, this study is not naive that manifestos do not necessarily reflect the positions of parties or the true intentions of the political class. Indeed, it has been argued that manifestos require political will on the part of the elite, dedicated bureaucrats, and enlightened citizenry that can demand accountability (Ekisa, 2007).

[43] See ODM-K manifesto

[44] See ODM manifesto

annually for the first five years.[44] In its manifesto, the slogan was clear; *kazi ianze* (let the work begin), which therefore meant ODM did not recognize the economic growth under Kibaki–not PNU. Further, by citing inequality and inequity as the major problem, and hence a reform message, ODM had diagnosed the problem and went ahead to propose social protection programmes through cash transfer as key to tackling poverty. Further, to improve economic processes, ODM proposed to spend 10 per cent of Gross Domestic Product (GDP) on improving infrastructure.[45] However, some analysts cited that ODM seemed lost in finding the concrete solution (Gatheru, 2007).[46] Further still, ODM was criticized for misleading the public about Kenya's ranking on poverty in the world, since the country was ranked 42 out of 177 countries and not 3 as ODM had claimed (Institute for African Development, 2007).

Poverty elimination, employment creation and infrastructural development were the messages within economic messages sold to the electorate. Even some 'small' parties such as Kenya National Democratic Alliance (KENDA) promised to alleviate poverty.[47] Yet, the party was led by Kamlesh Pattni, whose name, as seen above, was and still is synonymous to alleged corruption in Kenya. On its part, the PNU manifesto proposed to reduce poverty from current figures to 25 per cent by 2012. However, analysts still criticized the approach of government where it did not trust local investors in popularized Initial Public Offers (IPO's) in the stock exchange, which could have been instrumental to reducing poverty (Gatheru, 2007). The ODM-K manifesto, other than the 24-hour economy that assumed that Kenya's economy suffered from low productivity, also proposed a programme dubbed *komesha umaskini* (eradicate poverty) which also, like ODM, proposed a cash transfer system. Similar to ODM too, the ODM-K campaigned that lack of trickle-down effects of economic growth was the undoing of the Kibaki presidency. ODM, however, went further to propose a tax holiday for those earning under Ksh 30,000, including tax relief for 'vulnerable groups'.[48]

All in all, major parties made many promises towards economic reforms, but unlike the 2002 elections, three issues could be cited: first, unlike 2002 when KANU had mismanaged the economy to the extent that a reform message to lift the economy was highly ranked among the electorate, in 2007, this issue could not feature prominently, but PNU personalized the success to its presidential candidate. Second, NARC transformed the economy but since the three top parties were not associating with NARC, they could not take credit for that success. Third, since NARC existed but with only one instrumental member left from the 2002 amalgam, they could

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[45] ODM manifesto. Indeed, the title of the Manifesto was telling: 'Prosperity with Equity and Accountability'

[46] Gatheru (2007).

[47] *The Standard*, 12 November 2007, 'KENDA vows to tackle poverty', story by James Ratemo.

[48] See ODM-K manifesto.

not boast of this reality to campaign for itself. Eventually, under all these weight of economic messages, solutions to inequality were sidestepped. No clear solutions about regional disparities came to the fore, and how to ensure future growth trickles down. All these were drowned by politics rather than clear messages about how to solve the problem of economic governance.

Anti-Corruption

An attempt at anti-corruption messages came through in the political campaigns and manifestos. ODM-K pledged to combat corruption by strengthening legal frameworks and institutions, safeguarding public resources and also improving public services.[49] Nonetheless, there were no concerted messages of eliminating corruption that took centre stage, but accusations of corruption. To ODM, PNU was responsible for the Anglo-leasing finance scandal, while to PNU, ODM was responsible for Goldenberg. Images of either campaign materials filled the media, especially electronic media, depicting that each party had no moral authority to tackle corruption.[50]

True, in both camps, corrupt individuals allegedly involved in misappropriation of public resources and outright theft graced the party's leadership positions. Thus, no party had moral authority to speak firmly about eliminating corruption, but strangely went ahead to propose the same in the manifestos. ODM, for instance, pledged to review salaries of KACC and also sought to pursue the looted billions, which in 2007 had been publicized in the Kroll and Associates report. Indeed, the ODM criticized the government for not working with the British government to pursue the latter (Ogosia and Opiyo, 2007). As seen in the discussions above, PNU and GNU were accused of forging alliances with old networks of corruption especially on Anglo-leasing, yet the latter occurred when all the three major parties and presidential contenders were under NARC. PNU was, however, lukewarm in its manifesto on the subject of corruption to the point of being described as 'tame and unconvincing' (Gatheru, 2007). PNU was criticized thus:

> *If the Kibaki government is to regain credibility on anti-corruption, the manifesto in this regard will need to be dropped and replaced with serious action. Disclosing those asset declarations of public officials would be a good place to start. Then, that wasteful anti-corruption commission...needs to be shut down. The dubious company that PNU is keeping to win the elections*

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[49] ODM-K manifesto.

[50] These messages were aired in prime time on both audio and visual electronic media. PNU commissioned the airing of some tapes where presidential contender of ODM (Raila Odinga) stated in 2002 that his running mate, Musalia Mudavadi, was responsible for Goldenberg. Also PNU aired one advert which was popular called *domo domo* (talk and only talk...no action), which showed Goldenberg was ODM's scandal. ODM, on the other hand, aired why *domo domo* made Kenyans know about Anglo-leasing.

[51] *Sunday Nation*, 18 November 2007, p18.

> *is not lost on Kenyans. They cannot forget the past if it involves hundreds of millions of dollars of public cash stashed abroad that will influence the country's politics into eternity...* [51]

Generally, on the anti-corruption front, these major parties, and including the minor ones, were all harbouring alleged perpetrators of the vice or were busy profiteering from the same, especially during their campaigns. Given there were no regulations on party financing, a coalition of civil society actors, the **Coalition for Accountable Political Financing (CAPF)**, depicted wanton misappropriation of public resources and also undisclosed receipts for financing party activities.

In a report released 10 days before the 2007 poll, CAPF pointed out that the cost of misusing state resources on the part of the PNU had reached a staggering Ksh 139 million. CAPF also questioned the sources of the huge sums that ODM (Ksh 501 million) and PNU (Ksh 642 million) were using for presidential campaigns. CAPF concluded that only 40 per cent of such funds could have been raised legally through open fundraising. The rest, CAPF hypothesized, were raised through under-the-counter dealings such as through institutional corruption, arms dealers, pyramid schemes, oil companies and some shoddy businesses (CAPF, 2007). Therefore, no major party could stand tall and raise moral alarms about corruption-only civil society could and CAPF raised the need to regulate campaign financing as a key agenda for reform under the Political Parties Act, which has since been enacted and will be operationalized beginning 1 January 2009.

Institutional development under GJLOS

GJLOS still remains the most ambitious reform initiative by government. GJLOS is a multi-sectoral programme bringing together government Ministries, Departments and Agencies (MDAs) and several semi-autonomous government institutions such as the Kenya National Commission on Human Rights, Kenya Institute for Public Policy Research and Analysis (KIPPRA), among others. These are the main beneficiaries of the GJLOS kitty. Non-Governmental Organizations (NGOs) were not direct recipients of the kitty but were to participate in Thematic Group meetings, which provide a forum for implementation tracking, experience sharing, and early problem resolution.[52]

Reforms were to be implemented between 2004 and 2009 and beyond. It provides that Kenya's institutions, structures and systems will be transformed. Through its first phase, the **Short Term Priorities Program (STPP)**, a lot of hardware was given to state institutions in the first year of implementation. As the 2007 poll neared, 4 Joint Review Meetings between 2004 and 2007 were undertaken. These meetings

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[52] There was an attempt to introduce a non-state actor kitty, but this has never materialized to date.

provided avenues of assessing the rate of implementation, challenges and propose solutions to the teething problems in implementation.

While the GNU, and now PNU, were squarely in government, nothing much appeared in their messages on what and how far GJLOS has reformed the State. Some critics pointed out that GJLOS lost its cause mid-stream; others stated it was founded on an erroneous assumption. For example, Maina Kiai–former Chair of the Kenya National Commission on Human Rights (KNCHR)–stated that GJLOS was wrongly conceived and hence foundered due to a lot of attention being paid to hardware than actual reforms, to the extent it became a modernization vehicle.[53]

Indeed, this view was shared among civil society institutions, which argued that GJLOS provided modernity and not reforms. Towards the end of 2006, CSOs pointed out that GJLOS is being used to 'clamp down' on the real change and desire to have a new constitution. In verbatim, CSOs contended:

> *Even though there is a perception that reforms are being done, the same are just piecemeal and not structured. The government should instead of undertaking these piecemeal reforms concentrate on the bigger picture, which in this case is the Constitutional Review... the reform is urban-based and does not percolate to the rural area. There is no visibility for GJLOS on the ground as the public does not know about it.*[54]

Further, CSOs deflated the entire GJLOS by arguing that the reform programme has not filtered through to the junior staff of the state, some of who think and understand it to mean going for training, trainings and more trainings, the purchase of vehicles and computers, among others. By 2007, CSOs had concluded that there should be a change of attitude among government officers, better and more effective service delivery, among other real reforms. From that verdict of CSOs, it is clear that the quest of GJLOS to reform the country was scrutinized before the 2007 general elections. Consequently, PNU, or any other party, could not make it clear to the public what they had indeed delivered on reforms promised in 2002, as the public was seldom aware of what 'kind of animal' GJLOS was. On their end, ODM and ODM-K made frantic proposals aimed at transforming State institutions, such as appointments in civil service (for ODM-K) and reforming the police (for ODM), but the mandate given in 2002 was side-stepped.

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[53] See Maina Kiai's speech delivered to the National Assembly in Kiev, Ukraine, in January 2008.

[54] See report of the CSOs meeting with GJLOS Mid-Term Review Consultants. Meeting held at the CRADLE on 2 November 2006. Key CSOs were represented at the meeting. They included: CRADLE, LRF, Kituo Cha Sheria, the Youth Agenda, and the East Africa Human Rights Institute, among others. With such a representation, such sentiments and perceptions speaks volumes about GJLOS.

Governance structure

Arguably, there is no reform message that pre-occupied the pre-2007 poll than the structure of governance. This agenda was not, however, the sole prerogative of political parties or dominated by them, but also many scholars, media and civil society activists, including Kenyan population sampled through opinion polling. Indeed, many vented out political opinions and emotions about what type of structure Kenya should embrace after the 2007 elections, especially the pros and cons of the oft-quoted *majimbo* system.[55] To the ODM, they boldly stated that devolution, which they christened *ugatuzi,* should be the new governance structure after 2007 polls. Many political commentators, especially affiliated to ODM, supported this position, arguing that time had come to devolve power and resources from Nairobi in line with the Bomas Draft constitution. In their writings, the ODM candidates emphasized that *ugatuzi* was about taking resources and power to the people organized in various sub-national jurisdictions.[56] As ODM, the party rallied this policy proposal stating that the levels of inequality, especially regional disparities, would be dealt with.

PNU on its end criticized this system as intended to balkanize the country; it was regressive and, therefore, all Kenyans should oppose it.[57] This view was even supported by clerics and many other commentators, arguing that the system is unworkable and will further divide the country, which was already polarized by the heated ODM-PNU campaigns (Opiyo, 2007). Further still, PNU emphasized that Majimbo was also 'rejected at independence'.[58] PNU went ahead to state that Kibaki had gone ahead to introduce the Constituencies' Development Fund (CDF), which to the party was sufficient devolution. Indeed, PNU emphasized that devolving economic decisions to local authorities and communities is good practice and desirable, and

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[55] *Majimbo,* a Kiswahili term meaning 'regions', and in this context 'regionalization' of the country. For details about this system, see Okondo (1995). See also numerous commentaries written in the dailies between October and December 2008, some of which are cited below.

[56] See Nyong'o (2007) and Namwamba (2008). The two are in the National Assembly on the ODM ticket.

[57] See PNU 'Statement on *majimbo*', Advertisers Announcement, *The Sunday Standard*, 28 October, 2007. In a rejoinder, ODM made it clear that *ugatuzi* was devolution and was misunderstood. See ODM, 'It is time for the Truth', Advertisers Announcement, *The Standard*, 4 November 2007.

[58] This is not entirely true. At independence, Kenya inherited a constitution, sometimes referred to as '*Majimbo* Constitution', which had regionalized the country but numerous amendments between 1964 and 1969 altered this system to a centralized system (see Mute and Wanjala, 2002). This position was also emphasized by numerous commentaries or media reports, for example Nyong'o (2007) and Opiyo (2007). Peter Wanyande (a professor of political science, University of Nairobi) was reported to have reiterated that *majimbo* was not rejected, as it was not given a chance to work by Kenyatta and KANU, who used the concept to achieve independence and later damp it and, therefore, the claim that *majimbo* was rejected is baseless.

[59] See PNU's 'Statement on Majimbo', Advertisers Announcement, *The Sunday Standard*, 28 October 2007.

[60] See Kilonzo (2007). Mutula is the ODM-K Secretary General, and is an elected member of the tenth National Assembly.

that devolution should not be confused with '*Majimboism*'.[59] Similarly, the ODM-K leadership also criticized and rejected *majimbo* as a recipe for inter-ethnic chaos and, thus, supported the unitary system of governance.[60]

On its part, ODM-K supported devolution, both in its manifesto and also in campaigns, in a way intended to implement 'economic federalism' where wealth will be created and distributed. In its manifesto, similar to PNU support of 'devolved' funds, ODM-K stated that a devolved system will allow transfer of budgetary resources to the district and involve the people at grassroots to make their own decisions.[61]

While the major parties made governance structure a key agenda in the 2007 poll, this agenda unfortunately was clouded by rumour and fear mongering (Oswago, 2007). Thus, there was no way this reform message could be discussed in a heightened electoral process such as political campaigns. Many commentators held this view, where they took issue with how the agenda was being paraded and countervailed by both ODM and PNU, respectively. Indeed, it was warned that *majimbo* is a complex issue and conceptually difficult to be discussed in an election atmosphere (Mutua, 2007). To some commentators, they took issue with the problem of governance in both a federal or unitary system, and that bad governance can occur at either levels (Mulaa, 2007).

From the foregoing, this agenda was drowning. Three major issues could be deduced from this debate on *majimbo*. First, this debate is as old as Kenya's history. While the historical aspects were missing in most of the debate, it is clear that the *majimbo* agenda still drew the same emotive debates of Lancaster talks between 1960 and 1962. The debate then was about marginal communities and minority rights for ethnic minorities, which in 2007 were represented by ODM and not KADU. Unlike 1960s though, the Luo as a community felt that 45 years of independence have left them marginalized, with Kenyatta and Moi marginalizing them, and also perceptions that Kibaki's first term did the same.[62]

The second issue to draw from this debate is that Kenyans still perceive, and rightly so, the presidency as the ultimate prize in electoral contest and without clinching it, national and natural resources are skewed in favour of presidencies home turf. Thus, *majimbo* is viewed as an avenue of spreading this wealth to others, especially those who cannot have one of their own as president. These perceptions have been

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[61] See ODM-K Manifesto, or as reported 'Party promises a devolved welfare system' in Daily Nation, 15 November 2007.

[62] Kenyatta and Moi did marginalize the Luo, where the whole community was seen as a bedrock of opposition politics and hence denied access to government facilities and resources. Further, both presidents were disliked by the community for having detained leaders of the community (Oginga and Raila, respectively) and are perceived to have had a hand in the assassination of both Tom Mboya and Robert Ouko, respectively. For Kibaki, the perceptions of marginalization were perhaps informed by the fact that Kibaki dishonored the MoU where Raila was to become the Prime Minister, but Kibaki trashed the deal once he was elected for the first term.

[63] For example, see Society for International Development (2005).

vindicated in various analyses of national budgets, and also how Kenyatta's and Moi's presidency misappropriated resources such as construction of roads, hospitals, schools and other public amenities to their constituencies and 'home' provinces. There are real national disparities across regions in terms of accessing such resources.[63]

Finally, the reform message on *majimbo* still illustrates the nature of political and constitutional contestations in Kenya, from Lancaster to the Bomas Conference. There has been a myriad of opinions on *majimbo*, within individuals and groups, depending on geographical location. In a poll commissioned by the *Nation*, 44 per cent of Kenyans rejected the idea, while 39 per cent supported it, but 10 per cent did not express any opinion and 7 per cent were undecided (Warigi, 2007). To some of those who opined, they perceived *majimbo* as 'uprooting communities' from 'indigenous lands' that are 'owned' by certain communities. This was more so in Central and Coast provinces. Some of those polled thought *majimbo* meant making decisions at local level, while to some it meant re-allocation of land, especially those polled in Rift Valley (16%) and Nairobi (22%). Unfortunately, the *majimbo* debate cannot be handled or even polled at the eve of an election, but requires a carefully thought-out formula with a well-thought out constitutional design and architecture, a subject discussed below. Summarily, this governance agenda illustrates that no matter how many years, Kenyans will have to settle, in a rational way, the question of ethnic diversity versus the concept of nationhood. However, this question should not be an either/or argument since both can co-exist; cultivating diversity but also harvesting nationhood has been done in quasi-federal, federal, confederate and also unitary states.

New Constitution: Minimum or Maximum Reforms

As seen in the introductory part of this study, Kenyans have been in constitutional review for over 20 years, but the debate is longer than that. As the 2007 polls approached and within the political campaigns, all major parties and civil society wanted to go into the poll with a new constitutional dispensation. Unfortunately, every effort to jumpstart the review was clouded by political intrigue and ended up unsuccessful. From the 2006 Panel of Eminent Persons whose report also included timelines slated to conclude the process before 2007, to the later-day Multi-sectoral Review Steering Committee forum comprised of political parties, to the Muungano wa Katiba Mpya (coalition for a new constitution) that comprised civil society and some opposition MPs, and to the Joint Dialogue Forum of civil society, just to name but a few. The bottom line of all these efforts was to ensure a new order to guide the 2007 polls. All these efforts were stillborn. An all-rounder conference by civil society in September 2007 to make a new constitution as an agenda in the 2007 poll

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[64] The 4Cs and the Citizens for Common-sense Constitution (3Cs) organized the conference at Kenyatta

was skipped by the major political players, and civil society ended up 'preaching to the converted'.[64]

In between these processes, there was the argument to have minimum reforms, which clouded much of 2007. Predicting that a new order was not realizable within that election year, ODM's presidential aspirant, Raila Odinga, kicked off the debate towards the end of 2006. Perhaps following cue, the **Parliamentary Departmental Committee on Administration of Justice and Legal Affairs, under leadership of former MP and Senior Counsel, Paul Muite, proposed minimum reforms to the constitution.**[65]

Reading through the 55-pager document, some critics argued that the debate about minimum reforms was misplaced for three reasons. First, Kenyans were in **agreement in many parts of the various draft constitutions; there should be maximum reforms on what Kenyans had already agreed.**[66] Second, the proposals contained therein were not 'minimum' as such, but could re-configure the **Constitution of** Kenya entirely (Kagwe, 2007a). Such issues involved altering the **Constitution of Kenya, structure of the executive, citizenship acquisition, representation, number** of members and calendar of the National Assembly, composition of the judiciary, **and so on. All these were not 'minimal' changes to the constitutional order as it exists today.**

Third, was the issue on who was to benefit from these 'minimum' reforms. It was **evident from the proposals that most of these 'minimum' reforms targeted sState** power and how that power is to be apportioned among the ruling elite. Further, it **was predictably clear that the 'minimum' reforms would offer the same elite (whether supporting or opposing them) a 'bargaining chip' as the country paced towards the** 2007 general elections. Evidently, the call for or rejection of the 'minimum' reforms debate among the ruling elite was a ploy, not for the benefit of the general populace, but for a few individuals and their cronies (Kagwe, 2007b). Be that as it may, the **'minimalist' argument subsided as a result of various factions in the political class and, to an extent, civil society where some favoured minimum reforms while others such** the Kenya Human Rights Commission favoured total overhaul (KHRC, 2008).

During the 2007 campaigns, the ODM-K pledged that a new law will be in force within the first year of an ODM-K government. The party made reference to the **Bomas Draft per se, and emphasized that the new order will provide for better protection of** rights such as freedoms of expression, association and access to information and its

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[65] See 'Report on the way forward on the Constitutional Review Process', December 2006.

[66] Yash Ghai, former Chair of CKRC made this comments at the KHRC Inaugural Human Rights Lecture, on 8 December 2006, and also on 9 December during a KHRC public forum on constitutional review, graced by, among others, Njoki Ndung'u then serving in the Ninth National Assembly and the Parliamentary **Departmental Committee on Administration of Justice and Legal Affairs.**

[67] OMD-K manifesto.

dissemination (Otieno, 2007). According to the party manifesto, and similar to NARC in 2002 campaigns, ODM-K also pledged to create positions of deputy president, prime minister and the deputies in line with the Bomas Draft.[67]

Similarly, the ODM unequivocally supported constitutional overhaul, with the Bomas Draft being the point of departure. This was seen above when they supported a devolved structure informed by the Bomas Draft. Further still, ODM was categorical about other aspects of the Bomas Draft, since most members and supporters were pro-Bomas Draft during the National Referendum in 2005, which eventually trounced the Proposed New Constitution. Having lost in that Referendum, PNU was somewhat apprehensive to mention any draft. Thus, constitutional reform was lukewarm on the part of PNU. Nonetheless, the party managed to maintain that a new constitution was within reach in the second term of the Kibaki presidency, as reiterated so often by the Minister in charge of constitutional affairs.

From this sub-section, it is quite clear that ODM, PNU and ODM-K had differing messages on constitutional review. One pointer is that ODM, since November 2005, was categorical that the Bomas Draft was the legitimate draft and, to an extent, some scholars stated that ODM took the draft as being the 'voice of God'.[68] To OMD-K, a party formed by erstwhile 'Orange camp' during the referendum politics, they had to push for the Bomas Draft. PNU clearly had no constitutional agenda to float other than hope in a future where Kibaki's second term would not be similar to the first.

Human Rights Agenda

The issue of broad human rights issues has been discussed above in a four-pronged debate. First, within the context of economic governance, poverty has been discussed. Poverty is one of the worst forms of human rights violation and has been dealt with. As Ghai (2006) argues, poverty deprives a human being of dignity to claim other categories of rights, and hence is worse than any other form of violation. Second, corruption leads to misappropriation of financial resources to fighting poverty and robs the state the opportunity to channel those resources to fulfill its obligations to meet human rights. Third, the constitutional review process provides avenues for further protection of human rights.[69] Fourth, and specifically on the NAP process under GJLOS, human rights protection and promotion find a resting ground, as seen above. Other broad-based rights-centred reform messages were on increasing levels of employment, hence the right to work, and also ensuring better and affordable

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[68] See Mutua (2005), prepared for the African Centre for Economic Growth (ACEG), October 2005. In this paper, Mutua states that, to the 'Orange camp', the Bomas Draft was the voice of God. To the 'Banana camp', the Wako Draft was sacred. To both, the other's draft was a mongrel, a screed, a tool for dictatorship, or a wholly illegitimate document.

[69] See KNCHR, Living Large, Report on Corruption, 2006.

healthcare, and hence the right to health.

The human rights discourse as contextualized in this study deals with the protection of three categories of rights, be they civil and political, socio-economic and cultural, and solidarity rights or sometimes referred to as group rights. The second area of concern relates to how those in power transform the state to the commonly referred to 'human rights state', a situation where values such as respect, accountability and transparency in governance provide avenues where the above 'three generations' of human rights can be protected, promoted and realized concurrently. In the latter discourse, it is possible to group the above broad human rights agenda in terms of fulfilling the actual realization of human rights.

In specific terms, when reviewing the pre-2007 polls, the two-pronged discourse rarely featured. ODM-K on its part scored well where, first, their reference to the new constitutional order provided for the protection of fundamental freedoms was a firm foundation on the place of the discourse relative to other contenders. Second, women rights featured prominently in the 'appointment' of the first woman vice-presidential candidate in any political party since 2002. The ODM-K provided that affirmative action will be entrenched to increase women's participation in public affairs.[70]

Third, and similar to PNU and ODM, the manifesto was clear about the allocation of state's attention to right to education, healthcare, right to security, and also the question of livelihoods through elimination of poverty and inequalities. PNU was specific on ensuring 30 per cent of seats are for women, but shockingly none of the women in its campaign brigade gave a speech during the launch of the party manifesto, or during the endorsement of Kibaki's candidature for a second term. Further, the PNU manifesto pledged to recruit 50-50 ratio of men to women, but this was challenged when a political commentator argued:

> *How will 30 per cent of PNU women end up elected when the best women do not feature? Njoki Ndung'u, who pulls more than her fair share of weight expecting no favours, is having a hard time finding a place in the campaign. Nobel laureate Prof. Wangari Maathai, who has the world eating out of her hand, cannot be trusted with a frontline position to woo a few thousand voters. It is no wonder that Charity Ngilu resorted to drama to remain visible in this man's club* (Gatheru, 2007: 18).

Similar to PNU, ODM too had relegated women issues to the periphery. In what they termed the 'pentagon', it was a man's club, where the 'luminaries' were all men until Ngilu joined in October 2008. This was happening against a backdrop of the highest number of women candidates who sought the parliamentary seats (269 out of 2,604) and 1,478 women who sought to be councilors in the 2007 polls (Orlale,

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[70] See ODM-K manifesto.

[71] See Namunane (2007). Chacha (2007), reveals more on the intricacies of this deal.

2007).

One other human rights issue that drew sharp reaction from all and sundry was the ODM 'secret pact' with the Muslims, through the National Muslim Leaders Forum (NAMLEF).[71] In the context of protecting religious minority rights, Raila Odinga entered a deal with Muslims on how his presidency would secure their freedoms, which until then to date have been violated through government's 'puppet acts' of arbitrary arrests, renditions, detentions and torture courtesy of the 'war against terror' led by the United States (Kimathi and Butt, 2008). ODM was roasted for this, but the prime reason was to solidify support from minorities. Other rights-centred messages by ODM manifesto bordered on transitional justice and also the issue of the marginalized. While the former had to deal with investigating past massacres, including the Wagalla Massacre, the latter dealt with mainstreaming North Eastern Province into the development paradigm by establishing a kitty to ensure that the region's infrastructural needs are fulfilled.

Broad Observations

It is evident from the discussion above that three key issues could be deduced from the above reform agenda, which seemingly was thwarted by political reality. First, while the governance agenda on *majimbo* that was meant to reform the structure of the state seemed to dominate, it was clouded by political skullduggery and misplaced emotive debates, which seldom were informed by history. Equally, lack of a historical perspective also proved an asset, as the current situation of inequality and inequity among individuals and also regions in Kenya played a key role in informing the debate.

The second broad issue to be observed is related to institutional governance. None of the major political parties alluded to key successes in transforming the state institutions, save for lip-service in new ways of transforming the police, civil service and others. Finally, the human rights agenda featured half-heartedly. Unlike in 2002 when NARC had moral authority to criticize the Moi regime, which had woefully failed in protecting rights, the political parties in 2002 had suffered from a plethora of reports, press statements, and other medium used to name-and-shame the NARC's regime in protecting freedoms. In such a context, there was no moral authority so speak on human rights, especially after civil society activists and media suffered under the 'cruel' hand of former reformists, who violated civil and political rights with impunity.

Therefore, when reviewing the reform agenda in the 2007 general elections, it is clear that while some civil society and members of the government were concentrating on achieving a new constitutional order, there were others in civil society and opposition who emphasized 'minimum' reforms. The 'twin reform agenda' on transitional justice did not feature prominently among political parties except

for the casual mention in ODM's manifesto and campaigns. Of course, PNU under Kibaki and ODM under Raila did not have the moral or legitimate authority to speak on transitional justice, on economic crimes especially, since the two had entertained KANU stalwarts whose alleged records in corruption were far much too weighty.

The above observation, therefore, leads to a conclusion that it was impossible for the reform agenda, as compared to 2002, to be a key issue in 2007 polls. While this does not mean that NARC was trouble-free in terms of reforms, as conformists and reformists were there too, the political conditions that obtained in 2002 were different: there was an anti-Moi syndrome and anything intended to dislodge Moi and KANU from power was welcome among the electorate. Secondly, after many years in the opposition, some key 'movers and shakers' of NARC were an unparalleled pedigree in the reform movement. In 2007, the 'reformists' were split, issues were split, and also conformists were in both camps to warrant any significant attention to the reform agenda. Kenya was at crossroads, with nowhere to turn, since both ways, it did not matter who won. The reform agenda had been overtaken by the pursuit of raw power.

A Postscript: Reforms After 2007

Post-Election Violence: A Synopsis

The post-election violence in Kenya, which was triggered by the announcement of the disputed presidential election results, left over 1,000 people dead, scores of people injured and over 200,000 people displaced. Moreover, property worth billions of shillings was vandalized or burnt in various parts of the country. The post-election mayhem shocked many as it had not been anticipated, and where so, the magnitude, scope, and speed were under-estimated.

Violence commenced immediately after the announcement, although some of the violence began way earlier, especially in Rift Valley, Nyanza and Nairobi. Kenya experienced unprecedented demise of people's fundamental freedoms and individual rights as enshrined in the Constitution of Kenya. These include gross violations of the right to life, right to decent shelter, right not to be deprived off property without compensation, freedom of assembly, freedom of association, freedom of expression and freedom of movement, among other individual and democratic rights.

Second, it was impossible to meaningfully invest in governance institutions, especially in the security sector where reforms have been channeled during the NARC years. That is, while security officers could be seen to be wearing the 'GJLOS software and hardware' of website and information-sharing, not to mention better uniforms, weapons and so on, their respect for human rights and fundamental freedoms such as self expression, movement and also right to security were wanting in the post-election crisis.

Furthermore, the Kenya National Commission on Human Rights (KNCHR), a body created in 2002 and operationalized in 2003, had invested a lot of GJLOS resources in human rights education, and it seems Kenyans were still up in arms disrespecting individual rights and fundamental freedoms enshrined in the Constitution of Kenya. Indeed, something markedly different was happening; having invested many years of voter and civic education, civil society institutions were also at a loss as to what transpired to the oft-quoted 'haven of peace' in a 'sea of turmoil'.

Mediation Agendas

During and after the mediation process, Kenyans inherited various reform initiatives, be they commissions of inquiry, commissions to be created as a result of new legislations, and also a plethora of reform issues contained in Agenda 4 such as constitutional and judicial reforms, land reforms, reducing unemployment, and tackling regional imbalances, among others. These initiatives were to lead Kenya's transition from post-election pogroms towards truth, justice, peace and reconciliation. Already, two commissions of inquiry have been formed and their reports submitted. These are the Independent Review Commission (IREC) and Commission of Inquiry into Post-Election Violence (CIPEV). Further still, two commissions created through an Act of Parliament were proposed: the National Ethnic and Race Relations Commission (NERRC) and Truth, Justice and Reconciliation Commission (TJRC).

Within Agendas 1 to 4, there are key issues that are poised for reforms. These include: a) power sharing, which concluded with the signing of the National Accord and Reconciliation Act (2008); b) institutional reforms in the judiciary, Electoral Commission of Kenya, police force; c) constitutional reforms; d) policy reforms pertaining to land and unemployment, particularly among the youth; d) tackling poverty, inequity and regional imbalances; and, e) attendant or incidental issues such as demobilizing the militia, enhancing transparency, rooting out impunity, and consolidating national cohesion. Broadly, and with optimism, the JDMC addressed salient issues that are fundamental in ensuring that Kenya transforms. Below is a candid analysis of the commissions and also issues in the Agendas, as a postscript to the reform agenda.

Commissions' Quest for Reforms

As seen above, four instrumental commissions were proposed. While there appears to be some differences in the commissions, the bottom-line questions include: a) how each commission delivers on its mandate; b) who it reports to; c) how independent it is; and d) how deep their recommendations can be implemented. Further, all these factors are subject to a steadfast appointing authority; the prevailing 'political

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[72] See, Africa Centre for Open Governance (AfriCOG), *Postponing the Truth*.

climate', especially when its findings come forth; the political will to follow through the recommendations; the speed of dispensing justice, where prosecutorial court cases could drag for years on end; and finally, litigants who could seek court interpretations of the reports and recommendations, among other glaring issues that always face commissions in Kenya.

Indeed, in a recent publication, commissions of inquiry have been criticized in Kenya for lacking 'teeth to bite'. Some commentators have boldly stated that commissions of inquiry circumvent justice by 'postponing the truth'.[72] This is because the recommendations of these commissions are often not implemented by government. The argument provided is that they are usually formed to respond to public pressure or to appease them. Given this background, it seems the commissions formed after the mediation talks are walking on a tight rope if one were to interrogate the reform agenda.

To ensure accountability, Kenyan civil society institutions, especially the Kenya Human Rights Commission (KHRC) and the Kenyans for Peace for Truth with Justice (KPTJ) played a critical role in informing and influencing the process, content and outcomes of the mediation talks. These two lobby groups have analysed the four commissions in varied ways. Summarily, the two have focused on the mandate of each commission versus the delivery potential. In this regard, when the first two commissions were formed (IREC and CIPEV), these CSOs brief-watched them and also made submissions, and thereby authoring reports that influenced the national agenda.[73]

The reports of the first two commissions were received with mixed reaction. Whereas the IREC report was substantively vilified by KPTJ, there was a warmer reception of the CIPEV report, especially with regard to the culture of impunity. For example, KPTJ took issue that IREC did not assign personal culpability by not summoning returning officers to its hearings and also not assigning blame on any of the electoral officials. Further, no attention was paid at **Kenyatta International Conference Centre (KICC), which was the national tallying centre or to the role of state security agents in abetting rigging or directly participating in the same. The** KPTJ found IREC'S report inadequate.[74] Nonetheless, its recommendation to overhaul the ECK was welcome both within the civil society and also the political class, especially those affiliated to the ODM. Without doubt, disbandment of the ECK is instrumental to opening floodgates to other electoral reforms such as the **introduction of the Mixed Member Proportionate Representation (MMPR) system, which many in civil society have recommended.**[75]

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[73] Reports from these lobby groups inform the subsequent discussion. KHRC (2008) and KPTJ (2008).

[74] See KPTJ, Truth and Justice Digest, Unfinished Business, Issue 04/08 October 2008.

[75] For example, see KHRC (2008).

With regard to CIPEV, the mandate was clear. The terms of reference were: a) to investigate the facts and circumstances surrounding the violence; b) to investigate the conduct of the various state security agencies; and c), to give recommendations to these and other matters. CIPEV was formed for the sole purpose of investigating, probing and documenting the post-election violence by gathering evidence that could lead Kenyans to know the perpetrators, sponsors and victims of the post-election violence. Formed within the Commissions of Inquiry Act but within the mediation talks, the mandate of the commission extended beyond reporting to the president, and hence its report was also forwarded to the Panel of African Eminent Persons, which was led by Kofi Annan.

After the conclusion of CIPEV's hearings and its report (popularly known as the Waki Report), a lot of 'hot air' has transpired. First, the political noise is about the 'secret list', which is deemed to have names of perpetrators and financiers of the post-election violence. Second, is about the recommendations and automated timelines set forth in the Waki Report demanding that parliament sets up a Special Tribunal for Kenya without which the matter will automatically be referred to the International Criminal Court (ICC). Having full knowledge of the many Kenyans who lost their lives or lost their beloved ones, those who were injured, those who have been internally displaced, and those whose property was destroyed or looted, the Waki Report must be implemented in toto.

Undoubtedly, impunity must be rooted out if fundamental reforms in Kenyan politics, especially political organization and mobilization, have to take place. The culture of impunity in Kenya has had many ramifications in circumventing justice.

Further, it has been argued that how CIPEV's report is handled will be a test on whether Kenyans are ready to handle a truth commission, even indicating that CIPEV is a 'mini-truth commission'.[76] That is, if Kenyans cannot handle the issues that emerge especially with regard to truth and justice, then it will be extremely difficult to go through the Truth, Justice and Reconciliation Commission (TJRC). It, therefore, behooves the political class to fully implement CIPEV's report, and expeditiously.

With regard to the other two commissions, the civil society (through a taskforce) quest for reviewing the TJRC Bill was unparalleled and still remains so, before it becomes part of laws of Kenya.[77] The TJRC mandate, at least internationally, is three-fold: to ensure that the truth is told; that justice is done; and that reparation is provided to all the victims. While many of the tasks are uncontested, two key

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[76] See Makau Mutua, *Sunday Nation*, 17 August 2008.

[77] The Bill was passed in Parliament on 23 October 2008, but has not been assented to by the President in accordance with Section 46 of the Constitution of Kenya. There is still leeway to influence the Bill before it becomes an Act of Parliament. Civil society formed the Multi-Sectoral Task Force on the Truth, Justice and Reconciliation Process, which made substantive recommendations on the Bill.

pillars inform the broad discussions that informed the civil society quest to have the Bill amended.

First, is the issue of whether or not to provide amnesty. There are many issues emerging, both technical and also political. Technically, it has been argued by the civil society taskforce on the process that the amnesty provisions are the weakest point. The provisions may face constitutional challenges, especially as regards their relation to the Bill of Rights, or the constitutional discretion of the Attorney General to prosecute. That is, the Attorney General could go ahead and prosecute if it is not clear that the TJRC has only powers to recommend rather than grant amnesty. Also, concerns have been raised about categories of crimes that qualify for amnesty. There has been concern that some crimes against humanity, which are outlawed in international criminal law, could qualify for amnesty.

Second, is the number of tasks TJRC has, some of which have been previously tasked to other commissions and some of them investigated and comprehensively documented. With regard to the latter, TJRC has been tasked with inquiring into the irregular and illegal acquisition of public land and making recommendations on how the land can be repossessed or how the cases on such land can be determined.[78] Yet, the Ndung'u Commission dealt with the issue of land in a very effective manner, but the Report has not been fully implemented.[79]

The final commission is the National Ethnic and Race Relations Commission (NERRC), which is to be created by the National Ethnic and Race Relations Bill, 2008. If enacted, the legislation will address only challenges related to ethnicity. The interpretative section of the Bill defines 'ethnic relations' to entail racial, religious, tribal and cultural interactions between various communities. However, a Bill of this nature should broaden its scope beyond 'racial, religious, tribal and cultural interactions between communities' to address other bases upon which discrimination has occurred in the past, and equality more generally.

The Bill could, for example, have taken its cue from Article 2 of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). These conventions obligate State parties to ensure to all individuals within their territory and subject to their jurisdiction the stipulated human rights without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Other such protected grounds upon which discrimination is no longer permitted include: pregnancy, disability, health status,

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[78] See The Truth, Justice and Reconciliation Commission Bill 2008, Section 4(e).

[79] See Report of the Commission of Inquiry into Post-Election Violence.

[80] See, for instance, Section 9 of the Constitution of the Republic of South Africa.

sexual orientation and age.[80] The equality challenges faced by Kenya are more than merely ethnic, and any initiative aimed at achieving equality ought to factor in all known grounds on which discrimination can occur. Further, this should be open-ended, as new grounds for protection could emerge in the future.

The Constitution of Kenya falls far below the 'equal protection' threshold in at least three respects. First, although the Constitution prohibits discrimination on a number of grounds, discrimination on the ground of gender is, in effect, permitted in matters of personal law such as adoption, marriage, divorce, burial and devolution of property on death.[81] Second, the Constitution does not exhaustively list the grounds upon which one may not be discriminated. Omitted from the Constitution are what should be the protected grounds of disability, health status, sexual orientation, etc. Third, affirmative action as a principle and as a remedy to rectify specific outcomes of discrimination in the past does not find constitutional expression in Kenya.[82] The proposed law makes no reference to affirmative action or substantive equality, yet these should be inherent in processes seeking to rectify past injustices. Indeed, according to Kameri-Mbote (2003):

> *Substantive equality seeks to address the shortcomings of formal equality and seeks to ensure that equality is achieved. The quest for substantive equality will lead to some form of discrimination or differential treatment. This is justified on the account of leveling the playing field, it being recognized that equal rights will not deal with past injustices occasioned by formal equality that does not take into account structural distinctions.*

Evidently, the Bill has weaknesses that ought to be addressed before being enacted into law. The biggest weaknesses are conceptual. It ought to have its scope broadened to cover equality rights in general in an inter-sectional manner, and efforts must be made to anchor it on the higher moral ground provided by international and regional human rights instruments. There is also need to review the Constitution alongside the enactment of the Bill to create a level of consistency.

The constitutional review, which is discussed below, should broaden the protected grounds upon which discrimination is prohibited in an open-ended manner, should incorporate affirmative action measures, and should provide for both horizontal and vertical application of the Bill of Rights. Only on this basis can private individuals be made responsible for human rights. Finally, given the supremacy of the Constitution

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[81] Section 82(4)(b) of the Constitution. The debate is already in Kenya, albeit there is a lot of individual or collective homophobia, religious intolerance and cultural suppression against sexual orientation and abortion, as experienced in the constitutional review process and, more recently, the draft bill on Reproductive Health Rights.

[82] These shortcomings point that there is need for a remedy in the form of a review of the Constitution alongside the enactment of a comprehensive statute promoting equality and prohibiting all forms of discrimination. The Bill under review clearly fails to satisfy this need. It has instead adopted a piecemeal approach, a disturbing scenario.

in Kenya's legal order, it might also help to entrench the proposed NERRC in the constitution. This would avoid a situation where these bodies are threatened by litigations seeking to declare then unconstitutional.

From the above discussion, it is evident that the search for reforms through these commissions may founder unless serious pressure is mounted to review the bills or fully implement the recommendations of the two commissions, which have already submitted their reports to the public.

Agenda 4: Chances for Reform

Generally, Agenda 4 is on six (6) key issues: undertaking constitutional, legal and institutional reforms; tackling poverty, inequity and regional imbalances; tackling unemployment, especially for the youth; consolidating national cohesion; undertaking land reform; and addressing impunity in an accountable way. Briefly, land reform is about implementing the Ndung'u Report and the Draft National Land Policy and, therefore, will not require re-invention of any wheel. Poverty, inequities and regional imbalances will require a concerted effort, not just of Vision 2030, but also in the context of Millennium Development Goals (MDGs). A national cohesion inter-ministerial committee has already been established in the Ministry of Justice and Constitutional Affairs. In terms of unemployment for the youth, a Ministry of State for Youth Affairs has been established and is currently disbursing funds to the youth.

Of special emphasis to Agenda 4 is constitutional review, which is cardinal to reforming the state and achieving all the above. The 'Grand Coalition' government pledged a new constitution before the end of one year, although it was not clear when the clock begins to tick. Nonetheless, two bills were published in June 2008 and later re-published in August 2008. These bills are intended to: a) amend the Constitution of Kenya; and, b) provide a legal framework to review the Constitution. Civil society made candid presentations to the Parliamentary Departmental Committee of what needs to be amended. Some of these recommendations bordered on the type of referendum; threshold of the referendum; context of the review process; stakeholders other than parliament in the review process; and also issues bordering on the content of the bills.[83]

On their part, political parties also made presentations that were more or less similar to those of civil society. For example, political parties, the same as with the civil society, proposed that the process be effective, all-inclusive and also democratic. In this regard, they proposed that amendments to the bills be made, including re-drafting and re-introduction in the house with a view to having a council of people

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[83] Civil society proposals to parliament, 29 July 2008.

to check the experts and also for a yes/yes referendum (Centre for Multi-Party Democracy, 2008).

Broad Observations

The proposed commissions (TJRC and NERRC) are founded on quick sand, if the current bills under review are any indicator. Indeed, not much thought seemed to have gone into the negotiations and subsequent drafting. It could be hypothesized that events that preceded Agenda 2 to 4 clouded good judgment. The most critical event was the formation of the Grand Coalition. With political actors now sitting on lapels of power, not much thought and commitment were given to the mediation process. Indeed, some political actors were unceremoniously requesting the mediators to leave the country with haste. Seemingly, the reform agenda is hanging precariously; hanging between a committed civil society on the one hand, and political elite that is so much consumed by political power on the other. Many Kenyans have shown they are in agreement with some reform initiatives such as the TJRC, as seen in a recent Gallup Poll, but some Kenyans are ambivalent about most of these reforms.[84]

Conclusion

When one peruses the broad observations contained at the end of each section in this chapter, it is clear that the reform agenda compared between the 2002 and 2007 general elections meant different things to different individuals and/or political parties. In 2002, the agenda seemed clear. NARC carried the agenda. KANU did not and could not in any way lay claim to have a reform agenda, especially after 40 years of waste. In 2007, one can only conclude that the agenda was neither here nor there; it was neither with PNU, not with ODM, nor with ODM-K. Circumstances had changed and politicians had split from the original NARC 'dream'. Unlike 2002, there was no 'common enemy' called KANU as it were. Second, NARC had performed in terms of economic recovery and some modicum growth, opening of spaces for socio-economic rights such as health and education and, at least, there was some level of tolerance in civil and political rights. But no one could claim this other than those in government then; that is PNU, yet it was a three-month old party in the elections. Other than flimsy discussions on reforms in their campaigns, political parties and their leaders were not truly speaking the reform language as known to civil society. Yet, the reform agenda was also clearly lacking amongst other key civil society institutions that had previously been vocal about reforms.

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[84] The Gallup Poll was conducted between 19 June and 9 July 2008, with a sample size of 2,200. While the survey indicates that those polled 'believed' that Raila won the presidency by 57 per cent against 25 per cent of Kibaki, KHRC and KPTJ still insist that no one institution can or should conclusively state who won the presidential poll, unless an independent forensic audit is done to the results. See media reports in the *Daily Nation*, or *The Standard*, Tuesday, 9 September 2008, available from www.gallup.com (accessed 10 September 2008) for the authentic survey.

In summary, one can only conclude that the reform steam that ushered NARC into power was just that: a steam, which they used against KANU in the 2002 elections. While there was commitment to reforms through fast legislation, some broad agreements about judiciary, GJLOS, civil society and the rest, NARC's bubble of reforms busted on a reform platform - the process of drafting the new constitution of 2005. A key reform moment presented itself before NARC but it evaporated immediately after the referendum. It was never gathered again, as all that was left was political expediency as seen when fighting for political space and survival up to the 2007 general elections.

In 2009, one could even see that the mediation **Agenda 4 items were being** circumvented through the political logic of staying afloat and in power, rather than conclude on major issues that made Kenyans fight in the first place. Similar to a **docked boat, there is motion but there is no movement.** Thus, one can only hope that **some light will shine on Kenyan leaders as they travel from the Kenyan 'Jerusalem'** to post-election 'Damascus' to change their ways before the next general elections. **But that is all one can do: hope.**

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12 Money in Politics: Financing of the Kenya 2007 General Elections

Kennedy Masime and Charles Anderson Otieno

Abstract

Corrupt political financing is a problem in many countries. Corrupt campaign financing is also a problem in countries undergoing transition from non-democratic regimes to democratic ones. Elites from previous regimes often seek out new elites in new regimes during transitions to perpetuate old economic and political interests. Thus, money from vested interests unduly influences political processes and their outcomes. In Kenya, transition from one-party authoritarian rule to a multi-party democracy has witnessed increase in corrupt political financing. To successfully participate in democratic elections, political parties and individual candidates require huge amounts of financial resources. In order to improve our understanding on the nature of corruption political financing and campaign financing in particular, this chapter examines the modalities of political financing in Kenya. Using the December 2007 presidential election in particular, the discussion explores who the financiers were, their motivations, and the implication of this key governance issue. Data on which this chapter is based was gathered by the Coalition for Accountable Political Financing, which monitored political party financing during the 2007 general elections to shed some light on the phenomenon of political financing in Kenya. The chapter, among other things, highlights the expenditure patterns of the major political parties and sampled parliamentary candidates and their sources of funding and the activities of the private during the 2007 general election. It successfully illustrates that the manner in which political parties and individual candidates mobilize and utilize resources during elections in Kenya has a direct bearing on a country's governance and its socio-economic well-being. Furthermore, corporate interests pervade campaign financing in an intricate manner, with some corporations giving 'donations' to all the main parties–an important cautionary measure especially when they are not certain about who will win the election if it is too close to call.

Introduction

There is an inherent tension between democracy and representation. It is a tension that stems from the need to establish a trustworthy linkage between citizen preferences and the representative's interests, coupled with the need to find a proper way to aggregate these citizen-representative linkages into coherent public policy. In contemporary democracies, great amounts of resources are necessary for electoral activities to take place, and this further complicates democratic representation. As Lawrence Whitehead has recently warned, 'a liberal democracy is one that decides public policy (including the distribution of 'social goods') in accordance with citizen choices, not the decisions of the powerful or the wealthy. But to achieve such a distribution of social goods according to democratic principles, civic and political rights must be insulated from the cash nexus, political power must not be for sale, and bribery must be effectively sanctioned' (Whitehead, 2005: 13).

This passage correctly alludes to a second potential problem with the role of money in electoral politics, namely that should moneyed interest effectively infiltrate the public apparatus, then the rule of law, understood as the ability of a strong, autonomous state to uphold citizen rights and at the same time be accountable to them, is in serious jeopardy. Hannah Pitkin's statement of concern that contemporary democracy has become 'a new form of oligarchy, with ordinary citizens excluded from public life' (Pitkin, 2004: 335) is a straightforward reminder of how even an effective representative democracy could be subject to substantial shortcomings in terms of social justice, should it produce a systematic bias against those who are less well-off.

Thus, even as we accept that democratic elections are in themselves insufficient in the creation of a high quality democratic polity, we must recognize the necessary role of such elections for the existence of most other public outcomes deemed valuable. It is from this condition that the centrality of money in politics arises. However, the relationship between money and politics has many implications for all democracies, including emerging ones such as Kenya. Since the re-introduction of multi-party politics in 1991, there have been growing concerns that money is dominating politics, buying politicians, buying parties, buying voters and corrupting the entire political system.

A major concern has been the threat posed by unrestricted money from corporate donors. Though money is required to fund democratic processes, undisclosed and unregulated money in politics has the potential to warp the political contest and the governing process that follows an election. This chapter looks at how politics is financed, who finances it and with what outcomes in terms of governance in the society. The chapter will also examine why people, both individuals and institutions, finance politics. Using a conceptual framework that interrogates the usefulness and harmfulness of money in politics, the chapter further discusses whether the

manner in which politics is financed is responsible for any particular form of policies or discourses. Specifically, the chapter attempts to answer the following questions:

- What was the expenditure pattern of various **political parties in the 2007 general elections?**

- What was the main source of finances for the main **political parties in the 2007 general elections?**

- How did the private sector behave during the 2007 general elections in terms of financing the campaigns?

- What was the profile of companies supporting different parties in the 2007 general elections?

- Based on the findings, what is the impact of money on democratic values, choice and practice?

Methodology

The analysis in this chapter is based on the findings of the **Coalition for Accountable Political Financing (CAPF) 2007 General Elections Campaign Finance Monitoring Project.** The project systematically and objectively observed and documented the use **of money by** political parties and various candidates in the 2007 general elections. CAPF's primary aim was to promote an environment less vulnerable to corruption in election campaign finance by assessing the legal framework and practice; exposing **practices vulnerable to corruption; and promoting greater transparency.**

The project's monitoring process involved preliminary scoping study, data **collection and analysis. The scoping study involved brief research to collect all the** available information on campaign finance in Kenya to be monitored. The information was then used to define the specific objectives of monitoring. The objectives in turn **determined the monitoring strategy, identifying what was monitored and why. The** areas of campaign finance monitored depended on a number of factors, including but **not limited to the political context and the nature of election campaign; the legal and** institutional environment regulating campaign finance, and the way in which parties **and candidates are known to raise and spend campaign resources in Kenya.**

The sources of information for the scoping study included but was not limited to existing laws and related legal documents, party official reports and documents, existing literature and studies on campaign finances, press and electronic media **information on election campaigns, and personal interviews with people with** knowledge of campaign finance. The information collected during the monitoring **covered the following: the fairness of elections, the legal framework, the media, and the state sector and public administration.**

The project monitoring strategy depended on the aspects of election campaign finance that required the most attention, which included contributions from private donors, misuse of state resources for campaign purposes, problems with the legal framework, and inadequate enforcement of existing provisions. The sources of information monitored were also selected for observation. In general, three sources were observed: official sources from parties and candidates, independent sources from the people and agents involved in raising campaign finances, and primary sources of information such as reports collected from direct observation of election campaign activities themselves.

For the purpose of monitoring, the project defined campaign spending as expenditure incurred by or on behalf of a political party or candidate to promote the party or candidate during election campaign. This included expenditure incurred by a political party or individual candidates or third parties, such as private companies or individuals, foundations or other non-governmental organizations, state and public institutions, or institutions supported by the state.

In order to monitor campaign spending effectively, the specific activities where resources were spent were examined in turn. These included expenditures associated with political advertising and publicity, hidden advertising, non-advertising-related expenditures such as administrative and operational costs, rallies, polling, market research and campaign design and management, distribution of money and other direct benefits to voters, including vote buying. Distribution of money and other direct benefits to voters, including vote buying was highlighted for two reasons: first as a dominant cost in campaigns in Kenya, and second as an area where significant information and experience was available.

The project also examined how political parties and/or candidates obtained the resources used in the election campaign. It identified different types of resources, which were categorized as campaign income and devised ways to monitor donations, loans, in-kind or third-party contributions, membership dues, and the use of state or public administrative resources. From the perspective of the project, the point of interest was the way in which these resources were distributed or used, i.e. the existing potential for corruption.

The misuse of public administrative resources was highlighted for two reasons: corruption in campaign financing is generally assumed to involve campaign contributions by private persons or companies in return for illicit benefits. Less attention has often been given to a related phenomenon whereby political parties or officials use the resources attached to public office for electoral campaign purposes. Such misuse is a form of corruption, and it appears to be a major, if not dominant, form of election campaigning in Kenya. Also, incumbent politicians and parties in power have a wide range of resources at their disposal, through which they can gain unfair and systemic advantages in the electoral process. Abuse of these resources

goes beyond concerns with corruption per se to raise fundamental questions of democratic process.

Conceptual Framework

When we think of the problem of money in electoral politics, we tend to focus on the corrupting influence of interest groups, whether legal or illegal, on democratic representation. This characterization, while useful, is incomplete and perhaps fundamentally flawed. Democracy requires large amounts of resources to function. From a normative standpoint, the principle of 'one person, one vote' is effective only if the voter is properly informed about the choices available, and this, in turn, will only be realized if enough effort is devoted to guarantee that the otherwise uninterested citizen will be minimally informed about her choices.

Beyond this functional perspective, parties and their members are in constant need of money, voluntary labour, and organizational power to get their message out, mobilize support on their behalf, demobilize opponents' supporters, and more generally to increase their chances of being elected to public office (Rosenstone and Hansen, 1993). A recent study of developed democracies identifies four basic models of party finance systems (Hopkin, 2004), namely: the clientelistic mass party-as the case of the PSDB in Brazil; the externally financed elite party—as the Democrats and Republicans in the US; the internally-financed elite party—as would be the case of Berlusconi's Forza Italia; and the cartel party model—epitomized by the Mexican publicly hyper-funded party system.

Each of these may be construed as an alternative solution devised and enforced by politicians to keep their parties properly funded. Even in the romanticized model of the old mass party, where membership dues were used as a key financial support, there were institutions, devised and enforced by party politicians, that made this model a viable alternative (such as political and social membership benefits, closed-shop unionism, and the like).

It may be posited, therefore, that political financing is mostly generated by the demand of ambitious politicians interested, above all, in attaining public office (Aldrich, 1995). From this perspective, money is one among many types of inputs that politicians will be demanding and donors may be willing to provide. Yet, it is also the most fungible of resources, and thus the one which politicians may have the most interest in obtaining.

More importantly, there is something unique about political financing or money in politics, which makes its analysis perhaps more essential than the study of the supply of money itself. In the same way in which votes are essential for politicians and only marginally important for the citizen (Aldrich, 1993), money is the lifeblood of access to political power in a way that does not benefit interest groups, businesses, and unions. Put simply, the demand for political financing should be understood

as the driving force of the need for money in electoral politics, since most societal actors will not need to contribute to political campaigns for their existence, and those who may find it in their benefit to do so are likely to have alternative ways to exert pressure on the government and obtain concessions from the public arena.

In fact, evidence regarding the size of private donations in US politics, the so-called check-book democracy that is supposedly most vulnerable to the influence of money in the world (Whitehead, 2005), supports the point that these resources are more important for parties and politicians than they are for most donors. The total amount of contributions to federal candidates and parties by interest groups—soft money included—seems very small (US$ 560 million in the 1997-1998 election cycle) when compared to the sums devoted to lobbying (US$ 2.6 billion), and especially with what is spent on charity (US$ 17 billion) (Ansolabehere, de Figueiredo and Snyder, 2003).

This conceptualization does not ignore the fact that for a market to exist, there needs to be both consumers and producers of the goods to be exchanged, and it would certainly be naïve to assume away the rent-seeking intentions of political donors. The model is, however, geared towards a comprehensive understanding of political financing and all of its imperfections, with a strong emphasis on the demand side.

When money is not a problem in politics

Money is a necessary element for democracies and parties to run smoothly. Without political financing or party funding, competitive electoral politics can not function. Like a form of free speech, political financing or party funding is linked to the health and strength of democratic-electoral politics. Money helps in fostering political competition and financing campaigns and party organizations. For instance, to keep functioning, political parties ideally resort to the engagement of party activists and sympathizers. Modern politics requires a high degree of professionalism in management. Many services cannot be delivered by voluntary engagement. To cover the costs of running modern party organizations, recruiting and training new political leaders, and reaching out to voters in election campaigns, parties and candidates typically resort to considerable amounts of monetary and non-monetary resources. Without these, free and informed competition would not be sustainable.

The financing has, however, to be transparent, properly accounted for, with full public disclosure and subjected to effective governmental and social oversight mechanisms. This guarantees citizens' basic right to know the financial interests supporting candidates and the chance to consider them when casting their votes. Transparency and accountability also serve to monitor irregularities such as vote-buying and the flow of ill-gotten funds.

When money is a problem in politics

One concern is that donors (special interest groups, organized crime, etc) will buy legislation or policy decisions through campaign contributions, biasing representation away from citizens' preferences, or from otherwise efficient outcomes. This may be done both in a positive way by promoting certain types of bills, or in a negative way by defending the status quo and avoiding incurring certain costs that might be beneficial to the public interest (Grossman and Helpman, 1996).

Alternatively, and to the extent that legislative votes are highly visible and much more costly to change for a legislator, donors will buy privileged access to policy makers and legislators, and thus their voices will be louder than those of the citizens in the policy making process, ultimately altering policy decisions (Hall and Wayman, 1990). However, looking at the minimal evidence in favour of this perspective offered by analysts of legislators, some have argued that money from interest groups only strengthens legislators' incentives to stick to certain ideological tenets that a majority of voters originally chose (Bronars and Lott, 1997), but that over time the elected legislators end up representing the preferences of interest groups more than those of their constituents.

With these pitfalls in mind, regulation across the world has focused on limiting the size of individual donations to parties and politicians, and restricting the total amounts to be obtained from private sources to avoid the possibility that concentrated funding would determine politicians' strategies. Additionally, or alternatively, certain types of donors are banned, such as businesses, government contractors, foreigners or foreign parties, religious groups, and more generally others whose political participation is deemed inappropriate. Interestingly, this perspective recognizes donations as political participation, regardless of its rent-seeking or public-spirited intentions (Nassmacher, 2003).

In the electoral arena, it is often assumed that money skews electoral outcomes, and ultimately representation, since those with most money are most likely to win and they are not necessarily those who best represent the electorate (Griner and Zovatto, 2004). This is the key reason, alongside parties' failure to maintain a broad base of donors, behind the push for public finance of parties and candidates (van Biezen, 2004). Private money, the argument goes, will pervert political representation precisely because representatives' election-driven demand for campaign resources will make them vulnerable to contributions offered in the form of policy bribes by private donors.

The problem of money in politics: An overview

(a) When the availability of resources becomes a decisive factor in winning elections instead of a candidate's proposals and policy stipulations.

(b) When money contributed to electoral campaigns safeguards private interests and inhibits political parties and candidates representing collective interests to communicate their ideas.

(c) When a party in office uses the system and the resources of the state for the benefit of the electoral campaigns of its candidates.

(d) When companies contribute to electoral campaigns in exchange for future favours from elected representatives.

(e) When illegal groups, such as organized crime, drug-traffickers or other armed groups support candidates who in performing their duties will represent illegal interests.

(f) When resources used to fund electoral campaigns are raised individually by candidates and not by their parties, thereby creating the risk of personal commitment on the part of the candidate to the donor.

(g) When candidates use financial resources for inappropriate purposes, such as vote purchasing or other forms of unfair competition.

(h) When elected representatives have, in general, a greater commitment to donors than to the public.

(i) When representatives use their post and attendant government resources to gain re-election.

(j) When civic equality, reflected in the principle of each individual having one vote, is undermined by the unwarranted ability of some to contribute money to politics.

Money in the 2007 General Election

The 2007 general election was the most heavily funded in Kenya's electoral history.[1] The estimated entire expenditure for the main political parties (PNU, ODM, and ODM-K) amounted to Ksh 5.6 billion. Overall, PNU spent Ksh 2.1 billion, ODM spent Ksh 1.2 billion, ODM-K spent Ksh 157 million, while over Ksh 1.5 billion was acquired through the misuse of state resources and another Ksh 0.8 billion was spent by third parties on behalf of PNU. A substantial section of the expenditure went to logistics, media advertising, and hiring journalists. Spending on logistics was especially high for ODM and ODM-K, but PNU was cushioned from logistical and security expenditure by access to state resources. The greatest proportion of money spent by political parties and third parties went directly to facilitate voter contact through rallies, meetings and political events such as party nominations and party manifesto and campaign launches.

Expense patterns for individual parliamentary candidates were largely similar to those of political parties, except for spending to provide direct financial benefits to voters and supporters, including vote-buying. Overall, 210 parliamentary candidates spent an estimated Ksh 1.4 billion, with each elected Member of Parliament spending an average of Ksh 7 million. Nearly all elected Members of Parliament gave cash handouts directly to voters to secure their support. Most parliamentary candidates considered expenditure for direct benefits to voters, such as gifts, raising funds for churches and meeting funeral expenses for supporters more important than expenditure on publicity or campaign materials. They consequently spent more money on direct voter benefit than on publicity and campaign materials.

On campaign income, besides the party nomination fees and fundraising dinners, there were other sources of income for the parties and candidates. Although a majority of income sources remain unknown, several funds were channelled and received from foreign entities, Kenyans in the Diaspora, corporations and chief executives of state corporations. Generally, campaign income of major political parties amounted to a total of Ksh 4.8 billion.[2] Many parliamentary candidates funded their own campaigns, with most of their campaign money coming from personal resources, including family and friends' donation and borrowings (from pyramid schemes, savings credit and cooperative societies, banks, insurance companies and personal business funds).

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[1] CAPF, *The Money Factor in Poll Race*: A Monitoring Report of the 2007 General Elections.

[2] Monitoring campaign expenditure was important because parties and candidates were not required to disclose total income. Assessing main categories of campaign spending gave a clear indication on the level of resources that had been mobilized by different parties and candidates.

For those incumbent in public office, additional income from unpaid use of the provincial administration machinery, coercion to extort money from private businesses, use of state media and state corporation advertisements to propagate partisan information, use of government premises for party meetings, involving senior public officers in presidential campaign planning, use of government resources to produce material for campaigns (e.g. Government Printer) and fuelling private vehicles using funds from government. These latter activities are estimated to have amounted to over Ksh 500 million.

Besides normal campaign expenditure, a lucrative election industry absorbed most of the raised campaign money. Beneficiaries included the media, fundraising officers, campaign paraphernalia manufacturers, travel and hotel companies, rally and event organizers, campaign strategy advisers, media consultants, polling and market research, campaign coordinators and pollsters, security companies and personnel, and amorphous youth and women groups. Vote buying and voter bribery were endemic and increased in the post-party nomination campaign period.

The 2007 Expenditure Pattern of Main Political Parties

Political parties and candidates spent the resources raised in different ways. Most parties and candidates spent a substantial portion of their campaign money to

Table 12.1: Estimated PNU coalition campaign expenditure pattern

Expenditure category	Amount (Ksh million)	%
Fundraising costs	36	1.7
Mass media and publicity	189	8.9
Campaign materials	160	7.5
Constituency support	190	8.9
Travel and logistics (vehicles)	9	0.4
Kibaki Tena rallies	190	8.9
Media facilitation (journalists)	9	0.4
Presidential campaign teams	150	7.0
Vijana na Kibaki	300	14.1
Party nominations	120	5.6
Campaign coordinators	320	15.0
Party agents (polling stations)	390	18.3
General ICT	39	1.8
Opinion polls	19	0.9
Propaganda	10	0.5
Total expenditure	2,131	100.0

Source: CAPF Campaign Monitoring Report of the 2007 General Elections

influence voters, notably on direct voter contact through rallies, meetings, and political events such as party and presidential campaign launches, party nominations and party manifesto launches. Parties spent their money on events they would come in contact with voters, make speeches and distribute campaign materials, including money and gifts to voters.

Distribution of money and direct benefits to voters was carried out through targeted groups such as youth groups, women's groups and religious leaders, the latter mostly in the guise of church *Harambees (*fundraisings*)*. Parties and candidates also provided other indirect forms of benefits such as gifts to various opinion leaders to secure their support and that of their followers. Tables 12.1, 12.2, and 12.3 provide detailed summaries of estimated total party campaign expenditures for the three main parties (PNU, ODM and ODM-K). The tables not only show that PNU was the biggest spender with a total expenditure outlay of Ksh 2.1 billion, they also indicate the patterns of campaign expenditure. As can be deduced, a significant portion of party expenditures was spent on media campaigns and logistics, especially for ODM and ODM-K. PNU, though spared logistical and security expenditures by access to state resources, spent substantially on items such as party agents, campaign coordinators, *Vijana na Kibaki* (Youth for Kibaki), *Kibaki Tena* (Another term

Table 12.2: Estimated ODM campaign expenditure pattern

Expenditure category	Amount (Ksh million)	%
Fundraising costs	30	2.7
Mass media and media facilitations (advertising)	152	13.8
Campaign materials	39	3.5
Constituency support	27	2.5
Travel and logistics (choppers and vehicles)	200	18.2
National campaign events (manifesto launch and Nairobi rallies)	57	5.2
Pentagon team	147	13.4
Presidential nominations	54	4.9
Party nominations (personnel, logistics, and communications)	156	14.2
Campaign coordinators	50	4.5
Party agents (polling stations)	20	1.8
Rallies and meetings, trainings and seminars	89	8.1
Security and rally personnel	70	6.4
Opinion polls	6	0.5
Propaganda	3	0.3
Total expenditure	1100	100.0

Source: CAPF Campaign Monitoring Report of the 2007 General Elections

Table 12.3: Estimated ODM-K campaign expenditure pattern

Expenditure category	Amount (Ksh million)	%
Mass media and publicity	6	3.8
Campaign materials	9	5.7
Constituency support	8	5.1
Travel and logistics	28	17.8
National campaign events (manifesto launch, Nairobi rallies)	22	14.0
Presidential nominations	17	10.8
Parliamentary nominations	21	13.4
Campaign coordinators	9	5.7
Party agents (polling day)	9	5.7
Rallies and meetings	16	10.2
Security	12	7.6
Total expenditure	157	100.0

Source: CAPF Campaign Monitoring Report of the 2007 General Elections

with Kibaki) rallies, constituency support, mass media and publicity and campaign materials. The lowest expenditure item for PNU was travel and logistics, ironically the largest expenditure item for the opposition, showing the magnitude of resource advantage that the incumbent enjoyed over the competitors.

On the other hand, ODM spent a total Ksh 1.2 billion. The largest expenditure item was travel and logistics, followed by party nominations, mass media and media facilitation, the Pentagon team, rallies and meetings, trainings and seminars, security and rally personnel, national campaign events and presidential nominations in that order. The lowest item on ODM expenditure list was propaganda at a cost of Ksh 3 million.

As for ODM-K, the party spent a total of Ksh 157 million. The largest expenditure item was travel and logistics at Ksh 28 million. The second biggest expenditure item was the national campaign events such as manifesto launch and Nairobi rallies, mostly because the party transported supporters to the venues of the events. Other expenditure items were parliamentary and presidential nominations, rallies and meetings, security, party agents, constituency support and mass media and publicity.

As illustrated in Tables 12.1, 12.2 and 12.3 above, the larger part of the money was spent either on travel and logistics or on publicity. This spending generally aimed at reaching voters. The key expenditure patterns of various political parties included fundraising costs, mass media and publicity, campaign materials, constituency support, travel and logistics, media facilitation, presidential campaign teams, party

nominations, campaign coordinators, party agents, general ICT, opinion polls and voter research and propaganda. In most cases, the costs were high for rallies and meetings because parties and candidates had to give allowances to organizers and campaign materials to attendees, and money for public address systems, security and transportation of supporters to venues of the events.

The ability to make direct voter contact at rallies and meetings, however, was heavily dependent upon how much money a party or candidate was willing to spend to attract voters. Reaching voters required huge cash outlays, particularly in rural constituencies where large portions of the voters are not accessible without large, expensive four-wheel drive vehicles. Travel and logistical expenses were the largest expenditure items for both ODM and ODM-K, both of which spent Ksh 200 million and Ksh 28 million, respectively, on transportation and logistics. In many cases, provision of transportation and vehicles was not merely in order to reach voters, but for a variety of other matters such as acting as hearses, ambulances and for moving constituents to other destinations.

Media outreach to voters was another significant expense by all major parties. In many constituencies, where media, especially television and FM radio services were accessible, almost all parties and candidates notably found media outreach as a major campaign expense. Consequently, most parties spent huge portions of their campaign income on this expenditure item. Although propaganda was one of the smallest expenditure items for ODM and PNU, both parties spent money on it, showing the faith both parties had in it. The money was used to purchase advertising space on billboards, newspapers, radio airtime, etc.

Table 12.4: Estimated expenditure of a parliamentary candidate

Expenditure category	Candidate's average expenditure (based on monitoring of 110 candidates), Ksh
Money goods, and direct benefits to voters/voter-bribery/vote buying	3,000,000
Campaign personnel	100,000
Travel and logistics	900,000
Personal security	100,000
Rallies	1,000,000
Campaign agents	200,000
Polling station agents	300,000
Publicity	500,000
Campaign materials	900,000
Total expenditure	7,000,000

Source: CAPF Campaign Monitoring Report of the 2007 General Elections

Expenditure patterns for individual parliamentary candidates were similar to parties' spending patterns. Majority of funds spent by individual candidates were spent to reach and influence voters. As illustrated in Table 12.4, spending to provide direct financial benefits to voters and supporters, including vote-buying was the highest overall expense category for an individual parliamentary candidate. Nearly all parliamentary candidates monitored during the electoral process provided direct benefits such as gifts to voters. This was followed by expenditure on rallies, campaign materials and travel and logistics and publicity in that order. The total amount of money spent in elections in any parliamentary election by parliamentary candidates is far above this average figure. Where there are many candidates, it is possible that all the main candidates–in terms of level of support at the constituency–will spend this average or more. The combined sum total of expenditure by parliamentary candidates is, therefore, far beyond this average. Parliamentary elections, thus, could be expending more money, overall, than is usually acknowledged.

Main sources of income for main political parties

There were various ways in which parties and candidates financed their campaigns. These included donations, loans, in-kind or third party contributions, nomination fees, earnings from assets and property or business activities, and the use of state or public administration resources. All these constituted the main sources of income for parties and individual candidates. Overall, the three major **political parties raised over Ksh 4.8 billion from party nomination fees and fundraising dinners, of which Ksh 813 million was raised through nomination fees and party levies.**

Besides the party nomination fees and fundraising dinners, there were other sources of income for the parties and candidates, among them donations and loans (in

Table 12.5: Estimated total collections by parties on nomination fees and party levies

Party	Revenue (Ksh millions)	%
ODM	300	36.9
Small parties (Not part of PNU coalition)	200	24.6
KENDA	120	14.8
PNU coalition parties	78	9.6
ODM-K	58	7.1
PNU direct nomination applications	30	3.7
KADDU	20	2.5
NARC	7	0.9
Estimated total collections	813	100.0

Source: CAPF Campaign Monitoring Report of the 2007 General Elections

Table 12.6: ODM-K fundraising initiatives and resources mobilized

Fundraising Initiatives	Resources mobilized (Ksh millions)	%
Individuals contributions	15,000,000	30.0
Corporate contributions	10,000,000	20.0
Foreign contributions	15,000,000	30.0
In-kind contributions	10,000,000	20.0
Total resources mobilized by campaign initiatives	50,000,000	100.0

Source: CAPF Campaign Monitoring Report of the 2007 General Elections

Table 12.7: PNU fundraising initiatives and resources mobilized

Fundraising initiatives	Resources mobilized (Ksh millions)	%
Individual contributions	100,000,000	16.6
Corporate contributions	300,000,000	49.9
Foreign contributions	150,000,000	25.0
In-kind contributions	51,000,000	8.5
Total resources mobilized by campaign initiatives	601,000,000	100.0

Source: CAPF Campaign Monitoring Report of the 2007 General Elections

Table 12.8: ODM Pentagon[3] fundraising and group initiatives and resources mobilized

Income sources	Resources mobilized (Ksh millions)	%
Individual contributions	200,000,000	15.9
Corporate contributions	500,000,000	39.7
Foreign contributions	500,000,000	39.7
In-kind contributions	60,000,000	4.8
Total resources mobilized	1,260,000,000	100.0

Source: CAPF Campaign Monitoring Report of the 2007 General Elections

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[3] Top five regional kingpins of ODM.

Table 12.9: Breakdown of sources of candidate's income

Sources of candidates funds	Estimated amount (Ksh)	For 210 candidates (Ksh)
Personal funds (savings and sale of personal assets)	3,000,000	630 million
Loans (from pyramid schemes, insurance companies, banks and SACCOs)	2,000,000	420 million
Donations/Contributions from friends	2,000,000	420 million
Estimated total funds	7,000,000	1.4 billion

Source: CAPF Campaign Monitoring Report of the 2007 General Elections

the case of individual candidates). Although most income sources remain unknown, a substantial amount of donations to parties came from foreign entities, Kenyans in the Diaspora, corporations and various chief executives of state corporations. As can be seen in Tables 12.6, 12.7 and 12.8, the main **political parties received additional income from individual and foreign sources**. It is not clear whether the foreign funding came from Kenyans in the Diaspora or from non-Kenyan financiers. ODM mobilized the greatest funds from abroad and corporate sources, each totalling Ksh 500 million.

Many parliamentary candidates funded their own campaigns with most of the money coming from their personal sources. Up to 40 per cent of candidates reported that the funding for their campaign was from loans, personal resources, including family and friends' donations, pyramid schemes and personal business funds. As shown in Table 12.9, loans from pyramid schemes, insurance companies, SACCOs and banks as well as personal funds drawn from personal savings and sale of personal assets such as land and housing assets constituted the largest share of funding for candidates.

Role of private sector in financing political parties in the 2007 general election

The private sector played a major role in availing resources for the 2007 political campaigns. It not only provided loans for individual candidates but also gave substantial donations to the campaign kitties of political parties. Besides cash donations, various players in the corporate sector provided services to boost the

Table 12.10: Profile of companies supporting main parties in the 2007 general elections

Company core business	Total No. of companies	Party funded				
		PNU	ODM	PNU/ ODM	ODM-K	PNU/ ODM/ ODM-K
Advertising	2	1	1	0	0	0
Agriculture	1	0	1	0	0	0
Arms dealing	1	0	1	0	0	0
Business people	3	0	1	0	2	0
Cabling	1	1	0	0	0	0
Construction	9	4	1	2	1	1
Dairy	1	1	0	0	0	0
Energy	5	1	4	0	0	0
Finance	2	2	0	0	0	0
Media	1	1	0	0	0	0
Mining	1	0	1	0	0	0
Packaging	1	1	0	0	0	0
Paints	1	0	1	0	0	0
Pyramid scheme	2	0	0	0	0	2
Retail trading	3	3	0	0	0	0
State companies	1	1	0	0	0	0
Stock broking	2	2	0	0	0	0
Telecommunications	3	2	1	0	0	0
Transport	2	2	0	0	0	0
Tyres	1	1	0	0	0	0
Vehicle sales	5	4	1	0	0	0
Water	1	0	0	0	0	1
Other	1	0	1	0	0	0
Total	50	27	14	2	3	4

Source: CAPF Campaign Monitoring Report of the 2007 General Elections

campaigns of the political players based on their respective competencies. Those in the transport sector, for instance, provided transportation while those in the hotel industry gave accommodation and hosted functions of politicians and political parties.

Banks, SACCOs and financial institutions provided loans, while those working in the media provided advertising services. Private firms such as legal and opinion polling firms also availed consultancy services based on their key competencies. The

Figure 12.1: Number of companies supporting main parties in the 2007 general elections
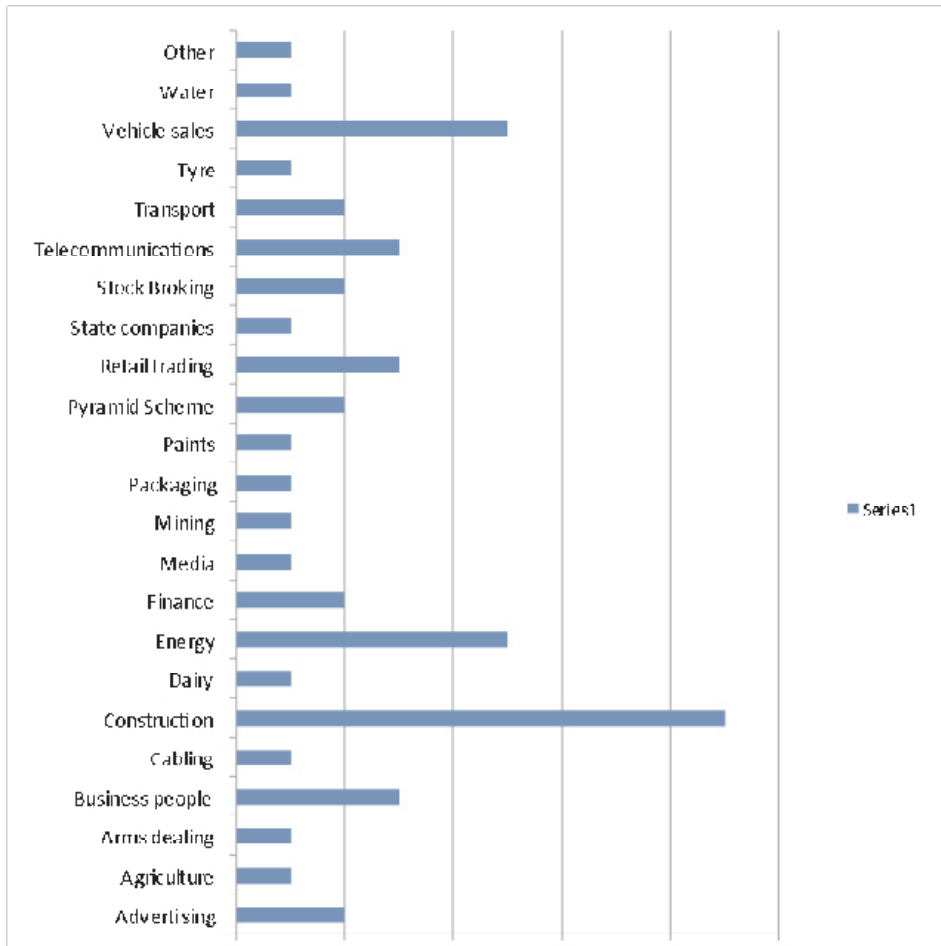
estimated amount of donations received from corporate contributors by the main parties was Ksh 810 million. ODM was the biggest beneficiary of corporate donations, mobilizing a total of Ksh 500 million from the sector, compared to PNU's Ksh 300 million. This could have signified a new phenomenon of having the opposition attract more financial attention from the corporate sector than the incumbent party. However, a number of the corporate donors gave across party lines, distributing their donations mainly between the two main political parties–PNU and ODM. Figures 12.1 and 12.2 illustrate how the corporate donors gave to the parties.

Although not much information is available to feed into the profiles of these corporations, given the difficulty in accessing such information, it emerges that most of the donors seem to come from the construction industry. Nine or 18 per cent of the companies that donated to the parties were construction-based companies. PNU

was the main beneficiary: four companies donated to PNU alone while another two donated to both PNU and ODM. Energy and vehicle selling companies were the second important donors comprising about five companies each. All but one energy company donated to ODM. All but one vehicle selling company donated to PNU.

These findings signify how making headway in some sectors such as the construction sector relies on the influence of politicians. This, on its own, is a pointer to the significance of the construction sector as a site of bridging money and politics and, therefore, an important site of corruption. Indeed, when the National Rainbow Coalition (NARC) government came to power after the defeat of KANU in the December 2002 general elections, the new government suspended construction contracts entered into by the previous government on account of claims that they were corruptly issued and/or paid for. The previous government had paid some of the companies for incomplete or non-performed tasks, while others had given a fee to corrupt individuals in government.

Motor vehicle sales corporations and energy sector corporations were other significant corporations in terms of the number of donors contributing to the parties. Again, these companies may have contributed generously in anticipation of favourable contracts to supply vehicles or energy-related products to the government constituted by the victorious political party. A fleeting look at some of the corporations in terms of their proprietors and histories show that some are considered to have had close relations with politically influential individuals in both the Moi and the Kibaki administrations. For instance, a proprietor of one of the construction companies contested and won a parliamentary seat on PNU ticket. Similarly, some of the energy companies were observed to have had relations with influential individuals in ODM. The point to stress here, nonetheless, is that the companies donated on the basis of their political relationship with the party leadership. One cannot rule out, therefore, that the parties donated in anticipation of winning favours after the elections.

Use of state and administrative resources in the 2007 elections campaign

The other sources of income came from state resources and personnel. Reports from agencies monitoring election campaign in all provinces and 71 constituencies indicated that the misuse of state resources was prominent among incumbent politicians. This involved use of state vehicles, as shown in Table 12.11. Further, there was use of officers of the provincial administration to mobilize for campaign rallies (chiefs, district officers and district commissioners), use of coercion to extort money from private businesses, use of state media to propagate partisan information, use of government premises for party meetings, involvement of senior public officers in presidential campaign planning, use of government resources to produce material for campaigns (e.g. Government Printer), and fueling private vehicles using funds from government.

Figure 12.2: Corporate financing of parties in the 2007 elections
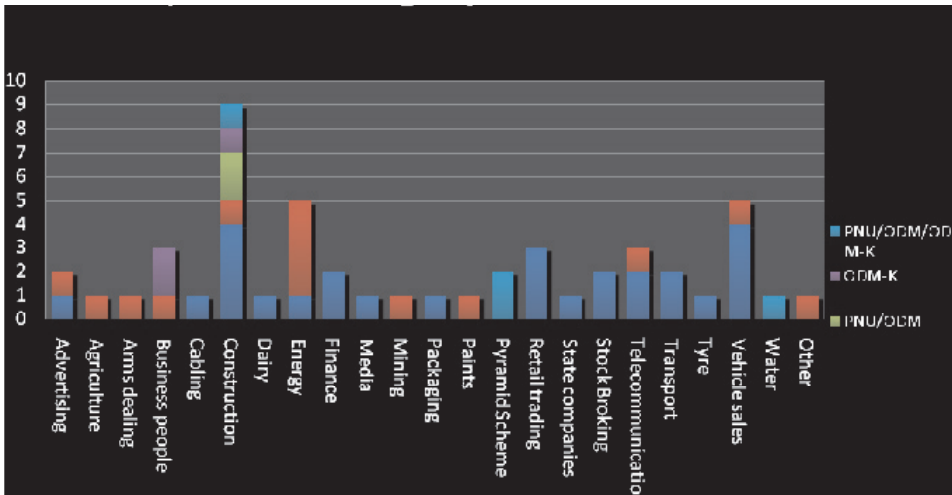
Use of state vehicles

A total of 240 state vehicles were counted in use for partisan political campaigns during the 2007 general elections. As Table 12.11 shows, the use of government vehicles cost the taxpayer a total of Ksh 324 million, based on calculations derived out of the monitored/recorded incidences.

Misuse of state media

Reports on state media monitoring by various agencies indicate that there was a high proportion of coverage for candidates and parties contesting in the elections throughout the period under review. However, the Kenya Broadcasting Corporation (KBC) failed to fulfil its minimal legal obligations as a public service broadcaster. Analysis of KBC's coverage of election campaigns by both its English and Kiswahili services revealed a high level of bias and granted a combined total of 76 per cent of coverage to the PNU coalition partners. ODM received 13 per cent of coverage on the station and ODM-K 5 per cent, with the remaining 6 per cent allocated to a range of parties. The public broadcaster's TV coverage demonstrated a similar bias in favour of the PNU coalition. The PNU received 71 per cent share of KBC TV coverage, while ODM received 11 per cent and ODM-K 5 per cent. The allocation of free airtime on KBC to registered political parties standing for election, pursuant to Section 89(1) (k) of the Kenya Broadcasting Corporation Act, was also not adhered to, in this instance failing to fulfil a key legal obligation.

Hidden campaign advertising

An analysis of government agency advertising budget as shown in Figures 12.3 and 12.4 suggests that there was an increase of 175 per cent in government spending on advertising between September and December 2007. The total volume of advertising increase suggests that state money was used more intensively during the election period to advertise government activities that were associated positively with the PNU presidential candidate.

Furthermore, a qualitative analysis of government advertisements between April and December 2007 reflects an intention to assist the PNU presidential candidate's re-election efforts. **88 per cent of institutional advertisement by KRA as** indicated in Figure 12.5, for example, credited the PNU candidate with an increase in government revenue rather than the KRA, which is responsible for collecting

Table 12.11: Estimated costs to the taxpayers of misuse of state institutional resources

Category	Market value per use (Ksh)	Monitoring timeframe (days)	Monitored /recorded incidences per day	Estimated cost to the taxpayer (Ksh million)
Use of government vehicles	15,000	90	240	324.0
Use of state aircraft/ helicopters	100,000	90	6	54.0
Use of state media (KBC TV and radio)	10,000	120	32	38.4
Hidden advertising and government institutional advertising	40,000	240	3	28.8
Total				445.2

Source: CAPF Campaign Monitoring Report of the 2007 General Elections

revenue. Analysis of advertisements on the Constituency Development Fund, free primary school education, the Youth Development Fund, the Women's Enterprise Fund and road construction programmes carried out from June 2007 suggested that the advertisements were deliberately designed and timed for electoral propaganda purposes rather than to inform citizens about government policy achievements.

Impact of state and administrative resources misuse on campaign finance

Although the overall impact of the misuse of state resources by the PNU coalition is significant, their financial dimension is difficult to measure systematically or accurately. However, the misuse of state and administrative resources has a damaging effect both on the financing of election campaigns and on the political system in general. The use of public resources for partisan campaign purposes constitutes a form of illegal campaign income and misallocation of public resources.

The illegal campaign expenditure cost the Kenyan taxpayer a total of Ksh 445 million, which was used to pay for partisan advertisements, run and maintain vehicles for campaign purposes and pay for use of other state assets such as helicopters. There were other incidents of misuse of state assets that have not been quantified, although they had an important impact on the campaigns since they cushioned the incumbent from significant costs and allowed him to spend in other areas. Among these included use of state security apparatus and offices and personnel in campaigns. To elaborate the point further, whereas the incumbent's travel and logistics expenditure only amounted to Ksh 9 million, its closest rival, ODM spent Ksh 200 million over the same expenditure category, showing how state resources favourably cushioned the incumbent against this expenditure category. The incumbent also did not have a security expenditure category, whereas its two closest rivals, ODM and ODM Kenya spent Ksh 70 and 12 million, respectively, on security, further indicating the income advantages that the incumbent enjoyed.

Impact of Political Money on Kenyan Politics

Modern democracies require strong party organizations that compete for political power in fair elections. To keep the system functioning, political parties must have the resources to run successful campaigns and support political machines. However, parties and their candidates also must reconcile the drive for resources with the risks of distorting political competition and corrupting elected officials. Depending on where they come from, how they are distributed and what they are spent on, resources given to parties and candidates can corrupt elections and democracies.

Political finance can undermine the same democratic values and good governance that it also supports. The two main risks are that resources (monetary and non-

Figure 12.3: Trend in government institutional advertising
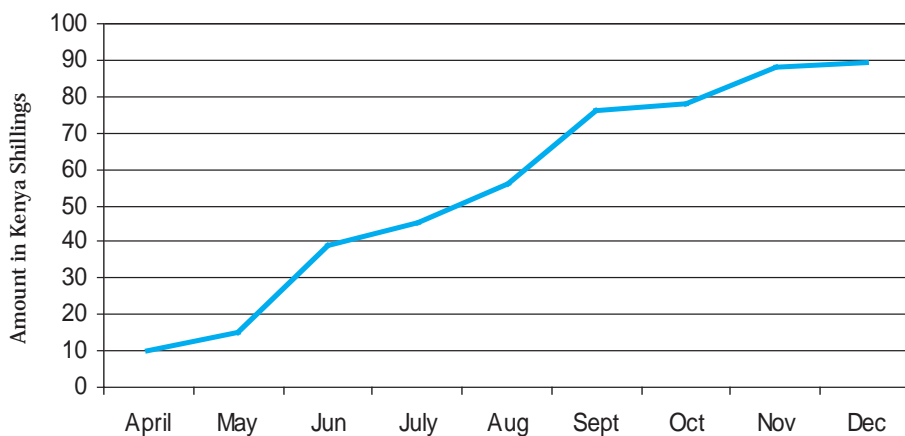
Figure 12.4: Monitored government institutional advertising during election year
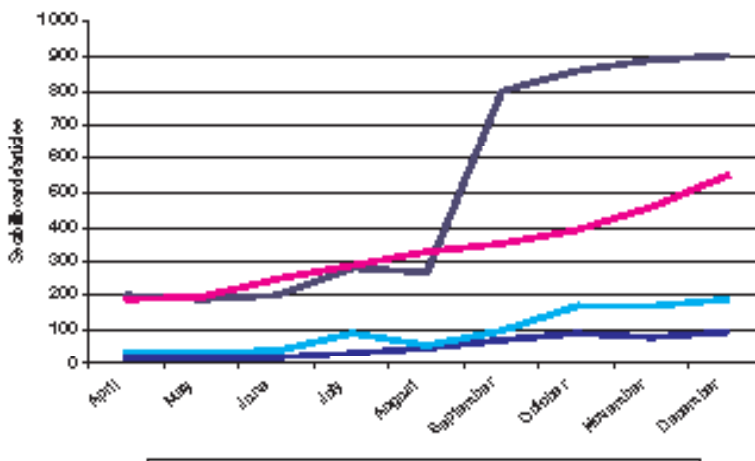
Source: CAPF Campaign Monitoring Report of the 2007 General Elections

Figure 12.5: Level of government institutional advertising between April and December 2007
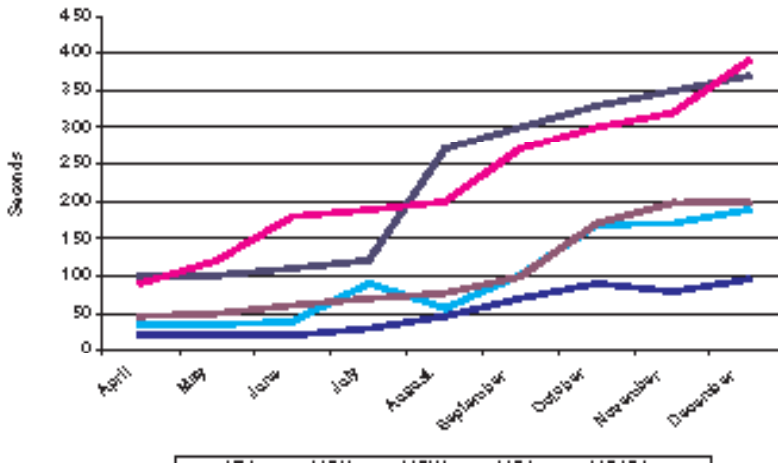
Source: CAPF Campaign Monitoring Report of the 2007 General Elections

monetary) can distort electoral processes and may improperly influence the decisions taken by a country's elected representatives. Money can distort the electoral competition when it is unfairly distributed among candidates. When accountability is low, resources are left open to abuse by parties and candidates. Incumbent politicians may abuse state resources to fund their re-election campaigns. Resources for electoral contest may be diverted and the money pocketed by candidates or used for vote buying.

There are two issues emerging concerning political financing in Kenya. In the first case, how money is sourced has had an impact on Kenya's governance and social well-being. In order to source for political financing, competitors within the political arena may resort to misuse of public resources, thereby leading to political corruption. Indeed, mega financial scams, among them Goldenberg and Anglo-Leasing, that have had a huge negative impact on the Kenyan economy as a whole are largely the consequence of political financing. Candidates and parties are forced to source for campaign finances, including from financiers, whether corporate or individual, who make contributions not out of their solidarity with a candidate or party ideology but rather in expectation of financial returns, thereby subverting the practice of politics as representation of people's interests to that of serving corporate and donor interests.

The second issue arising out of political financing has to do with how political finance is deployed to win political contests. Kenya's electoral experience shows that deployment of political finance has been a major source of corruption. Whereas any form of bribery–as an aspect of corruption in political financing–is outlawed

in Kenya's electoral campaigns, in the past the laws governing elections such as the Election Offences Act (Cap 66 of Laws of Kenya) have failed to deal with the sources of money that made bribery possible in the first place. This gave politicians a loophole to spend monies without restrictions as long as they avoided being caught engaging in bribery. In many cases, the distribution of goods of monetary value such as maize flour, sugar, clothing, iron sheets, and purchase of voters cards and national identity cards as a bid to deny an opponent's supporters the right to vote have been widespread in many parts of the country. In this sense, political parties and individual candidates use money to buy and disenfranchise voters who do not support them.

Other areas where money has been used to distort the outcome of elections include the hiring of youths to disrupt political rallies and even cause violence. Since 1992, the youth have played a central role as hecklers and usually cause chaos during political rallies. A large number of rowdy youths have on several occasions been hired and paraded during such meetings as supporters, causing tension in political meetings and often instigating fights. These youths usually attend political meetings drunk, often with explicit instructions to disrupt meetings. Money is also used in many cases by the parties to induce opponents to step down so as to increase the other candidates' chances of winning an election.

Election campaigns have largely come to depend on the availability of funds at a party's or candidate's disposal. This in turn has introduced problems in the electoral process that do not augur well for Kenya's nascent progress towards democratic governance. The underlying point, therefore, is how money and those who have access to it (the ruling party-state resources) use it to manipulate the political process, making political parties and candidates hell-bent on raising funds from whatever sources and spending it in ways that can guarantee their access to power. The obsession is to control the state and its resources and, thus, be in a position to distribute the resources in a manner that will perpetuate the inbuilt patronage network of rewards and punishment through political inclusion and exclusion.

As there have been no public funding for political parties in Kenya, parties and candidates have sought financial resources from everywhere. And, as parties need money for election campaigns, individual candidates also need money for their respective party nominations. While the party is expected to shoulder the logistics and administrative aspects of such nominations, candidates are expected to finance their own campaigns during the exercise. In addition, parties also expect the candidates to contribute to the party's kitty as it prepares to battle it out with other parties at general elections. It is against this background that the politics of patronage usually take a central stage in the party nomination process.

Towards Controlling Campaign Finance in Kenya

It is widely acknowledged by advocates of political finance regulation that **political parties and politicians require money from many sources to support their campaigns. It is equally acknowledged that the purpose of regulating political money is not to** stop such funding, but rather to ensure that parties and politicians are sufficiently funded from sources that are neither corrupt nor potentially corrupting.

The murky relationship between money and politics has been at the heart of almost every major scandal faced by politicians and the government since 1992. **The blurred nexus between party, government, politicians and state power has been** the defining struggle of the democratic era since the re-introduction of multi-party politics in 1991. Elections and political campaigns in Kenya have revolved around **wealthy individuals, whose political mandates are acquired through endless abuse of money, making the political and electoral process in Kenya a travesty of democracy. This situation is often made worse by the fact that there have been no laws governing money in politics,** political parties and political financing.

In July 2008, the Political Parties Act, 2007 became operational. The Act seeks to regulate the role of money in Kenya's political and electoral process. The Act provides for the establishment of a partially state-funded Political Parties Fund to finance political parties. Besides restricting sources of revenue for political parties, the new law also establishes a legal and administrative framework to govern the formation, registration and management of political parties in Kenya.

The Act provides a framework for the registration, regulation and funding of political parties in Kenya. Since its enactment, political parties are now registered and regulated by the Registrar of Political Parties. This is a departure from the previous practices where political parties have been registered under the Societies Act (Cap. 108). The Registrar of Political Parties is an office within the Electoral Commission of Kenya with the necessary autonomy to make impartial decisions.

The Act provides for the formation, registration and regulation of political parties. The conditions under which a political party may be formed, qualifications of a founding member, participation in political activities and the rights of party members are set out. It also provides for the process for registration of a party and the contents of a party constitution. The circumstances under which a party's registration can be cancelled and the effect thereof are also set out.

However, the Act does not, among other things, control or limit the expenditure of political parties and individual candidates in an election and regulate sources of funds for individual politicians (yet they are the primary campaigners). It lacks an effective enforcement framework as most of its clauses on political party financing are vague. There is, therefore, need to review the Act and/or enact a separate comprehensive political (party) financing legislation to effectively provide for appropriate and enforceable disclosure requirement, bans and contributions from unsuitable sources,

limits on contributions and expenditures, limits on campaign periods, and enhance and tighten regulations around state funding.

Conclusion

Modern politics face the challenge of reconciling the presence of money in politics with the risks it poses to democratic values and good governance. While money is required to foster political competition, its role in politics can undermine the tenets of democracy. Depending on where money comes from, how it is distributed and what it is spent on, it can turn from a blessing into a curse. Money can distort the electoral process as a result of the sources and distribution of funds, the management of resources and expenses, and the motivation linked to donations.

This chapter has examined how politics is financed, who finances it and with what outcomes in terms of governance in the society. The chapter has also examined why people, both individuals and institutions, finance politics. Using a conceptual framework that interrogates the usefulness and harmfulness of money in politics, the chapter has further discussed whether the way politics is financed is responsible for any particular form of policies or discourses. The discussion has grappled with establishing the nexus between representation and democracy, pointing out the inherent danger that money poses to developing democracies such as Kenya. Though it argues that democracy needs money to function, the flipside to this is that it becomes a problem when interests use it to buy favours. Basing the analysis on the findings of CAPF 2007 General Elections Campaign Finance Monitoring Project, which systematically and objectively observed and documented the use of money by political parties and various candidates in the 2007 general elections, it is argued that the 2007 general election was the most heavily funded in Kenya's electoral history. Among the sources of campaign finances for the elections included donations, contributions from the Diaspora, personal savings and loans, pyramid schemes and state resources. The financing of campaigns was in turn spent on the media and logistics. Most of the contributions came from construction and motor sales interests. The main problem as far as campaign financing in Kenya is concerned involves the fact that the way the financing is sourced inevitably has an impact on Kenya's governance and social well-being, especially in how it breeds and links to corruption. Equally, the deployment of this finance has links to corruption and negative influence on the country's politics.

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PART VI:
THE POLITICAL ECONOMY OF VIOLENCE IN KENYA

13 Undercurrents of Post-Election Violence in Kenya: Issues in the Long-Term Agenda

John O. Oucho

Abstract

As Kenyans search for enduring peace and stability following the post-election violence that engulfed the country in the first two months of 2008, they should be wary of undercurrents of the violence that have far-reaching implications for the country's future. Simply dangled 'ethnic violence' by both Kenyan and international media, the violence that almost brought Kenya to a standstill after the 2007 general elections is a manifestation of longstanding issues, which the country previously paid little attention to, and which it must address to avoid their recurrence and undesirable repercussions in future. This chapter draws from a wealth of historical, political, economic, demographic and socio-cultural sources to analyse factors that underlay the post-election violence and that may still place hurdles on frantic efforts for durable peace, improved democratic dispensation and equitable division of the national cake in Kenya. It posits that the solution of Kenya's current political problems lies in multidisciplinary diagnosis of the issues in play, taking a new look at the long-term agenda, in particular longstanding injustices in regional development, including resource allocation, the land question, historical grievances and invocation of irrelevant cultural stereotypes to discredit certain ethnic communities. Analysis concentrates on two sets of variables: first, independent variables underpinning the colonial legacy and independence governance; and, second, proximate variables embracing regional geo-politics, historical and cultural factors, economic actors, population issues and state intervention. The chapter concludes that the land question, ethnic animosity and other injustices connived to cause the post-election violence and must, of necessity, be resolved to avoid recurrence of violence in future elections.

Introduction

The post-election violence that engulfed Kenya fell short of a civil war, which several independent African countries have experienced as a result of factors ingrained in national political, economic and socio-cultural character. To all pundits of Kenya's democratization and those who had regarded the country as the only 'island of peace and tranquillity' in a politically volatile region, the violence came as a big surprise. Yet, to social scientists viewing the country through various disciplinary lenses over the last four decades, the post-election violence had for long been a simmering volcano only waiting to explode, the question still lingering being when it would explode. That it exploded as the year 2007 ended and thus denied Kenyans celebrations of the New Year, persisting until the end of February 2008, underlines a deep-seated problem that Kenya must solve both in the short-term and in the long-run to avoid its recurrence. Even as the dust of that political storm settles, the environment is still bumpy and politicians across the political divide, like most Kenyans, do not seem to trust one another anymore. Neither do Kenyans take each other for granted anymore as they continue to recoil back to their ethnic cocoons after the most difficult time ever in their lives. The post-election violence was partly a response to the disputed result of the presidential poll, and partly a means for the disgruntled to vent their anger on Kenyans, whom they perceived to have for too long hampered positive changes in the country. For those on the other side of the political divide, the post-election violence was an unnecessary affront attempting to challenge the status quo.

This chapter seeks to show that given the tinder box of outstanding issues that Kenya possesses, even if the presidential elections were not rigged, violence would still have occurred and in a pattern almost similar to what the country witnessed in the first two months of 2008. It draws from a wealth of historical, political, economic, demographic and socio-cultural sources to analyse factors that underlay the post-election violence, and which may still place hurdles on frantic efforts for durable peace, improved democratic dispensation and equitable division of the national cake in Kenya. It suggests that the solution to Kenya's current political problems demands taking a new look at the long-term agenda, in particular addressing longstanding injustices in regional development, including resource allocation, the land question, historical grievances and widespread ethnic chauvinism, which tend to undermine national solidarity.

After highlighting the sources and limitations of the information used, the paper employs a conceptual framework for analysing perceived undercurrents of the post-election violence. The dependent variable–post-election violence–ranged from killing and maiming of people and livestock, looting and destruction of property, and arson. Concurring with the Office of High Commissioner for Human Rights (OHCHR) (2008) that variants of spontaneous, organized and retaliatory violence occurred, the study uses the conceptual framework both to organize analysis and to provide a basis for empirical research which, however, was beyond the scope of the

study. The chapter concludes that the future of general elections in Kenya lies in a careful review of pertinent issues with a view to prescribing lasting solutions. While Kenya has set up commission after commission on practically everything that ails the country, it has failed to implement the findings, thereby compounding rather than resolving the problems that the commissions have been established to investigate. The Commission of Inquiry into Post-election Violence (CIPEV) made far reaching recommendations which, when adopted, will shape Kenya's future and stop further election-related conflict.

The discussion in this chapter draws from diverse sources of secondary and even tertiary data. First, historical sources illuminate the evolution of Kenya into a nation-state, where nationalities range from cohesive groups to groups amalgamated on the basis of cultural affinity and political alignments that provide useful insights of the country's past (Ogot and Kieran, 1967; Ogot and Ochieng', 1995). Second, demographic data provide perspectives of Kenya's demographic transition, gleaned from four decennial censuses since 1969, and from the Kenya Demographic and Health Surveys (KDHS) since 1989. Successive censuses have yielded invaluable data on population size and growth; spatial and rural-urban distribution, components of population growth and change (fertility, mortality and migration); population structure (by ethnicity, sex, age, marital status, education and economic activity); and urbanization. That only one-third of Kenya's land area is arable underscores why land is so precious. It intertwines with national and sub-national politics, and resolving the land question has eluded the country since independence. Finally, geographical data help to depict the country's diversity in physical and human attributes, population-land ratio, physical and other infrastructure, the distribution of parliamentary constituencies (often based on unclear criteria), and consequently the distribution of voters and their power in determining voting outcomes. Space dictates that the chapter desists from too much detail contained in the sources, which it has conveniently cited for further reading.

Studies of conflict and violence stem from different disciplinary sources. Barron *et al* (2004) inform us that different studies have focused on different types of conflict and that 'both theorists and polemicists of the subject not only ask different questions but ask and answer them in different tongues'. The multidisciplinary nature of the subject is reflected, for instance, in the report of the seminar on the demography of conflict and violence, which drew together scholars and practitioners from different disciplines, among them demography, history, social anthropology and political science (IUSSP, 2003). Therefore, any analyst has to prudently identify relevant issues without claiming to undertake an exhaustive treatment. While political scientists might stake a strong claim in the subject, they cannot adequately analyse apolitical issues, which connive with political issues to cause election-related violence.

Framework for Analyzing Post-election Violence

A previous study adopts a conceptual framework for analysing determinants of ethnic conflict that erupted in Kenya immediately before the re-introduction of multiparty politics in the early 1990s. The framework identifies sets of exogenous variables that acted through the intermediate variables to influence ethnic conflict in Kenya at the turn of the 1990s (Oucho, 2002b). As conflict can range from simple disagreement to violence, the previous framework informs the framework adopted in this chapter to analyse undercurrents of post-election violence in Kenya (Figure 13.1). The framework posits that post-election violence in Kenya was due primarily to intermediate or proximate variables, which were influenced by sets of independent variables, some of them of longstanding significance. Future researchers could undertake empirical work on post-election violence in attempts to apply empirically robust models.

The framework adopted in this study is a mixture of the two frameworks used in Guyana (Premdas, 1992) and Kenya (Oucho, 2002b). In a study of Guyana, Premdas distinguished between 'predisposing factors' and 'triggering-igniting factors' that determined ethnic conflict and development in the country. Predisposing factors include cultural pluralism, lack of cooperation and overarching values and internal communal beliefs of separate sections, which are sometimes exploited to advance ethnic differentiation and even perpetuate ethnic conflict, thereby displacing formerly co-existent neighbouring ethnic groups. Triggering-igniting factors include colonial manipulation, introduction of mass democratic politics, rivalry over resource allocation, and imported political institutions adopted at independence (Premdas, 1992). The OHCHR (2008) identifies four main causes of Kenya's post-election violence: longstanding dispute over land rights; recurrent violence and persistent impunity; pre-existing violation of economic and social rights; and vigilante groups. However, a careful analysis of the problem suggests that longstanding, recent and election-related issues contributed to post-election violence, and hence the utility of the conceptual framework employed (Figure 13.1). An issue such as land features numerous times in this framework, as it has been the fulcrum of Kenya's wealth, politicking and exploitation and has long-standing as well as proximate underpinnings on the country's political dispensation.

Governance: From Colonial Legacy to Independence

Despite its nearly half-century years of independence, Kenya still clings to colonial legacy and adopts independent governance which remains slavishly tied to it. This section sheds light on these two, identifying particular issues that must have influenced the post-election violence.

Figure 13.1: Conceptual framework for analyzing the determinants of post-election violence

Independent variables

Intermediate proximate variables

Dependent variables

COLONIAL LEGACY

Coterminous ethnic and administrative units

The complex "land question: alienation "agreements", etc

Migrant labour system

Immigrant settlers (squatters) vs host communities

Imperial constitution and its inherent challenges

REGIONAL GEOPOLITICS
Ethnic balkanization and voting patterns
Pattern of political alliances and gambles
Electorate's consciousness and sensitivity

Reinvigoration of stalled revolution

Political leaders' mistrust and bigotry

Crave for devolution/regionalism

HISTORICAL AND CULTURAL FACTORS
Unresolved "land question"
Backlog of IDPs from 1991-1993 conflict
Cultural affinity/stereotyping

Unresolved "historical accidents"/longstanding issues
Violent elections environment

ECONOMIC FACTORS
Increased youth unemployment
Spiralling cost of living
Increased poverty
Regional inequalities

INDEPENDENT GOVERNANCE
Maintenance of centralized governance and challenges

Clinging to outdated constitution

Failed decentralization

Biases/prejudices

Unfulfilled promises of successive regimes

Impact of regional political instability on local political landscape

POPULATION ISSUES
Population size and growth
Population structure

Spatial population distribution and inherent problems
Urbanization and social exclusion

STATE INTERVENTION
Manipulation of Provincial Administration
Uneven political playing field
Partisanship in regional issues
ECK partisanship and dishonesty
Ban on live broadcasts and assembly

POST-ELECTION VIOLENCE

Adapted from J. O. Oucho (2002), Figure 1, page 22 and based on literature accessed

Colonial legacy and the Kenya state

The British colonial legacy has impacted significantly on Kenya's governance. Four aspects of the colonial legacy verify this fact: coterminous ethnic-cum-administrative boundaries that make up the country; the 'land question', which remains unresolved; conflict-prone migrant labour system, which generated farm labourers and squatters; and an imperial constitution that has stood firmly in the way of efforts to entrench democratization. This section analyses each of these issues.

Coterminous ethnic and administrative units

The boundaries of ethnic and administrative units have remained coterminous ever since Kenya was colonized. This is the one colonial legacy that has baited the country to the extent it is repugnant to development. Administrative maps of Kenya in 1924, 1929, 1961 (Ominde, 1968) and even today provide evidence of this trait persisting in Kenya. The apparent bait was the work of the Regional Boundaries Commission, which the British Government established in July 1962 to determine provincial boundaries in Kenya. Based on the boundaries that existed and, allegedly, the people's wishes to belong to regions of their choice (methodology for this unclear), the Commission divided Kenya into six regions and the Nairobi area (Ominde, 1968). The provinces recommended were Central, Coast, Nairobi, Northern Frontier, Nyanza (included the present Nyanza and Western Provinces and Kericho District) and Southern.

Apart from Nairobi and Rift Valley Provinces, all other Kenyan provinces hold one dominant ethnic group or culturally similar groups. Apparently, mischief dictated the decision of the colonially controlled Commission to bequeath to Kenya one of the problems that keeps rearing its ugly head from time to time. This explains why the smaller ethnic groups used *majimbo* (Kiswahili for 'regions') as a trump card to acquire their territories and thus avoid domination by the larger ethnic groups. Indeed, its reappearance in political exploits immediately before the 1992 multiparty elections never allowed its different interpretation during the Bomas Draft of the Constitution to gather much support in certain quarters. Although the system of coterminous ethnic-administrative units works well in countries such as South Africa and Ghana, it remains Kenya's nightmare, one that haunts leaders and prickles the led. It flares up whenever conflict erupts, and clearly did so in the post-election violence when certain ethnic groups singled out and attacked other unwanted groups.

The land question: An unfinished agenda

Still lingering on as a colonial legacy is the controversial 'land question' and well-recognized inherent problems on which different commissions have prescribed recommendations that have never been implemented. Land has been at the core

of Kenya's political evolution since the colonial period. In fact, the 'land question' **originated during the 1930s when the** Kenya Land Commission (1932-1933) —otherwise known as the Carter Land Commission—**made recommendations that planted seeds of discord, among them: rejection of the notion that Africans had any land rights in the former** 'White Highlands'; setting the stage for the Resident Labour Ordinance of 1937, which defined squatters as labourers; directing that the disaffected Gikuyu be awarded 21,000 acres (8,500 hectares) of land and £2,000 as **compensation for loss of land (Furedi, 1989 and Kanogo, 1987, note 33, quoted in Oucho, 2002a); and creation of conditions leading to the country's administrative segregation into a** 'dual' economy and society by the colonial state (Gordon, 1986, quoted in Oucho, 2002a). The land settlement programme soon after independence **seems to have steered clear of this unresolved agenda, which interested parties have addressed as best suits them, even when it least suits other contestants.**

With time, agitation began for recovery of the expropriated land, with the Mau Mau rebellion (1952-1955) best known for accelerating the pace of land decolonization if not the whole decolonization process (Rosberg and Nottingham, 1966; Kanogo, 1989). Yet, to this day, the Maasai, the Kalenjin, the Gikuyu and the Miji Kenda, who were most affected, have not had the situation redressed. If anything, **much of their land has fallen into the hands of avaricious individual Kenyans and unscrupulous land-buying companies.**

Conflict-prone migration

The third colonial legacy is the conflict-prone internal migration system, which has pitted migrant labour (and squatters) and migrant settlers, on the one hand, against the 'host communities' on the other, precipitating intermittent conflict. Migration **redistributed population from the traditional sector to the modern sector, comprising commercial agricultural areas and urbanizing centres.** The vast majority of migrants moved from the poorer areas that the colonial land acquisition did not affect.

As soon as the white farmers embarked on commercial farming in different parts of the country, with a strong foothold in the Rift Valley and associated highlands, they **recruited cheap migrant labour from Nyanza and Western Provinces exclusively to work, and some from Central Kenya who had the double expectation both to work and to acquire land** (Ominde, 1968). There emerged stable in-migration streams, which caused rapid urbanization of Rift Valley Province, the county's most urbanized **region. This type of migration never changed much after independence as the new large-scale farmers still required farm labourers from the established sources** (Oucho, 1981). Throughout independence, Kenya's provinces have been sharply divided between five net out-migration provinces (Central, Eastern, North-Eastern, Nyanza and Western) and three net in-migration provinces (Rift Valley, Nairobi and Coast). Unfortunately, migration scholars have neglected the unpredictable mobility of those

engaging in all kinds of business, albeit strictly speaking not considered migration in the classical interpretation of the concept.

The colonial migrant system also made provision for squatters, who doubled as workers and were granted temporary residence for as long as their employment lasted. After independence, Nakuru town, dubbed the 'farmers' capital' in the colonial period, became a popular destination for Jomo Kenyatta in his 'working holiday' escapades, during which he allocated chunks of land to his Gikuyu kinsmen who, in his view, were the landless deserving freely allocated land. To date, Nakuru District represents one of Kenya's political hotbeds as the Gikuyu and the Kalenjin scramble for land, and as different ethnic groups engage in bitter struggles over parliamentary and civic authority seats in Nakuru and its environs. Thus, the ethnic mix due to migration has shaken, rather than solidified, the foundation of national solidarity; whenever violence erupts, it easily takes an ethnic dimension even if ethnicity does not feature in the equation.

Imperial constitution

The 'imperial constitution' adopted at the Lancaster House Conference in London was a founding constitution from which Kenya has not deviated markedly. It has retained an imperial presidency often considered above the law—an institution that, with impunity, usurped the powers of the country's legislative, executive and judicial institutions. After Kenya African National Union (KANU) convinced **Kenya African Democratic Union (KADU)** to disband and join the government ranks and the **Kenya Peoples Union (KPU)** was proscribed in 1969, Kenya became a one-party state from 1969 to 1991. As President Moi gained a firm grip of leadership, his government changed the constitution in June 1982, thereby converting Kenya into a *de jure* one party state from 1982 to 1991 (Widner, 1992). But the tide of multiparty politics forced the regime to change the constitution again in 1992, ushering in an era of multiparty politics in which shreds of the imperial constitution still exist. Thus, periodic mutilation of the imperial constitution was meant to suit the powers that be and was hardly in the interest of the electorate. That constitution gave Kenya a deceptively smooth transition for independent governance and, therefore, the misguided perception that the country was a bastion of peace in a politically volatile region.

The four issues examined above have placed hurdles on Kenya's way as an independent nation that observes its constitution for the good of the citizens and willing to respond appropriately to the changing political climate that requires equally appropriate changes. Whenever the issues discussed above cause tensions, the government and the citizenry have tended to dismiss them as inconsequential until they rear their ugly heads. Their cumulative effects finally tested Kenya's national solidarity during the recent post-election violence, invalidating the hypothesis that the country is a bastion of peace.

Independence Governance

The second independent variable consists of four facets of the country's governance since independence. The four issues are: maintenance of centralized governance despite its challenges; the baggage of an outdated constitution; unfulfilled promises by successive regimes; and the impact of regional instability on the country's political landscape.

Maintenance and implications of centralized governance

Among the inherent features of the imperial constitution is Kenya's centralized system of governance. While the country retains its eight provinces, districts have been sub-divided from time to time through presidential proclamation, apparently ranging from sub-ethnic groups to lower-level clans. Creation of new districts has become one of the goodies Presidents Moi and Kibaki gave to particular districts that they favoured or wished to woo their votes.[1] Any calls for decentralization of the country's governance has earned immediate wrath of the political elite, who often dismiss it as *majimbo* in the mould of the 1960s.

Kenya's independent governance provides instances of many challenges that negate national solidarity. Nairobi has remained the country's political, economic and international capital, with provincial capitals experiencing shifting fortunes depending on the personal whims of the political elite. At independence, political representation was decentralized through regional assemblies, which were soon abandoned when the country changed from a bicameral parliament (the Senate and the National Assembly) once the KANU-KADU deal had worked out, to parliament in its present form. Since then, the country has adopted a central government with an arm of the provincial administration under which falls administration at district, divisional and locational levels. Generally, the central government dictates orders to the provincial administration, which follow them unequivocally and which, therefore, explains why the latter consistently meddles in electoral politics.

In the sphere of development planning, Kenya has experimented with different frameworks since independence in 1963, each of them abandoned without proper cause. First, at independence, decentralization took the form of regional assemblies with provincial jurisdiction. But it soon fizzled out when the three-tier governance–comprising these assemblies and a bicameral parliament (Senate and National Assembly)–were abolished three years later. Second, the country adopted **district-based development planning in the form of the District Development Grant Programme**, the Special Rural Development Programme in particular areas, the

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[1] In Jomo Kenyatta's regime (1963-1978) Kenya had 41 districts (including Nairobi Extra-Provincial District) and the number increased to 69 during Moi's rule (1978-2002) and to 46 by the 2007 elections in Kibaki's first term. While the increase might seem legitimate on grounds of population growth, this is not the case as some districts with very large population were not sub-divided.

Rural Development Fund and **District Development Planning. By the time of Jomo Kenyatta's death in August 1978, after an imperial presidency, no imprints of these frameworks were evident. Kenya had slid into a 'private estate' for the few and a no-go area for the majority. The country became sharply polarized between the chosen districts that enjoyed the fruits of independence and the neglected districts that languished in poverty. Third, the** Moi regime, flagging the *Nyayo* (Kiswahili for 'footsteps') philosophy, perfected the system of polarization by adopting the famed **but short-lived** District Focus for Rural Development (DFRD) in 1983/1984. Sadly, **the DFRD turned out to be a complete fiasco as the country's political leadership** manipulated it for political ends, directing development to selected districts in Rift Valley Province and others with the leaders closest and most loyal to President Moi. One would argue that Moi was simply emulating Kenyatta, who had confined **development within Central Province, with Kiambu receiving the lion's share.**

Mwai Kibaki's regime in the first term (2002-2007) reorganized the economy, which had been registering negative growth by the end of the KANU era, introducing **two notable efforts towards decentralization: the creation of the Constituency Development Fund (CDF) for parliamentary constituencies, and implementation of the** Local Authorities Transfer Fund (LATF) for civic authority constituencies. Unfortunately, both the CDF and the LATF represent only minimal decentralization, if any, and any attempts to cite them as evidence of devolution, as did some PNU **politicians during electioneering, made no political sense. Kenya was somewhat a** devolved state at independence when regional assemblies took care of regional issues, **but over the last four decades became a centralized state without any consideration of effective decentralization. With the Bomas Draft of the constitution underscoring** devolution, which was ODM's campaign trump card both at the 2005 referendum and **in its manifesto for the 2007 general elections, it was not surprising that the wave** for devolution grew stronger and resonated well with the voters. Therefore, PNU's **attempts to explain away devolution simply as decentralization in the decongestion mould could not succeed.**

Forty-four years down the line, the three transitional problems of development **at independence–ignorance, disease and poverty–still dog Kenyans, in particular** the last two. By the time of the 2007 election, independent governance had failed to respond appropriately to Kenya's diversity, which is its greatest asset if judiciously exploited. Successive governments have tended to develop areas from which the top **leadership hails and to neglect those perceived to be opposition strongholds, making the scramble for leadership turn into an opportunity for eating chiefs at the expense of starving subjects. The verdict that the voters were deemed to pass in the highly polarized country in 2007 was no change for the better in their lives and, therefore, their desire to embrace change by trying to vote in another party, failing which they would revolt. Indeed, the post-lection violence attests to the revolt that took place as well as other issues that represented the baggage over the years.**

Unfulfilled promises

Kenyan politicians have been making election promises that they never fulfil, and successive Kenyan regimes have developed documents that are seldom implemented. It has been a persistent scenario from the regime of Jomo Kenyatta through the regimes of both Daniel arap Moi and Mwai Kibaki.

As the father of the nation for 15 years (1963-1978), President Jomo Kenyatta maintained the tempo of Kenya's development, stabilizing the economy and inculcating a sense of nationhood in Kenyans. However, instead of Kenyans witnessing the trappings of the much-touted African socialism, they saw the country become a ruthless capitalist state with the vast majority barely surviving, and with land freely allocated to the selected, politically correct or well-connected few. That period saw the sowing of the seeds of inequality.

Daniel arap Moi was a master operator of 'use and dump' politics. His regime was characterized by replacing a person from an ethnic group with one of their own, making sure that once one was used, one had to be dumped. After promising to deliver a new constitution to Kenyans in the sunset days of his regime, he put hurdles that were hard to remove. After all, through manipulation of elections and defections from other parties to KANU, he controlled parliament, which passed whatever legislation at his pleasure. Kenyans became consistently poorer as the Moi years elapsed, the workers promised salary increments during elections never received them, the districts created through presidential proclamation had no infrastructure and in no way served well the supposed beneficiaries. The institutions that had for long been the country's pride simply collapsed. The *wananchi* (Swahili for 'citizens') became so demoralized that they voted out KANU in 2002.

The NARC government, which assumed power in 2002 and whose presidential candidate changed parties to be the PNU candidate in the 2007 presidential election, failed the electorate who had vainly waited for the much promised 'change'. NARC's catalogue of promises soon evaporated as the status quo took a firmer grip. In the 2007 general elections, the electorate tended to give the ODM the benefit of doubt to deliver the stalled change, including the quest for a new constitution, which the NARC government tried unsuccessfully to influence in its favour by attempting to substitute the Bomas Draft with an adulterated Wako Draft. Thus, throughout the three regimes, Kenya belonged to cliques who did not care about the problems facing the country and its gullible taxpayers. When the regime that wananchi were determined to vote out allegedly stole the presidential election, it had to be stopped at any cost, hence the post-election violence.

Impact of Regional Instability on the Kenyan Political Landscape

Despite Kenya having been a bastion of peace in a region that has witnessed episodes of civil war, indiscriminate killing of innocent people, including children, and gross violation of human rights, it was bound sooner or later to catch the bug of instability. Lying east of it is Somalia, a failed state without a national government; to the north is Ethiopia, which is still smarting from a protracted civil war; and to the northwest is Uganda, which has been recovering from civil war in the wake of Idi Amin's most repressive military coup in the 1970s. Farther away is Rwanda, where the 1994 genocide caused ripples in the entire region. Refugees from these countries moved to Kenya, some of them indoctrinating Kenyans with their foul experience, sometimes wooing gullible Kenyans to emulate their unlawful schemes.

Results of this mixed unrest include the sale and movement of small arms, existence of hired gangs (for example, Mungiki, 'Taliban', 'Baghdad Boys' and so on) who were ready to cause harm as directed by their benefactors and surreptitious involvement of contiguous states in Kenya's 2007 electioneering. During the post-election violence, rumours had it that Ugandan soldiers became involved in indiscriminate shooting of civilians in Kisumu, fuelling the suspicion that Kenya's neighbour, not known to have enjoyed peace since the turn of the 1970s, supported the status quo. Indeed, such rumours became prominent once the government had gagged the electronic media.

Proximate Determinants of Post-Election Violence

There are multifarious intermediate variables that must have determined post-election violence in Kenya. As any effort to unravel an exhaustive catalogue of them is at best pretentious, our analysis concentrates on an illustrative array. Particular factors influenced different traits of violence in particular settings. For example, Sarah Bayne (2008) identifies four broad forms of post-election violence: spontaneous violence which broke out in the ODM strongholds soon after the announcement of the presidential election result; organized attacks in the Rift Valley in a Kalenjin-Gikuyu rivalry; organized retaliatory attacks by gangs of Gikuyu youth, directed at the Luo, Luhya, Kalenjin and other groups in the farming enclaves of Nakuru and Naivasha; and excessive use of force by the Kenya Police, which killed some and maimed other civilians in particular areas, mainly in western Kenya. This chapter argues that the independent variables already discussed in the previous section cushioned the intermediate variables, which directly shaped the post-election violence. Four categories of these–geo-political factors, historical factors, population issues and state intervention–provide useful insights.

Regional geo-politics

Kenya's regional geo-politics can be analysed under the rubric of six factors. These are ethnic balkanization, which interrelates with the voting pattern; the pattern of political alliances and inherent gambles; the electorate's consciousness of and sensitivity to the changing political climate; reinvigoration of the revolution, which began in 2002 but stalled midstream; political leaders' mistrust and bigotry; and the spirited crave for devolution/regionalism to reduce centralized governance.

Ethnic balkanization, voter enclaves and swing provinces

As explained above, there were three areas for bloc votes and some swing provinces in which the three parties scrambled for votes. Table 13.1 provides insights of voter registration, votes polled for each presidential candidate and voter turnout by Kenyan provinces. Ethnic balkanization of the country generated three voting blocs–two main ones in western Kenya and Mount Kenya area and a tiny one for ODM, PNU and ODM-Kenya, respectively. All other provinces remained to provide swing votes and, therefore, became serious hunting grounds for registered voters.

The three western Kenya provinces had a total of 6,964,743 (48.7% of the grand total) and central Kenya alone had a share of 15.3 per cent of the total. Their voter turnouts were 5,095,179 (51.1%) and 1,704,004 (17.1%), respectively. Table 13.1 implies that Raila Odinga would have the majority of the western bloc, Mwai Kibaki that of Mount Kenya region and Kalonzo Musyoka had no chance whatsoever to make it even to a rerun should that have become necessary.

The previously non-block Western Province for once became an important companion in the western Kenyan voting equation. Macarthur (2008) attributes this anomalous show of solidarity of Western Province to three factors: a divided KANU, which in the past had camped and captured majority votes in the province; ODM's consciousness of regional interests likely to be satisfied through *majimbo*, which the province favoured in 1963 and flagged by the 2007 elections in terms of devolution provided for in the Bomas Draft of the constitution; and acknowledgement of prophet Elijah Masinde's prophecy that Luhya leadership would come from the lake (Victoria), from which Odinga hailed (Macarthur, 2008). To this end, Western Province's Musalia Mudavadi was Odinga's viable running mate, with Rift Valley's William Ruto expected to become the Prime Minister in the ODM government. Equally disaffected were voters in Coast Province, a rich region which had been fully exploited by upcountry people at the expense of the coastal people, who now had the chance to vote out an unpopular, untrustworthy government that had perpetuated longstanding marginalization of this potentially rich region. In the ODM manifesto, North Eastern Province, which hitherto had remained an economic backwater since Kenya's independence, was to have a special development programme that would change its economic fortunes and improve the lives of its people.

Table 13.1: Distribution of voter registration in Kenya by province, 2007

Province	Registered voters	Votes for each candidate			Voter turnout	
		Mwai Kibaki	Raila Odinga	Kalonzo Musyoka	Number	% of total
Nairobi	1,275,445	313,478 (47.4%)	288,922 (43.6%)	52,974 (8%)	662,038	51.9
Coast	1,178,537	197,354 (32.8%)	353,773 (58.8%)	38,878 (6.5%)	601,201	51.0
North Eastern	315,756	97,263 (50.4%)	91,440 (47.4%)	4,498 (2.3%)	192,965	61.1
Eastern	2,374,763	840,804 (52%)	83,595 (5.2%)	726,782 (45%)	1,615,967	68.0
Central	2,186,936	1,643,421 (96.4%)	30,655 (1.8%)	11,231 (0.7%)	1,704,004	77.9
Rift Valley	3,358,381	916,112 (35.7%)	1,584,271 (61.7%)	34,334 (1.3%)	2,567,931	76.5
Western	1,564,682	312,300 (32.5%)	639,246 (66.6%)	6,729 (0.7%)	960,109	61.4
Nyanza	2,041,680	262,627 (16.8%)	1,280,978 (81.7%)	4,470 (0.3%)	1,567,139	76.8
All provinces	14,296,180	4,583,360 (45.97%)	4,352,880 (43.65%)	879,896 (8.82%)	9,971,354	69.7

Source: Crisis Group Africa Report No. 137, p.6; per cent of voter turnout computed by the author

Pattern of political alliances and gambles

The alliances formed in the ODM were unknown before in Kenya's political history. With Nyanza province's longstanding disaffection with previous governments, and Rift Valley Province opposing Kibaki for ungratefulness to the region after Moi's, an alliance between them was to be expected. Most unexpected, however, was Western Province, with a former short-lived Vice President—Musalia Mudavadi—becoming part of a formidable opposition. Macarthur (2008) observes that throughout Kenya's independence, the Luhya had distinguished itself as an unpredictable voting bloc. In 1963 and 1992, 'the Luhya split three ways, some voting with the Kalenjin, some with the Gikuyu, others remaining independent', *but seldom with or for a Luo* (author's emphasis).

Running its campaign under a *strong* institutional framework known as the 'Pentagon'—in the persons of Henry Kosgei and William Ruto from Rift Valley, Musalia Mudavadi from Western, Joseph Nyagah from Eastern and Najib Balala from Coast, and later Charity Ngilu from Eastern and representing women's interests—ODM and its presidential candidate had more or less locked up most regional votes. This arrangement provided credibility for power sharing arrangement across the provinces, and also redistribution of resources, equitable development and resolution of the constitutional stalemate (Macarthur, 2008).

PNU, on the other hand, was still a patchwork of several parties posturing for the booty and having a candidate who was *not too sure of votes* beyond the Mount Kenya region. It had the oldguards who had been civil servants in the colonial period, some of them with grossly unpopular records, and had Kenya's 'who is who' in the economic arena but clearly past their political limelight. Judging by attendance at political rallies, young voters, educated but unemployed and poor, never wanted to listen to PNU's call of status quo when its candidate had duped them in his first presidential term. The message of change propagated by ODM made the young voters hopeful that things might just be different next time around.

Electorate's consciousness of and sensitivity to change

The violence witnessed in the wake of Kenya's 2007 general elections has a consistent history, namely a contest between reactionaries who insist on status quo to ensure their grip of power, and revolutionaries who would stop at nothing before change engulfs Kenya. The two parties were strange bedfellows. Reactionaries (exclusively within the PNU) pledged continuation of the status quo while their opponents, the ODM, clamoured for change, which the NARC government had failed to deliver. This analysis sheds light on ethnic balkanization of the country and its implications for bloc voting; the emergent pattern of regional voting blocs and swing provinces; the electorate's consciousness of and sensitivity, which moved them to vote out the Kibaki regime; a call by the proponents of change for reinvigoration of a stalled

revolution; heightened mistrust among political leaders in the run-up to the 2007 general elections; and the crave for devolution and regionalism as an alternative to a powerful central governance.

Kenya held ten elections in the 44 years (1963-2007), making it one of the few sub-Saharan African countries with an orderly transfer of power from one regime and one president to another. Yet, that was not to be in 2007 when politicians who had at one time been in government and at another in the opposition were pitted against each other in the tenth general elections. The 2007 general elections was a contest of Kenyan veterans vis à vis younger and more popular politicians, who relied on specific alliances that they believed would win the day. For post-*uhuru* (Kiswahili for 'independence') children then aged anything up to 43 years, the election marked their moment of reckoning, an opportunity for determining change in the country and a challenge to consign the older generation to political wilderness.

An important backdrop to the 2007 general elections was the 2005 referendum on the country's new constitution, which had been on the drawing board for eight years towards the end of the Moi regime. In contest were two camps: proponents of the Bomas Draft adopted in a multi-stakeholder assembly that had deliberated for a long time to reach that verdict, and their opponents who favoured the Wako Draft (the government-approved version) crafted by a smaller clique who had adulterated the Bomas Draft. In retrospect, the result of the referendum had to a large measure been influenced by the African Peer Review Mechanism (APRM) exercise in Kenya in which a broad spectrum of the Kenyan society had expressed their dissatisfaction with the country's performance relating to four APRM pillars, namely: democracy and political governance; economic governance and management; corporate governance; and socio-economic development (NEPAD Kenya, 2006). Against the backdrop of both the APRM and the referendum, the Kenyan electorate had become alert to detect tricks in, and were prepared to vote against the Wako Draft. To such voters, the 2007 general elections would be but a repeat vote of the 21 November 2005 referendum. In the hard-hitting language of Kenya Socialist Democratic Movement (KESDEMO, 2005), 'the calling of the referendum was itself a political suicide by a corrupt and insensitive government that turned its back against the mass opposition to a counterfeit and mongrel Constitution that was fundamentally on trial at the referendum' (http://kenyasocialist.org/ksws/2005/congratulations_to_odm.htm). When victory eluded the confident and highly motivated ODM and its ardent followers, hell broke loose at what they dubbed PNU's stolen victory.

Reinvigorating a stalled revolution

The 2002 revolution that showed KANU the door dissipated quickly once a clique in NARC began scheming to sideline its main architects in the characteristic Kenyan style of 'use and dump' politics. In 2003, senior members of the NARC government who had never participated effectively in the 2002 election campaigns sprang back

into action through grand corruption (for example, the Anglo-Leasing and contract for the new passport scams), ethnic nepotism, sheer arrogance and interference with the media. Analysts have argued that the culprits took undue advantage of their proximity to President Kibaki and, therefore, took the law into their own hands. In no time, Kenya soon lost the goodwill from the donor community and embarked on a downward road to nowhere. The revolution stalled and had to pick up in the 2007 electioneering campaign.

The NARC government had been elected on a platform of change and hope. The Kenya Socialist Democratic Alliance (KSDA) calls these 'NARC's unfulfilled election promises', namely: a wage increase for teachers; 500,000 jobs per year (2.5 million by 2007); a new Constitution in 100 days; an end to corruption in the country; return of billions of Kenya shillings stashed away in foreign bank accounts; bringing to book (delinquent) officers from the former regime; and ending tribalism in Kenya.

In Kenya's electoral politics, there had never been such a juicy cocktail of satisfying voters' quest for real change, hence their high turnout in the 2002 general elections to remove KANU, which had caused much rot in Kenya for four decades. The voters felt duped and no doubt waited to express their disapproval come the 2007 general elections. Surprisingly, none of these was achieved.

As Table 13.2 shows, an interesting pattern emerged in the polls, with Kibaki having unassailable lead between October 2006 and August 2007 when Odinga took over the leadership by September, after his nomination by ODM. Kalonzo Musyoka, who had been in the second position after Kibaki, began to complain and doubt the polls when Odinga had taken over the second position in April, embarking on such unbecoming reaction as declaring that a Luo would never lead Kenya and, on realizing his declining fortunes, taking over the original ODM before decamping to form ODM-Kenya. With Odinga's inevitable crowning for the ODM ticket, Mudavadi and Ruto, who had been Western Province and Rift Valley Province candidates, fizzled out and Uhuru Kenyatta slowly tilted towards the Kibaki camp. That Odinga opened a wider lead in September and October 2007 and maintained a slim lead up to eleven days before the poll date must have been a source of worry for Kibaki and the PNU. For the first time in Kenya's history, an incumbent president was trailing in opinion polls and his defeat was expected, unless something extraordinarily favourable to him happened. The extraordinary occurrence was the announcement of the presidential election results in the evening of 30 December 2007, followed by an unprecedented situation of hurried swearing in of Mwai Kibaki a few minutes thereafter. Soon, a dark cloud settled on the Kenyan scene as another extraordinary response, a post-election violence never seen before in Kenya, erupted in different parts of the country.

The gathering storm can be gleaned from Table 13.2, which shows how opinion ratings changed between the two strongest contenders. Of the 16 polls taken between October 2006 until 11 days before elections on 29 December 2007, Steadman and

Strategic took part in 11, Infotrack in only one such polls and all others took part once apiece.

Table 13.2: Opinion polls for presidential candidates in Kenya elections, 2007

Poll date	Presidential candidate by % scored					
	Kibaki	Musyoka	Odinga	Mudavadi	Ruto	Kenyatta
October 2006a	41	20	13		3	5
December 2006a	42	20	14		3	5
March 2007a	51	14	17	2	2	2
April 2007b	44.3	15.3	18.7	2.7	2.6	3.5
June 2007c	45	14	28	4	3	4
July 2007a	45	11	27	3	2	2
August 2007d	42	11	25	8	6	1
August 2007a	47	13	36			
September 2007a	38	8	47	Undecided		
30 September 2007g	40.2	12.4	47.4	0		
30 September 2007d	34	16	46	4		
6 October 2007g	39.6	10.8	49.6	0		
6 October 2007d	35	15	46	4		
13 October 2007a	37	8	53			
October 14, 2007g	35	11	52	2		
October 14, 2007d	33	13	49	5		
20 October 2007g	35	14	51	0		
21 October 2007d	31	14	52.2	2.8		
23 October 2007a	39	8	50			
28 October 2007g	33	14	51	2		
28 October 2007d	33.2	14	50	3.8		
4 November 2007g	35	14	50	1		
11 November 2007g	37	13	48	2		
17 November 2007e	42	45	11			
17 November 2007g	38	13	49	0		
21 November 2007f	41.4	14.7	40.7			
23 November 2007a	43.3	11.4	43.6			
23 November 2007g	38.6	14	45.2	2.2		
November 30, 2007g	38.4	17.5	43.2	0.9		
December 7, 2007a	42	10	46			
December 7, 2007g	39	17	43	1		
December 12, 2007g	36	17	46	1		
December 18,2007a	43	10	45			

Sources: http://en.wikipedia.org/wiki/Kenyan_Presidential_election,_2007Wikipedia;
 http://www.scribd.com/doc/919540/Kenya-Polls.

Notes: [a]Steadman International; [b]International Republican Institute; [c]Research and Marketing Services; [d]Infotrack Research and Consulting, and Harris Interactive Global; [e]**Gallup**; [f]Consumer Insight; and [g]Strategic Public Relations and Research.

Political leaders' mistrust and bigotry

In a survey of Kenya, Bratton and Kimenyi (2008: 5) found that 'Kenyans do not easily trust co-nationals who hail from ethnic groups other than their own... that political conflict is all too common among people of different ethnic backgrounds, especially in the national political arena'. Indeed, as the Kenyan electorate was preparing to get to the polls, the electioneering machine was grinding at various fronts. Two dominant political parties harboured satellite parties of varied strength and influence.

The PNU camped in Central Province and the northern portion of Eastern Province (better known as the Mount Kenya region), but drew support from a divided KANU, NARC-Kenya, FORD-Kenya with a home in part of Western Province, New FORD-Kenya which split from it, Safina Party, Shirikisho and other smaller parties. Its candidate was Mwai Kibaki, the man who had become President in 2002-2007 when Raila Odinga's famous '*Kibaki Tosha*' (Kiswahili for Kibaki 'fits the bid') wooed majority vote for him and crippled Uhuru Kenyatta. The KANU presidential candidate in 2002 was easily dismissed as a 'Moi project'; that is, Moi's proxy to maintain the status quo. Kibaki was a candidate who, through his *kazi iendelee* (the work to continue) slogan, called for status quo, which was no music to the ears of Kenya's most marginalized groups–the youth and women who constituted the majority of registered voters.

The second party with a formidable power base across generations, class and educational achievements of Kenyans was the ODM which, with the help of KANU and Moi, whose word then was unquestionable throughout Rift Valley Province, had landed defeat to pro-government parties at the 2005 referendum, and which since then had organized itself much better for the 2007 general elections. Its presidential candidate was Raila Amolo Odinga, the populist politician upon whom the youth and women placed their support as they became hopeful of change, which was ODM's slogan. In his acceptance speech the day he was nominated the ODM candidate, Odinga told his supporters that he was the bridge linking the present to the future. The party capitalized on the frustration of most Kenyans, reminding them that the Gikuyu had grabbed everything while all other ethnic groups had lost everything; that Mwai Kibaki had betrayed his promise for change; that crime and violence had gone out of control, with the police having failed to eliminate criminal groups such as Mungiki; that there was no need for government to sing about the country recording economic growth when that had not brought any benefits to the ordinary citizen (Prunier, 2008).

ODM-Kenya, which had camped in Ukambani with Kalonzo Musyoka as its candidate, had no national appeal whatsoever. It was a party waiting for the spoils by promising miracles in the final results. By joining ranks with PNU while the election dispute raged, ODM-Kenya seemed to have been determined to lock out ODM from winning the presidential election.

Apparently, the miracle which Kalonzo Musyoka kept promising the country was his covert support for a Kibaki presidency, having presumably been promised the plum position of vice presidency. That Musyoka was appointed Vice President while there was still a stalemate on results of the presidential election makes this hypothesis more plausible. His dispute with Raila Odinga on the pecking order later in the Grand Coalition government was by no means surprising.

Heightened crave for devolution/regionalism

Attempts by PNU to interpret devolution in the context of *majimbo* could not wash. *Majimbo* had gone through three phases of interpretation: in the run-up to independence, immediately before the 1992 multiparty elections, and as contained in the Bomas Draft of the constitution and propagated by ODM. As Kenya was approaching independence, the Kenya African Democratic Union (KADU), made up of minority groups as an affront to the Gikuyu-Luo dominated Kenya African National Union (KANU), clamoured for *majimbo*, that is regionalism that would safeguard their territoriality. KANU saw this as a means towards creating disunity in the country, where its slogan *uhuru na umoja* (Kiswahili for 'freedom and unity') made much sense after many years of the British 'divide and rule' strategy. KADU soon capitulated to join KANU in government, making Kenya a one-party state before the short-lived (in 1966-1969) Kenya Peoples Union (KPU) emerged. The second phase of *majimbo* was marked by ethnic clashes in KANU zones as Kenya prepared for the first ever multiparty elections after two decades of one-party dictatorship. Proponents of *majimbo* then were stalwart KANU leaders, who opposed multiparty politics. Although the Bomas Draft talked of devolution, which is not *majimbo* of the pre-independence time, and as couched by Rift Valley politicians towards the 1992 general elections, the latter gained prominence when the Banana group, which had transformed into PNU, tried to convince Kenyans that ODM's call for equitable distribution of resources in different regions and devolution actually underscored *majimbo*. As Kenya still tries to complete the constitution review exercise, devolution invokes differing images in different parts of the country.

Historical factors

Historical factors are so critical in Kenya's democratic process that they cannot be easily dismissed or wished away as inconsequential. Where land was attractive, it was appropriated and where it was not, procurement of cheap labour became a substitute. Avaricious land transfers in the independence era made a minority extremely wealthy, while the vast majority languished in poverty. Eating into Kenya's social fabric are cultural affinity and stereotyping, which harbour even outdated traditions and discriminate against certain ethnic or cultural groups in Kenya. Finally, since 1991, Kenya's election environment has been hostile, particularly around the time

of elections when prospective voters of particular parties or candidates are evicted on flimsy grounds. Therefore, the recent post-election violence should be regarded as the peak of what had been building up over the last 16 years.

Unresolved land question

The 'land question' has reared its ugly head in Kenya from the perspectives of transfers, purchases and gratuitous grabbing. In the 45 years of Kenya's nationhood, more questions have been raised on these and other issues relating to land, but without satisfactory answers to settle the land problem.

The history of the Kenyan land settlement programme is riddled with politics, economics, intrigue and deliberate misinterpretation of facts depending on the analyst. When land alienation took place in the colonial period, the indigenous people receded to the 'African Trust Lands' or the so-called 'reserves' , which took on ethnic tags as the Luo reserve, the Gikuyu reserve, the Kamba reserve and so on (Leo, 1984:4, quoted in Oucho, 2002a: 32). There were no Luhya or Kalenjin reserves as these nomenclatures arose in the colonial period to amalgamate different ethnic communities, with some linguistic-cum-cultural affinity. The land settlement programme can be viewed through two lenses: resettlement of the rank and file of the society, and land acquisition through political patronage and land-buying companies, some of which turned out to be highly unscrupulous.

Although Kenya's land settlement programme was an integral part of the independence package, which provided an opportunity for Kenya to redress land grabbing by British settlers during the colonial period, it precipitated inequality where the rich acquired land indiscriminately and at the expense of the landless. Migrants who had been squatters in Rift Valley Province took advantage of the temporary stay they had been granted by the White settlers to stake claims on land, knowing well that such land actually belonged to the Kalenjin and the Maasai. Coastal land was similarly acquired without due regard to the Miji Kenda, who were its rightful claimants. The chief architect of land transfers was Kenya's founding President , Jomo Kenyatta, who took advantage of his unchallenged position to settle his kinsmen, presumably invoking the constitution, which allowed Kenyans to settle anywhere in the country. With carefully planned official itineraries, Kenyatta frequently went on 'working holidays' in Nakuru and Mombasa–and to no other part of the country–with a singular mission: land allocation to his kinsmen who were supposedly landless and had fought for Kenya's independence under the banner of Mau Mau and, therefore, deserved free land.

Officially, a dual land settlement policy was adopted–settlement of the landless poor with limited capital and agricultural experience, on the one hand, and a 'willing buyer willing seller' arrangement; the first one involving the poor without much capital and know-how, the other elitist. This dual system generated three types of

settlers: (a) the poor, unemployed landless persons who were allocated land in the High Density Schemes; (b) the middle-income group with some capital, who occupied larger landholdings, and (c) the rich, most privileged persons capable of buying more land, mainly in Low Density Schemes, including in the first two (Oucho, 2002b). Some farmers formed cooperatives and, thus, bought chunks of land through land-buying companies, which benefited from credit facilities.

Land settlement has been the root cause of social tensions, which triggered political violence targeted at the 'invaders'. Finally, settlement took a regional bias in which the settlers remained in their provinces, with the exception of those from Central and Western provinces who crossed over to Rift Valley Province. Whenever political heat strikes, these in-migrants become victims of violence, looting, arson and destruction of property. This has become such a predictable phenomenon that, surprisingly, the Government of Kenya has only taken palliative measures to try and redress it.

One question that keeps begging is who owns land in Kenya. The one thing to the credit of Kibaki's first term (2002-2007) is the opening up of democratic space which, among other things, permitted press freedom and investigative journalism that, unlike the Moi regime when the media was heavily gagged, helped put more information in the public domain. Revelations by investigative journalism and information compiled by the MARS Group Kenya regarding who owns land in Kenya underscore how Kenya's political elite and their relatives, and politically well-connected friends have grabbed land in Kenya, particularly in Rift Valley Province. In an exclusive article in the *East African Standard*, Namwaya (2004) gives a 'who is who' list of some of those owning land in Kenya. Under dubious land transfer arrangements, the list includes all three Kenya's presidents and their family members, and close friends. It also includes former top-brass civil servants and heads of state corporations who were presidential appointees.

In the MARS series, Kamau Ngotho draws attention to 'big money games that run Kenya's politics' (Ngotho, 2008), noting that the intricate links between land and politics point to the fact that '[This] is a system that has continuously perpetrated, in successive fashion, socio-economic injustices that have been seamlessly transferred from one power regime to the next'. In Kenyan society where newspaper reading, listening to different radio stations including FM stations, and watching TV have become the rule rather than the exception, it would only be a matter of days before Kenyans read, digested and made rational conclusions on how political leaders had duped them and why they, as voters, had to react appropriately by voting out the Kibaki regime for failing them. Conversely, ODM had packaged its campaign with particular reference to different categories of voters. Its manifesto pledged redress of historical land injustices, unemployment, inequitable resource sharing and poverty through a radical people-tailored constitution transformation (the Bomas Draft of the constitution), and tackling the land problem as provided for in relevant chapters

of the said constitution, for example through devolution and establishment of a National Land Commission.

The crux came with the famous but conveniently ignored *Report of the Commission of Inquiry into the Illegal/Irregular Allocation of Public Land* (otherwise the Ndung'u Commission), which completed its work in 2004 (Government of Kenya, 2004). This report noted, among other things, that land awards were made to 'both Kenyatta and Moi families, and to a raft of former ministers, MPs, judges, civil servants and military officers. The recommendation was that the large majority of such awards should be revoked' (Southall, 2005). It recognized that land retained a focal point in Kenya's history and was crucially important in the country's independence; that it had been allocated as political reward and for speculation rather than for development purposes; and that, ironically, the colonial system of land allocation by direct grant facilitated government's illegal and irregular abandonment of public land after independence (excerpts from the report of the Ndung'u Commission, quoted in Southall, 2005). Perhaps the very name of the Ndung'u Commission biased responses; it should have avoided the adjectives and just underscored 'land allocation', working with a clear conscience to determine whether or not land was acquired illegally or irregularly.

Cultural affinity and stereotyping

The second historical factor is cultural affinity or differences that engendered ethno-cultural animosity and unnecessary stereotyping between ethnic groups, often ending up in ethnic strife, conflict and violence. It has been noted that the 'ethno-conflict theory'–incorporating social, political and economic structures, religion, language and folk psychology, though not sources of conflict–identifies variables within a cultural system that with time can both cause conflict and contribute to conflict resolution (Centre for Conflict Resolution, 2000). In Kenya, different key players in cultural stereotyping included vernacular FM radio stations, which relayed news and played offensive music aimed at enemy groups; the yellow press, which circulated alarmist information; and politicians from particular communities, whose inflammatory language against other communities lit the fires of confrontation.

Towards the 2007 general elections, Kenya had implicitly become divided into ethno-cultural zones: the GEMA zone in Mount Kenya region, the Kalenjin enclave in Rift Valley Province, the Luhya zone in Western Province with the exception of a part of Bukusu area, the Luo and Gusii enclaves in Nyanza, the Muslim backyard in Mombasa and so on. Not surprisingly, PNU did not waste any resources in much of Nyanza and Western provinces and, in equal measure, ODM made exceptionally few visits to the Mount Kenya region and Ukambani. It was a matter of 'our region for us only as its owners' and 'Kenya for all Kenyans' to struggle for.

A violent elections environment

The one legacy of the Moi regime is the creation of a violent elections environment. In Kenya, elections are a question of life and death. Kenya's 1992 general elections was held against the backdrop of violent electioneering in which vigilante groups such as Baghdad Boys, Angola Musimbiji, Jeshi la Mzee (Kiswahili for the 'old man's army') and so on terrorised non-conformists of the KANU regime with impunity. No arrests were made, and where arrests were made, the culprits got away with crime at the intervention of their benefactors. Law and order broke down in the face of either partisan or indifferent security forces, making Kenya an unsafe country. A repeat of all this in the 1997 and 2002 elections confirmed lack of government intervention in criminal behaviour. Although the 2007 electioneering did not witness as much violence as had occurred in previous elections, it was a camouflaged peaceful election environment, which exploded when dispute arose over the announced results of the presidential election after two days of inter-party grumbling. Events of the two days of extreme anxiety psyched different interested parties to try and make redress in whatever manner best suited them, and post-election violence was a manifestation of this.

Economic factors

Increased youth unemployment

Despite attaining exceptionally good education, Kenyan youth have been reeling from unemployment and poverty. The problem is traceable back to the mid-1980s when the country began expanding university education, which failed to absorb the growing band of secondary school-leavers produced in the independence era. Indiscriminate expansion of secondary and tertiary education without concomitant creation of employment opportunities defeated the very purpose of education in the country. Promising such youth employment, credit facilities and other goodies, as happened in the 2002 electioneering by NARC, without ever fulfilling the promises was, therefore, one of the greatest shortcomings of Kibaki's first term. Pledging to complete the stalled revolution, ODM no doubt became the party of choice for and by the youth; a party whose failure to capture leadership on fraudulent grounds never went down well with the youth. That the youth revolted was a predictable response.

Spiralling cost of living and increased pauperisation

The spiralling cost of living had become unbearable for many Kenyan households, who saw voting out the government in power as their only hope for a better economic climate. Unlike the past when bribes worked, the stakes were too high and voters would take bribes from one party or even several parties, but probably vote for

the party of their choice. Increased poverty at individual, household and regional levels, which ODM promised to eliminate by citing specific strategies, became an important campaign chip. The government's argument that the country was enjoying an economic upturn was a fact, but the ordinary wananchi had not seen any positive changes to warrant voting for it, hence the voters' overwhelming support for the opposition party.

Regional inequalities

Kenya's imperial presidency has usurped the three arms of political governance, namely the legislature, the executive and the judiciary. During the Moi regime, the presidency played a triple role of having the prerogative to direct legislative, executive and judicial matters of the country. In his inaugural speech as President under the NARC government, Mwai Kibaki gave Kenyans the year-end message that the country would accede to the rule of law and that his presidency would desist from 'roadside announcements'. But no sooner did the New Year dawn than the President embarked on roadside announcements and continued to play the triple role of being the *de facto* head of the three arms of governance. He appointed the Cabinet without recourse to those who had made NARC victory possible; continued with the ethnic nepotism formula to appoint top-brass civil servants and heads of state corporations, some of the appointees long past retirement age; and, on the recommendations of the Ringera Commission, his new government dismissed judges who had served Kenya for decades, allegedly for being corrupt and incompetent but who have never been prosecuted up to now. Kenyans believe this move was meant to make the judges scapegoats to let the President appoint judges who would support his rule at any price. Some Kenyans suspect that the appointment of **Justice Philip Waki to chair the** Commission of Inquiry into Post-Election Violence (otherwise the Waki Commission), after he had successfully challenged his sacking in court and got back his job, is a means to both placate and compensate him handsomely for whatever losses he had incurred.

Ethnic nepotism characterized appointments in the public service. When NARC assumed the reigns of power in 2003, it announced that meritocracy would guide all appointments in Kenya. This never happened and, in fact, ethnic nepotism worsened after the November 2005 referendum when all appointments were confined to the Mount Kenya region. It is in the NARC regime that those aged 60 years or more dominated top-level appointments and ensured that younger, better qualified and more energetic Kenyans were kept at bay, never to be seen closer to the corridors of power. That the older generation are still keeping their positions is more surprising in the Grand Coalition government; they might still be keeping close to their treasure, which could be exposed once their appointments are terminated.

Invocation of the 'theory of ethnic nepotism' in Kanyinga's (2006) analysis of public appointments confirms consistency of ethnic nepotism. Jomo Kenyatta's Cabinet

appointments favoured the Gikuyu. Moi followed suit, even appointing people who were unqualified for the positions they encumbered, leaving the appointees with simple options, namely embezzlement of public funds and corruption in high places. Daniel arap Moi's regime began with some modicum of equity in 1979, appeased the Gikuyu in 1982, and Gikuyu and Luo in 1985 and 1987, and thereafter favoured the Kalenjin, the Luhya and the Kamba in 1994 and 1998 (Kanyinga, 2006). Mwai Kibaki appointed an equal number of Gikuyu, Luhya and Luo to his Cabinet at the onset of his first term in 2003 up to the referendum in November 2005 but, stung by the referendum results, made his Cabinet overwhelmingly a Mount Kenya region affair, with the Luhya benefiting substantially up to the time of the 2007 general elections.

Appointments of Assistant Ministers and in the public service and parastratals took more or less a similar pattern. Odipo's (2008) incisive analysis of Kibaki's appointments before and after the Grand Coalition government provides evidence of ethnicized political, civil service and state corporation appointments reminiscing Jomo Kenyatta's appointments in April 1974. Key institutions, among them the Cabinet, security chiefs and state corporations, including financial institutions, are headed by Kibaki's appointees from the Mount Kenya region; appointees because, in Kenya, those are presidential appointments, unlike true democracies where some vetting of candidates is done. From Odipo's (2008) analysis, the small discrepancy is that while Kenyatta's appointees were from the slopes of the mountain, excluding Nyeri, Meru and Embu areas, Kibaki's encompasses the entire region.

Regional inequalities through partisan governance

All political regimes in the country have entrenched certain biases and prejudices of the past, which the general public, civil society organizations and the donor community have urged the regimes to redress. Successive Kenyan regimes have established commissions to investigate particular issues of national importance, but their findings are rarely made public or their recommendations seriously considered. Nairobi and Central Kenya and Rift Valley during the time of President Moi have had the lion's share of Kenya's development, judging by various indices of regional disparity. Recent publications presenting facts and figures (SID, 2004) and crucial readings on inequality in the country (SID, 2006) provide invaluable information that needs not detain us here. They reveal regional inequality, which makes provinces drift farther apart, creating even greater animosity. In the eyes of highly motivated voters, an ODM victory would redress regional inequalities and usher non-partisan governance, concomitant with regionalism.

Population issues

Population issues have not been adequately factored in Kenya's democratic process, despite the implications of the country's rapid population which, in the first three decades of the country's independence, occupied the attention of demographers, policy

makers and donors throughout the world. Duffy (2005) contends that demography matters in war situations as a tilt in a country's ethnic balance, with changing age and sex ratios, mass migration and resettlement, and large family size can cause conflict. Tirtosudarmo (2006) observes that conflicts between majority and minority groups are always related to the democratic composition of the population in which ethnicity, religion and economic classes are politically played out. He wonders why demography and population studies seem unmoved by research on the causes and consequences of conflict when such research has exploded among other disciplines in the social sciences and humanities. This shortcoming poses a challenge on the extent to which Kenyan institutions have kept abreast of the changing intellectual terrain, and interrogates why disciplinary pigeonholing persists in grappling with contemporary societal problems. Theories underpinning the relationship between population and conflict/violence are crucial for analysis of the recent crisis in Kenya, and should necessarily attract future research.

Kenya is suitable for a systematic study of political demography to provide insights of many issues analyzed piecemeal in different social sciences, or in the context of this study.[2] The foremost scholar on population-conflict interplay argues that population issues feature in conflict as 'parameters' that shape the situation itself, as 'multipliers' by aggravating underlying or existing hostilities, and as 'variables' by serving as critical factors in conflict that shape the unfolding and/or determine the outcome of conflict (Choucri, 1974; 1984, quoted in Oucho, 2002b). Although the three features of the population factor were applied to international conflict, they apply to the Kenyan situation, where they have been played out in previous conflicts and did so in the post-election violence. As this is a complex subject in its own right, this study limits itself to selected aspects of population dynamics. A rare work on the consequences of rapid population growth for conflict in Kenya considers population growth a conflict-predisposing factor, drawing attention to population size and growth, ethnic composition and spatial distribution (Oucho, 2000). The work provided impetus for a detailed study of undercurrents of ethnic conflict, which analyzes these population issues in addition to 'ethnic arithmetic', which has bedevilled censuses, population-resources allocation issue, population viewed through ethnic and political lenses and the Gikuyu hegemony and ethnocentrism (Oucho, 2002b).

Population size and growth

In only thirty years, 1969-1999, Kenya's population more than doubled, the population growth rate peaking at nearly 4 per cent in the early 1980s and ebbing

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[2] Myron Weiner (1971: 567) states that "political demography is the study of the size, composition and distribution in relation to both government and politics (concerning) the determinants and political consequences of population change...on the distribution of power..." His plea for political demography has gone unnoticed by demographers and population scientists.

down by the 1999 census. Rift Valley has been having a commanding lead in both population size and growth rate, largely due to in-migration from Central Province, whose population size has increased but at successively declining growth rates.

When President Moi, in response to preliminary results of the 1989 population census, yapped that censuses were a waste of money and time, demographers interpreted his complaint to question why the Kalenjin population still came fourth after the Gikuyu, Luhya and Luo population in descending order. Population size and growth do not seem to enter the equation of carving out constituencies in Kenya and, if they were, some provinces such as Nairobi and Nyanza could have many more constituencies than at present. The fear seems to be that determining constituencies on the basis of population size could give undue advantage to ethnic communities who, in the eyes of some Kenyans, are not supposed to rule Kenya. Population must have been a factor in the weight the Rift Valley and other in-migration areas imposed on in-migrants from elsewhere. Scholars have found out that using local data, rather than national data, might reveal a stronger relationship between population pressure and conflict (Urdal, 2005), which calls attention to the need for identifying areas in Kenya where population or even livestock pressure on resources, notably land and water sources, have caused conflict. Whenever political disagreement flares up, such conflicts easily assume a political dimension.

Neo-Malthusians contend that invocation of population as a source of conflict does not stand the test of every empirical study (Urdal, 2005), and that Marxists find an apologia for the failure of development to take care of population. Localized research often tends to reveal more insightful results than national studies, which fail to underpin regional disparities.

Population structure

More important in demographic analysis is population structure by demographic and socio-economic characteristics. Demographic characteristics include sex, age and marital status, while socio-economic characteristics relate to education and economic activity of a population.

Kenya's population consists of 42 African ethnic groups and Kenyan Asians, Arabs and Europeans, who have lived in the multi-ethnic society without any difficulties. With the exception of Europeans, all other groups take effective part in elections as candidates and electorate. All Kenyan censuses up to 1989 collected and published ethnic information but in 1999, the census reports did not contain information on Kenya's African ethnic groups to avoid sensitivities that previous census reports had generated.[3] In descending order, the five major ethnic groups are the Gikuyu, the Luhya, the Luo, the Kalenjin and the Kamba, among whom there have been

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[3] Karuti Kanyinga accessed ethnic data in the 1999 census but these are unavailable in the official census reports.

political alliances.[44] Rift Valley Province, in which all but the last ethnic group have converged, has seen some of the worst tensions in the country during elections. Tense co-existence between the Gikuyu and the Kalenjin in Rift Valley seems to stem from the increasing proportion of the former and the decreasing proportion of the latter. The proportion of the Gikuyu population increased from 15.4 per cent in 1969 to 18.5 per cent 1n 1979 to 19.3 per cent in 1989, the percentages in Nakuru District alone being 58.2 in 1969, 60.8 in 1979 and 59.7 per cent in 1989. Proportions of the Kalenjin in the province were 48.4 per cent in 1979, declining to 46.4 per cent in 1989 (Oucho, 2000). In Nairobi, census data have shown high proportions of the long-distance in-migrant Luo and Luhya resident in Kibera and Mathare slums (Oucho, 1988a) where they can easily afford housing. It was not surprising that spontaneous post-election violence erupted in these areas soon after the announcement of the presidential vote.

Age, the most important variable in demographic studies, plays a special role in violence because only population within a certain age bracket is most prone to violent behaviour. The CIA's National Intelligence Council (NIC) cites 'youth bulge'—a large percentage of youth in a population—as one ingredient in a perfect storm for internal conflict in certain regions' (Dabelko, 2005: 3, quoting NIC, 2004). Sarah Staveteig (2005) finds age structure a predictor of insurgent-based civil wars as the future relative cohort size (the number of youth versus that of older working adults) could make policy makers formulate policies to reduce the chances of such conflicts. Citing the cases of Rwanda and Sierra Leone, and the Democratic Republic of Congo where civil war had raged for decades, Staveteig (2005) cautions that youth unemployment, rather than just young age, enhanced recruitment and fuelled respective conflicts. She argues that 'youth bulge' is a misnomer because 'the presence of young adults is not as important as the degree of alienation, frustration, and marginalization they experience'. With the Kenyan youth having experienced unemployment, alienation, frustration and marginalization for long, and tending to support ODM, which pledged change and redress of youth-centred problems, they went to any length to fight back once they felt the presidential vote had been stolen from the party they had supported.

In this study, special attention is given to the 'youth bulge' for several reasons: the youth (15-24 years) who constitute over 40 per cent of Kenya's population are reported to have voted overwhelmingly for the NARC government in which they had lost confidence by 2007 when NARC became PNU. In their utterances, the youth stated that the NARC government had promised them employment opportunities, which never came their way and promised them credit facilities for businesses, which never materialized. In reaction to the result of the Kibaki win on 30 December 2007,

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[4]   The two ethnic groups, Luhya and Kalenjin, actually consist of several distinct sub-ethnics with some affinity and in certain instances differences that fail to weld them into similar nationalities as other Kenyan ethnic groups; no less than 16 sub-ethnic groups comprise Luhya, while the Kalenjin consists of no less than 9 sub-ethnic groups.

some of the youth spontaneously reacted by demonstrating, looting and destroying property and even killing purported enemies, and others bowing to manipulation by the political elite and colluding with partisan security forces to unleash mayhem both for self-protection or to endorse the result.

In-migration areas such as Rift Valley, Nairobi and Mombasa have huge numbers of youth who, spontaneously or on instigation, participated effectively in the post-election violence. Indeed, this explains why, apart from the settlement areas that the youth attacked, youth demonstrations and wrath occurred in urban areas such as Kisumu, Homa Bay, Migori, Eldoret, Kakamega, Nairobi and Mombasa. With the electronic media having relayed youth vibrancy and resistance to injustices in other parts of the world, the Kenyan youth had extraordinary zeal to take the law into their hands; that they reportedly overpowered the police in many settings is not surprising, given their large numbers and athleticism.

Spatial distribution of population

Another population issue is spatial population distribution, which has compelled population in densely-settled, population-pressure areas to move to sparsely settled areas of pastoralist communities. While the Gikuyu from the densely populated Central Province moved to Rift Valley, either spontaneously or were resettled there for being landless and by purchasing land, the Kisii and Maragoli (a Luhya sub-group) from even more densely areas migrated to the same province only after purchasing it. There have been clashes between agriculturists and pastoralists or even between different groups of livestock keepers in parts of Rift Valley that have caused serious skirmishes. Such clashes constituted a recipe for the post-election violence.

Internal migration and population redistribution

The most rudimentary demographic measurement of internal migration is based on the direct technique of cross-classifying 'place of birth' (identified with as usual residence) and (temporary or permanent) 'place of enumeration' at censuses. Table 13.3 presents the picture, based on a 10 per cent sample of the total population.

The table shows the pattern of 'lifetime migration'–that is, determination of migration on the basis of those enumerated in areas other than their usual place of residence without specifying when they actually moved. It confirms the dominance of the Central Province migration streams to Nairobi and Rift Valley provinces, followed by migration from Nyanza and Western to the same destinations. Three net out-migration provinces–Central, Nyanza and Western–had nearly the same size of in-migrants in Coast Province. They constitute the upcountry people who are often targeted for eviction or violent attacks around election time. The patterns above give credence to why serious disagreements between the Rift Valley in-migrants and

Table 13.3: Internal migration in Kenya by province, 1999[a]

Province of enumeration	Out-migration province							
	Nairobi	Central	Coast	Eastern	North Eastern	Nyanza	Rift Valley	Western
Nairobi	12,391	15,443	1,683	13,840	862	10,744	4,232	10,130
Central	1,270	97,473	314	4,268	100	1,476	4,165	1,930
Coast	538	1,914	55,505	4,948	721	2,768	909	1,999
Eastern	350	2,083	383	12,1799	378	451	781	313
North Eastern	22	48	37	215	20,417	47	45	26
Nyanza	827	354	420	257	72	109,085	1,034	3,083
Rift Valley	1,201	13,186	501	2,940	286	9,022	142,556	11,947
Western	328	473	218	236	68	1,802	1,906	81,032
	16,927	13,0974	59,061	148,503	22,904	135,395	155,628	110,460

Source: Estimated from Kenya Population and Housing Census 1999 data.

Note: [a]Based on a 10 per cent sample of the Kenya Population and Housing Census 1999 data held by the Integrated Public Use Microdata Series (IPUMS), University of Minnesota, USA

non-migrant natives, and among Western Kenya and Central Province in-migrants in Nairobi result in clashes and precipitated previous past and recent violence.

Risk-prone business mobility

Unpredictable movement of people involved in petty trade, transportation business and other income-generating activities has been taking place alongside the four conventional types of internal migration. This 'business migration' entails largely movement of people from Central Province to other parts of Kenya, where they run shops or kiosks, *matatu* (Kiswahili for minibus) transport and vendors of all manner of business. There is never overt complaint against such business people until a crisis such as post-election violence emerges. Other Kenyans view the Gikuyu entrepreneurship scornfully, alleging that the ethnic group would never allow anyone outside their community to run similar businesses among them, not even where they live in one residential area. Unsurprisingly, as soon as Kibaki's victory was announced, marauding bands of youth identified and destroyed businesses known or perceived to be owned by the Gikuyu across the country, particularly in urban areas. The Kenyan press reported cases of selective burning, destruction and pulling down of property belonging to the Gikuyu, Asians and others who were known or perceived to have supported PNU in Kisumu, Eldoret, Nakuru and Mombasa.

Urbanization and social exclusion

Urbanization in Kenya, like that in most sub-Saharan countries, is simply a conglomeration of population in settlements that lack viable economic base and strong political governance. Rural-urban migration and translocation of rural fertility levels to urban slums and suburbs spur urbanization in which the poor become increasingly marginalized. It is not surprising that slum areas, where most of the poor live, account for more than 60 per cent of Nairobi's population. This explains why many Luo and Luhya migrants in Nairobi live in Kibera and Mathare slums (Oucho, 1988a), why the Gikuyu dominate Mukuru kwa Njenga slum, and why the Kamba dominate the sprawling suburbs of Embakasi constituency. The long-established in-migrants of these residential areas have a knack for identifying new in-migrants or temporary guests who visit those areas in times of elections, for instance. A persistent problem in these areas is disagreement between landlords and their tenants, as the former keep increasing rents with the latter not seeing justification for that. With the disputed election results, serious disagreements easily flared up, culminating in violence.

Victims of social exclusion easily strike back whenever they believe something does or is likely to aggravate their situation. In the Nairobi slums, socially excluded persons saw their hopes completely wiped out against all expectations, hence their spontaneous reaction to hit back. In Kibera, for example, the slum dwellers had

hopes of housing upgrading, which had been announced but not implemented by the NARC government in 2002-2007.

In the highly urbanized Rift Valley, relative to other provinces, urban centres and rapidly growing trading centres are most vulnerable to violence triggered by any small disagreement. It was not surprising that post-election violence erupted in settlements of varying sizes in western Kenya, especially in Rift Valley where, as the Kiliku Report (Government of Kenya, 1992:36) stated, the *chui* (Kiswahili for leopards, and here referring to Kalenjins) had been braying for the blood of *madoadoa* (Kiswahili for 'spots', here referring to non-Kalenjins in the province). The report of the Parliamentary Committee to investigate the pre-1992 ethnic clashes, like that of the Akiwumi Commission in its wake, have been gathering dust without their contents ever being considered. If some of the salient findings of these commissions had been implemented, they would have helped avert the post-election violence.

Issues in state Intervention

State apparatus have always been involved in Kenyan elections, both as facilitators and as schemers. Among issues in state intervention are involvement of the provincial administration, uneven political playing field, government's partisanship in regional issues and the questionable oversight of the Electoral Commission of Kenya (ECK) in the 2007 general elections.

Manipulation of the provincial administration

Since independence, Kenya has retained eight provinces, which the Kenya Boundaries Commission provided more than four decades ago. Curiously, except for Eastern and Rift Valley Provinces, and the metropolitan province of Nairobi with ethnic plurality, all other provinces reflect domination by particular ethnic groups. Central Province is exclusively inhabited by the Gikuyu, Coast is predominantly Miji Kenda, North Eastern is home to Somali-speaking groups, Nyanza is predominantly Luo, and Western is Luhya territory. Rift Valley, which belongs to the Kalenjin and the Maa-speaking groups, is inhabited by a large number of post-colonial settlers comprising the Luhya, Gikuyu and Kisii, though there are also Luhya and Luo migrant labourers in the commercial agricultural sector.

All elections held during Kenya's independence era have seen heavy involvement of the provincial administration, in most instances as a reliable cog in the government's (KANU for four decades) wheel of election fraud, including either overt or covert rigging.

A few weeks towards the 2007 general elections, rumours had it that large numbers of Administration Police had been transported to the ODM strongholds in Nyanza Province either to vote for the incumbent or to cause mayhem to disenfranchise

registered voters. Photographs taken and television footages by the media verified transportation of unknown people to undisclosed destinations a few days towards the general elections, and local people reacted angrily by stopping the buses and beating up their occupants, who failed to identify themselves, some of them escaping. While the truth of this episode is shaky, the very transportation of unknown people in many buses was itself a suspicious act on the part of its sponsors, and the puzzle remained unresolved even after the general elections. Such incidents must have infuriated the electorate, which explains the heavy hand of the Kenya Police in punishing residents of the areas concerned during the violence.

Having been in politics all, and in government most, of his life, the incumbent knew how far the provincial administration could go to salvage the situation at a time the vast majority of Kenyans had rubbished the much-touted economic growth, and when the most reliable help could come only from loyal civil servants who had more to gain by endorsing his regime. Since support for the government of the day had already become the norm within the public service, civil servants were probably highly apprehensive of the change that ODM was promising to effect if it won the election. Opinion polls that ran counter to the expected election outcome must have worried the incumbent, and more so his handlers. The late results spewed from the incumbents' strongholds after he had been trailing the polls seem to have been the result of conspiracy between the provincial administration and the ECK officials.

Uneven political playing field and information diffusion

There has never been a level-playing field for political parties, presidential candidates and other candidates contesting elections at different levels in Kenya. The media houses attempt to even out the playing field, but sometimes at their peril as the political elite often force them to toe the line of the government in power. During electioneering, Kenya seems to be divided into 'party zones: Rift Valley was KANU zone in the Moi years; Central had two sub-zones by FORD-Asili and Democratic Party (DP) of Kenya in 1992, DP in 1997; Nyanza was a FORD-Kenya zone in 1992 and the National Democratic Party (NDP) zone in 1997. The only time that these zones disappeared was in 2002 when NARC engulfed Kenya in a euphoria reminiscent of KANU at independence. Party zones re-emerged in 2007, with the Mount Kenya region becoming a PNU zone, the whole of western Kenya an ODM zone and a small ODM-Kenya zone emerging in Ukambani. Apart from government failing to provide an even-playing field, the parties themselves entrenched an uneven playing field, with some of them refusing entry of their rivals in their zones. Party supporters followed suit and, in some instances, led their parties into accepting the will of the electorate. The existence of uneven playing field paved way for the foul print and electronic media reports that listeners in particular zones were treated to.

When the taxpayers' information and broadcasting station–the Kenya Broadcasting Corporation (KBC)–became overtly pro-government, Kenyans turned

to vernacular FM radio stations (their incendiary messages notwithstanding) and relied on rumour mills. But these were not all; there were intermediaries such as bar-room talk, cartoons, ethnically conscious music, mobile phone text messages and web-based blogs (Wa-Mungai, 2007). Two examples underline the gravity of this problem. Kass FM, a Kalenjin radio station condemned Gikuyu for being greedy, land-hungry, domineering and unscrupulous, urging the Kalenjin that 'the time has come for us to reclaim our ancestral land', or that 'people of the milk' (Kalenjin) must 'clear the weed', namely the Gikuyu. Gikuyu FM stations, in particular Inooro, Coro and Kameme waged an ethnic propaganda campaign against ODM and the Kalenjin using call-ins with gospel songs (Crisis Group, 2008). Results of these unconventional communication avenues included widespread commotion, sloganeering, political engineering and unproven allegations in the country. For speakers of Dholuo, the late D.O. Misiani, one of Kenya's longest musicians with a special menu of political satires, the *ohangla* musicians campaigned extensively for the ODM presidential candidate.

Partisanship of the Electoral Commission of Kenya

If there is one Kenyan institution to earn the wrath of Kenyans, it was the Electoral Commission of Kenya (ECK), which looked compromised from the start and clearly rudderless at the time of announcing results of the presidential election. Before the term of the ECK Chairman, Samuel Kivuitu, was extended, both Raila Odinga and Kalonzo Musyoka appealed to Mwai Kibaki to extend the ECK Chairman's term as failure to do so would fuel suspicion of a pre-rigged election; the two were gullible to assume that Kivuitu was objective enough to steer a supposedly objective ECK. That Mwai Kibaki consented to reappoint the ECK Chairman was curiously ambiguous.

On the one hand, Kibaki showed deceptive magnanimity in granting the reappointment. On the other hand, this made Odinga and Musyoka play into Kibaki's hands as the President became deceptively magnanimous by reappointing the ECK chairman. It may be hypothesized that the ECK Chairman was reappointed for a specific mission: to ensure that the incumbent won the election at all cost. A more intriguing issue was President Kibaki's appointment of some new ECK Commissioners close to the elections to replace those, including the Vice Chairman, whose terms had duly expired. It was suspected that the newly appointed Commissioners had a singular mission to fulfil, namely to ensure the incumbent's re-election. Appointment of Commissioners was the President's prerogative, not an inter-party undertaking; it was one of the 'contentious issues' flagged, but not resolved, before the 2007 general elections. Theoretically, the die was already cast before the general elections; the ECK Chairman would be working with a majority of Commissioners who owed their allegiance to the incumbent and who would dare not go against the tide in the incumbent's favour. Deductively, Kenya was going into the 2007 general elections with a compromised ECK, and it would take only a few months for that fact to be confirmed.

The ECK Chairman's irresponsible utterances and unsolicited statements during periodic briefings at the Kenyatta International Conference Centre–asking Kenyans whether they knew what the life of a fugitive entailed, that he did not wish to become one and that some of his officers outside Nairobi had simply vanished before handing over results and others changed results in a number of constituencies–left Kenyans in no doubt that the man performed below the expected. The ECK Chairman's other reckless statements that he was forced into announcing the results (without indicating who had forced him) and that he was not sure if Mwai Kibaki truly won the election left Kenyans wondering whether the Commission had served them as expected. Such statements coming from an old man who himself had been a Member of Parliament cast doubt on the integrity of the ECK and its Chairman.[55]

Conclusion

Kenya has been carrying a baggage that is increasingly becoming heavier as years roll by. The 'land question' remains unresolved and will keep haunting the country until durable solutions are found. By setting up commission after commission to investigate the issue, the Kenya government has simply been playing with time as protagonists of different types of land continue to battle with no end in sight. The solutions prescribed by various commissions should persuade the government to review current policies with a view to reformulating them in order to undertake suitable programmes.

Kenyans have been clamouring for devolution of governance, a fact which they underwrote by voting against the Wako Draft of the Constitution in the referendum conducted in November 2005. Voters' failure to realize the dream of devolution necessarily sparked the violent reaction, to which pro-establishment forces responded by unleashing violence in equal measure. The post-election violence underwrote an important point: that Kenya is a divided society, which requires more healing if national unity is to be maintained.

Proximate to the post-election violence were factors that have bedevilled the country for rather too long. The country's ethnic balkanization is both an asset if well exploited and a liability if abused as happened in the 2007 general elections. The election drew political alliances along party lines, which countered ethnic balkanization enclaves, implying the country's democratic maturity. The country has moved from an era of ethnic political warlords to one of ideology and issues-based electioneering. Since the 1992 general elections, the electorate have become increasingly conscious of the power of their votes and were exceptionally prepared for the 2007 general elections. Successive opinion polls had revealed this and it was

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[5]   The Independent Review Commission, chaired by South Africa's Johann Kriegler, found the ECK's execution of the 2007 general elections sloppy and recommended dissolution of the body to create a leaner and more credible one.

not surprising that the government in power was panicky and had to do anything within its grasp to survive.

Historically, Kenya has pending issues such as the land question, the backlog of IDPs from the ethnic clashes of the early 1990s, and a persistently hostile election environment. All these historical accidents constitute a great liability to the country.

In the economic sphere, increased youth unemployment, the spiralling cost of living, the country's economic misfortunes, and regional inequalities undermined the government's attempt to cite the country's economic turnaround for the better. Moreover, persisting regional inequalities, which numerous studies have underlined in Kenya, lie at the core of political divisions that voters might wish to redress through other means if polls cannot resolve issues.

Kenya's rapid population growth and multi-ethnic character has tended to neglect the needs of the marginalized groups, in particular women and youth and inhabitants of arid and semi-arid lands. Population pressure in densely settled areas has resulted in in-migration in other parts of the country that were formerly in the hands of white farmers and where land settlement has occurred without taking into consideration the fears and concerns of communities who owned such land before colonialism. Post-election violence in Rift Valley was partly a reaction of the local people to the stolen election and partly their expression against acquisition of their land without considering their concerns. Urban areas have witnessed increasing pauperisation of the majority of inhabitants, who can only afford to reside in slums where they lead miserable lives due to lack of basic amenities. Politically, slum dwellers were among the most enthusiastic voters, who pinned their hopes on voting out the incumbent and his party to give a chance to a new party that might recognize their plight. Theories on the relationship between population and conflict/violence are crucial for analysis of the recent post-election violence in Kenya and should provide frameworks for research in future.

State apparatus involved in Kenya's development and politics as schemers are a great liability. The provincial administration behaved in the 2007 general elections very much like one of the ruling group's satellite parties and consequently earned the wrath of voters in opposition strongholds. Uneven playing field for political parties gave room to unprofessionally packaged communication and information, which inflamed election campaigns throughout the country. Added to these liabilities was the state partisanship in handling regional issues, which infuriated the voters.

The Electoral Commission of Kenya (ECK) was a real shame to Kenya's achievements in democratic politics. Inadequate human and material law-enforcement resources were a major shortcoming, which perhaps forced those involved to adopt outdated tactics both for self-protection and to save a sinking regime.

Finally, the ban on relaying results of the presidential election through electronic media, once there was impasse at the election headquarters, fuelled the suspicion that there was an all-systems-go to manipulate the verdict. At no time had a president taken the oath of office hurriedly in a confined place without Kenyans and invited guests witnessing the occasion. This anomaly necessarily drew the voters' wrath and, therefore, their violent response.

Now that the stage has been set for disputing election results in Kenya, resulting in violence, it might become a recurrent feature of future elections. The undercurrents of post-election violence in Kenya might persist should the 2012 general elections be handled in a similarly sloppy manner as the 2007 elections.

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14 Militarized Spaces and the Post-2007 Electoral Violence

Musambayi Katumanga

Abstract

This chapter attempts to put into perspective the Kenya post-2007 election violence. The chapter also discusses how attempts by the governing elites to consolidate control of the state resulted in deep ethnicization of the security sector, a phenomenon that has been taking place throughout the post-colonial period. Elite interest in consolidating power rather than democratizing the state resulted in increased control of the security sector, including staffing senior positions in the sector with people from their ethnic communities. Without exception, all regimes exerted their influence on the military and the police. This influence in turn led to ethnicisation of the security sector and made it easy for anyone in power to use, for instance, the police to crack on dissent or deepen repression. At the same time, those in power have perceived the state as an economic resource for plunder. They craft ethno-political strategies, including violence, to facilitate their political interests. This is the background to the violence that accompanied the disputed 2007 elections. There had also emerged discourses of inclusion and exclusion in which many ethnic communities felt excluded. Violence that emerged, thus, had the consequence of weakening the security sector because it polarized the sector on ethnic basis. The militarization of society also occasioned pressures to guard ethnic communities from the enemies of the 'tribe'. This shaped the nature and pattern of violence that followed.

Introduction

A violent conflict engulfed Kenya after the December 2007 general elections. It spread across the country, threatening existence of Kenya as a nation-state. It is widely acknowledged, however, that its trigger was a deep-seated nation-state crisis. Initial reactions across the country were not only politically and socially differentiated, but also fitted the pattern of a social protest against the prevailing governance. Interestingly, towards the end of 2007, Kenya's economy had remarkably recovered–if growth figures are anything to go by. The economy grew from under 2 per cent in early 2003 when a new government came to power, to around 7 per cent in 2007. This growth did not lead to a significant decrease in poverty levels. The number of people living below the national poverty line dropped from around 55 per cent in 2000 to around 46 per cent in 2006. Growth declined again to about 1.2 per cent in 2008 following the post-election violence.

By January 2008, the economic impact of the violence was clear. Some of the major economic activities had been paralyzed, thus slowing down economic growth. The violence and the patterns that defined it raises a number of questions. Critical in this regard is how politics is interlinked with issues around the economy. That is, what type of politics shaped the forms of violence that followed the disputed election? Secondly, why did the violence spread so rapidly and why was it more intense in some regions of the country than in others? What role did ethnicity play in the ensuing violence? Finally, how did the perceptions of the political elite about the state and its institutions inform the occurrence of the violent political conflict? The answers to these questions provide the context in which the political economy of the post-2007 election violence is appraised.

This chapter discusses these issues by paying particular attention to how various actors interlinked violence with the economy and ethnicity to threaten Kenya as a nation-state. The discussion builds on the assumption that the ruling elite perceived the state as an economic resource for plunder. To sustain this form of extraction, elites tended to instrumentalize ethnicity. They constructed discourses of ethnicity to gain control of certain territories. This fragmented the security sector, thereby weakening it and rendering it ineffective.

The part that follows discusses the concept of security and the significance of the security sector in society. The third part examines the politics of security in Kenya. The discussion focusses on how the various regimes politicized and ethnicized the security sector. The fourth part examines the factors underlying the failure of security institutions while the fifth part examines the regional dimension and patterns of the post-2007 election violence and the factors that shape this pattern. The sixth part discusses the mediation efforts that led to the enactment of the National Accord and Reconciliation Act, 2008. The final part of the chapter draws key conclusions in relation to the political economy of the security sector and violence in the country.

Distorted Governmentalities and the Crisis of Security

Government control of things emerges through the production of knowledge and its application on a social reality. In Foucault's genealogy, control of conducts is expressed through pastoral, disciplinary or bio-power. Modern governmentality[1] is rendered visible and distinctive through specific forms that allow the population and the economy to be effectively administered. With reference to Europe, Foucault points to a wide range of processes in the 17th and 18th century that informed governmentality. The basic aim was the administration of life to render it more effective.

Acquisition of new forms of knowledge and techniques facilitated this process of capturing and imposing control over the individual. In line with Foucalt's thinking, a set of anatomo-political practices that aimed at disciplining the individual human body to optimize its capabilities in a bid to increase its usefulness in the political and economic system constituted the core of these methods. Also critical were bio-political interventions and regulatory controls. To sustain this process, the production of knowledge such as statistics, demography, and the relationship between resources and inhabitants became necessary. A combination of these processes produced bio-power, which underpinned the development of capitalism and the production of an organic logic of societal organization that was structured around rational laws and institutions (Foucault, 1997: 239-260).

High levels of state penetration of different fields prevailing in the society ensured functionality, order and security of the state. Penetration of the society is made possible through enforcement of laws. This implies a need to enhance the institutional capacity of the state. It also implies that where the political elite fail to consolidate the state, they begin to generate the elements of state insecurity (Buzan, 1991).

While security can be conceptualized as the ability of a state to ensure its citizens' right to values, a threat to national security refers to the sequence of events that threaten to drastically and—over a relatively brief span of time—degrade the quality of life of inhabitants of a given state. Insecurity is also experienced when certain events significantly threaten to narrow policy choices available to a government, or to private non-governmental entities—persons, groups, corporations within the state (Ullman, 1983: 5-17). To enhance security, government policies on economic, political and social architecture are critical. The policies must eschew exceptionalism and privilege before the law, while evolving knowledge that allows the conceptualization of the state as whole. The focus must be on opening economic and political spaces through penetrative infrastructure and security to be related to the society. Failure to do this produces identity crises and insecurity or even civil strife.

Civil strife is not merely a function of natural resource abundance, especially mineral exports, as argued by De Soysa (2000: 113-135). It can also be a function of

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[1]Governmentality to Foucault implies an expansive way of thinking about governing and rule in realtion to the exercise of modern power. See Foucault M.Power (New Press 1978/2000).

value addition that takes place in a space. Collier (2000: 91-111) equally misses the point when he attributes civil strife to economic decline (growth collapse), arguing that conflicts are the result of the availability of male youth with little or no education seeking financial rewards through conflict. He refutes the linkage of conflict to inequitable distribution of income.

An examination of states such as Kenya points to the fact that strife can be a function of social-economic inequalities, as well as a fight for access to spaces of accumulation. Thus, conflict can occur in the context of economic growth. Three factors underlie this. First is the attempt by elite factions to consolidate access and control over state resources, thereby creating the need to appropriate private violence through alignments with various armed militias. Second is the attempt by groups maximizing on opportunities emergent from the convergence of a weakened state and the youth's desire to create fields of accumulation. Third is the emergence of un-administered spaces created by the retreat of the state from the provision of security. These factors combine to transform state spaces into sites of conflict.

Collier (2000) rightly notes that natural resources are not the only geographical factors that underlie conflict. It is the aspect of relative location of the space in use plays, in terms of whether armed groups can control territory and communication networks—legal or illicit—to facilitate connectivity to the outside world. Even then, this emphasis is on the conflicts that engulfed Africa in the 1990s. It actually leaves out the contemporary conflicts in states such as Kenya where bandit groups emerge without external infrastructure.

Insecurity is also the result of elite contestations. The elite in power strive to fence out their opponents by maintaining control over political power. On failing to gain power at the centre, the excluded elite retreat into ethnic territorial space where they seek to close off the ruling elite. Security units soon find their probity and competence compromised. The contestation also leads to ethnicization of the security units. As they become ethnicized, their ability to dominate instruments of violence is demystified and weakened. Consequently, there is an inflation of bourgeois and lumpen 'security' provisioning groups. The bourgeois are foreign dominated, aligned to the ruling elite and situated in formal spaces. The lumpen groups are informal and situated in both rural and urban informal spaces. This transforms security into an institution controlled by a small cabal of ethnic elites, and in an oligopolistic manner. Security is also transformed into a commodity whose value is guarded by this cabal of elites. The sections that follow address these issues.

Archaeology of Insecurity in Kenya

The centrality of security infrastructure in the exercise of power in Kenya has roots in the colonial situation. It has its roots in the colonial government's efforts to construct the strategic rail line to secure the Nile. A racially defined land alienation

system for the purpose of white settler farming provided the best option for recouping the costs of building the railway. To facilitate the settlers' economic reproduction and political security, the state introduced taxes for African households and promulgated legislations to anchor these extra-economic coercive measures in law and regulate behaviour of the different ethnic communities. Thus, what Foucault refers to as bio-political measures, or those policies and laws aimed at the control of the individual, conjoined with anatomo-political practices that sought to control ethnic communities.

Measures for the administration of the individual and regulation of ethnic or groups interlinked to sustain the colonial state and to enforce African support through extra-economic coercion for the colonial state and its mode of rule. Specifically, to consolidate the colonial rule, the state used legal instruments such as the 1903 Hut Tax Ordinance and Poll Tax system (reinforced by Master and Servants Act 1906); 1915 Crown Lands Ordinance Act (that saw thousands of Africans uprooted from their land and confined into ethnic native reserves); and the 1918 Residence Labourer's Ordinance that allowed the colonial regime to control movement of Africans and speed extraction of labour from Africans for the benefit of the White settlers. Regulating movement to and from native reserves facilitated the institution of anatomo-political practices or measures that sought to administer economic and social-political activities of different ethnic groups. Core here were measures which ensured continued flow of African labour to support the settlers and the colonial regime. Consequently, three closed spaces emerged. The first comprised multiple native spaces where Africans were administered as subjects under differentiated and ethnic specific customary law. The second category was that of spaces reserved for citizens administered under the 'modern laws open only to Caucasians' (Mamdani, 1996). The third space was located in the north of Kenya, inhabited mainly by the pastoralist communities: the Pokot, Turkana, Samburu, Rendille, Merille Borana and the Somali.

All ethnic groups were territorialized, closed in and forbidden from interacting with each other. This produced closed 'ethnic/racial spaces' (Ngunyi, 1996: 251-279). To cement the protection of the 'White Highlands', military units were set up in Gilgil, Lanet and Nanyuki. In Nairobi, there was the Lang'ata and Kahawa barracks. The units were made up of what the colonial administration called select loyal ethnic groups. It is this process of identifying loyal groups that undermined the rationality of state construction and, more specifically, its disciplinary and bio-power from the outset. It produced native spaces differentiated by customary laws. Customary-differentiated space in turn cemented and reproduced ethnicity. Opposition to this mode of rule produced different forms of resistance, of which Mau Mau was one example.

The post-colonial state inherited this security structure without any alterations. The first post-colonial government of President Jomo Kenyatta effected several

constitutional amendments to consolidate power. Effective consolidation of power allowed President Kenyatta to control national spaces through direct appointment of Provincial Commissioners and other senior public officials. Members of his ethnic community, the Gikuyu, invariably dominated the security sector apparatus. His imprint on the security infrastructure began as the provincial administration assumed control over the colonial chiefs tribal militia, renamed the Administration Police.

Kenyatta was also concerned about the ethnic composition of the military. The colonial preference of the Kamba and Kalenjin had seen the two communities emerge as the numerically major groups in the armed forces. However, in 1971, the army attempted a military *coup de tat*. This compelled Kenyatta to shift support away from the army to the nascent Kenya Air Force and the General Service Unit. He restricted growth of the army by ensuring it remained a small sized force while enlarging the Air Force and the GSU as the main bulwarks of his regime. Little attempt was made to re-configure the security architecture to enhance the sense of state. This confirmed the core task of the force to be inclined towards regime consolidation rather than deterrence for fending off external aggression.

The ethnic character of the security sector had an important impact on politics. Kenyatta's control of security instruments allowed his allies to operate without accountability. Corruption, popularly known as '*magendo*', flourished as those allied to Kenyatta and other influential individuals sought to accumulate their wealth through the state framework. Security contracts were a good opportunity in this respect. Kenyatta's approach to the security sector thus had the effect of deracializing the sector. It had a negative impact too. It resulted in centralization tendencies and deeper ethnicisation of the armed forces. He appeared supportive of 'open' national spaces but in practical terms facilitated the push of his ethnic clients into public sector positions and previously closed native spaces.

The land reform programme started by the colonial state on the eve of independence and pursued later by the Kenyatta administration provided another opportunity to advance the Gikuyu political and economic interests. Settlements schemes in the Rift Valley and Coast provinces saw the Gikuyu landless acquiring land away from Central Kenya. During the period, Central Province remained closed to other groups; there were no new frontiers to allow for occupation of other communities. The out-migration of the Gikuyu and allocation of land to the landless outside of Central Kenya had the consequence of straining relations between the Gikuyu and other communities in the areas they settled. They were seen as outsider community that was benefiting from the Gikuyu leadership. This in turn false consciousness among the Gikuyu; they needed Kenyatta's leadership. The cabal of leaders from Kenyatta's ethnic community preferred to hold onto power. Through their support, extra-legal militia known as the *Ngoroko* emerged, with the objective to eliminate those opposed to the scheme of keeping power within the reins of the Gikuyu and related groups. The *Ngoroko* unit was re-equipped, expanded and given paratrooper

training to protect the Gikuyu political leadership (Karimi and Ochieng', 1980: 123). In addition to the *Ngoroko*, there was a highly ethnicised police force.

The successor Moi regime assumed power with promises to restructure the police force. The *Ngoroko* outfit was reconstituted under the Anti-stock Theft Unit. The Moi regime initially sought redistribution (at least at rhetorical levels). It had no specific agenda for growth and, before long, began scuttling the state with short-term objectives. Perceived deviants (especially officers in the security structures from the Gikuyu community) were hounded out of office. Before long, his bio-political practises such as detention without trial and general abuse and violation of civil and political rights forced resistance, of which the attempted military *coup d'etat* in August 1982 remains a good example. The Moi regime maximized on it to reconfigure the military into a regime-friendly force. Gikuyu dominance in the Kenya Air Force was quickly supplanted by Kalenjin, who also increased their demographic presence in the military and the paramilitary General Service Unit (GSU). The government also began a process of military expansion. This saw the completion of two infantry brigades: the formation of 9th Kenya Rifles in Eldoret in the Rift Valley Province, and 15th Kenya Rifles at Mariakani in the Coast Province. The setting up of 81 Tank Battalion in Gilgil (also in the Rift Valley) to supplement the 78 Tank Battalion in Isiolo (towards the former Northern Frontier) and the 76 Reconnaissance added up to make a Brigade minus of amour. Parallel to this was the expansion of the GSU. This force transformed into a presidential guard, thanks to specialized commando training provided by Israel.

More parallel structures emerged in the provincial administration. These included the Special District Officer, reporting directly to the Office of the President. There was a remarked expansion and reorganization of the Administration Police (AP), which included the centralization of the unit and the recruitment of direct entry officers to the rank of Inspector. The force ceased being a locational chief's force recruited within given ethnic spaces. Instead, it was nationalized and given the stature of a national internal security police force. This of course facilitated regime consolidation, and gave the Kalenjin political elites under Moi an alternative space within which they could ensure a huge presence of members of their ethnic groups in the internal security structures. Accompanying the reorganization of the security sector was their ethnicization, corruption and increased levels of state violence against opponents.

The National Security Intelligence Service (NSIS) also transformed during the period. NSIS was formed to succeed a discredited Special Branch organ of the security sector, whose main concern centred on identifying critics of the government and others opposed to Moi. However, the police remained unreformed: poorly paid, violent and corrupt. Marked increase in corruption at state level rose in tandem with state violence. Neo-liberal economic austerity measures adopted under the Structural Adjustment Programme in the early 1990s provided both new sites of accumulation for state-friendly elites and means for increased violence against those opposed to

the elites in power. Illegal privatization of state instruments of violence and the rise of private groups to protect political interests of these individuals characterized the period. Violence was rapidly privatised.

Increased cases of corruption gave rise to private forms of violence. The political elites had to craft strategies to outcompete one another and of course defend themselves from possible uprising. Thus, the elite in power developed a dual strategy: the privatization of public violence and the appropriation of private violence and its deployment in both national and local indigenous ethnic spaces. The elite in power organized urban lumpen into groups to promote or protect their interests through violence at the national level. At the local level, they again organized groups of unemployed youth to guard ethnic spaces and to ensure only ethnic citizenship was recognized with non-indigenous citizens asked to 'lie low like envelopes'. The regime's anatomo-political practices picked up with calls for expulsions of *madoadoa* (spots) or non-ethnics from indigenous spaces. This resulted in violence, which accompanied the first multiparty general elections of 1992 and the second election held in 1997. More than 400,000 Kenyans were displaced and more than 1,100 killed in the Rift Valley, Coast and parts of Western and Nyanza Provinces. Three spaces emerged: native spaces (where the exercise of citizenship was ethnic); spaces of chieftancy (where youth violence was purchased by the looting political elite); and national spaces (where security forces were noted for their diminishing competence, probity and capacity to assure security).

Ethnicisation of the security sector, the rise of private forms of violence, and guarding of ethnic spaces from encroachment by 'others' characterized the Moi regime in a significant manner. But also important was the rise of corruption in the security sector. This on its own attenuated the sector and eroded the basis of competence and confidence of key institutions. In particular, the state elites turned to acquisition of military equipment as a source of political and individual funds. They quickly formed companies or entered into partnership with Asian business elites to provide overpriced and low quality equipment. Influential elites, through these arrangements, generated their wealth by providing sub-standard police vehicles and other equipment, which the police could not use efficiently. The wealth accumulated through these arrangements in turn supported their political violence activities mentioned above.

The 1990s saw the rise of different militia groups. These included the better-organized and armed cattle rustlers in rural north western Kenya, and Mungiki in Nairobi and Central Provinces. Others were the Chinkororo and Amachuma in Kisii parts of Nyanza Province, Baghdad Boys in Kisumu, Taliban in Nairobi's Kibera and Mathare neighbourhoods, and the Republican Force in Mombasa. There was also the Jeshi la Mzee, Jeshi la King'ola and Jeshi la Mama. These groups were largely sustained by youths shed off the education system due to neo-liberal policies, and thus resident in the slums of Kibera, Mathare, Kibarage and Soweto in Nairobi. Some

of these groups emerged to provide lacking security, consequently building some sense of legitimacy and compliance.

Gradually, it became apparent that power in Kenya could be acquired through accumulation of capital necessary for instrumentalizing violence and ethnicity. Capital was accessed to state as a lootable resource. Bandit economies comprising carjacking, land grabbing, government corruption and bank robberies was worth billions of dollars. Some estimates showed about Ksh 8 billion was lost through carjacking in the period between 1990 and 1995. Political elites also illegally acquired land worth Ksh 127.4 billion during the period. They targeted public land in upmarket areas of the city and sandy beaches on the coastline.[2] Rival elite were permitted to set up their own fields of accumulation. Some involved in cattle rustling. In the period between 1995 and 2002, cattle rustling saw loss of 300,000 cattle worth about Ksh 3 billion or about USD 50 million. More than 1200 people died and several thousands were displaced (Musambayi, 2005). The political elite understood capturing power or sustaining control over power to imply the necessity to acquire mastery over capital (critical for buying violence), and the instrumentalization of ethnicity. The transition from Moi to the Kibaki administration under the National Alliance Rainbow Coalition (NARC) had to contend with this challenge.

Despite their facilitation of a smooth transition from the KANU regime to the coalition of political parties that won the December 2002 elections under NARC and President Kibaki, the new regime initiated changes in the military with negative consequences on the state. The Army Commander, a Kalenjin, was retired; the Vice Chief of General Staff, also a Kalenjin, was transferred to the National Defence College but retired thereafter. Another Kalenjin in charge of the Air Force was relieved of his command. They were replaced by people from other ethnic communities-Kamba Maasai and Gikuyu

Significant also is the fact that the Gikuyu who were in the rank of army generals rose from three to five. In the highly instrumentalized ethnic environment in Kenya, focus was on the very fact of one ethnic group controlling the army, intelligence services, in addition to the Permanent Secretaries and ministers in charge of the ministries of Defence and Internal Security by 2007. Here, the issue of the competence of these officers was not put into consideration. Neither was the fact that over the course of the Moi reign, officers from the Kalenjin community had assumed a disproportionate presence in relation to their demography. Soon, it evolved a perception that the generals were either NARC or KANU.

The new regime had control of the Ministry of Finance and used this to gain influence in defence. This influence began through several security-related contracts worth Ksh 56 billion (Githongo, 2005). The contracts provided a bridge between the security establishments, state bureaucrats and the political elite seeking regime

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[2]   See East African Alternatives: "The Bandit Economy: Corruption and Crime as the Fourth Factors of Production in Kenya". Sept/Oct 1999, p21.

consolidation.[3] Several multi-million dollar contracts were entered into for this purpose. They all concerned security facilities, including printing of passports, procuring security communication equipment, and building forensic laboratories. The process of procuring all these contracts raised concern because of inflated costs and the poor information on how they were procured.[4]

The Kibaki regime equally pushed the privatization of public institutions of violence a notch higher when individuals close to the centre of power penetrated the police and the Criminal Investigations Department (CID) and subsequently facilitated an illegal integration of two Armenians (the Artur brothers) in the force. Soon, they were leading the Kwekwe crack unit of the CID and the GSU in covert operations against the *Standard* newspaper. This operation aroused tensions in the force between the CID Director and the Minister for Internal Security, on one side, and the Police Commissioner, on the other. Tensions were equally apparent between the regular police and a highly politicised administration police, which now comprised a specialized rapid infantry deployment unit. There were also other units that mushroomed within the police force outside the command and control of the police commissioner. Some of these engaged in extra-judicial execution of many youth. In effect, the bio-political practices of the Kibaki regime perfected use of state violence without negating the appropriation of private violence. The regime witnessed emergence of oligopolistic violence in which small armed groups controlled specific areas and for different purposes, including political and economic extortion.

The activities of militia groups received covert support from those seeking to 'buy their violence', and in particular the Gikuyu elite in Nairobi. Convergence of interest of these two actors underpinned re-negotiations of their engagements in a bid to safeguard their market and political projects. This polarized the political terrain. Western, Nyanza, Coast provinces and a large part of the Rift Valley supported the opposition Orange Democratic Movement (ODM) party of Raila Odinga while Central Province, Eastern Province and the predominantly Gikuyu parts of the Rift Valley leaned towards Kibaki's Party of National Unity (PNU). Nairobi was split mainly around the two.

This apparent divide seemed to swing the political advantage to challenger Raila Odinga's Orange Democratic Movement, pushed the ruling elite towards direct appropriation and privatization of private and public violence, respectively. Firstly, there were direct but covert efforts to engage certain factions of Mungiki in a bid to undercut Raila in Kibera. Secondly, the Administration Police was brought into the wider strategy of regime conservation.[5] Its agents were increasingly caught in illegal activities such as the distribution of propaganda tracts maligning Odinga in Eldama Ravine and in support of the PNU. A few days to the 2007 elections, senior

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[3]See *The Standard*: How Govt Officials Plotted to loot billions in Scandal. *Standard* 9/2/2006.

[4]See 'Secrets of Ksh 58 billion deals' *Daily Nation*, 20 April 2006.

[5]See Commission of Inquiry into the Post Election Violence, Nairobi: Republic of Kenya, 2008. This report is also referred to as the Waki Report and named so after Justice Philip Waki who chaired it.

Administration Police officers were reported to have met with a senior minister, effectively putting into motion the chain process of having the force assist the regime in its re-election bid. This was followed up by a decision to have an estimated 3,000 troops withdrawn from their line, reformed at the Administration Police Training College, before being sent to the western part of Kenya where it was feared the President would be rigged out.[6]

The state was entering the electoral chain with security units that seemed polarized and unable to dominate instruments of violence. While the larger part of the regular police force rank and file was deemed to be sympathetic to ODM, a large part of the Administration Police force and its leadership was said to have sympathies for PNU.

Security Sector Embers and Fires Gutting Down the Nation

On election day, there were accusations of malpractices and delays occasioned by organizational weaknesses, which were generally interpreted as additional tactics geared towards rigging. By 29 December 2007, matters began to get out of hand. Contestations were launched with respect to the returns from both sides. By 30 December 2007, the delays and the exaggeration of figures had reached a point at which only a miracle could save the state from the impending fires that were closing to engulf it. The 'president-elect' was announced to have won despite the flawed vote count and dispute over the result.

From the onset, the Police Commissioner promised to enforce law and order by any means necessary if there were violent protests against the results. Thus, following protests by the ODM, the immediate action was to bring out the full force of the police. They were supplemented by fresh recruits from all its units. In the reserve and on standby in Nairobi were units of the 4th Brigade of the Kenya Army.

Unable to resist police actions and to stem what its leadership perceived as a *coup d'etat* against a democratic process, ODM adopted a 4th generation warfare strategy that sought to target economic, political and social elements. It threatened economic boycotts before its members began to effect outright sabotage at national and local levels. The aim was to put pressure on the PNU leadership to reverse its actions. At the political level, ODM sought to demonstrate the extent of illegitimacy of the regime. To this effect, it sought to maximize on both diplomatic actions at the global and regional levels, while literally rendering strategic state institutions non-functional at internal level. The strategy manifested itself in actions that demonstrated the extent of diminished statehood in Kenya. This action aimed at wearing down, but also at minimizing the advantage the PNU had in its monopoly over the instruments of violence.

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[6] It is this group that was captured by TV cameras as it was transported by bus. A number would later lose their lives as they were attacked, burnt in some vehicles and some apparently thrown into the lake. The force was eventually withdrawn.

The key element sustaining the ODM insurgency was the extent of its ability to develop a strong superior political will capable of neutralizing the military and PNU's economic advantage. The first mistake the state and governing elites in PNU made was to assume that revolts, if any, would be localized in Nairobi within the Kibera slums and Kisumu in Luo Nyanza because, to them, Raila Odinga of ODM was from the Luo ethnic community and had a strong base in Kibera. To them, his ethnic community would revolt but give up after a short while. For this reason, the government tended to pay attention to possibility of security lapses at the national level. Local level gaps in areas with high concentration of ODM support remained uncovered.

Counting on bandit groups such as Siafu, Baghdad Boys, Taliban and militias in the Rift Valley Province ODM was able to innovatively use simple practical approaches to tire the security organs. ODM supporters cut off strategic communication networks. They began also to engage in civic action by mobilizing large numbers of people to join protest groups. The protests that the police perceived as an issue of law and order turned into a popular uprising.

The Cabinet Security Committee and the National Security Advisory Committee could not meet and provide clarity of mission. Their paralysis was rooted in the fact that in the case of the Cabinet Security Committee, the responsible ministers were in the throes of the electioneering process to the extent of not being able to appreciate the intensity of the security situation and delineate it from their subjective experience. The National Security Advisory Committee, on the other hand, hardly met. It was also paralyzed by lack of moral courage. On his part, the President did not seem to exercise moral authority and provide the necessary direction for activating the national military command, comprising of the Chief of General Staff and service commanders, who would subsequently appoint a joint taskforce commander. A taskforce commander is expected to respond to a crisis and, thus, issue military strategic guidance of Operations Other Than War (OOTW). Such process was going to be necessary for the military to support civilian authority. Such activation of the military arm of a grand strategy is core to objectivizing national security policy.

Undergirding this paralysis was the absence of not only a legal framework to anchor the operationalization of these structures, as well as the absence of moral courage among those tasked with the responsibility of securitizing the state.

Without a legal framework to direct interactions across different security institutions and the entire state security system, the ability of these organs to prevail on the Head of State to undertake certain decisions in the interest of the state was wanting. The Commissioner of Police seemed to be undermined by slow decision making processes, given the apparent paralysis at the grand strategic level.[7]

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[7]See Waki Report. See also Kenya National Commission on Human Rights (KNCHR) reports on security organizations' violence.

The Commissioner of Police was also undermined from the outset by the crisis in the Unity of Command. Despite being the operational commander of both the Regular Police and General Service Unit, he was not in control of the AdministrationPolice. The Commissioner did not have control over special units such as Rapid Deployment Unit (RDU), Government Buildings Protection Unit based at Mbagathi, and CID's Kwekwe Squad. Consequently, not only was the force's operational capacity undermined by this apparent politicization, but it was also hamstrung by the animated feeling of hostility towards it in pro-ODM spaces. Internal security forces had their fighting ethos seriously undermined, creating tensions while undermining cohesion. The *esprit de corps* was missing.

The police lacked accurate and timely intelligence assessments and dissemination. This is despite the fact that intelligence is core to tactical and strategic activities. Without intelligence and its use, the police were basically walking blind and could not guard against surprise, nor could they seize initiative such as to neutralize the nerve centre of ODM and other non-state actors. There was a clear lack of objectivity and systematic exploitation of whatever little intelligence that was available. At the political level, there was also an apparent lack of access and responsiveness to intelligence provided by the National Security Intelligence Service. In the end, intelligence failed to support commanders in determining objectives, directing intelligence operations, informing the mission support and evaluating the effects of operations. It failed to provide information on specific ODM dispositions and characteristics, just as it failed to determine the objectives, strengths, weaknesses, values and critical vulnerabilities.

The police were out-manoeuvred and found themselves locked in spaces where they could only achieve one single objective, that of protecting key centres in the urban areas, or once in a while supplementary objectives such as blocking ODM from demonstrating in such places. In reality, they were unable to dominate national spaces and restore order, and protect the lives and property of ordinary Kenyans. They seemed to have abandoned their internal mission of assuring security of persons, property and statehood. This left different parts of society to cannibalize themselves. Despite the police firepower potential--the collective and coordinated use of target acquisition of data from all sources using direct and indirect firepower weapons--the force was unable to maximize on this advantage. The tactics applied by ODM implied that the more the police killed, the more they lost support, in effect mobilizing for ODM. This factor also undermined the state's centre of gravity while inflaming further violence and consequent dislocation of people left to their devices by the police. While there appeared to have been an apparent shoot-to-kill order, its application was not uniform. It was not only differentiated but also ethnicized, resulting in reported cases of blue on blue shooting, slang in Kenya for friendly fire.

With local administration paralyzed and without adequate intelligence, police had to grapple with basic issues of force protection as senior leaders began receiving

threats. Glaring gaps existed too at the level of command. For instance, local direction and control of movements and manoeuvres necessary to accomplish the mission assigned by high authorities was lacking at the local levels. The police also did not seem work as one whole; different officers interpreted issues in ethnic terms and acted as much. This led to differentiated excessive use of force in some areas, reluctance to intervene in others, and deviation from objectives. In other instances, this led to some officers engaging in rape and looting. The misinterpretation of the intent of ODM resulted into poor application of police to provide security to citizens. For instance, while there were almost two brigades size of security units deployed in Nairobi's Central Business District (CBD)[8] to prevent access to Uhuru Park, there were few units deployed in high density spaces such as Kibera despite the existence of a strategic railway line linking Kenya to the rest of the eastern Africa region.

The military, despite being aware of the state of the republic, failed at the level of moral courage. It came in too late to support the civilian authorities. This is despite the fact that its role as stipulated under Section 3(2) of the Armed Forces Act specifies the military's support to civilian authorities in the maintenance of order, and other duties that may be assigned from time to time. The military can be called upon to assist in the protection of the civilian population, the promotion of national unity and cohesion, attending to natural disasters and emergencies by also providing security and humanitarian assistance. These activities fall under military aid to civilian authorities under Internal Security Operations, Counter Terrorism, Disaster Response Control and Management. The military is expected to enjoin itself in such situations and swiftly bring normalcy to allow the police to sustain law and order.

The responsibility of state security falls in the hands of the President, who delegates this to the military chiefs and officers. This apparent failure can be traced to the crisis of doctrine informing the assurance of internal security through joint operations across different agencies to ensure complementation of action and protection. This doctrine is based on national interest. Without the postulation of this in the grand strategy, the military's support to internal security is limited and wrought with dangers.

The apparent tendencies of non-state actor groups working in tandem with or with facilitation of security forces soon produced a dynamic of centralizing private violence, a factor that engendered clear elements of a civil war. Inertia and paralysis in the force was interpreted not as actions of the state but those of factions, and by inference ethnic groups represented in the military. The inability of the military to prevent the disruption of core lines of internal communication, despite this being part of their mandate, merely intensified the crisis. For instance, it is interesting that ferry services, which are within the neighbourhood of the main naval base, could be cut off without the military taking action. It is also interesting that fighting and indeed total disruption of services took place near strategic assets such as the refinery

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[8]About 2,300 of these were mainly APs undergoing their training at APTC Embakassi-Nairobi.

without the military intervening.[9] In other words, the military watched as various fires gutted the nation. The failure to develop a National Security Policy that would inform defence policy contributed to this inertia. In addition, there were no adequate numbers on the ground. The police ratio to the population was inadequate to deter the spread of violence. Without adequate numbers, security forces lost deterrence power and credibility, hence the resort to massive force. Regime consolidation based on peacetime deployment had come to hound the state.

Regional Fires to Dismember the Nation

Nairobi: The Battle for the Soul of the State

Common in all civil conflicts, capital cities become the main centres of contestation. Two factors explain this contestation over a country's capital: its symbolic value to any faction demonstrating or resisting control over it, and its economic importance and significance. Therefore, during the first few days of the conflict, there was an attempt by ODM to exert its control over the capital. The geography of the city was important in this respect. The most important routes are Thika, Ngong', Outering and Jogoo roads as well as Waiyaki Way. Of value to bandit groups is the role these routes play in resource extraction. Control of these not only provides a source of living but also, in effect, political influence. Underlying this are demographic and sociological (ethnic) factors inherent in urban lumpen spaces adjacent to these arteries and controlled by these bandit groups.[10]

Several militia groups operated in different parts of the city. Different groups operated in their distinct territories, which are carved along ethnic lines. Mungiki operated in Kariobangi, Korogocho, Dandora and Kasarani areas of Nairobi. The Taliban, on the other hand, had their base in Kariobangi North and Kibera. Kibera was also home to other groups such as Siafu, Bukhungu and Jeshi la Darajani. State absence saw these groups offer 'comfort' and security and in return, they extracted capital through their ability to enforce levies, including on permission to construct toilet facilities and kiosks. In some urban spaces, these groups were core to the distribution, management and supply of electricity and water, pointing to their ability to transform and add value to their different capitals, while seeking to reduce the effectiveness of similar capitals controlled by their opponents.

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[9] This paralysis explains the weak response by the Navy to the Mtongwe Ferry accident, as well as failure to come to the assistance of the overwhelmed police during the night assaults mounted against the public and police assets in 1997. The same can be said of the absence of the Army in countering armed groups from Ethiopia and Sudan due to the assumed defence posture and hence deployments in peacetime.

[10] Such as Kibera with an estimated population of one million, Mathare with an estimated population of about half a million and other parts such as Kangemi, Westlands, Kawangware and Riruta Satellite. Equally influencing the nature of these spaces is their ethnicisation. While Kawangware and Riruta Satellite are populated mainly by the Gikuyu and the Luhya, Kibera has a large Luo population, followed by Gikuyu, Luhya, Kamba and Nubi.

The spaces occupied by these groups are not essentially disorganized as perceived by the world external to them, but rather internally organized by clear rules of engagement and sustained by an alliance of official politics and organized crime. Organized crime needed some apparent political protection and state security connivance, and by inference the support of business interests, hence willingness to support certain political candidates. The said candidates in turn needed these groups as a means of violence. It is this symbiotic relationship that sustained the violence, which in turn became increasingly privatized.

The politicians opted to transform criminal aggression into what is best described as politically motivated violence. What emerged was co-existence of criminal and political violence, a bifurcated world through which the process of consolidation and conservation of ruling elite emerged. The nexus between violence and politics, and the subsequent interactions with entrepreneurial spirit provided institutional actors with militant activists, gangsters and street fighters core to the survival of political ambitions.

The spaces allowed the maturing of ideologies that become critical to sustaining the psychological moments needed by crowds. The effects of the neo-liberal economy, especially market exclusion in the case of Kenya, allowed people to live on the edge of tensions and in a constant state of agitation. Political parties in turn provided the valves for canalling apparent ethnic mobilizations. The dominant ideology sought to push for fragmentation and instrumentalization through the creation of the 'we' group as a means of fending off the 'other' enemies. Political violence in this sense became a form of ideology within which group aspirations were met. Its operationalization allowed active identification, besides acting as a propaganda tool.

While the trigger of violence in Nairobi was inherent in the perceptions about the manner in which results were released, the economic sociology of the capital city, especially in the slum areas, explains the pattern the violence took. There were violent conflicts between landlords and tenants that the electoral process exacerbated. In Kibera, for instance, the Gikuyu and Nubians owned houses while the Luo were tenants. Although the Nubians are the first settlers and occupants of the area, successive governments have failed to give them title to the land. Property rights of the slum dwellers and the feeling of domination of the economic space by the Gikuyu thus aggravated the conflict.

A propaganda war on property rights aggravated the conflict too. PNU often pointed out that an ODM government would not recognize the property rights of the landlords in Kibera and other areas where tenants come from ethnic groups supporting ODM. Central here also was the argument that the tenants would live in their houses without paying rent to the landlords. In effect then, the fight over the elections became in itself a fight for survival by different groups. The reactions towards the election results would not be confined to the felt sense of loss in political terms, but also in the socio-economic realm. The first reaction, therefore, was

characterized by the push towards Uhuru Park and the city centre in a bid to reverse the results. Once state security structures met this with heavy resistance, those in these informal spaces retreated and adapted sub-optimal games geared towards securing economic spoils. In this sense, urban groups went for each other, seeking to gain territory in a bid to establish a new order. For instance, in Mathare, certain groups initiated what they called the resistance against landlords' (Gikuyu) economic oppression. The landlords in turn evolved several groups to counter the tenants' resistance. The results were interesting to observe. In places such as Mathare North, the violence resulted in reconstruction of ethnic spaces. Areas such Mlango Kubwa were effectively controlled by Gikuyu urban groups while the Luo established and consolidated their presence around Mathare No. 10. The Huruma area fell under the direct control of the Kamba. The Somali effectively controlled Eastleigh area. [11] The Luo also gained control of Kibera together with the strategic railway line that links Kenya to Uganda.

Although the principal economic activities were paralyzed, an ethnic pattern of distribution of economic services emerged. Militia in each area would allow corporations to operate in their area depending on their perception of the political alignment of the corporation. In Kibera, the ODM militia would allow corporations such as the Kenya Bus Service the right of entry at a fee but disallowed a rival transport company, Citi Hoppa, from operation because they perceived it as being allied to PNU. It is this differentiated access to these lucrative spaces that not only increased the value and need for control but equally cemented the alliances between organized violence and the political economy. Emergent counter violence equally sought to target the properties of opponents. Economic and social spaces perceived as belonging to the Gikuyu were quickly overrun and burnt down. These included market spaces such as Toi next to Kibera, and churches. Church structures became victims of well-choreographed strategic diversions aiming at facilitating access to food. In totality, this was perceived as a form of resistance against ethnic domination. The culmination of this would flow into the bandit logic where the *matatu* (minibus) businesses that had been the preserve of the Gikuyu would be deconstructed.

Outside Nairobi, the same pattern of a linkage between violence, politics and the economy emerged. Significant in other places, too, was that low levels of internal cohesion and apparent hostilities between members of different ethnic groups undermined the effectiveness of security forces, particularly because they were structured around ethnic lines. Their ability to dominate instruments of violence waned and they lost their strategic relevance to non-state actors. The state ceased to be a sovereign authority that is the accepted source of identity in the arena of politics. Worse still, state capacity as a guarantor of security over a populated territory significantly reduced. However, each region had its own pattern of violence. These issues are discussed below.

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[11]Interview with some of the security officers engaged in operations here and some of the residents, Nairobi, February 2008 and January 2009.

Western: Perceived Exclusion from the Centre and the Reverse Closing of Spaces

In Western Province, violence began prior to the elections. Militia groups had already firmed up their control of some areas in the region even before the election. In particular, for about two years, violent activities of the Sabaot Land Defence Force (SLDF) led to the death of hundreds and displacement of thousands in the Mt Elgon District of Western Province. Central to the grievances of the militia was an unresolved land question and agrarian injustices of various forms, but in which the question of rights of natives and settlers was central. There was also widespread violence initiated mainly by state-friendly political actors.

At the local level, the feeling of occupation and domination by what the locals referred to as 'settlers' who controlled the local economy in core activities such as transport and commercial activities was prevalent. These fields anchored the huge population of highly dislocated youth, given the absence of industries. The province had undergone an increased level of lumpenization, especially in its market centres dominated by bicycle taxi, *boda boda* and *matatu* transport activities. While the former is cheaper and were dominated by the local Luhya, the *matatu* industry, which is highly lucrative, was Gikuyu-dominated.[12] The *matatu* industry provided constant contact between the Gikuyu transporters and ordinary Luhyas on a day-to-day basis, thus fuelling perceptions of oppression, mistreatment and abuse. Narratives of how Gikuyu touts mocked the Luhya, preferring to carry their vegetables rather than the people became increasingly folkloric.

Narratives such as 'you cannot do without us', whether real or not, fed into the misgivings the community had over the Kibaki administration. It was not, therefore, hard for constructions such as the tendency of the Gikuyu to exclude others from their spaces in Central Province while seeking to spread in other areas to emerge. The perception that Kibaki was favouring his people at the macro level converged with local perceptions of oppression feeding narratives about the need for 'change'. Raila Odinga became the embodiment of this. The popular narrative revolved around the notion of closed spaces: here, the Gikuyu were constructed as maximizing on open spaces in Western Province to lock out the locals. Further, this perception had been reinforced by staffing of local public posts with the Gikuyu. The government had created new districts and staffed them with members of the Gikuyu ethnic community. To the locals, the Gikuyus had cheated them and, therefore, they were of the impression the Gikuyu 'as was their tradition would not concede defeat; they would not allow anyone else other than their own to rule'. In that sense, they had to be 'uprooted'.[13]

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[12]   Discussion with some of the inhabitants in the province.

[13]   Sentiments expressed in interviews carried out with a select group of inhabitants from the province. This was a feeling expressed especially by the low-income earners and indirectly by several elite.

Nyanza Province: Losing the Centre and the Drift to the Minimum Game

Nyanza spaces, especially Kisumu city, constituted some of the most violent places consequent to the election result's declaration. Three factors explain this: first was the construction of Raila as that potency of the Luo against the regime oppression of the Luo. Second was the presence of well-organized urban bandit groups such as Baghdad Boys, who had been in existence since the early 1990s. Third were the forms of perceived marginalization within the local political economy.

Violence broke out in all urban spaces such as Rachuonyo, Migori, Siaya and Nyando. By 30 December 2007, the entire part of Nyanza occupied by the Luo was engulfed, forcing closure of all government offices. All road and telephone communication infrastructure was cut off, successfully uprooting government from the society.[14]   The PC would later note that there was no indication of a violence of the magnitude that was later registered on 29 December 2007. The assumption that violence would be concentrated in urban areas saw security forces withdrawn and posted to the major urban centres.

From 29 December 2007, government structures were targeted as the public began to counter police violence. The next cycle of violence followed the killing of two ODM Members of Parliament. Police changed their strategy, opting to block people from the slums from entering town centres. The people responded by mobilizing and digging trenches and barricades using overturned government vehicles to achieve their strategic objective of 'cutting out the government'. They effectively blocked roads and the railway line. On 30 December 2007, 1,000 rioters headed for the Lake Basin Development Authority offices where they looted rice, beans and maize. At least three people were shot dead. Crowds also uprooted the railway line and effectively succeeded in blocking transportation of goods to and from Uganda. This was as a result of rumours that seemed to suggest the intervention of Uganda Defence Forces on the side of government. It would later turn out that these were GSU: the government was reinforcing the local police.[15]

Violence was eventually directed at non-indigenous people—mainly Gikuyu, Kamba, Meru and Kisii pointing to the shift from national space struggles to the closing up of ethnic spaces. Residential, commercial and business centres were all gutted. Crowds would disperse in the evening and regroup the following day. They responded to the cordoning of town centres by blocking the main highways, tactfully selecting choke points. It should be noted that most local economic activities in Kisumu were controlled by non-indigenous groups, from fish to transport and other commercial activities in town and market spaces. The argument here was that since the PNU-allied communities had prevented Raila from assuming the presidency, then members of these groups had to leave.

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[14] See Waki Report, p178.

[15] From field notes gathered by the Amani team to Kisumu, January 2008.

The security strategy aimed at locking people in slums and the police established lock-up points to prevent entry into town. These lockups produced a counter response as desperation began to set in. Rioters armed with rungus and machetes made a desperate push into the Lake Basin Development Authority offices at Migosi near Kondele where they stole rice, maize and beans. Another 3,000 succeeded in burning down a Kenol petrol station. Opening roads implied application of more force. As the Provincial Police Officer notes: 'the Government of Kenya was under pressure to ensure that fuel meant for Uganda reaches [its] destination safely. It was very difficult for us'.[16] According to government statistics, 102 people were reported killed, 685 injured, 40,000 non-Luos displaced, nine government offices burnt, 73 business premises destroyed, 415 residential houses looted and burnt, and 50 government vehicles and 16 public vehicles destroyed. About 90 per cent of the injuries were a result of gunshots.

Rift Valley: The Undeclared 'New Borders'

Rift Valley experienced three forms of violence: that of ODM aligned groups against PNU supporters; police violence against civilians; and vigilante violence directed mainly at ODM supporters. Eldoret town in the North Rift[17] was the epicentre of the first two forms of violence. The violence was anchored in the felt sense of marginalization of Kalenjin as an ethnic group. Narratives here pointed to an apparent 'connivance' between the Moi and Kenyatta administration that saw a huge settlement of the Gikuyu emerge. Since the advent of multipartyism, there had always been animosity directed at those regarded as outsiders: 'ambitions by Kalenjins of recovering what they think they lost when Europeans acquired their ancestral land...fostered the desire to remove foreigners derogatorily referred to as *madoadoa* (stains) from their midst. The reference was mainly towards the Gikuyu, Kisii and other communities who had found permanent residence in the Rift Valley'.[18]

This contention over the notion of citizenship was compounded by economic advancement of 'outsiders' and the unemployment and landlessness of the Kalenjin. Remarkably, these settlements bear the names of the 'settler' community's ancestral roots. Control of economic fields of interaction such as the transport industry provided a convergence for tensions that were referred to as ethnic arrogance.[19] These feelings were apparently known to the state security agencies such as NSIS: 'During the 2005 referendum, the Kalenjin viewed the Gikuyu as arrogant and also [felt] that the Gikuyu looked down upon them, notwithstanding the fact that the

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[16] References to the Amani Fact-Finding Mission. See also Waki Report, p183.

[17] Uasin Gishu, Trans Nzoia West and East, Nandi North and South, Marakwet, Keiyo, Baringo North and South.

[18] Cited in the Waki Report, p39; Reference notes of the Amani Fact-Finding Mission.

[19] Notes of Amani Fact-Finding Mission.

Kalenjin were 'host' to a large number of the Gikuyu people'.[20] There was equally a strong feeling of being targeted by the Kibaki regime when many Kalenjins were retired from the military and other public service positions.[21]

By 2007, Kalenjin resistance and collective expression against the government was firmly rooted on the ground. This was so firmed up that when PNU youth attacked William Ruto (the emerging political leader of the Kalenjin) in Kisii forcing him to flee and lose a shoe, there was an immediate response against the Kisii in the Rift Valley. Unfortunately, for the state, the vigilantes involved in the attack were released without charges. The state's behaviour is better captured by a senior police officer in Nyanza who pointed out that: 'You find that I get calls from Nairobi. My boss says, 'Did you arrest those people?' I say yes, for this and that. Then he says, 'Well, warn them and let them go home'. I comply.'[22]

The reaction of the police created a feeling that state security apparatus were taking sides. There were calls for the expulsion of the Kisii from Kalenjin territory. Immediately, the violence began with vigilantes attacking the Kisiis asking them '*Wapi viatu ya Ruto*?' (Where are Ruto's shoes?).

Right from the outset, the security apparatus seemed to suffer from an apparent partiality that worked against their ethos and internal cohesion. The situation worsened when agents of the Administration Police were arrested by members of the public distributing propaganda leaflets on behalf of PNU, aimed at inciting public animosity towards the ODM and Odinga in particular. The decision by the state not to act created a strong impression in the minds of ODM followers that the state was bent on using its security structures to rig elections. This engendered vigilante logic seeking to prevent what was perceived as an apparent scheme to rig elections.

In this setting, the manner in which the election results were being declared merely acted as a trigger for the violence that would engulf the North Rift Valley. The main objective here seemed to roll back the perceived election theft, and at the same time reverse what was perceived as historical injustices. Communities perceived to be the enemy were attacked indiscriminately.

In the Central Rift Valley,[23] the nature of violence was mediated by agrarian-related contestations and the failure of social integration. In regions such as Kuresoi, open fighting between the Kalenjin and the Gikuyu community had been intermittent. The general feeling by the Kalenjin was that the Gikuyu settled in this area preferred to vote together with their brethren in Central Province, in effect engendering the logic of capturing state power thus facilitating horizontal push in their non-native spaces. This is captured by Gordon Ogola when he notes: 'Violence was not over land

[20] See Waki Report, p41.

[21] See Waki Report, p41.

[22] Waki Report, p134.

[23] Comprises the districts of Narok, Molo, Koibatek, Nakuru, Rongai, and Naivasha.

as such, but due to a feeling among the Kalenjin that during the elections the Gikuyu and other communities opted not to vote according to the wishes of the Kalenjin and instead followed the voting pattern of their kinsmen elsewhere. This general feeling led to animosity between communities'.[24]

Central Province: Bitter Grapes for Peasant Returnees and 'Retrenched Proletarians'

To understand the modes of violence in Central Province,[25] one needs to put into context the sociology of its economy and spaces. Limited value addition to cash crops and the collapse of the industrial sector in the late 1980s and 1990s is compounded by the existential crisis in the province, a factor that saw it evolve as favourable ground or rare-base for Mungiki.

The huge Diaspora from the province has continued to provide a card for instrumentalizing politics. Political actors in and out of power have sought to mobilize support and enhance their consolidation of power by playing the Gikuyu 'card'. This factor became more animated in the 1990s with the threats of eviction being initiated in a bid to force compliance from the Gikuyu or their support, depending on the power wielders. In effect then, an examination of the political and economic spaces seem to point to a phenomenon of closing spaces given demographic and the limited resource value addition factors. This closed space phenomenon was manifest in the increased push towards the capital and other parts of the republic perceived as 'open frontiers'. This thinking was animated at the political level by the ruling elite, who have sought to conserve their hold on power by instrumentalizing ethnicity. Core in this was the construction of the 'enemy without'. In the Kibaki regime, Raila Odinga became the embodiment of that threat. This began to get out of hand during the referendum when many political actors from Central Province began to attack Odinga, calling him 'Satan' and a threat to the Gikuyu presidency. Calls on the Gikuyu to protect the presidency while apparently succeeding in unifying the Gikuyu, Embu and Meru communities, by inference, produced an opposite and equal response in non-Gikuyu spaces, who by late 2007 had coalesced around Odinga as the only counterpoise to this apparent Gikuyu jingoism.

The social environment within Central Province itself remained militarized and fragile consequent to Mungiki market activities and their intermittent encounters with state security forces. As the elections approached, the critical question was that of grasping whose side Mungiki would throw its weight. At one point, it appeared as

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[24] See Waki Report.

[25] Covering a space of 13,220 sqkm, it has an average population of over 4 million people. The spatial spread of the population is 320 persons per sqkm. The modes of expansion in Nairobi have created the phenomenon in which Central Province is a *de facto* part of Nairobi. An average 2 million descend into and out of Nairobi on a daily basis from Central Province. It is this process that has turned the communication arteries into the province into essentially Nairobi city's internal lines of communication.

if it would act as PNU's vanguard when one of its leaders, Ndura Waruinge, declared interest in running against Raila Odinga in Lang'ata Constituency. This attempt would be denounced by the mainstream Mungiki. After its encounters with the state security forces, Mungiki's activities in Central Province seemed to take a low profile. Apart from charged campaign messages, the situation began to assume volatility as narratives began to circulate to the effect that an ODM victory would see the Gikuyu landlords lose either their properties or be forced to lower rents. Cases of people perceived to be ODM supporters being forced out of houses by Gikuyu landlords began to surface. Violence in the province broke out openly on 3 January 2009 as the Nakuru-Nairobi highway was blocked at Limuru. Attacks on non-Gikuyu homes were reported in places as far off as Nyandarua, where 12 houses owned by Kalenjins were torched on 4 January 2008. It is interesting that despite intelligence pointers to the possibility of counter reactions to the events west of the republic, the internal security apparatus did not see it fit to call in the military. Instead, the elite were given time to begin organizing counter attacks against the proletariats from the west.

It should be noted that Central Province is host to huge plantations, government institutions and a few surviving industries. These have had a net effect of attracting a huge migrant labour force in places such as the Steel Rolling Mills, Bata Shoe Company, Kenya Agricultural Research Institute and Kenya Forestry Research Institute. Thus, once thousands of displaced Gikuyu 'settlers' fleeing attack began returning to their 'ancestral' homes, there was immediate counter reaction targeting these migrant workers. Underlying these attacks were attempts to correspondingly seal off the Gikuyu spaces and appropriate the factory fields. Youth set fire to business premises owned by Nelson Oluoch Owegi (ODM coordinator in Limuru) and other suspected ODM supporters. Attacks were also directed at the Tigoni Police Station where a police officer, Police Constable Joseph Kiplang'at, was shot and wounded. The apparent reason here was the deep-seated feeling that police from ODM areas were targeting and killing local youth. Calls for their removal were issued at a rally attended by several MPs and politicians.[26]

These actions in Central Province effectively brought the nation to a near paralysis. They stretched the police capacity with all its internal security components paralyzed, but with an increasing dilemma whose control they could not exercise. For starters, it forced the entry of the military into the mix as the vigilante actions threatened to overrun displaced persons in Naivasha. These actions in Naivasha threatened the lives of 'settlers' from Central Province taking refuge in pro-ODM spaces. Violence in Central Province was animated by mass media, especially radio and television. The instantaneous transmission of graphic images captured and transfixed, before subsequently constructing a sense of collective suffering. Messages expurgated Odinga, who was denigrated as a devil worshipper, a communist, a Gikuyu hater who practised witchcraft and a serial coup plotter willing to take power by any means

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[26] See Waki Report, p214.

necessary. These were transmitted into the entire Gikuyu and GEMA spaces with the aim of fragmenting, before subsequently unifying, the polity as an endangered species. The core message here was that they were hated because of their success, brought about by their hard work. It was time for them to arm themselves and resist in a bid to protect the Kibaki presidency. In effect, they put Kenya on the rails of a potential genocide, threatening along with this whatever little cohesion there remained in the internal security force structure.

Coast: Seeking Total Liberation of Ethnic Spaces

The predominantly Islamic population in this region increasingly identified itself with ODM, enticed by Raila's pledge to address Muslim concerns, especially the rendition of terrorism suspects and economic marginalization issues. This pledge was expressed through ODM's argument for a *majimbo* system. To the extent that a large number of the people in Coast Province perceived their problems to be rooted in the Kenyatta policies, which they understood to be pro-Gikuyu, they saw their spaces as being occupied. They pointed to the 'Gikuyunisation' of the provincial and security infrastructure in some districts in Coast and the manner in which more and more land allocation seemed to favour non-indigenous community groups. Despite having experienced politically instigated violence in the 1990s, the state had done little to address these concerns. It is not a wonder then that new groups such as Revolutionary Republican Council (RRC) emerged. The RRC was apparently training militia in Mulungunipa Forest in Kwale District with the help of ex-servicemen in preparation for an armed resistance against the Kenyan state.[27] The main threats here pointed to attempts at drawing in the Digo, Duruma and Taita. This fact was pointed out to the Waki Commission by the Coast Provincial Police Officer (PPO) when he observed:

> *Claims that they would like to have the Coast Province declared as [a] republic independent from the rest of Kenya. We did consider them to be a threat to our security operations and we had taken measures to make sure that they did not disrupt the election or wage violence against other people after the election.*[28]

Prior to the 2007 elections, tensions and small scale violence had been reported in Coast. Tension began to mount as results were delayed. The declaration of Kibaki as winner was greeted with violence and demonstrations targeting government and Gikuyu referential. The latter were referred to as thieves. As crowds sung praises of Odinga, areas housing Gikuyu, GEMA and Kamba businesses were targeted and burnt down. The more the police reacted violently, the more the crowds became

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[27] Interviews with senior security officers and some academics in the Coastal region, August 2007.

[28] Waki Report, p222.

animated in demanding the exit of the Gikuyu from Coast. In effect, the violence sought to enforce their brand of majimbo, given the apparent feeling that their expression of this aspiration had been abused through rigging. Like in the Rift Valley, any means were going to be used to effect the expulsion of those they deemed as thieves, arrogant and disrespectful. This push for closing out the Coast reached its peak on 30 December 2007 as youthful mobs engaged the police and the GSU with rudimentary weapons.

Other choke points included strategically located Changamwe, with its high value strategic assets such as the oil refinery. The Nairobi-Mombasa highway was cut off at Mikindani, paralyzing access to the interior of Kenya and the heartland of the Great Lakes. This situation was not helped by the fact that this road is the only outlet from Coast into the interior. These tactical actions had a net effect of facilitating achievement of a wide range of strategic pressures on the faction in power. The police were effectively cut out, stretched and to the point of being overwhelmed. Without options of support through fresh deployment and the military out of the equation, threats of exterminations were becoming real with the cutting off of strategic arteries and paralysing the operations of the port city of Mombasa.

Towards a Ceasefire: The National Accord

Large swathes of Kenyan territory had been effectively cut off from central control by demonstrating youth, armed militias, and the security forces'. ODM youth had opted for tactical actions that cut off key local points with strategic implication at national, regional and global levels. It is this impact that was translated into external pressure on the regime to negotiate with ODM. The state security focused on strategic actions whose operationalization through tactics such as attempts to lock up mobs in residential areas left citizens to their own vagaries. Using soft power, ODM had undermined the 'government's' legitimacy. It consistently called on its supporters in Nairobi to march to Uhuru Park, knowing clearly well that they would not be allowed in. As deception, however, this roused imaginations that transformed this space into a high value target whose 'capture had to be resisted by any means necessary'. The main fear of those in power was that any breach in the elite GSU wall in Uhuru Park would result into a Raila invasion and his subsequent installation as President. In effect, this apparent threat evolved into a clear military feign maximized upon by ODM to keep vital government forces concentrated and locked up around one objective while ceding large swathes of national spaces to Odinga supporters and by inference losing legitimacy.

Each action executed by either bloc elicited opposite and equal reaction from the other. Worse still was the apparent paralysis within security organs caused by polarization, negative politicization and systematized ethnic deployment. These generated direct threat towards IDPs, producing an ethnic security dilemma.

The escalation model below illustrates actor actions and counter actions. State **paralysis was marked by the leadership's inclination towards easy options such as transferring/returning populations back to the so-called ancestral areas. Equally, there were intelligence reports pointing to organized arming of non-state actors by certain 'invisible' actors within the regime. Pointers emerged to increased acquisition of arms in Rift Valley regions, with reports indicating that the cost of an AK47 rifle had risen to Ksh 60,000 from the previous one head of cattle (about Ksh 15,000). Other sources pointed to increased activity in arms purchase by some Kenyan elements in areas of Karamoja region in Uganda.**

Escalation options remained constant with scenario constructions that pointed to a possibility of secession. These revolved around fears that Raila would fly to Eldoret city, mobilize his support base among members of the public and military units in Moi Garrison and subsequently declare himself President. What was apparent was that except for North Eastern Province, which retained in place its scattered military units (with the APs and GSU having been withdrawn to beef up security elsewhere), each space in Kenya had become a *de facto* indigenized ethnic space occupied by resisting 'ethnic armies' seeking to fend off 'occupying forces from the centre'. Paralysis at

Figure 14.1: Escalation/de-escalation model
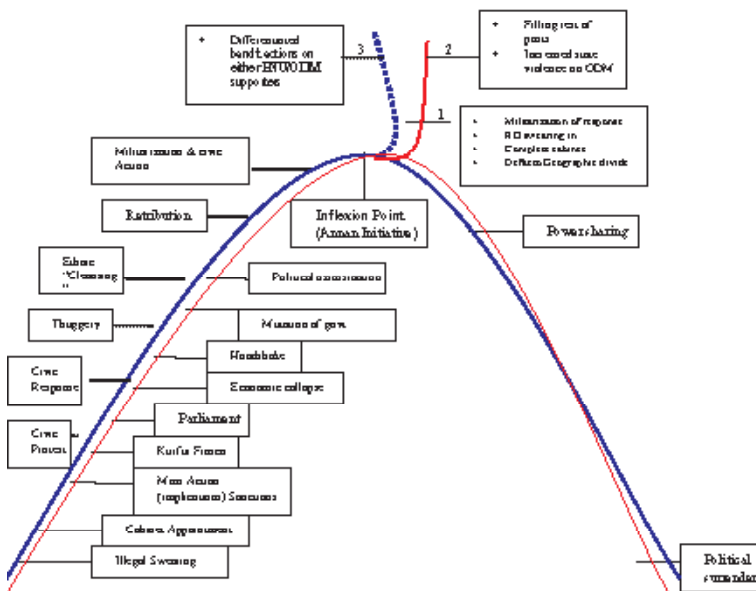
Source: See Ngunyi, M. and Katumanga, M: Amani Fact-Finding Mission)

the vertical level due to contestations in national spaces implied that Kenya's level of stateness was fast diminishing.

The state was effectively paralyzed, unable to engender security, demonstrate sovereignty, and the functionality of its institutions. Security dilemmas equally produced the scenarios of political surrender by the President or a power-sharing arrangement. It is these emerging threats of genocide at one level and economic collapse in Uganda, Rwanda, Eastern Democratic Republic of Congo and Southern Sudan that increasingly animated both the regional and international actors into action geared towards pressurising the main actors into a settlement.

In this unfolding scenario, former United Nations Secretary General, **Kofi** Annan, entered the scene through the African Union initiative. Facilitating him were underlying imagined costs interested parties were likely to incur in the event of an overt state collapse. Several arenas/theatres of engagement on the Kenyan crisis emerged. There was the Annan Initiative where ODM and the PNU government engaged in formal negotiations/dialogues. Directly above it and seeking to animate its success were international actors such as the US, UK and the continental body, African Union (AU). AU efforts were complemented by regional initiatives, which continued to threaten consequences to those willing to torpedo the Annan process. These included Uganda and the Museveni/EAC Initiative, Rwanda, Tanzania, EAC and IGAD. Driving external actors and indeed the actions they were likely to take were their geo-political and economic interests. These interests brought about the realization to the local elite that they were merely custodians of the geographical expression known as Kenya. The other shareholders—core here were the US, UK and other EU states—were willing to act against them. Various indirect and differentiated actions were spelt out, and included visa withdrawals and travel bans on some individuals and their families. There were also implicit threats of hard power.

The day Annan called off negotiations because of lack of movement saw the arrival in Nairobi of Tanzania's President Jakaya Kikwete. The following day, all the principals were sequestered in Harambee House only to emerge after many hours to sign what would be known as the Kenya National Accord and Reconciliation Agreement. The core components included the a priori recognition of the crisis that had engulfed the state and the need for a political solution given the disputed elections and the resultant divisions that had rendered the governance of the state by either of the protagonists impossible. Therefore, there was going to be 'real power sharing' to move the country forward. There would be a coalition, which 'must be a partnership with commitment on both sides to govern and to push through a reform agenda for all Kenyans'. The Accord would become operational subsequent to an Act of Parliament, henceforth known as the National Accord and Reconciliation Act 2008.[29]

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[29] See the National Accord and Reconciliation Act 2008.

Conclusion

With a political ceasefire instituted, thus allowing the stoppage of overt combat, the opening of national spaces through power sharing and by inference the reintroduction of the state presence in ethnic spaces, the ruling faction moved quickly to 'defeat' criminal groups, militarily, but failed to address the socio-economic issues that sustained them groups.[30] Little effort was put into demilitarization, demobilization and the reintegration of armed groups into the society. In effect, they had merely been stood down. It is apparent that the symbiotic relationship between the political elite and these groups that had seen the former rent violence lulled after the elites gained power. A large part of these groups had retreated to their normal fields of accumulation, except the main faction of Mungiki, which sought to engage different factions of the state in negotiations.

In all generalities, the ruling elite are still challenged in their attempt to engender stateness, more so as measured by continued instrumentalization of ethnicity and the ability to guarantee security. The state seems driven by instrumentalized ethnicity, a fact that has driven the state towards the consolidation of polarity of nations. The embers burnt the idea of a nation state. Its rebirth is possible only if ethnic elites accept to develop a state nation first..

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[30] Its field commander was killed in an ambush. However, efforts of reconstitution are going on.

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PART VII:
GENDER AND THE 2007 ELECTIONS

15 Institutional Framework for Gender Equality: A Scoreless Affirmative Action in the Kenya 2007 Elections

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Abstract

Gender debates continue to attract scholars across disciplines, with the debate concentrating on women's inclusion and/or exclusion in development processes. This chapter builds on the argument that the first step towards women's advancement is to increase their numbers in all structures of governance institutions. The chapter discusses the importance of affirmative action in relation to women's representation in civic and parliamentary elections in Kenya using the Kenya 2007 general elections. The elections saw a total of 15 women elected and 6 nominated out of a total of 210 elected and 12 nominated Members of Parliament, respectively. While 15 was an increase from 9 elected women parliamentarians in 2002, it fell much below the expected 30 per cent affirmative action threshold. The chapter reviews some of the theories on affirmative action to provide a framework for analyzing how political parties in Kenya translated and utilized the affirmative action provision in both their party manifestos and in the 2007 electoral process. The chapter argues that affirmative action in Kenya, embedded in the Gender Equality and Development Policy of 2006, and in a number of legislations and a Presidential Directive, was not adequately reflected in the outcome of the 2007 general elections. While there are many factors that explain this outcome, including sociological factors, in particular its cultural dimension, the inability of political parties to practice what is provided in their manifestos had a major contribution to the outcome. The chapter notes that although affirmative action has been promoted globally, including in Kenya, its capacity to increase gender sensitivity in decision making, transform

patriarchal relations and facilitate recruitment of women by political parties is minimal. Thus, although the performance of countries where affirmative action has been applied is better than countries where it has not been applied, women's representation in both cases remains minimal. Increasing women's representation requires more than policy and legal provisions, which have been dominant. It requires dealing with sociological issues as well as economic issues that contribute to the reluctance to include women in power structures.

Introduction

The gender dimension in the management of public affairs continues to attract debate and interest among academicians and development practitioners across the globe. The assumption that increased numbers of women in governance and related institutions will result in effective participation and women's advancement informs this debate. While a few scholars have begun interrogating this assumption, this chapter builds on the argument that the first step towards women's advancement is to increase their numbers in all structures of governance institutions. The chapter thus discusses the importance of affirmative action in relation to women's representation in civic and parliamentary elections in Kenya.

The skewed representation and participation of women vis à vis men, in decision making, planning and management of public affairs is a given fact and need not detain us here. The gender concern in economic and political spheres was triggered by the Boserup study of 1970. Boseup discussed what happens to women in the process of economic and social growth. The findings revealed how women increasingly lost out in the process of modernization of economic systems. This occasioned unprecedented attention on how this would be reversed. As a follow up, the first women's conference was held in Mexico City in 1975. Since then, several conferences and protocols have focused on women's inclusion in decision making in all public activities. Globally, countries are making attempts to ensure the representation and participation of both women and men, with many attempting to bridge the glaring gender representation gap.

Although Kenya has made commitment to bridge the gender gap by signing the UN Convention on Elimination of all forms of Discrimination Against Women (CEDAW), and developing a Gender and Development Policy, the gap remains wide compared to other countries within the region. This chapter argues that affirmative action in Kenya, which is embedded in the Gender Equality and Development Policy of 2006, and further insinuated in a number of legislations relating to national institutions, including the Presidential Directive of 30 per cent representation of women in public service, is marginally reflected in public institutions, including the outcome of the 2007 general elections.

In order to explain the minimal representation of women despite affirmative action, this chapter reviews some of the theories on affirmative action to provide a framework for analyzing how political parties in Kenya translated and utilized the affirmative action provision in both their party manifestos and in the 2007 electoral process.

A point to note is that after Boserup's 1970 study on women's role in economic development, there were several initiatives seeking to mobilize attention and focus on women's representation. The Women's Conference was held in Mexico City in 1975 followed by the Copenhagen Conference in 1980, while the Women's Decade

Conference was held in Nairobi in 1985. Ten years later, the Beijing Women's Conference was held in 1995. All these conferences emphasized the need to include women in socio-economic and political development of respective countries. The Beijing Conference of 1995 and the follow up monitoring of the implementation of the Beijing Platform by various UN bodies, local and regional organizations and many governments have made improvements on women's representation in electoral politics, albeit women are still under-represented, and the few included are yet to wield adequate power to the benefit of women's agenda.

A review of ten years after the Beijing Conference revealed that the average number of women in national assemblies had only increased from 9 to almost 16 per cent, with only 16 countries meeting the threshold of 30 per cent or more. This is the critical threshold at which it is thought that women in office can change the culture, practice and outcomes of politics to respond better to gender equality concerns (UNRISD, 2005). Majority of countries are still to meet the gender threshold of representation.

In Kenya, although women's affirmative action in electoral political process dates back to the Inter-Parties Parliamentary Group (IPPG) provision of 1997, specific legal provision aimed at attaining the 30 per cent female representation threshold in parliament was turned down by the male dominated 9th Parliament. The 1997 IPPG amendment to section 33 of the Constitution provided for a gender balance in respect of nominated Members of Parliament (MPs). This amendment resulted in an increased number of women nominated by political parties in 2002 (Mitullah, 2004). Although the number of nominated women reduced from 8 in 2002 to 6 in 2007, the provision partly contributed to more women being supported by political parties and managing to sail through the party primaries and national elections. In total, 269 out of the 2,548 parliamentary candidates in the 2007 general elections were women, up from 44 out of the 1,015 legislative aspirants in 2002. The Party of National Unity (PNU) fielded 13 women out of its 135 aspirants, while the Orange Democratic Movement (ODM) fielded 7 women out of 190 candidates. ODM-Kenya fielded 15 women out of 133 candidates. The other 108 political parties also fielded women candidates. However, most of these parties were weak and, therefore, most of their male and female candidates did not win.

Although the 2007 national election gender record was an improvement to the 2002 national election, achieving the 30 per cent threshold is still far from being realized. The number of elected women MPs increased from 9 to 15, while the number nominated reduced from 8 to 6, bringing the total number of women in parliament to 20. This amounts to only 9.5 per cent of women in Parliament, which is still far below the 30 per cent threshold pledged by political parties, hence the notion of a scoreless affirmative action.

Theoretical, Legal and Institutional Framework

There are a number of theories that explain the patterns of representation and participation in political activities. Some of the major ones include: legal/institutional; sociological; legal/institutional; psychological; and rational choice. Many scholars use the sociological and the legal/institutional theories in analyzing gender representation and participation in electoral politics. It is, therefore, necessary to reflect on these theories for deeper understanding of gender representation in Kenya politics.

Theories on women's marginalization

The socio-cultural patriarchal ideology has been used to explain the inability of women representatives to reach the 30 per cent global threshold. This ideology is coated in cultural norms and attitudes, which represent the female gender in reproductive roles such as cooking, farming and childcare, which are not categorized as serious business. These norms and role expectations have largely assigned women to the domestic sphere and prescribed to them less empowering work roles.

In spite of having the greatest voting quota, women have failed to enjoy the benefits flowing from a representation that allows effective redress of development challenges. A number of authors have attributed women's poor representation to their engagement in the private domain. Robinson and Godbey (1999) observe that the cultural aspect of time demands associated with women's traditional roles of wife and mother, and frequent lack of family support, explains women's absence from public life. Use-of-time studies by Robinson and Godbey (1999) further indicate that men and women who work outside the home do not share equally their household and childcare responsibilities. In such cases, women often end up having two jobs: one at work and the other at home. Apart from the pressure of managing two jobs, the differential acquisition of skills relevant to a political career through involvement in non-political activities also contributes to women's inactiveness in political processes (Robinson and Godbey, 1999).

Mumtaz (2006) also observes that women are overwhelmed with chores, and can barely spare time or energy for involvement in public life. While such observations could provide explanation for the absence of women in the public domain, they do not provide a full picture of the gender situation in the electoral process. Conway (www.apsanet.org) argues that, social norms, combined with limited educational and occupational opportunities, prevent most women from obtaining the skills and resources necessary to compete successfully for public office.

Socio-cultural constraints have contributed to the lack of support for women candidates by both men and women. Women candidates ran the risk of intimidation and violence by men. Campaigning for votes becomes a battle; unlike the case for their

male counterparts. In addition to demonstrating their commitment to development, they must also counter stereotypes held against them, make extra efforts in portraying greater perceived masculine tendencies than the men, and withstand gender-driven intimidation (Akerkar, 2001).

The sociological patriarchal ideology has been resistant to change and is often used in justifying the retention of women in the domestic domain, a domain that is perceived to be inferior to the public domain even though it is the basic functioning unit of any society (Mitullah, 1998). Roles associated with the male gender allow them to gain and grow within the public sector, which they protect, making entry for women difficult. The protection is achieved through education and expanded networks. The networks and access to gatekeepers facilitates participation in public life (Mitullah, 2004), while at the same time justifying the continued subordination of women. The gatekeepers who are symbols of political process are barriers to women candidates.

While this chapter acknowledges the sociological theory, it is noted that across the globe, women have progressed and by-passed socio-cultural stereotypes but they still find it quite difficult to manage the electoral process and win seats. This requires other complimentary theories, and this is where the legal/institutional theory becomes handy. Included in the institutional aspect are the networks and the political party structures that are not responsive to gender.

It has been observed that network organizations, including civil society organizations and public institutions' committees, which are important networks are largely dominated by the male gender (Verba *et al.*, 1996). Embedded political networks, including party patronage, ethnicity and the related indigenous institutions are also dominated by men, and operate on a patriarchal system, which women can hardly infiltrate. The values ingrained in the networks do not glorify women's role in political leadership due to the cultural and traditional constraints that dictate the societal spatial relations (CSW, 2002; Mumtaz 2006). The predominance of women in private domain as opposed to public domain make it hard for women to canvass and to promote themselves over men, who have enduring relationships in public networks due to their many years of interaction and advantage.

The networks that men use are cumulative and are developed over the years as men interact during their education, social and political life in public domain. Such networks are useful for leveraging the electorate, and if women have to succeed then, they have to develop relevant public networks in the midst of their multiple societal roles. The limitation of networks and presence of gatekeepers have partly contributed to poor number of women in parliament, and has impeded their chances of getting to parliament (Norris, 2000; CSW, 2002; Mitullah, 2004).

Education is often considered important for creating and expanding networks relevant for public engagement, and gender upward mobility. However, studies

show that even in cases where women have education, they still face challenges in accessing political positions. A number of scholars (Burrel, 1993; Niven 1998; Norris 1997; Norris and Lovensduski, 1995) attribute this to the role of gatekeepers who determine who can successfully run for public office. The prior selection phase of office seeking is critical, and many women often do not penetrate this level, which is dominated by male party leaders, interest group leaders, campaign fundraisers and related networks.

The patriarchal ideology has influenced perceptions about women, with some analysts assuming that women should play politics differently. For this reason, women who hold key positions in the private and public sector have been accused of using the plight of rural women in achieving their own personal gains, whenever they use such networks for campaigns (Mwangi, 2007). This exploitation of existing networks should not be perceived as selfish, but a platform for accessing political positions. Women's approach, in this case, is not different from those used by the male candidates. In any case, women's behaviour in politics should not be expected to be different from that of men. Therefore, women should not be vilified for using existing gender networks for personal interest and gains in politics. These same networks have been exploited by male candidates over the years, and women who belong to them should indeed use them as platforms for accessing positions of power, including political positions.

A study done in Botswana reveals a unique network for male candidates called 'small houses'. This is an emerging concept denoting extra marital affairs or chain of non-committal love affairs that male candidates develop across wards and constituencies for campaigns. Viewed this way, the `small houses' are a major factor in waging successful campaigns and are used as agents to build campaign networks. Women politicians interviewed in the study indicated that the `small house' factor had become a major challenge to female politicians who are not able to strike similar relations with either men or women (Tlamelo, 2008). Another study among the nomads in Kenya points out that any support to a woman by a non-blood relation can be damaging and attracts a smear campaign with allegations of promiscuity (B-Dido, 2005). This is because `good morale' is a criterion for judging women, while the same case does not apply to male candidates.

Equally challenging for women are the campaigns that are held in public places, including beer halls, and night meetings in private locations. A woman candidate, during the 2007 Kenya elections, observed that she had to visit community leaders in her constituency late in the night after her opponent had biased the community against her with propaganda in the evening. Her visit involved clarifying issues and distributing perks to community leaders and other influential members of the community. Late night campaigns are strategies that opponents use to undo any misconceptions that occur during the day, and to also consult potential supporters in camera. Most women candidates find such strategies contradictory to their household

roles, and often concentrate on day time campaigns, which are undone overnight by their male opponents.

Apart from the socio-cultural patriarchal drawbacks, lack of resources and poverty has also been noted to restrain women from venturing into politics. Most women, in comparison to men, lack the required resources for pursuing networks and running efficient campaigns, especially in countries where vote buying is dominant. This is intensified by patriarchal practices that subject women to relaying on funds from their partners and family or depending on party support. All these factors discourage and prevent women from venturing into politics (Mangochi, 1996; Norris, 2000; CSW, 2002; Mumtaz, 2006). Further, party resources for campaigns are inequitably distributed, leaving the less significant party candidates, who in most cases are women, out of the financial loop (Oriare, 2006). Indeed, only very few elite women have overcome the barriers of patriarchy, education, lack of relevant networks and economic resources required for accessing political positions, including civic and parliamentary seats.

Penetrating the male dominated levels of political engagement is necessary for acquiring sufficient endorsements, financial resources, and volunteer workers to run a successful campaign for the political party's nomination and participation in elections. Conway (www.apsanet.org) notes that since most powerbrokers are men, women may be less likely to gain the support of gatekeepers, and subsequently often opt not to enter the contest for party nominations.

Related to economics theory and inherent lack of resources is class and ethnicity. Although class is linked to economic status of women, the two factors have played a key role in Kenyan elections and have effects on the presidential and parliamentary election outcomes (Wanyande, 2006; Jonyo, 2003; Mburu, 2008). Majority of the electorate vote in ethnic blocks, affiliated to specific political parties perceived to be ethnically supportive (Wanyande, 2006; Mburu 2008). The perception governing ethnic politics lies in the perceived socio-economic and political benefits that accrue to members of the ruling ethnic group once their presidential candidate is in power.

During campaigns, there is always fear of not accessing state benefits should different ethnic presidential candidate win. As a result, the electorate vote in ethnic blocks, based on advice largely provided by incumbent male politicians and indigenous ruling institutions such as councils of elders. Women often do not perform well in this ethnic-based competition, where male party leaders front their best candidates, who are often their supporters and cronies. The ethnic block political leveraging provides a platform for indigenous ruling institutions in the election outcomes and selection of candidates. Political candidates are likely to win if they gain favour with those in power within their ethnic group. In order to tap on this resource, most candidates prefer to run for parliament under ethnicised political parties whose affiliation, in most cases, provides a definite pass (Wanyande, 2006; Jonyo, 2003).

Ethnic politics has constrained women aspirants contesting for parliamentary seats due to the dominant patriarchal character of most ethnic groups, and the male dominated councils of elders that decide on the political life and leaders of various ethnic groups. However, women have begun to penetrate ethnic patronage by creating new lines of patronage, for example by mobilizing women as a political block and jointly bargaining for representation and participation in parliament. This has been witnessed in Uganda, where lobbying by women groups for increased representation resulted in women occupying 25 per cent of parliamentary seats (Tripp, 2003). Although this did not reflect parity between women and men, 25 per cent representation of women was a substantive milestone towards gender representation and equality. The same case was repeated in the 2009 Malawi elections where sensitization and campaigns for increased gender representation resulted in the percentage of women in Parliament increasing from 14 to 22 per cent without affirmative action.

Women representation and cultural institutions

The indigenous cultural institutions also impact on gender during elections. During any electioneering, the male politicians are often made elders and members of the given communities, as a sign of acceptance of their leadership. This respect is seldom bestowed on female candidates, although after the 2007 elections, it was also bestowed on Karua by one community. Field findings for this study revealed that the indigenous institutions such as the *Njuri Chenke* and the Luo Council of Elders are no longer as strong as they were historically. Most of these institutions no longer wield power from the community, but are largely driven by politicians who not only fund them but also give them the political leverage they require for survival. This implies that women have to begin influencing these institutions by giving those perks and building image as done by male candidates, in addition to intensive awareness programmes aimed at changing the attitude of individuals that run such institutions.

In one constituency in Rift Valley Province, interviews revealed that it was the elders who approached one female candidate to contest the election. The elders came from her family and once she accepted to contest, the elders took the initiative to convince elders from other neighbouring communities to support the candidate. While there was resistance of voters to support her because she was married outside the community, she won the election, thereby dispelling the myth of lack of support for women by indigenous institutions. The key determining factor in this election was the education of the candidate and not the gender. The elders argued that the female candidate was educated, understood the local issues and could ably represent the community in parliament.

The case study on the women political aspirants in pastoralist communities of Kenya revealed how institutions of the family, clan and social groups shape the electoral process, thereby determining the legitimate representative. In some of these communities, individuals interested in political positions require an endorsement from the clan before presenting their interests to the larger community. For women, the process of endorsement begins first by seeking family approval. Male candidates do not have to go through this requirement and do not need a representative to present their case to the elders unless they choose to. In women's case, their interest is articulated by either a husband or male relative. Legitimacy in this elder based process is defined from socio-cultural and political perspectives of the clan, although over the years, the process is characterized by bribery, making those who have resources wield power. Once the clan settles for a candidate considered legitimate enough to represent the clan, the candidate is supported, including with resources, positive publicity, and making alliances with other clans to increase the candidate's chances of winning (B-Dido, 2005).

The family and bribery or manipulating indigenous institutions have become second hurdles to women. A female Member of Parliament observed that "not being married was a bonus, as I had the freedom to be my own master and control my funds". The female politician enumerated reasons that make it hard for women to run for parliament: society is very traditional and male dominated; financial limitations; one needs people to help since you cannot campaign alone; and voters are conservative; and women with political aspirations cannot automatically count on support of female voters (All Africa Global Media, 2008).

The role of the family requires interrogation in gender analysis of electoral politics. A cursory examination of women politicians shows that most of the women who make it in politics are either single, separated, widowed, dating and not married or have spouses that indigenous institutions consider as weak. In gender analysis, the 'weak' men are usually those who have created space for women to exert their capabilities. Thus, in terms of gender representation, there seems to be a clash between indigenous institutions and conventional gender perspectives. In reference to bribery, most women are not endowed with resources for bribing the elders, compared to male candidates.

Considering the challenges of the family and indigenous institutions, most women fall back on social groups, in particular women's groups, although these groups do not have the power of blessing and curse, which the elders are endowed with. Few women are able to convince the elders in their engagement in other social groups, in addition to their educational background, that they have capacity and are able to effectively represent the clan. This was demonstrated in the case of the MP who was approached by the clan to contest elections, and eventually ended up winning. Overall, the worry of how to begin convincing the family and clan of ones political interest keep many women as compared to men away from electoral politics, which partly explains why few women manage to go through the electoral process.

Global Protocols on Women's Advancement and Gender Mainstreaming

The legal/institutional theory continues to compete with patriarchal theory, with a global assumption that putting in place the right legal and institutional framework will resolve the challenges that women face in accessing positions of power. Using this perspective, the constraints facing women have been addressed globally through various legal frameworks, including CEDAW of 1979; the Beijing Declaration and Platform for Action (BDPA) of 1995; the International Covenant on Civil and Political Rights (ICCPR); and the African Union Protocol to the African Charter on Human and People's Rights, including the Rights of Women in Africa. However, these global interventions have to be domesticated and applied by various countries. Kenya falls among the countries that have been reluctant to domesticate the various global conventions, as reflected in Kenya's failure to reach the 33 per cent gender representation requirement threshold.

The Beijing Platform of Action has guided several Conventions and Protocols on the representation of women in the private and public sector. Its global agenda prioritized areas of concern for women in achieving gender equality. Most significant is the comprehensive mandate for governments to ensure gender equality and women empowerment by increasing the electoral positions for women to 33 per cent.

CEDAW is another legal international agreement, which established the International Bill of Rights for Women with agendas for Action by State parties. CEDAW is the most comprehensive treaty; it calls for gender equality in all civil, political, social and cultural rights of women and men. Article 7 obligates States to take appropriate measures in eliminating discrimination against women in the political and public life of a country by ensuring that women enjoy the same rights as men. CEDAW further binds governments to affirmative Action: Section 7(b) calls on governments to `participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government". CEDAW affirms the principle of equality for women, and civil and political rights in the representation and participation of women in governance. Although Kenya has ratified this convention, it has not yet been domesticated.

ICCPR, in recognition of the Charter of the United Nations Universal Declaration of Human Rights, presumes that all member states recognize the inherent dignity of human beings, this, being their equal and inalienable rights as the foundation of attaining freedom, justice and peace in the world. In attaining civil and political rights, Article 25 provides that every citizen, without discrimination, shall have the right and opportunity, without any distinctions (in this case gender) to: take part in the conduct of public affairs, directly or through freely chosen representatives; to vote and to be elected at genuine periodic elections, which shall be by universal, and

equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; and access, on general terms of equality to public service.

Article 2 of the ICCPR further reinforces these provisions, ascertaining that all persons are equal before the law and entitled to their civil and political rights. The Article calls on member states to take necessary measures, in accordance with their constitutional and legislative processes, to adopt legislative or other measures necessary to give effects to the civil and political rights of those who are marginalized, in this case women. Kenya has ratified this Protocol, although there has been no progress in the legislative process.

The African Union acknowledges the role of women in development and the need for affirmative action to address the structural and traditional obstacles that hinder the advancement of women. The Protocol on Women's rights in the African Charter on Human and People's Rights acknowledges the institutional and traditional structures that hinder women from fully participating within the political economy (Chesoni et al., 2006). The Charter calls on member states to apply legislative and other measures to ensure gender equality. However, there are conflicting positions vis a vis gender parity for the AU organs. Whereas, Article 5 of the Solemn Declaration on Gender Equality in Africa by Heads of State and Government of the Member States of the African Union, 2004, provides for 50/50 representation in all organs of the African Union, Article 4 (2) of the Protocol to the Treaty establishing the African Economic Community relating to the Pan African Parliament (PAP) provides that: `each member state shall be represented in the PAP by 5 members, at least one of whom must be a woman'. Thus, the Protocol to the Treaty Establishing the African Economic Community relating to the PAP lowers the standard set by the Solemn Declaration on Gender Equality in Africa, since neither one of the two instruments provides for 33 per cent representation. The actual standard for staffing and membership of the organs of the AU is higher (50%) whereas the PAP's threshold is much lower, at 1/5th, which is 20 per cent. These two provisions are yet to be harmonized.

Although most countries have declared their commitment to gender equality, little has been done to remove the socio-cultural, political, economic, and ethnic challenges leading to this inequality. Thus, affirmative action must take both a proactive and redress approach to make provision for representation and participation of women in public life by addressing those socio-political and economic obstacles hindering women's entrance into public life (Mitullah, 2004). Once constitutional and legal provisions are made, women must push their way into relevant organizations and networks, which provide platforms for engaging in political life of any given nation, and convince political gatekeepers and voters of their readiness to take political offices, and to influence policy making in national development.

Policy, Legal, and Institutional Framework

The discussion in this sub-section is limited to policy and legal provisions, which inform institutions that ensure gender representation in political processes in Kenya. Kenya lags behind other countries within the Eastern and Southern African region in respect to developing enabling policies, legal and institutional framework relevant for achieving women's advancement and gender mainstreaming. However, the government has demonstrated its desire for gender mainstreaming by coming up with *Sessional Paper No. 2 of 2006 on Gender Equality and Development*; establishing the Commission on Gender and Development (CGD) in December 2003; transforming the Women's Bureau into a Department, and establishing the post of Gender Officers in July 2007.

The establishment of the post of Gender Officer was followed with a Presidential Directive of 30 per cent representation of women in the public service, including in committees operating at the local level. The CGD coordinates, implements and facilitates gender mainstreaming in national development, as well as advising the government on all aspects relating to gender; while Gender Officers are charged with ensuring that gender concerns are integrated in policy formulation and sector-based development planning and programming.

The 2006 Sessional Paper aims at ensuring women's empowerment, and mainstreaming of the needs and concerns of women, men, girls and boys in all sectors of development initiatives. On political participation and decision making, the policy upholds the principle of gender parity in political participation and decision making, noting that `a deliberate affirmative action will be embraced as a stop gap measure'. However, the policy paper partly contradicts the Kenya Constitution, which does not mention affirmative action. The Constitution silently discriminates on the basis of gender in a number of areas, including citizenship of a child born outside of Kenya. Even in cases where legal reforms have occurred, such as the Succession Act (Cap 160), widows are not guaranteed the same rights as widowers-a widow's life interest in her deceased husband's estate is determined by whether or not she re-marries, whereas a widower's is not (Chesoni, 2006).

Governments across the globe have reinforced their commitment to the Beijing Protocol and Platform for Action, and CEDAW through the Millennium Development Goals (MDGs). Annex 3 of the MDGs on the Promotion of Gender Equality and Empowerment of Women acknowledges the primacy of women in development and the eradication of poverty. While the steps taken so far by the Kenya Government are acknowledged, the government has not made much progress in embedding the gender equality provisions in the Constitution. Previous legislative bills tabled in parliament on affirmative action in the electoral process and public sector have not been passed, indicating an indifference to achieving gender equality and women's representation in parliament and public offices. The closest Kenya came to realising

gender equality is the Draft Constitution Bill, which was rejected during the 2005 referendum. The Bill provides for gender equality, through affirmative action, as a principle and guiding tool with reference to representation in all spheres of the public sector (Government of Kenya, 2005).

Although Kenya has committed itself to the Beijing Platform of Action and the CEDAW, and is a signatory to key Human Rights protocols, including the UN ICCPR, and the Protocol on Women's rights on the African Charter on Human and People's Rights, women are yet to reach the 30 per cent threshold for affirmative Action. The international commitments obligate the government to progressively realize the civil and political rights of women, including identifying structural and traditional factors that hinder gender equality, including equitable allocation of resources (Baku, 2005).

Electoral laws are important for ensuring gender inclusion in the electoral processes, and have boosted women's participation in electoral politics elsewhere. Electoral bodies, through legal provision, have powers to obligate parties through the electoral laws to have a minimum percentage of women in their party lists of parliamentary candidates. Such bodies can provide incentives to political parties, such as mass media coverage, special training in political issues and transport facilities for parties with a reserved quota for women candidates. It has been noted that women candidates suffer more physical and psychological violence and intimidation during elections because few women are represented in the electoral bodies.

During the 2007 Kenya general elections, for instance, in response to the systematic violence against women ECWD's Gender Rapid Response Unit, operating under the UNIFEM funded Gender and Governance Programme, provided security for existing and aspiring female politicians. The unit trained aspirants in self-defence tactics and engaged the Electoral Commission of Kenya (ECK), Kenya Police, media and local women's groups to respond to violence against women by calling hotlines to report violence against women. The reports were followed by an immediate response by the media, police and local women's group to assist the candidate and provide moral support in encouraging them to forge ahead with the electoral process (Brandt, 2007).

Electoral processes are determined by internal and external political structures and forces, which have acted as draw backs in the success of women candidates (Akerkar, 2001; Mumtaz, 2006). In recent years, there has been a formation of women's campaign support groups or political action committees. Such groups are found at the local level, where most political careers begin. They provide an organized bloc that has potential for providing the necessary resources, such as votes, money and volunteers. Akerkar (2001), in discussing the case of Uganda, observes that women in power are hindered from advancing motions on gender equality not initiated by the party leaders, due to patronage by their political parties.

In democracies such as East Timor, where women have been integrated in the electoral body, the Independent Electoral Commission (IEC) through active recruitment based on quotas on all levels of the Electoral Commission, the situation of women candidates has improved. The IEC provides electoral information and enhances education policy on the importance of gender equality. This is done through voter education, which in turn shuns sexist information and images and emboldens the perception of women within the society. The IEC also provides special training for women on the electoral process and special campaign material for women, to counter the existing stereotypes on the roles of women (Pires, 2004). This is a good example of how electoral bodies can empower women, and increase their chances of being elected.

In analyzing the Kenya case, both Mangochi (1996) and Mumtaz (2006), note that women's presence in the ECK has the potential of ensuring measures necessary for protecting women candidates. However, no quota or provision has been made in either the political parties' bill or the draft constitution regarding representation of women in the ECK. It can only be assumed that the commitment in other legal documents that promotes gender parity will apply to the Interim Electoral Commission of Kenya as well.

Theoretically, electoral commissions are constituted to ensure democratic electoral process, which allow representation of all factions of the society and safeguards the different interests through effective representation. In Kenya, the Commission is responsible for creating and reviewing constituency boundaries, and running free and fair elections. Some of the conditions set to guide free and fair elections include: having a favourable environment that is safe, secure and free from election violence; facilitating free and fair representation; and ensuring a democratic political system (ECK, 2004). Unfortunately, during the 2007 elections, the ECK did not fulfil this mandate and was extensively blamed for the post election violence. A probe on its role in the controversial election results recommended that it be disbanded, and subsequently was disbanded in December 2008.

Gender Representation and Affirmative Action

Affirmative action is one of the strategies identified for ensuring gender equality in the political sphere. It is aimed at attaining the "critical mass" of 30 per cent in parliament, which is believed to be imperative for effecting policy change in the cultural practices that hinder gender equality, by advancing women in parliament (UNRISD, 2005). Through affirmative action, legal and administrative instruments are created to guide and direct the electoral process to allow representation and participation of women in politics. Affirmative action policies are expected to transform the traditional structures of power relations, by enforcing policy measures and systems that address inequitable distribution of resources, regardless of the

existing stereotypes about women (Norris, 2002). It is assumed that once affirmative action policies are applied, women have an opportunity to exercise their political and economic leadership skills and are thus able to challenge gender associated stereotypes and set up better structures for gender inclusion.

It has been noted that affirmative action is critical for removing the practical barriers that inhibit disadvantaged groups from participating fully in running for political office. In respect to gender, affirmative action applies statutory quotas on party electoral lists and reserved seat constituencies (Norris and Lovendvski, 1993). Quotas are more effective where there are large electoral districts, and the requirements that women are spaced evenly on party lists.

Statutory quotas are designed to address the unfair norms, rules and practices that prevent women from winning elections, by inhibiting their effective participation in public life and assigning them to private life (Hannan, 2000; Goetz, 2007; Mumtaz, 2006). For example, in South Africa, a 'zipped' list known as 'Zebra' list contains alternating names of women and men, which provides equal chance for both gender. Quota provisions can be evaded when women candidates are demoted to the bottom of a closed list, where they are unlikely to be assigned seats in parliament unless the party's winning majority is overwhelming (UNRISD, 2005).

In single member, simple plurality political systems, measures to reserve seats for women have been preferred over quotas of women candidates, which are largely practised in multi-member proportional representation systems. The latter encourage representation of diverse interests, and have proved more open to women participation than the plural systems. The reserved seats vary according to whether the seats are filled by the direct or indirect election process. Countries such as Tanzania, Pakistan and Bangladesh fill seats for women in Parliament by assigning seats for parties own female nominees in proportion to the seats they have won. This model enables women to compete for popular vote rather than lobby for nomination by the party elites (UNRISD, 2005).

Constitutional and legislative provisions have the potential of compelling political parties to make provision for women representation, by enforcing women quotas in party representation, or through reserving special seats or constituents for women in parliament. Political parties have been known to ignore affirmative action if there are no penalties for failing to implement the provisions. This not withstanding, affirmative action is not a panacea for women's representation. For example, by 2005, countries such as Brazil, Venezuela and Panama had implemented affirmative action by providing quotas, but still had less than 11 per cent of women representatives in parliament.

Kenya has not embraced affirmative action, although the principle is embedded in the 2006 Gender and Development Policy. However, Section 33 of the Constitution, which was amended in 1997, requires political parties to take the principle of gender

equality into consideration when nominating individuals to the National Assembly. While this was a step forward, the country has only 12 seats for nomination. A further proposal to amend the same section in 2006, prior to the 2007 elections, in order to increase the number of nominated seats to 36, with 24 reserved for women, was rejected by parliament.

Mandatory legislated quotas under Proportionate Representation have been effective in increasing the representation of women in political office. Countries that have legislated quotas, such as Rwanda, Namibia, Mozambique, South Africa and Uganda have increased the number of women in parliament and in decision making (Norris, 2000).

Theoretically, affirmative action is a great step towards achieving women's representation in politics, although at a practical level a number of countries, including Kenya, are yet to effectively apply the provision. Further, it has been observed that increasing women's political participation needs to go beyond mere numbers to encompass the complex relationship between power, poverty and participation. It has also been opposed on the grounds of universal adult suffrage, which views it as privilege and favour to women, which undermines the hard work of elected women parliamentarians.

Critiques further argue that affirmative action invokes a hierarchy in parliament where those with elected seats dominate and are higher than those brought in through the provision; tokenism where privileges are accorded to elite women whose loyalty lies more with the political party; and that it exposes women to manipulation by men in parliament (Mumtaz, 2006; Norris, 2002; European Parliament, 2008). It is further criticised for limiting the electorate's choices by requiring specific regions to elect from a pool of women parliamentarians, and that women who come to power through the system are politically ineffective and unlikely to effect change.

Dahlerup (1998) observes that women do not want to be elected through affirmative action as it implies that they are elected because of their gender rather than qualification. The issue of fairness also arises; affirmative action is deemed unfair to other candidates who are perceived to be battling the same challenges as women (European Parliament, 2008). Italy, France and the United Kingdom rejected affirmative action as a constitutional amendment on the basis that providing quotas for women was believed to be against the concept of equality of all and is thought to be inconsiderate of other equally marginalized groups. It was also alleged that passing an amendment was more of a permanent solution rather than a temporary one, favourable for addressing the transitory gender inequality.

In spite of the criticism of affirmative action, an assessment of countries that have not adopted affirmative action reveals a lower representation of women as compared to countries that have adopted the provision; for instance Rwanda and the Nordic countries, which have adopted the provision, as opposed to countries such as Italy,

UK and France, which rejected the provision. Italy is ranked at number 52 globally with 21.3 per cent in its lower house and 18 per cent in its upper house, whereas the UK has a global ranking of 60 with 19.5 per cent female membership in its lower house and 19.7 per cent in its upper house, compared to Rwanda that is globally ranked first with 56.3 per cent and Sweden ranked second with 47 per cent. France has a global ranking of 65 with 18.2 per cent women in its lower house and 21.9 per cent in its upper house. Indeed, all the Nordic countries, all of which have affirmative action laws and policies, fall among the top 7.

Several countries in Africa, including Angola, Mozambique and South Africa rank in the global top twenty and many more are far higher ranked than the UK, France and Italy (http://www.ipu.org), which have rejected affirmative action. In Kenya, the new Political Parties Act provides a penalty for political parties, whose registered national office bearers do not reflect at least a third of either gender. Such parties do not benefit from state funding. Political parties in Kenya have had verbal and party manifestos commitment to affirmative action, but since there has been no legal provision and state penalty, such commitments end with the elections.

During the 2007 electoral process, for instance, in spite of all the three major political parties pledging to ensure 30 per cent women's representation, they failed to put into place provisions for realising their pledges. This can partly be attributed to lack of a legal provision compelling political parties to ensure gender inclusion in electoral politics. The Political Parties Act was not effective by the time the 2007 national elections were held. However, the legal provision has since been effected, but it only prohibits gender discrimination (Government of Kenya, 2007).

The Draft Constitution of 2004 (Bomas Draft), which was the genesis of the Proposed New Constitution of Kenya which failed to be ratified during the 2005 referendum, remains a leading legal framework on affirmative action in Kenya. The Bomas Draft was a stepping stone for women in Kenya towards the achievement of gender equality. It prohibits discrimination on the basis of gender, and guarantees women equal rights with men. This provision acknowledges the discrimination based on sex, which was previously not a ground for discrimination. Chapter 3 on National Goals, Values and Principles gives guidance on the governance of the country, the Bill calls for "full participation of women, with one third of members of all elective and appointive bodies being women".

Unlike the Proposed New Constitution of Kenya, the Bomas Draft contained a clear mechanism for achieving the minimum one-third representation under its chapter on the legislature. It provided for one woman to be elected from each district, each of which was to comprise a single member constituency (Bomas Draft Article 123 (1). The women's quota is set as a goal and principle that the people and Government of Kenya shall ensure for gender equality. If implemented, the provision would have been more binding than any legislative provision, and would have ensured women's inclusion in politics and national development.

Unlike Kenya, other countries in Africa have made a great step in gender representation by entrenching affirmative action in their constitutions. The Constitution of Rwanda introduced affirmative action through the quota system. It reserves 30 per cent of parliamentary seats for women. This target was surpassed in the 2003 elections with an additional 18.8 per cent, giving women 48.8 per cent representatives in parliament (Tripp, 2003). This has since been surpassed, with Rwanda leading the world in women representation. The Morocco, Tanzania and Somalia constitutions also have legislative quotas of 10 per cent, 20 per cent and 10 per cent, respectively, of seats reserved for women. These seats can only be vied for by women, and therefore referred to as women only seats or special seats.

The challenge of reserving parliamentary seats for women lies in the perception that there is a political ceiling in participation, rather than a platform for women to rise with the possibility of by-passing male representatives. Many countries that apply affirmative action keep to the minimum instead of by-passing the threshold, which is only meant for correcting the historical marginalization of women. It is only Rwanda and the Nordic countries that have managed to bring the participation of women and men to par. By 2005, over 80 countries had applied affirmative action, but very few had reached the required 30 per cent threshold.

Affirmative action is perceived as a threat by male parliamentarians. This is manifested in the rejection of affirmative action bills in many legislatures, including Kenya. The apprehension of loosing political power in a bid to attain gender equality discourages male parliamentarians from passing laws or adopting policies conducive to women (Akerkar, 2001; Norris, 2000). The doubts on the capability of women in politics are strongly rebutted, drawing experience from several legislatures where women have actively participated in debates. Women parliamentarians have tabled and articulated gender issues in parliament in spite of feeling intimidated and obligated to their party views.

Political parties play a central role in influencing women's election and entry to parliament. The section below discusses the role political parties in Kenya have played in ensuring affirmative action stated in their manifestos during the 2007 Kenya elections.

Political Parties and Affirmative Action

While many political parties contested the 2007 elections, discussion in this sub-section is limited to the three leading political parties: Orange Democratic Movement (ODM), Party of National Unity (PNU) and Orange Democratic Movement of Kenya (ODM-Kenya). The sub-section examines how each of the political parties embedded affirmative action in their manifestos, and discusses whether this was realized in the electoral process. As discussed in the theoretical and legal and institutional framework

sub-section, legal provision, including penalties, is important for compelling political parties to ensure gender inclusion.

Kenya lacks constitutional and legal provisions, except for the new Political Parties Act, that deny political parties funding if their registered national office bearers do not reflect at least a third of either gender (Government of Kenya, 2007). However, the Political Parties Act only came into effect on 31 December 2008 and, therefore, was not applicable during the 2007 elections. Thus, the only legal provision that informed the 2007 electoral process was the Constitutional Amendment of 1997, achieved through the IPPG, and the political party manifestos of 2007, which all committed to affirmative action.

Political parties hold the ticket for gender inclusion in electoral politics in most democracies. Norris (1997) observes that political parties are gatekeepers of women in parliament. In line with this notion, Mitullah (2004) argues that a political candidate's proximity to a party nucleus determines her/his entrance and possible success in elections. Such candidates have to be not only members of a party but also should have a good standing and be popular enough to be nominated by the party (Mitullah and Awiti, 2007). Thus, political parties expand or restrict the entry of women in politics, and women's entry to parliament is largely determined by their positions in the main political parties (Randall, 1982). The political party path into politics has been a challenge to many women; it has barred many of them from venturing into politics. The selection of women is dependent on party ideology and culture which, in many cases, do not provide for affirmative action.

Political party manifestos are important for gauging how political parties plan to run governments when they win elections. They are declarations to the public of the party principles and plans of the government in the event of succeeding in an election. Party manifestos indicate a party's strategic direction, with some well defined proposed legislation they would support. These commitments, both expressed and implied, are significant in nurturing a culture of gender equality within the party and subsequently the enforcement (Norris, 2000). In Kenya, although most party manifestos support affirmative action, commitment to gender equality has not been reflected by parties in the practice of the electoral process and outcomes.

One way of addressing the challenge of accommodating women in the political party structures is to create a political culture in party structures, which provides equal opportunities for both women and men through affirmative action. Affirmative Action, it has been noted, is most effective when political parties address the discriminatory gender patterns through binding provisions in their constitutions, party manifestos and instilling them as party cultures (Goetz, 1999; Norris, 2002; UNRISD, 2005). Entrenching affirmative action throughout a political party's systems and electorate accountability structures can ensure gender equality and participation through effective non-legislative means. The internal party power relations and social structures guide the selection of candidates for party lists,

electoral lists and the nomination process and determine the election outcomes (Norris and Englehart, 2000).

Norris makes reference to positive discrimination as the mandatory group quotas for selection of candidates from a particular political or social group in achieving equality of the electoral process and results. Political parties adapt cultures sympathetic to positive discrimination policies through a bureaucratic structure that implements formal party rules to achieve the set goals. Obstacles that may disadvantage women are removed and gender imbalances corrected in women representatives through temporary measures that disadvantage other dominant groups within the political party (Norris, 2002). As indicated earlier, these measures include percentage quotas allocated for women in different stages of the election, including shortlists for elections; electoral list of parliamentary candidates; and reserved parliamentary seats; prioritizing the provision of financial resources for campaign to women candidates; and instilling a party culture that ensures the structures of opportunity in the party to enable the representation of women in parliament.

Since the electoral success of a candidate is to a large extent linked to a candidate's political party affiliation, and proximity to the party leaders, women, who often are first time political candidates, lack the patronage enjoyed by men, who also dominate the public arena through enabling social structures (UNRISD, 2005). This is best reflected in the hierarchy of party leadership where few women are representatives in the decision making positions of party structures. In Kenya, this was well demonstrated during the 2007 elections in the cases of women who were well established in politics, such as Martha Karua and Charity Ngilu. These two women candidates were able to play the male game of changing parties without much care for the ideological orientation of the party they were moving to, just like the male candidates. This rightfully placed them on a footing with the men in the race, which they easily won by beating men who were equally endowed with political leverage.

All the three major parties, the ODM, PNU and ODM-Kenya highlighted gender inclusion in their party manifestos, with ODM and ODM-K indicating a goal of ensuring a parity of 50:50. The ODM's party manifesto is a firm resolve to having an equitable, democratic and prosperous Kenya. The party seeks to address past injustices of exclusion, which is reflected in poverty, inequality and regional disparities. In the preamble, ODM expresses economic and political challenges they intend to address, and acknowledges that women are the most marginalized groups in Kenya, and are in the forefront of the production system yet receive the least benefits. The manifesto submits its platform of democratic and inclusive governance through an accountable government and a new constitution.

In Chapter 8 of the Manifesto, ODM outlines a plan for the empowerment of women. It acknowledges the dominance of men in decision making institutions and the under-representation of women. It further commits itself to the proactive

removal of all gender driven obstacles in achieving gender equality for sustainable and equitable development. The obstacles include: oppressive practices, and statutes and customary laws that have subordinated women. The party commits itself to taking affirmative action and other measures to ensure the 30 per cent representation of women in parliament, local government, foreign services, and all other government and decision making institutions" in order to achieve gender parity of 50:50 (ODM, 2007: 45). In spite of committing itself, the outcome of the elections shows that this commitment for gender parity was not fulfilled, neither is it reflected in the deployment of senior positions in the coalition government, which ODM is a member of and almost equally shares in `allocation of posts'.

The manipulation of parties is also reflected in decisions that give some candidates, often men, direct nomination without going through the vote. For instance, in Kisauni Constituency where ODM gave a male candidate a direct nomination, a female candidate was automatically locked out of ODM nominations. The female candidate shifted to a less popular party and lost elections to the ODM male candidate (CLARION, 2008). In order to fulfil the **Political Parties Act** requirements, the party has reorganized itself, but no female was elected in any of the three key registered offices. This shortcoming reveals the weakness of the **Political Parties Act**. While the party has fulfilled the requirements of the Act, women office bearers remain marginalized. There was an outcry by women members of the ODM after the national election of party leaders, but this outcry did not go beyond the media releases.

The PNU, which is an alliance of 27 political parties and a member of the coalition, committed itself to improving the status of women in Kenya. The preamble states that the party shall entrench gender equity in the constitution by ensuring a 30 per cent representation of women in all public appointments and elected positions. The preamble does not clarify what approach shall be used in ensuring this representation. Entrenched in Chapter one is the provision of a "just, prosperous, secure and equitable future for all Kenyans" through the establishment of a democratic, participatory and consultative government. The party states that it will ensure that all Kenyans, including women, are in the management of party affairs. Pledge No. 8 among the 10 pledges notes that the party will "ensure that women are assured more than 30 per cent representation in all public appointments and elective positions". The Manifesto notes that the party has made progress with the empowerment of women by ensuring the recruitment of 30 per cent of women in top management in public institutions. The manifesto pledged to have a 50 per cent representation for the recruitment of women in public appointments (PNU, 2007), a goal that is yet to be achieved.

The Party Manifesto of ODM-K is not that different from that of the ODM. This is partly due to the fact that it was a split from ODM and retained substantive ideas from the mother party. In the preamble provided by its presidential candidate Kalonzo Musyoka, it is stated that involvement of youth and women in development will be ensured through affirmative action aimed at boosting women's participation in public

affairs. On Freedom and Democracy, equality before the law, and individual rights and freedoms, including the right to own property and gain access to opportunities for all social groups, youth, women and nomadic pastoralists are highlighted (ODM-K, 2007).

ODM-K's commitment to affirmative action is further emphasized in the section dealing with marginalized members of the community, which states that the party will `implement affirmative action through the formulation and implementation of non-discriminatory policies and ensure parity across all important social lines (gender, religious, regional, physical, ethnic and racial with a 50:50 formula for women representation and appointment to public service). In terms of ensuring gender parity, ODM-K was the first party to trash its manifesto by dumping a female running mate immediately after elections. The male PNU presidential candidate formed a coalition with PNU and formed a government without negotiating any position for the female running mate. One year down the line, the female running mate remains in oblivion and is not even able to push her original Labour Party of Kenya through the new party registration requirements.

Although PNU does not use the word affirmative action as in the case of ODM, the party, like ODM, commits itself to ensuring more than 30 per cent representation of women in all public appointments and elective positions. Both ODM and PNU are members of the coalition government and if they respected their manifestos, the gender situation in political participation and decision making would be totally different. All the party manifestos outline what the political parties intend to do if they win and form a government. They ignore and are blind to the need to address the issue of gender within their internal party structures, yet internal party structures are relevant for increasing the participation of women in governance. They fail to implement the principle of affirmative action within the internal structures, but would want to impress that they would do so when they win an election and form the government. This implies that they are paying lip service to affirmative action and to gender equality as an important value for human and political development. This failure and general weakness later on reflects on composition of government positions after a political party has won an election; there is little commitment to affirmative action.

Internal party structures and power relations

Party manifestos should outline what parties will embed in their party structures, such as binding quotas for women through internal party rules and systems as noted by Norris (2002). Manifestos should further specify how gender, in particular women, are rewarded in the political processes, since the power relations within political parties determine the electoral solutions reached in adopting positive discrimination policies. Party culture, including binding quotas, has been noted

to play an important role in influencing attitudes towards increasing the number of representatives of women in parliament. Binding quotas ensure a percentage of female representatives from respective parties in parliament. Thus, the culture of affirmative action is consistent with party culture when it is reflected in the party values and implemented through policy. Party rules embedded in party culture can provide for percentage quotas for women in the shortlists for elections and the electoral lists for parliamentary candidates.

The African National Congress (ANC) of South Africa has an internal party quota of 30 per cent representatives of women in parliament. This quota was spearheaded by the ANC Women's League through a series of campaigns and inside lobbying for a party policy to increase female representation (Tripp, 2003). Application of the quota system through party policy has had a significant impact on the number of women in parliament. This is evident in several other African countries, including Mozambique, which has achieved 30 per cent representation, Namibia with a target of 50 per cent has achieved 29.2 per cent and Senegal's targeted 30 per cent with actual achievement of 19.2 per cent (Tripp, 2003).

The fruits of affirmative action have also been realized in the United Kingdom's Labour Party, where the mainstream culture among labour activists supported affirmative action with positive electoral outcomes for women (Norris, 2000). The British Labour Party makes decisions about candidates on a constituency level under binding and standardized procedures as set out in the National Labour Party Platform. In short listing women for the Welsh Assembly, the New Scottish Parliament and London Assembly, the Labour Party used a policy of "twinned constituencies", which selected one woman for every man in constituent seats. This policy resulted in a 37 per cent increase in women representatives of the New Scottish parliament and 40 per cent of the Welsh Assembly (Norris, 2000). The boost in women representatives was complemented by the mobilization of women's activities and representatives within the party through conferences, events and debates surrounding the "twinned constituencies" policy. In Tanzania, political parties have a reserved quota of parliamentary seats for women only, on a proportional representation of the Parliamentary seats won (Tripp, 2003) and the provision is embedded in the Constitution.

Nomination into parliament by leading political parties is a channel for increasing the number of women. However, women have found it increasingly hard, especially with the dominant Kenyan political parties, to get nomination into parliament. This is partly due to competing male candidates who dominate the party structures, and are given first preference for nomination, especially where they fail to secure elective seats (Mitullah, 2004). This channel of access subjects women to the whims of political parties, and relegates them to operations on patronage. Chesoni (2006) notes that women nominated by political parties owe allegiance to the nominating party and its head, rather than a women's rights constituency that affirmative action provides.

She further points out that party lines are often stronger than gender issues, and provides an example of the campaigns during the 2005 Kenya referendum on the Proposed New Constitution where no woman parliamentarian raised issues on how the Proposed New Constitution had eroded the gains of the Bomas Draft.

An overview of the few women nominated to Parliament shows that they are either active in party politics and are good at pressurizing political parties and claiming their space, or are favoured by political parties, in particular the top leadership for various reasons. During the 2007 elections, going through the primaries and getting nominated as a party candidate was difficult. Nomination into parliament became even more difficult due to the loss of parliamentary seats by many Members of Parliament, including party leaders. Thus, the political parties had to balance gender with patronage, with the latter prevailing. In fact, if the IPPG did not exist, Kenya would have had fewer nominated women in the 10th Parliament than the current six. This does not rule out the possibility of some of the six nominated women having benefited from patronage rather than affirmative action.

Affirmative action after elections was further complicated by the politics of a Coalition Government. The three political parties dumped gender parity commitments made in their manifestos in order to deal with regional balancing, which threatened to crack the parties and party alliances. Achoka argues that coalitions have denied Kenyans a vibrant and diverse political landscape and instead pervaded it with agendas and manifestos that retain the incumbent politicians, including those with poor development records and charges of corruption. In addition, elites hide under coalition parties, which reduce the available slots for women in both nomination and party lists (Achoka, 2007).

Kenya does not have policies such as those applied by the Labour Party. Instead, parties coalesce around a political leader, rather than party rules and procedures. Most of the over 150 political parties in Kenya, which have reduced to 38 after the enactment of the new Political Parties Act, lack party culture and agenda relevant for realizing affirmative action. Their drive to take up the government revolves largely around party leaders who lead different ethnic blocks into voting for a particular presidential candidate, and a selected group of potential Members of Parliament (MPs). These ethnic lords have the final say in the political party; they command the political and financial position of parties and influence access and exit of the membership. The internal party rules, which are mainly informal, have no quota set for women, nor express privilege in the party lists, electoral lists or nominated seats.

In Kenya, women just like men have to struggle but they also stand disadvantaged, largely due to socio-cultural, political, and economic factors. The new Political Parties Act in Kenya provides a schedule listing 28 matters on which provision shall be made in the Constitution or rules of a political party. However, these provisions do not include any gender provision or a statement of party ideology, elements that

should be critical to any focused political party. The draft Political Parties Bill had incorporated affirmative action by encouraging political parties to have a 30 per cent representation of women in their political parties' nomination and party lists in order to qualify for party funding, but this provision had been deleted by the time the Government published the Bill (Brandt, 2007).

The Political Parties Act only bars political parties from accessing funding if the registered national office bearers do not reflect at least a third of either gender. The Act does not provide for nomination of candidates, which implies that women will continue to be disadvantaged during party nominations. Male politicians have continued to play lip service to affirmative action. Many of them appeal to women using many channels, including politicians' wives and children, but remain reluctant in integrating women into party structures and providing the necessary economic support. This was evident during the 2007 national elections, where the 'first ladies' of all male heads of political parties reached out to women. They made promises for greater representation in politics, in fighting for women's inclusion, but such promises are yet to be fully realized.

The failure of political parties to embrace affirmative action during the 2007 national elections and post-election period can be illustrated by what happened to the ODM-K presidential running mate Dr Julia Ojiambo, and Martha Karua. Dr Ojiambo became a running mate of the ODM-K presidential male candidate, after forming a coalition with ODK-K. This gave the party an image of a gender-sensitive party, which in turn resulted in creation of a gender platform that the party effectively utilized in the electoral process. However, the party reneged on the promise to reward the woman running mate after ODM-Kenya joined the government. The party identified other male politicians for reward with cabinet positions and left out Julia Ojiambo, the running mate. The failure to compensate women politicians for their supportive roles in the electoral process is a theme that runs across some of the main political parties. The PNU coalition did not reward Martha Karua, yet she fiercely campaigned for President Kibaki and fiercely defended the PNU position against accusations of vote rigging following the hot dispute over the December 2007 presidential election result. She also represented PNU at the international mediation process between ODM and PNU, where she again forcefully articulated the PNU position.

Although analysts argue that women often do not offer their candidacy whenever opportunity arises, and that they have to be persuaded to come on board, the case of Martha Karua disapproves this assumption. She was at the front of the PNU campaign. Martha Karua exploited the existing opportunity. As soon as the mediation process resulted in the establishment of a Coalition Government, she was keen for appointment in one of the two posts of Deputy Prime Minister created under the agreement and meant to be shared between PNU and ODM. However, President Kibaki did not appoint her to this post in spite of her role both in the defence of the PNU position during the dispute over the flawed vote tallying, as well as during the

mediation. Instead, the President appointed Uhuru Kenyatta, who had not played a prominent role compared to Karua. Although one may argue that the President appointed Uhuru in order to balance distribution of posts among the PNU allied parties, the failure to appoint the one person who vehemently and fiercely fought for him requires further discussion. Some may have feared that she would be over-domineering in the new arrangement, which they may not have been comfortable about. She had done her service to the President and the party. After her failure to be appointed as one of the Deputy Prime Ministers, she turned marginalization into an opportunity by taking a different path and rallying political forces around an alternative political party and managed to be elected a party leader. This gave her a good platform for political engagement, including fighting and leveraging political positions with other male leaders of political parties. Like other male party leaders, Karua began controlling entry into her party, and would largely influence what goes on in the party, and the national political terrain. How this would transform the party structures and policies into gender responsive organs is a matter of debate.

Apart from legal provisions, political party manifestos and structures, economic and indigenous institutions also limit women's chances of getting elected in political positions. Mitullah, in discussing the 2002 national elections, notes that in a country where the election campaign is dominated by vote buying to appease the electorate, the financial capacity of a candidate becomes a key determining factor; a capacity which most women lack (Mitullah, 2004). Direct financial assistance for women candidates in the 2007 elections was lacking, although moral support through endorsements was given to women during the campaign period (Reuters, 2007; Achoka, 2007; Wainaina, 2007). Changing this trend requires political parties to make provisions that accommodate gender through party policy, embedding gender political mobilization and consciousness rising. This has the potential of addressing internal party cultures that are subversive of women's participation in politics or gender equality (Sen and Grown, 1987; Norris, 2000).

In addressing the patriarchal tendencies and economic challenges facing women, affirmative action should include a system that financially enables women to campaign and participate in the electoral process. This can be achieved by prioritizing female candidates for financial support during elections, including greater media coverage. During the 2007 elections, the ECK established a Gender Rapid Response Unit, but the unit was more reactive rather than proactive. This was partly due to the absence of legal provisions that discourage violence against women and sanctions the perpetrators.

The above suggests that the only way women parliamentarians can effectively advocate for gender is when they are recruited from a gender constituency using special gender seats, such as Uganda where there are seats reserved specifically for women to run on; or when they take such option out of personal interest for gender. During the 9th Kenya Parliament (2002/07), a female nominated Member of

Parliament, Njoki Ndung'u, became a lead gender advocate and managed to push for the enactment of the Sexual Offences Bill in Parliament as a private members bill. She lobbied for the bill and ensured its passage in the male dominated Parliament. Such cases have been rare; the other few females who have attempted to push and lobby for affirmative action have not succeeded.

Changing the gender situation in Kenya requires party provisions, which equally shares key offices, in particular through a rotational approach to top leadership positions. This, in addition to the concerted effort of all stakeholders, including women's organizations and caucuses, would move the women's agenda and partly result in more women being represented and beginning to be active in party structures and national politics and development. This cannot happen without pressure and lobbying political parties and the government to embrace affirmative action, and ensure non-violence and protection of women candidates during elections.

Conclusion

National policies and legal provisions are a first step to ensuring women's representation. They provide party structures and rules, which open doors for affirmative action for gender inclusion. However, the capacity of affirmative action to ensure adequate gender representation remains questionable. This chapter reveals that although the performance of countries where affirmative action has been applied is better than in countries where it has not been applied, women representation in both cases remains minimal. Increasing women's representation requires more than policy and legal provisions, which have been dominant. It requires dealing with sociological issues as well as economic issues, which contribute to the reluctance to include women in power structures.

As discussed in this chapter, legal and institutional frameworks and economic factors are important for ensuring women's representation. However, this cannot be achieved unless the societal patriarchal attitude and economic issues are addressed. This missing link explains why even in countries where policies and legal framework is in place, women are still to achieve the 30 per cent threshold requirement. While nomination by a popular party is as good as being elected and increases a nominees' chance of being elected, unless the a female candidate is accepted by her community and the party elders, chances of being nominated and winning a representative seat remains slim..

Declaring interest in a political post is a mere first step. The major challenge lies in mobilization of resources, including relevant networks for effective campaign. Unfortunately, women have limited effective support structures and lack sufficient networks necessary for mobilizing resources and waging a successful campaign. Further, women's multiple role keep them away from mobilizing economic resources and this reduces their chances for success. Embedding affirmative action into political

party cultures and rules has the potential of promoting and increasing the number of women in parliament. However, this has to be backed up by engendering patriarchal ideology and systems, and ensuring that societal norms represented in legal and institutional framework, including the media reflect the real role played by women in both the private and the public domain.

A political culture that is receptive to the challenges facing women in the electoral process is necessary to achieve greater representation of women in parliament. Such a culture should further inform all the institutions that interact with women in their pursuit for public office. The outcome should be reflected in how legal and institutional frameworks articulate, advocate and enforce greater gender representation and participation in development. In particular, political parties should educate party members on the importance of gender equality and women's representation in party structures and parliament. For example, in the United Kingdom, the Labour Party used debates and conferences, which included input from the women leaders and academicians, in educating and drawing opinions from party members on affirmative action. This interactive process helped nurture a culture that was sensitive to the constraints limiting women in public life and resulted in affirmative action through political party quotas. However, this only gave women 19.8 per cent representation, which is below the required threshold of 30 per cent representation (http://www. quotaproject.org/system.cfm).

It is the absence of constitutional and legal provision for affirmative action in Kenya that has contributed to a scoreless affirmative action. Kenya is a signatory to various international protocols, including CEDAW and the Beijing Platform of Action, but remains reluctant in domesticating the protocols and embracing affirmative action. The Proposed New Constitution of Kenya, which was rejected in the 2005 national referendum, expunged important gender provisions that were embedded in the Bomas Draft without providing any affirmative action for women. Countries that have embraced affirmative action in their constitutions, such as the Nordic and African countries such as Rwanda, Uganda, Angola, and South Africa have managed to increase the number of women in decision making positions, in particular their representation in parliament.

A further attempt by the Kenya Government towards domesticating international provisions on affirmative action failed in 2007 when parliament failed to pass a Bill that sought to create 50 special seats for women. Further, the Government of National Unity (GNU) formed after the contested elections, left gender advocates, including women leaders disappointed. All the three major parties pledged to increase the number of female leaders in parliament and public offices at least by 30 per cent. This pledge was not kept by various political parties during the primaries and national elections; and the coalition government formed as a compromise, after a failure to determine who actually won the presidential elections, has also not engaged in engendering the political process. The seven women who currently hold ministerial

positions (highest number ever achieved) in the 10th Parliament might give Kenya women a stronger voice (Mango, 2008), although when the theory of numbers is considered, women still have a long way to go. There are a total of 42 ministers and assistant ministers with only 7 female ministers, which is only 16 per cent - a figure way below the 33 per cent threshold pledged by political parties.

The coalition government has been engrained in regional balancing and keeping the country together and has not bothered to honour the campaign pledges of its member political parties. This calls for sustained call for affirmative action, which is yet to be embedded in the constitution and related legal frameworks. Once the electoral body is restored, it should lead in the promotion of gender equality in the electoral process. This can be achieved through advocacy, and assisting women in the campaign process and ensuring that there is no violence. The electoral body, being the main guardian for free and fair elections, must advocate for an inclusive democratic electoral process free of challenges such as insecurity, corruption and patriarchal tendencies that impede on women representation and participation in politics. The electoral body should further ensure that Kenya embraces affirmative action through minimum quotas for women representation in the electoral process, including in the electoral body itself.

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16 (Re)turn of Women: Post-Moi's Kenya and Electoral Politics in Kalenjin-Rift Valley

Akoko Akech

Abstract

The 2007 general elections were historic and symbolic in the history of Kenya's post-colonial parliamentary representation. Nationally, 15 women won parliamentary seats, the highest number ever to be elected. The Kalenjin-dominated constituencies of Rift Valley Province elected six women to parliament; it was the highest number of women ever elected from a single ethnic group or province since independence in 1963. This chapter examines the factors that contributed to the 'triumph' of women in Rift Valley and, specifically, how the women agency resisted hegemonic masculinity in Rift Valley's post-colonial politics, notwithstanding decades of consolidated hegemonic masculinity in politics. It also highlights the impact of the of decline of Daniel arap Moi's presidency on women's participation and representation in Rift Valley's parliamentary politics. The discussion raises the need to begin addressing the role of culture in electoral politics from a different viewpoint. It shows that articulation of hegemonic masculinity and an imperial presidency impeded women's participation in electoral politics.

Introduction

Kenya's 2007 general elections were historic in the struggle for women's parliamentary representation. Fifteen (15) women were elected to parliament; the highest number of women to ever win parliamentary seats since Kenya's independence in 1963[1]. Regionally and in terms of ethnic identity, the Kalenjin-dominated constituencies of Rift Valley Province elected 6 women Members of Parliament (MPs). This was the highest number of women ever elected from a single ethnic group or province in Kenya's post-colonial general elections. More importantly, the six women MPs came from the various sub-ethnic groups among the Kalenjin, a cluster comprising several linguistically and culturally-related groups inhabiting much of the Rift Valley Province[2]. It is also significant that they came from the various sub-ethnic groups: Linah Jebii, a Marakwet (Marakwet East), Margaret Kamaar, a Keiyo (Eldoret East), Peris Simam, a Nandi (Eldoret South), Sally Kosgei, a Terik (Aldai), and Helen Sambili, a Tugen (Mogotio).

The election of the 6 women MPs by one community and in a single ethno-regional area is significant in a number of ways. One, Kenya' first Parliament (1963-1969) had neither an elected nor nominated woman parliamentarian. It is only in the 1969 elections that the first woman MP, Grace Onyango, was elected in Kisumu Town Constituency. The proportion of women in parliament did not significantly change after this election, and throughout the post-independence period. Women MPs comprise only 9.5 per cent of the tenth Parliament, elected in 2007. Stated differently, at the turn of independence, Kenya's parliament was 100 per cent male. Some 47 years or so later, women have only attained 9.5 per cent representation (CEDAW Report, 2009: 26). Given this dismal record, the election of 6 women parliamentarians from the Kalenjin-dominated constituencies of Rift Valley Province is significant.

Two, until 2007, no single ethnic group or province had elected more than three women to parliament in any general election. Although Nyanza Province (Kisumu Town Constituency) elected Kenya's first woman parliamentarian, voters in the Luo-dominated constituencies of Nyanza have not elected more than two women to parliament in any given general election. The region, nonetheless, faired better

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[1] See, the 7th CEDAW Report on Kenya, p26. Since 1992, Kenya women have made a slow but incremental gain in parliamentary representation. In 1992, there were only 7 elected and nominated women Members of Parliament. In 2008, there were 21 elected and nominated MPs, constituting only 9.5 per cent of Kenya's parliament.

[2] Kalenjin is a collective political identity for a number of Nilotic ethnic groups, namely: the Nandi, Kipsigis, Tugen, Marakwet, Keiyo, Sabaot, Pokot and Terik, who live mostly in central Rift Valley Province (see Benjamin Kipkorir, 2008:56-62 on elite and Kalenjin identity formation in post-war period). Rift Valley is also home to other ethnic groups: mostly Maasai, Kikuyu, Luhya, Kisii, Turkana, Samburu and Luo, among others. Therefore, a Kalenjin-dominated constituency refers to a constituency in central Rift Valley where most or majority of voters are Kalenjin. At independence, Rift Valley Province had 24 constituencies. The Jomo Kenyatta regime created 13 more constituencies in 1966 while former President Daniel arap Moi added 12 in 1988 and 1997. In total, there are 49 constituencies in the Rift Valley Province, higher than any other province in Kenya (Kihoro, 2007: 38).

in terms of women representation than other regions in the country[3]. For instance, the Kisii and Kuria-dominated constituencies, though also in Nyanza Province, have not elected a woman to parliament since 1963. Similarly, North Eastern Province has never elected a woman to parliament or into local government[4]. Other provinces such as Nairobi, Central, Western and Coast have elected no more than three women to parliament in any given general election in Kenya's history[5].

Three, the election of these women parliamentarians by a single ethnic community is significant because in Kenya's popular and academic discourses, Kalenjin-dominated constituencies of the Rift Valley Province are perceived as bastions of oppressive and retrogressive patriarchal traditions and cultures, such as female genital cutting or circumcision, cattle-rustling, and warrior-masculinities with supposedly little regard for women's participation in the public sphere (Agade, 2009; Straight, 2009; Sagawa, 2008; Government of Kenya, 2008). It is interesting that culture did not prevent the election of these women to parliament, and that the Kalenjin region elected the largest number of them. Other provinces such as Nyanza, Western and North Eastern did not elect a single woman to parliament in the 2007 elections.

Significantly, none of the triumphant six women parliamentarians ran on the Kenya Africa National Union's (KANU) ticket, even though the region has been a stronghold for the party from the early 1990s. All the candidates, except Linah Jebii Kilimo, are first term MPs. Linah and Prof. Helen Sambili ran on the Kenya National Democratic Alliance party (KENDA), an affiliate of the Party of National Unity, while all the others ran on the Orange Democratic Party (ODM).

The victory of the six women parliamentarians from the Kalenjin-dominated constituencies calls for an examination of factors that plausibly explain their rise

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[3] Grace Onyango, who was also the first woman mayor of Kisumu Town, was elected in 1969 and re-elected in 1974 to represent Kisumu Town constituency. In 1979, she was re-elected for a third term while Phoebe Asiyo (Karachuonyo) was elected for the first time that year. Phoebe Asiyo was re-elected in the 1983 general election and again in 1992. Grace Ogot was first elected in a by-election in Gem Constituency in 1985 and subsequently in the 1988 general election (Kihoro, 2007: 54).

[4] See, Musyimi and Mbathi (this volume) for more on women and local government representation.

[5] In 1974, Chelagat Mutai and Julia Ojiambo were elected to parliament to represent Eldoret North and Busia Central constituencies of Rift Valley and Western provinces, respectively. They were re-elected in 1979. Subsequently, Alicen Chelaite of Rongai constituency and Christine Mango of Butula were elected from constituencies in the Rift Valley and Western provinces, respectively. Nyiva Mwenda of Kitui West constituency in Eastern Province was also elected in the 1974 general election and re-elected in 1992 and 2002. Annarita Karimi was elected in a by-election to represent Meru Central constituency of Eastern Province in 1975. Subsequently, Agnes Ndetei of Kibwezi constituency was elected in 1988 and re-elected in 1992; Charity Ngilu was also elected in 1992, 1997, 2002 and 2007, and Cecily Mbarire of Runyenyes in 2007. In 1992 Mary Wanjiru of Kinagop and Martha Karua of Gichugu constituencies of Central Province were elected to parliament. Martha Karua was re-elected in 1997, 2002, and 2007. In Nairobi Province, Beth Mugo was elected in Dagoretti constituency in 1997, and re-elected in 2002 and 2007. Elizabeth Ongoro and Bishop Margaret Wanjiru of Kasarani and Starehe constituencies of Nairobi Province, respectively, were elected in 2007. Coast Province has elected two women to parliament since 1963: Marere Wamwachai in Msambweni constituency in 1997 and Naomi Shabaan of Taveta constituency in 2002 and 2007 (see Musyimi and Mbathi in this volume for on provinces and civic seat representation).

in a patriarchal community. It also underscores a fact that is poorly appreciated in Kenyan scholarship on gender and politics: the agency of women in the male-dominated political contests and patriarchal societies and the role of culture as a resource or impediment in women's quest for elective public office.

While recent studies (Chesoni, 2007; Nasongo and Ayot, 2007) including the chapter by Winnie Mitullah in this volume have looked at the various institutional barriers to women's participation in competitive politics, women's 'transgressions' in Kenya's male-dominated power and political processes, or what Grace Musila refers to as 'phallocracies and gynocratic transgression' (Musila, 2009), is one issue yet to be fully understood. The literature on the agency of women politicians in male-dominated electoral contests is still sparse (Kavulla, 2008; Amoko, 2001) despite the increasing number of successful women politicians or 'transgressors' in Kenya's competitive parliamentary electoral politics. Indeed, few scholars have looked at the impact of the interplay between women's agency and articulated hegemonic forces on women's participation in electoral parliamentary politics.

This chapter attempts an examination of the factors that plausibly account for the victory of these candidates in Kalenjin-dominated constituencies of Rift Valley Province in Kenya's 2007 general elections. It looks at the impact of the interplay between women's agency, masculinity contests, Daniel arap Moi's embodiment of triple hegemonic forces (hegemonic masculinity, Kenya's hegemonic 'imperial presidency' and hegemonic regional political parties) on women's representation in Rift Valley's parliamentary electoral politics.

The context: hegemony, culture and agency

A number of concepts have gained currency in the study of gender and politics in Africa (Musila, 2009: Uchendu, 2008). These concepts are culture, hegemony, masculinities, structure and agency. This discussion suggests that while Daniel arap Moi's hegemonic masculinity could have impacted negatively on women's participation and representation in parliamentary electoral politics in Rift Valley Province, his influence was more greatly felt because he embodied triple hegemonic powers that continue to shape Kenya's post-colonial polity and politics: hegemonic masculinity, hegemonic branch of the Kenyan state, and hegemonic political party. These powers can be examined through the lenses of concepts such as hegemony, masculinities, structure, agency and culture. However, various scholars have also used these concepts differently. Therefore, there is need to specify the meaning of these concepts as used in this chapter.

Hegemony and hegemonic masculinity

The Gramscian concept of hegemony is highly contested. However, in this chapter, hegemony refers to the incremental process of articulating and imposing one's interest or worldview as well as re-making political field (Bourdieu, 2005), after one's interest or worldview. That is, the processes of creating and maintaining a form of consciousness or unconsciousness about one's world that supports particular material interests but purports to be universal. Hegemony also refers to the process of producing and reproducing a hegemonic power and its subjects (Crehan, 2002:166) through a combination of means: the power of ideas to name and describe the world, the ritualistic performance of power relations; the power to determine 'the rules of the game'; and the use of force to foreground such powers.

At the same time, the concept of hegemony is key to understanding the nature of various power relations and resistance to such powers (Crehan, 2002), especially the struggles to re-name, re-describe and re-write the rules of the game in various political contests and contexts. It acknowledges that in every political field (Bourdieu, 2005), there is a contest between the dominant interests and actors that seek to preserve, redefine or transform power relations in their favour as well as resistance to such interest by other or marginal actors.

The discussion in this chapter looks at the impact of three forms of intersecting and reinforcing hegemonic powers on women's participations and representation in parliamentary electoral politics in Rift Valley Province. These hegemonic powers are: Daniel arap Moi's hegemonic masculinity or male power, which purports to represent both men and women's interest; his control of Kenya's imperial presidency or the branch of the government that purports to represent the interest of the state; and lastly, KANU's hegemony, the regionally dominant political party that purports to represent Kalenjin interests.

The discussion suggests that hegemonies are neither total nor unassailable. Indeed, hegemonies are never coherent and bounded (Crehan, 2002: 98-127). There were pockets of resistance by women and men to Daniel arap Moi's triple hegemonic control of Rift Valley politics. For instance, Chelagat Mutai, Francis Lotodo, Jackson Kibor, Kipruto arap Kirwa, Henry Kosgey, and Kipkalya Kones resisted Moi's hegemonic influence at different times (Lynch, 2008: 34).

However, it is women's agency in Rift Valley politics, given these contradictions and tensions within each hegemonic power that is the subject of this chapter that seems to have triumphed against these tendencies in the 2007 parliamentary electoral politics.

The discussion also examines how Kalenjin cultures name and define hegemonic masculinity: that is, an 'idealised form of masculinity at a given place and time' (Dowd, 2008; Courtenay, 2000), a worldview that endorses hierarchical power relations of men over women and some men over other men, heterosexuality over other forms of

sexualities. In a sense, it represents a social construct and performance of relations based on power and authority of all men over women, and some men over other men. This construct is learnt in a family, in a community or in schools (Courtenay, 2000: 1388). In other words, the discussions in this chapter examine how the Kalenjin social construction of femininity or masculinity and hierarchical relations based on such constructs favours men in men-women relations within the public sphere.

The perspective on culture and its influence on electoral politics in the region shows the likely cognitive impact of the encounter between the dominant Kalenjin cultures and the dominant Christian cultures (the striking similarities, contradictions and tensions between the dominant aspects of Kalenjin and Christian cultures) on gender consciousness and its public expressions. This suggests that the cognitive consonance between the dominant Kalenjin and missionary Christian culture privileges may explain Moi's ambivalent worldview on the questions of gender equality, gender equity and gender inequality. These ambivalences on gender questions found expression in his regime's public policy, and especially in the Rift Valley's electoral politics. His ambivalences on contemporary gender questions found expression in Kenya's politics, especially when he controlled the twin hegemonic powers of the office of the president and KANU's regional dominance in Rift Valley Province.

Culture: A political meaning

Culture refers to socially learnt and fairly systematic ideas, beliefs, norms, and institutions. That is, it is about ways of knowing, naming and behaving in one's world that are neither strictly bounded nor static (Crehan, 2002). Although culture has a fairly stable essential core, cultural boundaries are porous and invariably amenable to changes and contradictions over time. The role of these changes and contradictions in the electoral politics is discussed here in relation to the election of women parliamentarians in Kalenjin-Rift Valley. In particular, the discussion examines the traditional conceptions of gender relations and women's participation in the public sphere. It also examines the impact of change, if any, wrought by human rights or women rights discourses, various hermeneutic or interpretation traditions, modern schooling, and decline of pastoralism among a number of Kalenjin sub-ethnic groups. How the evolution of political and economic systems and institutions have impacted on the Kalenjin culture and the subsequent influence of this inter-linkage is also examined. Specifically, the discussion seeks to find out whether culture has had any role in the recent electoral politics in the area. The discussion on culture also makes reference to the Kalenjin culture, Christian culture and gender relations, as well as Kalenjin hegemonic masculinities, and narratives that sanction and legitimate male-dominance and women exclusion from the public sphere.

Culture also refers to counter-narratives (Kalenjin, human rights, evangelical-feminist and developmental discourses) that sanction and legitimate women's

participation in the public sphere and contest male domination, entitlements and privileges in private and public spheres. These processes have greatly shaped gender consciousness in the colonial and post-colonial Kalenjin generations. These changes have created new spaces women can use as springboards to public office and, to a significant extent, undermined the material basis of making claim to patriarchal dividends. These factors may account for the shifting male attitudes towards women in leadership and, importantly, women's sense of agency in the private and public sphere. Therefore, the discussions on culture in this chapter make reference to the encounter between hegemonic cultures and counter-narratives on gender equality, especially the idea of women's participation in the public sphere.

Agency: Women's determinism

Naila Kabeer defines agency as 'the ability to make choices, to define one's goals and act upon them'. Moreover, Kabeer also notes that agency can take 'the form of bargaining and negotiation, deception and manipulation, subversion and resistance as well as more intangible, cognitive processes of reflection and analysis. It can be exercised by individuals as well as by collectivities' (Kabeer, 1999: 435-438). Viewed this way and in line with Kabeer's argument, women's agency in various cultural and political contexts partly explains women's transgressions on male-dominated power and political processes. It may, thus, explain women's transgression on male-dominated Rift Valley politics in the 2007 elections.

The context of agency in this chapter helps to examine how women won parliamentary elections in the Kalenjin-dominated constituencies of Rift Valley Province in spite of unfavourable cultural and political contexts. The women agency shows how women took advantage of masculinity contests to launch successful political careers. Women's experience in other spheres assisted in this too; women who had gained leadership experience in other contexts (universities, government, non-governmental organizations, bureaucracies, and parliament) used these opportunities as a springboard to competitive electoral politics. On the whole, hegemonic powers—cultural and institutional—impacted on women's participation in competitive electoral politics. There is need then to discuss how women have successfully resisted these hegemonic powers in Rift Valley's politics. It is important to find out why these tendencies became assailable in Rift Valley's parliamentary electoral politics.

President Moi's hegemonic masculinity and women in Rift Valley's politics

Control of Kenya's 'imperial' presidency, the hegemonic branch of the government (the office of the president), throughout the period of Moi's regime impacted on political competition in Rift Valley Province in various ways. Notably, this control re-wrote the rules of political competition in favour of men over women, and some men

over the others. In general, Moi's hegemonic masculinity shaped women candidates' agency in a cultural and changing political context. This hegemonic masculinity dominance over political structures accounts for the absence of an elected women parliamentarian from the Kalenjin-dominated central Rift Valley constituencies, and the rise of six women parliamentarians in Rift Valley in 2007.

A reading of Moi's public persona suggests that two hegemonic cultural powers could have shaped his worldview or consciousness on women's participation in the public sphere and the contemporary questions of gender inequality, gender equity and gender equality. These are: the conservative aspects of Kalenjin culture and the conservative aspects of missionary (Africa Inland Church) Christian culture. At the same time, publicly, two things symbolized Daniel arap Moi's cultural world: the ivory-white baton that was a symbol of his reign, and his regular church (Africa Inland Church) attendance on Sundays. The ivory-white baton was a phallic-symbol of his pastoral-Kalenjin masculinity or his presidency, while his regular church attendance, a performance of his Christian faith (without a picture-perfect image of a Christian nuclear family), symbolized his cultural commitment to a culturally hybrid world. It is a world at once Kalenjin and African Inland Church Christian, but riddled with strikingly similar tensions and contradictions on the question of women's leadership and participation in the public sphere. One may argue, therefore, that Moi's worldview is an outcome of the encounter between these cultures, an encounter that produces a cognitive consonance, riddled with tensions and contradictions on the place of women in the public sphere, in any of its subjects. Consequently, policy choices and public actions on gender inequality, gender equity and gender equality found contradictory expression, reflecting the ambivalences of the Kalenjin-Christian cultures. The next section examines the Kalenjin and missionary African Inland Church's worldview on the place and role of women in the public sphere.

Kalenjin culture, gender relations and the public sphere

Kalenjin culture is a product of pastoral-nomadism. In traditional Kalenjin communities, a boy was valued more than a girl (Kipkorir, 2008:43) and the status and place of a woman in the community's decision making was equivalent in value to that of a child. The Kalenjin socio-political system was organized around seven cyclical male-age set systems called ibinda, which are largely patriarchal, patrilocal and celebrate the performance of hegemonic masculinity through cattle raids and regimented men-men relations; that is, conquest, domination and control and therefore the social division between the elders and the warrior class, and within the warrior class such as between a torusio and a motiren, a male candidate and a male mentor during the initiation period, respectively.

Kipkorir (2008:36) notes: 'once a youth has been chosen for initiation, he loses his freedom and becomes a prisoner to his moriten until initiation is complete'. During an initiation period (kaptorus), a motiren taught a torusio how to become the ideal Kalenjin

man, especially respect for or difference to one's seniors, endurance and humility in the face of extreme provocation and humiliation. Thus, under the tutelage of a motiren, a torusio endured humiliation and provocation as a necessary step towards attaining the virtues of an ideal Kalenjin male (Kipkorir, 2008:35-39). Despite enduring humiliation, a torusio was expected 'to always honour and respect their motiren, no matter how harsh the latter had been at kaptorus—the initiation hideout. This experience produced a momentary subordinate but strategic masculinity as well as inculcated loyalty and tough love relationship between a torusio and a motiren.

These everyday responses, which capture male-Kalenjin perceptions of women and non-Kalenjin male, underscore the fact that among the Kalenjin, women (and non-Kalenjin) were not considered equal in value or status to Kalenjin men. Consequently, most women could only participate in the public sphere through male-tutelage. Indeed, the few 'women' who participated in the public sphere were women who had attained a male status: female husbands or women who had attained post-menopausal age. Such a woman is said to 'kagotogosta komostab murenik' to have been promoted to male status (Oboler, 1980:74)'. She could and did participate in all community activities, public sphere and men-only ceremonies.

Kalenjin cultures did not completely obliterate feminine agency in the public sphere, metaphysics, matters of cattle raids and war. A woman was revered or feminine agency venerated in Kalenjin cosmology. Kipkorir (2008:9) notes that the idea of God, Asis, also called '*Chebet chebo chemataw* (Daughter of the day), *Cheptailel* (The one who shines), *Chibo him* (Man of the sky) or *Chemur him* (The one who crosses the sky), also took a feminine form, unlike the Christian God. Asis is the goddess of wellness, abundance, success, victory and peace.

The foregoing discussion does suggest that the Kalenjin culture did celebrate hegemonic masculinity as the maker of manhood and appropriate gender relations. Moreover, key institutions of decision making were built around male-initiation ceremonies and male-leadership, with a token provision for the participation mostly for 'women' who had attained male-status in some of these institutions and a few instances when women could exercise veto power. Generally, this worldview of mostly male and a few exempt women's, or instances of women participation and representation in the public sphere and sanctioned male-tutelage in the public sphere resonates with certain conservative interpretation of Biblical scriptures on women's leadership and participation in the public sphere.

Missionary Christian culture, gender relations and the public sphere

The missionary Christian encounter with Kalenjin cultures did not cause any cognitive dissonance on the role and place of women in private and public spheres. Instead, the encounter could have merely reinforced conservative attitudes towards women's

roles in the private and public sphere. Although studies on how the Bible has been used or is used in Kenya is sparse (Gifford, 2008) missionary-instituted churches such as the African Inland Church has tended to promote male privilege, and elide or ignore women agency, especially women exemplars in early Christian churches (see Fox, 2006; Jacobs, 2007; Pelikan, 2005; Felix, 1994). Partly responsible for this is the churches' patriarchal Western heritage, the male bias in scripture translations and conservative hermeneutic traditions, which promote 'inerrancy and primacy of scripture and absolute abhorrence of modernism' (Waller, 1999 cited in Lynch, 2008: 19-20). Also responsible is the conservative interpretation of the scripture. The New Testament texts of the Bible, i.e. St Paul in passages like I Corinthians 11:2-16; 14: 33-36, I Timothy 2:8-15, Ephesians 5:21-33, I Peter 3:1-7 , have been quoted as promoting the view that women are subordinate to men in private and public spheres. They have been applied to promote male tutelage of women in the public sphere and their exclusion from leadership positions.

Although there are counter-hermeneutic traditions such as egalitarian feminists, religious feminists and evangelical feminists, which challenge the dominant misogynistic reading of the Bible, they have hardly made it to many a Kenyan Christian discourse register, least especially among the missionary instituted churches. Moreover, the charismatic evangelical churches favour mostly hermeneutics of these Pentecostal movements (Gifford, 2008).

A reading of the dominant hermeneutic traditions that have also shaped the Kalenjin worldview suggests that there are striking similarities between the Kalenjin culture and the Christian culture; both endorse the participation of a few exempt women or permit a few instances of women leadership. A reading of both suggests that anyone who is a product of either culture, or both, is likely to be more amenable to making some efforts towards redressing gender inequality, but hardly any effort towards addressing the more problematic questions of equity or equality (Wyrod, 2009).

The confluence of these two worldviews, the African Inland Church missionary Christian culture and the Kalenjin cultures, probably shaped Daniel arap Moi's worldview on gender and electoral politics.

Moi, gender and the public sphere

Moi's worldview on women's leadership and participation in the public sphere partly reflected the tensions and contradictions of the conservative Kalenjin and missionary Christian culture. The resultant cognitive consonance between these cultures found various ambivalent expressions in Moi's public persona and responses to Kenya's challenges on gender inequality, gender equity and gender equality. For example, for the better part of his tenure as Kenya's president, Moi's public image was carefully framed as a benevolent, women and children-loving father who brooked no opposition to his rule over the 'nation' or the patriarchal-family (Musila, 2009: 47). However,

his public image of a President without an official 'First Lady', the visibility of his sons and the corresponding invisibility of his daughters in his public appearance and the quest for political hegemony, as well as his public pronouncements on women suggest that Moi's worldview was andro-centric or placed the male point of view at the centre. This is so, even though he often looked gender-neutral during his 24-year rule. Moi often referred to KANU as 'baba na mama', that is, 'father and mother' (Musila, 2009: 47-48), even though the party demonstrated no love or care for the citizenry and even though he had lost the affection of many Kenyans during his authoritarian rule.

Generally, men dominated parliamentary electoral politics during Moi's 24-year reign as Kenya's president. The CEDAW Report (2009:26) points out that in 1983, women made up only 1.8 per cent of the fifth Parliament, or there were only three women out of 170 elected and nominated parliamentarians. In 1988, women constituted only 1.5 per cent of the sixth parliament, meaning there were only three women out of 200 MPs. In 1992, the seventh Parliament had only 3.5 per cent women or seven out of 200. And lastly, in 1997 the eighth Parliament had only 3.6 per cent women or eight out of 222 MPs.

Similarly, Rift Valley politics was strikingly male-dominated. Men of Moi's liking dominated electoral politics in the region, with the exceptions being Jean-Marie Seroney, Chelagat Mutai and Jackson Kibor, most of the times, and Francis Lotodo, Kipkalya Kones, Kipruto arap Kirwa, and Henry Kosgey, who tended to contest Moi's dominance. However, Moi did not encourage women who were independent of him or his associates to participate in the public sphere, especially in parliamentary politics. Instead, he preferred selection and not election, mostly of male candidates to parliament. Thus, Moi nominated only two women to parliament from Rift Valley Province and they were nominated because of their loyalty and allegiance to him. However, such women, too, were seemingly few and far between in Rift Valley's politics. Although Moi appointed several women from the Kalenjin community to high public service offices, he nominated only two Kalenjin women **Zipporah Kittony** and **Prof. Margaret Kamar** to two parliaments: the Kenya National Assembly and the East Africa Legislative Assembly, respectively. On the other hand, Moi's adversarial relationship with Chelagat Mutai, the first woman Member of Parliament from the Kalenjin-dominated Eldoret North constituency, who owed him no allegiance, suggests that he detested independent-minded men and women alike (*The Weekly Review*, 25 September 1981).

Moi also favoured women's participation in the public sphere through a few selected appointments that he controlled to critical public office. For example, he appointed Dr Sally Kosgei as the permanent secretary in the Office of the President, Head of the Civil Service and Secretary to the Cabinet—the most powerful office after the office of the president in the government's bureaucracy. He also actively promoted girls' education, especially through the harambee 'self-help' movement and

establishing university quotas for women. Indeed, Moi's public pronouncement on topical political issues also suggests that he regarded women as unworthy participants in key political processes. A case in point is Moi's condescending reference to the supposedly ignorant citizens as a 'Wanjiku', a conscious or subconscious feminization of his imagined citizens' civic ignorance and incompetence on matters of constitution making.

Moi's ambivalent responses to the women's participation in the public sphere and hegemonic masculinity also found expression in Rift Valley's electoral politics. The next section looks at the political expression of Moi's worldview in Rift Valley's electoral politics, especially from 1974 to 2007; that is, before Moi's presidency, during his reign and after.

Masculinities contests and women's representation

Perhaps Moi owed his rise as Jomo Kenyatta's vice president to an astute performance of the ethics of a subordinate masculinity or a torusio. However, as Kenya's second president, his performance of hegemonic masculinity was strikingly similar to Jomo Kenyatta's. Both Kenyatta and Moi unscrupulously sought to dominate and control the Kenyan polity using the hegemonic powers of the executive branch of the state, especially that of the office of the president. Both presidents sought to institute and maintain proper hierarchical women-male relations and male-male relations that favoured their male-dominated regimes (Musila, 2009: 43-48).

In a sense, Moi's performance of masculinities (hegemonic and subordinate) as Jomo Kenyatta's vice-president (a period of waiting to become similar to Kaptorus) on the one hand, and his relationships with his various deputies, especially Mwai Kibaki, Josephat Karanja, and George Saitoti on the other hand, mirrors a motiren-torusio tough love relationship during an initiation period and a torusio morality after the initiation period. If Kenyatta was Moi's motiren as a president, that is, the one who taught Moi how to endure humiliation and extreme provocation as a transient and necessary experience of becoming and performing the 'imperial' president (Lynch, 2008; Karimi and Ochieng', 1980), then Moi was a motiren to a number of initiates, torusio, who endured humiliation and provocations such as Mwai Kibaki, whose rose to presidency, and others such as Josephat Karanja and George Saitoti, who did not. For example, both Kenyatta and Moi used constitutional amendments and the provincial administration to stifle political competition, such as the banning of Kenya People Union and the outlawing of multiparty politics in 1982, respectively. However, Moi's hegemonic masculinity found a greater expression in Kenya's public-sphere than Kenyatta's, a reflection of his anxious hold on the hegemonic branch of the Kenyan state: the imperial presidency.

Several reasons may account for the differences in the expressions of Moi and Kenyatta's hegemonic masculinity. First, Moi as a politician initially identified with the Kenya Africa Democratic Union (KADU), a party perceived to be at the forefront

for the reactionary white settlers who were opposed to Kenya's black majority rule, lacked the pre-eminence and currencies of his predecessor, Jomo Kenyatta. That is, Moi lacked Jomo Kenyatta's old age, political credentials and credibility of being a member of the most popular independence movement and party, the legitimating myths of active support or participation in Mau Mau struggles, nationalism and pan-Africanism (Musila, 2009: 44-46).

Consequently, Moi's claim to political eminence unlike Jomo Kenyatta's was easily contestable at national or provincial level. Neither did he have the backing of a populous, well-educated and economically powerful ethnic bloc like Kenyatta. Indeed, because of these legitimacy deficits, Moi's quest for the domination and control of every branch of the state was more urgent and anxious than Kenyatta's.

These anxieties found expression in Kenya's electoral politics, especially in the Rift Valley. If Kenyatta did not publicly support any parliamentary candidate, Moi often expressed his preferences and supported several candidates in parliamentary elections (*The Weekly Review*, 1979: 9). Indeed, Kalenjin women politicians such as Chelagat Mutai and Tabitha Seii were the first victims of Moi's ascendant hegemonic masculinity and political project that would find full expression in Kenya's infamous 1988 general election, in which queue-voting (Mlolongo) was introduced. The form of resistance that these two organized against Moi's hegemonic masculinity at different times and how they were assailed are discussed below.

Challenges to hegemonic masculinity: Chelagat Mutai and Rift Valley Politics

The first woman MP from the Rift Valley Province, Chelagat Mutai, partly owed her rise to the vexed question of land in Eldoret North (Ziwa) and partly to the masculinity contests and battles for political supremacy between Moi and Jean-Marie Seroney. The Rift Valley land question pitted Moi, as the eminent politician to represent the region in the Legislative Council (LegCo), against Jean-Marie Seroney, a radical politician who addressed contentious national and regional issues with candour. Seroney, unlike Moi, was a critic of the Kenyatta regime's land policy or practice in the Rift Valley (Lynch, 2008; Bates, 1989: 45-72).

In 1974, Chelagat Mutai, a 24-year-old, former editor of the University of Nairobi's student magazine *The University Platform* (*The Weekly Review*, 25 September 1981) was elected to parliament to represent Eldoret North. Mutai received Seroney's political and material support in the 1974 elections partly because they had shared concerns over the redistribution of the former 'white highland' lands in Rift Valley Province, especially Ziwa Sisal Estate in Uasin Gishu. Also, the seat had fallen vacant after Seroney's ally, William Saina, was convicted of misappropriating funds and sentenced to two-year jail term. The vacancy and the absence of Saina paved the way for a proxy masculinity duel between Moi and Seroney.

Although Mutai was also popularly known as 'Seroney's girl', in acknowledgement of his pivotal role in her 1974 victory, she seized the opportunity of her election to launch a successful political career. Indeed, Mutai, like Seroney, was a courageous, independent-minded politician who articulated radical views on provincial and national issues of the day: 'the Paul Ngei Amendment' which allowed Kenyatta to pardon his friend to run for election after being convicted of an electoral offence, the Josiah Mwangi Kariuki's murder, the arrest and subsequent detention of Seroney and Martin Shikuku, and the Ziwa land question. She cut a radical niche for herself in articulating issues around the land question and the prominent silence that Moi depicted while the government was settling Gikuyu squatters in new settlement schemes in Rift Valley. In doing so, she joined, as the only woman member, the group of seven radical politicians of Kenya's one-party state known as the 'seven bearded sisters' (Kanyinga, 1998).

In 1976, she was jailed for two and half years for inciting her constituents to violence. However, in 1979, she re-captured her parliamentary seat even after serving her jail term (Lynch, 2008: 34; The Weekly Review, 25 September 1981) by vanquishing 11 male candidates, notably among them William Saina. Besides being a Seroney associate, Saina also claimed a Talai heritage, meaning that he was a member of the highly regarded Talai clan who were the seers and priests of the Kalenjin community and a direct descendant of the revered and celebrated Nandi leader Koitolel arap Samoei (Kipkorir, 2008: 64-66; *The Weekly Review*, 1979).

Although she rebounded back to parliament, Mutai together with other mostly male government critics popularly known as the 'seven bearded sisters' were hounded out of parliament on trumped up charges of filing false mileage claims. Chelagat, like the others, went into exile in order to escape incarceration by the new Moi regime (*The Weekly Review*, 27 April 1984). To a great degree, her political career, like those of other independent-minded politicians, was cut short by Moi's use of state machinery to consolidate his hold on national and regional politics.

Tabitha Seii's challenge

If Chelagat Mutai's political career was cut short by Moi's performance of anxious hegemonic masculinity, Tabitha Seii's political parliamentary career was nipped in the bud by Moi's emerging hegemonic political project in Rift Valley Province. Seii, like Mutai, is a woman of great academic achievements, professional accomplishment and courage. Tabitha Seii had university education and had served as headmistress of several schools, with a good community development record (*The Weekly Review*, 5 August 1983).

In 1979, Tabitha Seii ran against Nicholas Biwott, then Daniel arap Moi's personal assistant and confidant. Although she posed the greatest threat to Nicholas Biwott's candidature that year, she was disqualified from the race, ostensibly because her

Electoral Commission of Kenya's language proficiency test certificate did not have the word 'Swahili' on it or because the word Kiswahili was 'found cancelled from her proficiency certificate' (*The Weekly Review*, 2 September 1983; 18 December 1987). Therefore, Seii was disqualified on the grounds of a 'legal technicality'.

In a word, barely one year into his presidency, in 1979, there were ominous signs that Moi's hegemonic masculinity and political project were set to redefine Kenya's politics in general, and Rift Valley's in particular. It was a political project that eschewed radical politics, democratic political competition, and notably women's participation in electoral politics, except for one or two outside Rift Valley Province.

It was a political project that sought to dominate and control every bit of Kenya's political life. For example, it was evidenced in Moi's preference for candidates in parliamentary elections in Tinderet (Henry Kosgey) and Busia central (Julia Ojiambo) in the 1979 general election (The Weekly Review, 1979; Throup, 1998: 41-42). However, it did find full expression in the 1988 Mlolongo elections—an election in which Moi's regime used the provincial administration to shape the parliament in its image. There were only three women out of 200 MPs that year.

Multiparty politics: The Return of Women in Rift Valley's Politics

Probably, it was Chelagat Mutai and Tabitha Seii, the women forerunners in opposition politics in Rift Valley's patriarchal society who inspired other women from the Kalenjin-dominated constituencies to run for parliamentary seats, especially after the re-introduction of multiparty politics in 1992.

The re-introduction of multipartyism in 1991 led to a loosening of KANU's grip over political competition and the return of some elements of competitive politics in a number of provinces, except the Kalenjin-dominated constituencies of Rift Valley Province. Nonetheless, the area would gain these elements of competitive politics in 2002. The end of Moi's reign as Kenya's president in 2002 and KANU's national chairman in 2004 soon marked the beginning of the decline of the party's regional dominance in Rift Valley's electoral politics. It also marked the opening up of Rift Valley's political space to parties and women who were previously excluded from the male-dominated politics. A more competitive political space in turn enabled women candidates to run against KANU's candidates with greater ease and to challenge male-dominance in parliamentary electoral politics in the province.

The women who have successfully run for parliamentary elections in the Kalenjin-dominated constituencies have profiles that are strikingly similar to Chelagat Mutai's: well-educated, articulate, and accomplished professionals. However, unlike Mutai, these women have had a fairly sound financial base. The public personas of most of them are notably undefined by the Christian picture-perfect frame of a nuclear family:

husband, wife and a child or children. Indeed, the public images of these women leaders, just like their male counterparts are noticeably defined by the absence or muted presence of a male figure as spouse or partner.

These women candidates seized the opening political opportunity brought by the end of Moi's presidency and decline of KANU's hold on Rift Valley politics. The 1992 elections saw the return of Tabitha Seii. She ran against Nicholas Biwott in Keiyo South Constituency on a Democratic Party (DP) ticket. Her return to electoral politics signalled the return of women in Rift Valley's parliamentary electoral politics as leaders.

As a founding member and vice chair of the Democratic Party, Seii not only re-introduced 'opposition politics' against Moi and KANU's hegemonic control of Rift Valley, but also ran against Nicholas Biwott, arguably Daniel Moi's most influential political confidant and awed political strategist. In popular Keiyo South's discourses on masculinity and power, Tabitha Seii's decision to run against Biwott is discussed as an instance in which she knowingly ran against him because, among the Kalenjin, extreme forms of aggression against women is considered un-manly. In woman-man political contests, men were expected to win fairly.

Consequently, a woman, counting on real or imagined restraints of Kalenjin ethos on the excesses of a Kalenjin male in a competition could dare run against Nicholas Biwott when men could not. Thus, Seii took advantage of this limited opportunity, the cultural restraint on hegemonic masculinity, in Kerio South, to introduce anti-Moi and anti-KANU politics in the Kalenjin-dominated constituencies of Rift Valley Province.

Although Seii lost to Nicholas Biwott in 1992, her courage to run against all odds could have inspired other women candidates. It is not unlikely that Tabitha Seii could have inspired Linah Kilimo, Alicen Chelaite and others to run for parliamentary elections in 2002.

The 2002 elections marked the beginning of the decline of Moi's dominance and control of Kenyan and Rift Valley's politics. However, only two women candidates (Linah Kilimo of Marakwet East Constituency and Alicen Chelaite of Rongai Constituency) won parliamentary seats on the National Alliance Rainbow Coalition tickets in the Kalenjin-dominated constituencies of Rift Valley Province.

If Mutai was the first woman to take on a Nandi patriarch, a Talai, and Tabitha Seii the second to take on the most influential Keiyo patriarch in Nicholas Biwott, then the victories of Linah Kilimo and Alicen Chelaite on a NARC ticket in Marakwet East and Rongai Constituencies, respectively, signalled the return of women's leadership and the end of- Moi's dominance in Rift Valley's electoral politics. Linah Kilimo's victory as an example in anti-Moi's hegemony politics is illustrative.

Linah Kilimo is a woman of remarkable academic and professional achievements. She holds a diploma and worked as a bank employee—both great achievements,

given her socio-economic background and the socio-economic indicators of her constituency. Linah Kilimo has twice been elected against the dominant regional party waves. In 2002, she ran on a NARC ticket against the KANU wave in Rift Valley Province. Again, in 2007, she joined KENDA a few months to the elections and ran on a ticket of the little known political party against the ODM wave in Rift Valley. In both instances, she won the elections despite campaigning for a regionally unpopular presidential candidate, Mwai Kibaki.

From 1992 to 2002, Marakwet East Constituency experienced cattle raids between the Marakwet and the Pokot, which led to death, displacement and injury. Many Marakwets had left their farms and sought refuge up the hills. Over the years, Marakwets often could not sleep in their houses for fear of attacks by Pokot cattle raiders (Kipkorir, 2008: xv). Many Marakwets believed that the then ruling KANU regime had taken sides in this conflict in favour of the Pokot. This perception pushed them to support the opposition in the 2002 elections when they elected Linah Kilimo of NARC ticket against KANU's candidate, even though KANU was the dominant political party in the region. Consequently, in the 2002 elections, while Moi's grip on Rift Valley's elective politics was still strong, the Marakwet voted for Linah Kilimo. Her election was either a protest or a vote of no-confidence in Moi and KANU's reign.

Rift Valley's politics, post-Daniel arap Moi and KANU's hegemony

The 2007 general elections were truly the first post-Moi and KANU poll in Rift Valley Province. It was an election in which, arguably, politicians from the province, like other Kenyan politicians, had a number of political parties to choose from. Decidedly, they were anti-Moi and anti-KANU's hegemony in Rift Valley politics.

The end of Moi's presidency, the defeat of KANU's presidential candidate, coupled with KANU's poor performance in the 2002 parliamentary elections marked the decline of the party's influence in national politics, and the beginning of its decline in Rift Valley politics. KANU's decline opened up Rift Valley's parliamentary political space. Furthermore, KANU's influence was weakened by the emergence of new political formation to reject the proposed Constitution at the referendum in November 2005.

The post-2005 referendum saw the ascendancy of the Orange Democratic Movement (ODM), which evolved into a vehicle for political parties opposed to the proposed Constitution, and became the preferred choice for most voters in the Kalenjin-dominated constituencies of the Rift Valley Province, evidenced by the number of parliamentary and presidential votes (see Ngau and Mbathi, 2010: 17 in this volume).

ODM made significant inroads into Kalenjin-dominated constituencies in the Rift Valley Province, aided (ironically) by the support of key former KANU politicians

from the area, including Moi who threw his weight behind the coalition campaigning for the rejection of the proposed Constitution. In a sense, KANU was subsumed by ODM and the party of independence has since diminished in stature.

Moreover, in the 2007 election, Moi's sons, relatives and close associates performed poorly in the parliamentary elections, namely: Gideon Moi (Baringo Central), Jonathan Moi (Eldama Ravine), Nicholas Biwott (Keiyo South), John Lokorio (Baringo North), Nick Salat (Bomet) and Jimmy Choge (Aldai). Indeed, Gideon Moi's loss of Baringo Central, a constituency he represented for five years after his father, Daniel arap Moi's uninterrupted 39 years reign, to Sammy Mwaita, a political upstart, captured the anti-Moi political mood in the Rift Valley. Indeed, Rift Valley not only voted for ODM's Raila Odinga, a leader who embodied anti-status quo politics but also a presidential candidate who has always opposed KANU's presidential candidates and in 2007 was opposing KANU's supported presidential candidate, Mwai Kibaki. These voters also resoundingly rejected Kibaki. However, it was the election of several highly educated women candidates, some of whom tactfully distanced their candidature from perceived Moi hegemony that embodied Rift Valley's anti-Moi and anti-KANU politics in 2007.

Generally, two factors may account for the victory of the six Kalenjin women politicians. First, Rift Valley's politics has been in a state of flux since 2002. Moi and KANU's influence has been on the decline. The Orange Democratic Movement, evolving from the referendum revolt, was barely two years old. Unlike KANU, ODM did not have crystallized political interests, allegiances and loyalties and this may account for ODM's fairly open nomination process of old and new politicians in the Rift Valley Province. Moreover, candidates also had other political options to ODM, such as the United Democratic Movement (UDM) or Kenya Democratic Alliance (KENDA), albeit with considerably lower chances of victory.

The availability of these parties widened parliamentary candidate and voter choice in 2007. The opening up of Rift Valley's political space created room for the agency of more women politicians. Indeed, women candidates who had lost arguably unfairly in the ODM nomination processes could run on alternative party tickets. The candidatures of Linah Kilimo of KENDA and Helen Sambili of UDM are illustrative.

Second, although all the triumphant six–with the exception of Linah Kilimo–were making a debut in parliamentary electoral politics, they had had good leadership experience, a fairly sound financial base, and familial networks, the prerequisite for a successful campaign. In a word, the disarticulation of hegemonic powers, state and party power that Moi embodied created more opportunities for women parliamentary aspirants, especially for women who had sound financial backing and organizational skills in the 2007 elections.

Conclusion

The victory of the six women parliamentarians from the Kalenjin-dominated constituencies of Rift Valley Province in 2007 is as historic as it is symbolic in women's struggle for equal or equitable parliamentary representation. The triumph of these six women parliamentarians suggests that culture hampers women participation in elective politics, especially when its pernicious aspects like hegemonic masculinity is intertwined with other forms of hegemonic powers such as Kenya's current governance and electoral system.

Poignantly, the election of six women politicians in a province stereotyped as traditional, oppressive and retrogressive, calls for a reassessment of these stereotypes and the cultural problematic in Kenya's electoral politics. Although masculinities, especially hegemonic masculinity, still shape Kenya's politics (Musila, 2009), discourses on gender and politics, democracy, and human rights are increasingly contesting men's sense of entitlement to public office, other presumed patriarchal dividends, women marginalization and exclusion from public office.

Consequently, further research on women's participation and representation in Kenya's parliament needs to examine the following: the agency of women politicians and the impact of ethno-regional alpha-males on women representation, particularly at a time when Kenyan masculinities are in a state of a flux (Kabaji, 2008; Musila, 2009), and the impact of Kenya's electoral system on women's participation and representation in local government and parliament.

Besides, further research on women's participation and representation in electoral politics needs to examine the cultural problematic in Kenya's electoral politics (see Government of Kenya, 2009: 27; Musimi and Mbathi, 2010: in this volume). That is, what accounts for the differences made by women in electoral politics in various ethno-regional constituencies of Kenya's eight provinces? What accounts for the disparities of gains made by women at the local government level of representation and the parliamentary level of representation?

Lastly, what accounts for Kenya's parliamentary or civic rural and semi-rural constituencies' lead in electing most of the women parliamentarians and councillors? Arguably, rural constituencies are culturally more conservative than urban, yet it is the more rural constituencies that took the lead in electing women to parliament and do still elect more women councillors than urban civic constituencies.

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17

Matriarchy Rises to Leadership Among Patriarchal Kalenjin: The Dynamics and Perspectives of the 2007 General Elections in Kenya

Susan Chebet-Choge

Abstract

The 2007 general elections is an indelible part of Kenya's history for its outcome and the violence that followed it. For the Kalenjin community, however, it is equally unforgettable for other reasons: That election year saw an increase in the number of Kalenjin women taking part in party and national politics. Women across the Kalenjin community supported various political parties and addressed political rallies. Many vied for civic and parliamentary party nominations and, although not all that did succeeded, six were elected to the tenth Parliament. Another two women would win seats in subsequent by-elections. The election of eight women Members of Parliament (six in the main election and two in the by-election) is unprecedented among the Kalenjin or any other Kenyan ethnic group. In 2007, a community organized around a patriarchal system made a strong gender statement by electing six women to represent it alongside its male MPs in parliament. What made this possible? This chapter uses empirical data, including case studies, to bring to the fore the factors that enabled the election of the largest number of women candidates in one ethnic region. This chapter is, therefore, an analysis of intra-community dynamics that gave rise to this political phenomenon.

Introduction

Kalenjin women's participation in competitive politics dates back to 1974 when Chelagat Mutai, at the age of 24 years, contested and won the Eldoret North parliamentary seat on a KANU ticket. She trounced William Morogo Saina and 10 other men (*The Weekly Review*, 9 November 1979). She was youthful and unmarried, yet the patriarchal Nandi community chose her over Saina. In 1979, she was re-elected with a convincing majority a few months after completing a two-and-half-year prison term for incitement, a charge brought against her by the state in 1976. She defeated Saina (who came second with 7,000 votes) and five other men (*The Weekly Review*, ibid and April 1984).

The participation of Kalenjin women in parliamentary electoral politics appears to have taken a lull during the 24 years of Daniel arap Moi's presidency. With the advent of multiparty democracy in 1992, Kalenjin women rejoined competitive politics. In 1992, Tabitha Seii contested the election for the Keiyo South Constituency, but lost to Nicholas Biwott. In the 1997 elections, seven women contested parliamentary seats in Kalenjin-dominated constituencies but none won. Of the five women who contested parliamentary seats in Kalenjin-dominated constituencies in 2002, only two succeeded—Alicen Chelaite in Rongai and Linah Kilimo in Marakwet East. In the 2007 elections, a whopping 36 women vied for various parliamentary seats, many of them in the Kalenjin-dominated constituencies of the Rift Valley Province where six won parliamentary seats. Another two won parliamentary seats in by-elections held in September 2008 in Bomet and Sotik Constituencies in Rift Valley Province. The two by-elections had attracted eight women. Generally, this is the highest number of women from one ethnic group in Kenya to vie for and to win parliamentary seats in a single election in the history of elective politics in Kenya. This chapter examines the factors behind the women's victories in the region. Specifically, it seeks to explain, by use of empirical data, the social, economic and political dynamics that persuaded the patriarchal Kalenjin community to elect eight women to parliament in the 2007 general elections and the 2008 by-elections.

The set of data that forms the basis of this chapter was collected using primary and secondary methods. Interviews using structured and non-structured questionnaires were conducted in the constituencies where women won parliamentary elections. Some 300 questionnaires were randomly administered to respondents in these constituencies, of which 173 were filled and returned. The researcher also held face-to-face interviews as well as e-interviews with 27 key informants purposively selected in the selected constituencies for their knowledge about local level politics. All the respondents and informants were persons who were eligible to vote in the 2007 general elections, as well as in the Sotik and Bomet by-elections of 2008. In Eldoret North, informants included the people who voted in the 1974 and 1979 general elections. Secondary information was obtained from published texts such as books, journals, newspapers and the Internet.

Kalenjin Society: Organization, Culture and Women in Politics

The Kalenjin are Nilotes who mostly occupy the Rift Valley Province of Kenya and Mt Elgon in Western Province as well as in Sebei District of Uganda. Early historians classified only eight Kalenjin sub-tribes, namely: Nandi, Kipsigis, Tugen, Marakwet, Keiyo, Sabaot, Pokot and Terik. Recently, the Kalenjin Council of Elders included two others, the Sengwer (Cherang'anyiek) and the Okiek, as Kalenjin sub-tribes. The latter two have for decades been classified with the Ndorobo and Tatog as distantly related sub-tribes of the Kalenjin (Sambu, 2007: 1-3; Choge, 1997: 2; Kipkorir, 1985: 2-3; Toweett, 1979: xiii-xiv and Ochieng', 1975:55). Traditionally, the Kalenjin are socio-economically a pastoralist, semi-nomadic and patrilineal community.

Before Kenya's independence in 1963, Kalenjin government was based on the *Kokwet* system (village system), a collective system of governance headed by *pooisiek ap kook (*Kokwet male elders) and supported by a fighting force led by the *muren* – the young men who had just completed their initiation rites.[1] All Kalenjin men served as *muren* before taking up *Kokwet* roles. This system revolved around the seven male initiation age sets called *ipinda*. Each set completed its cycle after seven years and would take up leadership again after 49 years. These age-sets are *Kipkoimet, Kaplelach, Kimnyigei, Nyongi, Maina, Chuma* and *Sawe* (Snell, 1954: 13)[2]. Men and masculinity are central and honoured, as summed up in the Nandi simile, *"Toror kou tany ak muren* (It is honourable/powerful/respectful like a man and a cow)."* This simile reflects a cosmology in which women and femininity occupy constricted spaces. Each gender's roles were clearly defined. The *muren* took charge of community's security matters and enriched it through cattle raids. The older men (retired *muren*) provided advice and guidance. Women's main roles were to bear children and care for the home. Children were under the supervision of their mothers and grandparents and could perform minor duties delegated to them.

Woman in the Kalenjin Society

In the indigenous Kalenjin religion and belief system, a woman was revered. The God-idea was in the form of a woman. The deity is symbolized by *Asiss* (the Sun), which in Egyptian mythology was a goddess and a wife to *Osiri*s (Sambu, 2007: 73 and 81). In ancient mythology, the Sun symbolized femininity while the Moon symbolized masculinity. Since the Kalenjin trace their origins to Egypt, they appear to have brought with them the Egyptian perception of God and entrenched it in their religious language as seen in all the names of *Asiss* such as *Cheptoleel* (white

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[1] *Pooisiek* (singular form is *pooiyot*) is polysemous in usage. First, it refers to the elderly men in reference to age. Secondly, it refers to any men who have assumed certain societal roles and, thirdly, it refers to husbands. The reference in this context relates to the second usage.

[2] Other Kalenjin sub-tribes such as the Pokot still have the eighth age set, called *Korongoro*, but among the Nandi, this set has been integrated with *Kipkoimet*.

girl/daughter) [White signifies purity and holiness]; *Cheptaileel* (she of the good fortune); *Chepeet* (she of the day/light); *Chepomirchio* (daughter/ girl of war) and *Chepokipkoiyo* (daughter/girl of providence). *Koiyet* refers to cattle obtained from a raid but can also refer to the place where such cattle are distributed, and the halo around the sun. *Chepkelyensogol* (she of the nine legs) refers to the symbolism of the number nine. Among the Kalenjin, the number symbolizes infinity. The significance of 'nine' can be traced back to the Egyptian mythology of *Isis*—the Sun goddess being one of the nine gods born by *Atum* and *Ra*. This title of *Asiss* connotes wellness, abundance, success, victory and peace (Sambu, 2007:91-101).

Apart from the names of God that point to a 'She Godhead', the Kalenjin also revere women and rely on their psyche. In moments of resignation, they say, "*Ngoekta kyeet (kupestap) korgo* (May morning find the world on a woman's laps)" and *"Kiigimwa kele kiirwogiin age tugul ko korgo met... (It has been said that any chief's/judge's/negotiator's head is feminine)"* (Sambu, 2007: 93-94), meaning that he/she rules justly.

The reverence femininity enjoys in the Kalenjin belief system may contrast with its outwardly strong patriarchal practices such as militarism, pastoralism and practices that seem to exclude women. The Freudian theory of the Oedipus complex may provide some explanations about why patrilineal communities—where everything is done and centres on and around men—occasionally support women to higher positions of government. It has been hypothesized that where men are in control, the sum total of the adoration for their mothers may add up and lead to a collective formalized projection of that condition to the "more ideal world beyond" where it coalesces into the image of one Great Mother (Lynch, 2008: 92). The concept of a Great Mother may be actualized as a female deity or a prominent woman. Therefore, an explanation for the election of women to parliament in Kalenjin-dominated areas might not be wholly found within socio-economic and political happenings in national and regional spheres in Kenya, or within established gender theories. Interrogating the psyche of the whole community can provide useful insights.

The Kalenjin patriarchs subconsciously adore and do not discriminate against their women. One could argue that their patrilineal characteristics could be an imposition from cultures they have encountered during their migration and from Christianity, which introduced a male Godhead. In traditional Kalenjin society, however, a woman was not allowed even to stand before men and address them. If allowed, she would do so while sitting, kneeling or squatting. Alternatively, she could air her views through a male relative or appointee.

The Kalenjin community loathed an unmarried woman. Each woman would be married in one of two ways: universal heterosexual marriages between a man and a woman or in the traditional alternative forms of marriage sanctioned by the community and supported by customary laws. Two of such instances are when a home has only daughters. One of them would remain at home to *kolaal maat ap*

koinywa (light the fire of her family). This woman would bear children who would continue the family line and inherit her parents' property. In the situation where her father had sons from other wives, then these daughters' children would keep alive the name of the wife who never had sons. Such a woman was considered to have been *kakitunchi biy* (married to the cattle kraal). Two, a woman would be given away in marriage to a fellow woman whom the community had accorded male status—that is, socially she is male. Such a woman would have reached menopause without bearing children. When accorded male status, the community would say *kakilanda* (She has been crossed over).[3] Though biologically female, socially this woman was male because she would be allowed to attend and participate in all male ceremonies and activities. None of the single women have gone through either form of marriage and, as such, traditionally, they would not be permitted to conduct any business for the community.

Kalenjin Matriarchs and Parliamentary Elections Since 1974

Active women's participation in competitive politics in Kalenjin-dominated areas started with the election of Chelagat Mutai in 1974, but was halted in 1981 when she fled into exile following the government's protracted intimidation and incarceration of critics in parliament. Some of her associates who were opposed to the government were jailed on trumped charges or for allegedly faking mileage claims in parliament. The re-introduction of multiparty politics in 1992 would revive that activism, with Tabitha Seii contesting the Keiyo South election against Nicholas Biwott. In 1997, seven women vied for election in Kalenjin-dominated areas and all lost. In the 2002 and 2007, the number of women seeking election in Kalenjin-dominated areas rose. In 2002, two women were elected and in 2007, six, with a subsequent two in the 2008 by-elections. These contests and wins are summarized in Table 17.1. Generally, the table shows that the number of female candidates participating in parliamentary elections began to increase from 1997. By 2007, the number had increased to 36.

The victories of women contestants in parliamentary elections in Kalenjin-dominated areas can be attributed to different reasons. Chelagat Mutai's win in 1974 was largely attributed to the patronage of her political mentor, Jean-Marie Seroney, the then MP for Tinderet. However, her victory in 1979 was largely due to her ability to deliver. During her first term in parliament, the thorny land issue in Ziwa was resolved when she led the squatters in September 1975 to invade and uproot sisal plantations and take over the land. This sisal plantation had been

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[3] Not all Kalenjin sub-tribes practice these alternative marriage rites. Notable sub-tribes that practice them are the Nandi and Kipsigis. The word *kakilanda* is a morphosyntactic unit. It has aspectual marker {ka-}equivalent to *has*, auxiliary verb *be* in its past participle form; {-ki}, which is equivalent to *been* and the verb {-landa} means *cross over* a divider such as a river, valley, ridge etc. In the context of this text, the linguistic unit refers to the social crossing over of the woman from functioning and being perceived as a woman to functioning and being perceived as a man.

earmarked for sale to commercial interests, locking out the local squatters already living on the farm. She was subsequently charged with incitement and destruction of property, convicted and jailed in 1976 for two-and-a-half years, thus cutting short her term in parliament (Lynch, 2008: 34). In the 1979 elections, the tough image and composure she maintained during her years of incarceration (*The Weekly Review,* 1979) boosted her candidacy. The feelings of the constituents were that the punishment meted out to her was excessively harsh. Their votes for her were an expression of love, sympathy and gratitude for standing with them at their time of need.

Table 17.1: Performance of Kalenjin women candidates in parliamentary elections[4]

Candidacy by gender	1974	1979	1997	2002	2007	2008 by-election	2008
No. of female candidates	1	1	7	5	36	Female candidates	8
No. of male candidates	11	8	73	86	225	Male candidates	9
No. of winning female candidates	1	1	0	2	6	Winning female candidates	2
No. of winning male candidates	0	0	26	21	20	Winning male candidates	0

Source: ECK: http://www.eck.or.ke/index.php/Election-Result-Database/ Retrieved 12 July 2008 and newspaper records

Chelagat Mutai's name still stirs up nostalgia and is hugely revered in the community, where she is considered a political heroine. The perception is that if as a young woman she could fight for her people's rights and resolve an issue that Saina—an MP, a renowned Kalenjin leader and a *Talai* for that matter—had failed to conclude, then 'women can deliver on leadership better than men'.[5]

In the 2002 elections, Chelagat attempted a political comeback on the National Alliance Rainbow Coalition ticket but lost to Reuben Chesire. KANU secured its win in Eldoret North by fronting Chesire, a weak candidate compared to the party's William Ruto, to win the NARC nomination. KANU sent out many of its supporters to vote for Chesire. Therefore, Chelagat's ambition of rebounding into Eldoret North's political arena was nipped in the bud.

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[4] The figures are drawn only from constituencies that had female candidates and, therefore, do not correspond to total parliamentary seats in Kalenjin Rift Valley.

[5] Talai is a clan of Kalenjin believed to posses supernatural powers to foretell the future and to halt calamities. They are the community seers and mediums descended from the orkoiik. One of their forefathers is the great ruler of the Nandi, Koitalel arap Samoei, who was killed by the British colonialists in 1905.

Chelaite and Kilimo's victories in Rongai and Marakwet East, respectively, were due to the NARC wave that swept the whole country, with the exception of strongly pro-KANU constituencies (Makotsi, 2004; State House, 2003). Chelaite succeeded in Rongai also because of the large non-Kalenjin vote. The Marakwet voted for Kilimo as a political messiah who would deliver them from the suffering they had endured from the Pokot raiders.

Kalenjin Matriarchs' Quest for Leadership under Moi's One-Party Regime

Moi, for decades, singly determined the direction the Kalenjin community politics took. He had both manifest and implicit power over the community, since joining the Legislative Council in 1955, rising to minister, vice president and then president in 47 years. His political influence within the community began to wane when he left national politics and leadership (Lynch, 2008: 19; Chesoni, 2006: 239; Shively, 2001: 42).

The Moi era entrenched the perception that the Kalenjin community was chauvinistic when it came to women and leadership. A close examination of the Moi presidency shows that he appointed many women to top positions in his government. There were women ambassadors, permanent secretaries, magistrates and judges (Nzomo, 2003). Moi helped to build and improve many schools for girls, with some taking his name. Yet, in Moi's 24 years as President, he never publicly introduced his spouse, Lena Moi, as the 'first lady'. It was only after her death, three years after he left office, that some Kenyans came to know that Moi was married. For all those years, his approach to politics and leadership at national and community levels was conservative. His approach to politics was to base elections on 'a selection mode', literally choosing who would win an election and, therefore, making the democratic process of election a mere formality.

Two examples of this are the infamous 1988 KANU nominations that used queue voting (*mlolongo*) and the 2002 imposition of Uhuru Kenyatta as KANU's presidential candidate in that year's elections. Under this voting system, a candidate who garnered 70 per cent of the vote in the party primary (KANU was the sole party) would be deemed to have been automatically elected to parliament. It is widely believed that Moi used this system to handpick those he liked and lock out those whom he did not want (Mwaura, 1997). Adar and Munyae (2001) state that:

> *In the 1988 general election, most Members of Parliament were not elected but selected by the party… patronage and loyalty to the President became mandatory for one's political survival… those perceived to be against the President and KANU policies were denied the right to contest electoral seats.*

In these elections, candidates with shorter lines but favoured by the government were declared the winners, while those with longer lines but disliked lost. Equally, a non-contestant in the election was also declared a winner (Press, 2004: 237).[6]

Moi never selected a Kalenjin woman to win in an election (Rourke and Boyer, 2004: 13 and Shively, 2001: 12). Had he done so, it is almost certain that she would have won, considering Moi's enormous influence at the time over Kalenjin political matters. It is possible that Moi was phobic towards women who were assertive, bold and resilient. During his presidency, the Cabinet influenced Parliament to pass a motion to amend the East African Legislative Assembly (EALA) election rule requiring at *least three* of the nominees to be women, and instead reduced it to one slot. During his rule, KANU nominated Prof Margaret Kamaar, while the Democratic Party picked Rose Waruhiu (Ang'ila, 2004) to EALA. Prof Kamaar has all the three qualities of assertiveness, boldness and resiliency but Moi had control over her through his confidant, Nicholas Biwott, with whom she has been in a relationship. Equally, Moi's constant support for Zipporah Kittony (a woman whose strength borders on stubbornness) throughout his reign is attributed to the close relationship between them. As a boy, Moi lived with Zipporah Kittony's family (Lynch, 2008: 20) and her father was his religious mentor. Because of this, Zipporah Kittony never used her strong personality in a way that could upset Moi. He elevated Zipporah Kittony to national politics by nominating her as a Member of Parliament in 1997.

Moi's silent dislike of assertive and popular women politicians can be traced back to the days of Chelagat Mutai. He was uncomfortable with the outspoken and radical Chelagat after she recaptured her Eldoret North seat in 1979. She cut the image of a winner, a resilient soldier and a leader after successfully settling her constituents on the sisal plantation land in Ziwa, serving time in jail and recapturing her parliamentary seat. In parliament, she associated with dissident left-leaning MPs pejoratively named the 'Seven Bearded Sisters'–fiery-tongued and razor-critical legislators who kept the excesses of the totalitarian KANU regime in check (Lynch, 2008: 34).

Chelagat was a protégé of fiery Nandi politician, Jean-Marie Seroney, and was popularly referred to as 'Seroney's girl'. Since Moi and Seroney were political opposites in terms of political views and approach, the former always saw Chelagat as the extension of his nemesis. The criminal charges brought against Chelagat in 1981 for falsifying mileage claims to the National Assembly are often seen as being politically motivated (Lynch, 2008: 34). It can be argued that Moi was

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[6] Mlolongo system is a type of voting in which voters queue behind a candidate or his/her poster for counting. The candidate with the longest queue would be declared the winner. In most cases, counting is never done but a poll returning officer can declare the outcome of the election just by subjectively judging the length of the queue. Often, in past elections, the posters would be exchanged when the voters were already in the queues and when the returning officer was about to do the counting. Most candidates lost to would be losers in a democratic election because posters at the head of the long queues were switched just before the count.

uncomfortable with Chelagat Mutai because he had no control over her since she listened more to her political mentor, Jean-Marie Seroney. His probable fear of her assertiveness, and her personal distance from him made it difficult for him to tolerate her ascent to political leadership in the community.

On the national level, Moi's imposition of Uhuru Kenyatta as KANU's presidential candidate for the 2002 general election turned into a political tragedy for him, marking the beginning of the end to his political dominance in the country and later in the Kalenjin community. Kenyatta lost the election to Mwai Kibaki and KANU's influence began to decline.

Kalenjin Matriarchs and Multiparty Electoral Politics

Multiparty politics created space for Kalenjin women to engage in competitive politics. Multipartyism provided an alternative route to the community's leadership and an avenue to participate with men in managing the politics of the community. Kalenjin men have an advantage of a 'perceived birthright to lead', which Chesoni (2006: 241) has termed as *son preference*. For many years, men have accumulated power and directed singly the community's development policies. Kate Millett has expounded the effect of this male priority syndrome in her book, *Sexual Politics:*

> ...*What goes largely unexamined, often even unacknowledged (yet is institutionalized nonetheless) in our social order, is the birthright priority whereby males rule females ...The fact is evident at once if one recalls that the military, industry, technology, universities, science, political office and finance—in short, every avenue of power within the society, including the coercive force of the police, is entirely in male hands. As the essence of politics is power, such realisation cannot fail to carry impact (Shively, 2001:12).*

Multiparty politics, re-introduced in 1991, seems to have provided an avenue for Kalenjin women to seek power and have a say in the way their community's issues are articulated. Apart from Chelagat Mutai, who had contested and won a parliamentary seat in 1974 and 1979 during KANU's one-party era, no woman had been successful in parliamentary electoral politics in Kalenjin-dominated areas until 2002.

Multiparty politics limited the choices and power of rival parties because, if a prominent party rejected a credible and popular woman candidate, she could seek nomination in a smaller party and still win the election. Notable examples are Helen Sambili and Linah Kilimo in 2007, who won elections on small parties, becoming their parties' sole representatives in Parliament. Sambili had lost the ODM nomination in what was perceived as an unfair process. Kilimo did not seek

the ODM nomination because she perceived the party as likely to deny her the ticket even if she won the primary election. These experiences are replicated elsewhere in the experiences of women contestants around Kenya.[7] Table 16.2 gives a profile of Kalenjin women ever elected or nominated to parliament.

Table 17.2: Party and sub-tribe profiles of Kalenjin women parliamentarians since 1974

Year	Winner	Party	Constituency	Sub-tribe
1974 and 1979	Chelagat Mutai	[1]KANU	Eldoret North	Nandi
2002	Alicen Chelaite	NARC	Rongai	Tugen
2002 and 2007	Linah Kilimo	NARC	Marakwet East	Marakwet
2007	Margaret Kamaar	ODM	Eldoret East	Keiyo
	Peris Simam	ODM	Eldoret South	Nandi
	Sally Kosgei	ODM	Aldai	Terik
	Helen Sambili	UDM	Mogotio	Tugen
	Lorna Laboso	ODM	Sotik	Kipsigis
2008	Joyce Laboso	ODM	Sotik	Kipsigis
	Beatrice Kones	ODM	Bomet	Kipsigis
Nominated				
1998	Zipporah Kittony	KANU	Cherangany	Tugen
2003	Esther Keino	KANU	Belgut	Kipsigis

Profiles of Kalenjin Women MPs and their Wins in 2007 and 2008

An analysis of each woman MP's qualities and the political landscape of her constituency prior to the 2007 elections provides interesting insights into why these women succeeded.

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[7] Wavinya Ndeti reportedly won the nomination for ODM Kenya but the ticket went to a male contestant she had trounced because he enjoyed the support of the party leader. She sought nomination on the little-known Chama Cha Umma and won the election in Kathiani Constituency, Eastern Province.

i)   *Linah Kilimo—Marakwet East Constituency*

Linah Kilimo made her political debut in 1997. She transformed herself into a successful politician and won the parliamentary seat in 2002. In 2007, she was a political schemer and masterful competitor and artist. Her constituency strongly supported the Orange Democratic Movement (ODM) and its presidential candidate, Raila Odinga, yet she openly supported Kibaki and contested the election on the little-known Kenya National Democratic Alliance. She had joined the party merely days to the election. Worse than being virtually unknown in her constituency, the party was associated with Kamlesh Pattni, a man synonymous with the multi-billion-shilling Goldenberg scandal. The risks were two-fold: the association with corruption, and the expectation that she would be flush with cash to distribute to voters.

The perception created by her opponents was that her victory was bought because she was sandwiched between Pattni and the high-spending Kibaki campaign through his Party of National Unity, to which she was affiliated. Some Marakwet East constituents, however, claim that though Kilimo spent more money in the 2007 campaign than in 2002, she did not bribe voters.

Her victory is mainly attributed to women's and the elderly people's desire to preserve the peace that followed her election in 2002. Prior to this, the Marakwet had not known peace for years due to deadly cattle raids carried out by the Pokot during the Moi era. Many Marakwets, especially in the Tot Valley, had left their farms and sought refuge in the upper areas. People no longer slept in their houses for fear of fatal attacks by the Pokot. The Marakwet felt that Moi did little to protect them from the Pokot. In fact, the majority believed that Moi supported the Pokot instead of reprimanding them. This perception pushed them to support the opposition in 2002 elections when they first elected Linah Kilimo on a NARC ticket, spurning KANU, which was the Kalenjin community's preferred party.

Respondents during the field interviews considered Kilimo a sacrificial lamb for peace; she was elected to end hostilities between the Marakwet and the Pokot, as well as restore peace and security. Her election was culturally symbolic in two respects. One, the Kalenjin customarily offer a daughter of certain qualities to appease *Asiss* and the spirits for wrongs committed.[8] Such a sacrifice would be made in times of severe drought, an epidemic or any other catastrophe the community felt had occurred as a result of *Asiss*' and the spirits' anger.

The Nandi narrative of *Chesong'ony ak Ilet* (Chesong'ony and Thunder) entitled *Chemarus ak Sandet* (Chemarus and the Lover) among the Kipsigis— (Sambu, 2007: 77-84) attests to this.[9] Besides this act, marrying girls off to the

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[8] *Asiss* 'sun' is the traditional Kalenjin name for God.

[9] *Chesong'ony* (crested girl) is one of the many theophoric Kalenjin anthroponyms. It is a special name

enemy communities in an attempt to end hostilities was common. Since Kilimo became an MP, the fighting between the Marakwet and the Pokot, as well as cattle rustling have reduced. She achieved something the previous male MPs had been unable to. Although in 2007 elections, the constituency broadly supported ODM, the Marakwet East constituents feared a reversal of the gains made in terms of peace and security if they elected the man who contested the election on the ODM ticket. Kilimo exploited these fears to her advantage. She constantly reminded her constituents of their lives before and after her election as their MP, asking pointedly, "Do you still want to sleep in your houses or do you want to go back to the bushes?" Equally, her election resulted from her previous experience as an MP and minister during the NARC regime between 2002 and 2005, before she was sacked after the failed referendum on the new constitution.

Kilimo also transformed *legetiet (legetio)*[10] 'belt' into a powerful political symbol. *Legetiet* is the Kalenjin women's indigenous belt made from cowhide. Every girl would receive one from her mother upon getting married. Women used the belt to gird their abdomens after childbirth. As long as a woman tied herself with the belt, there could be no physical intimacy between her and her husband. This belt was also used as a community's birth control and protective device. If a woman was opposed to impending cattle raid, she would place her *legetiet* on the warriors' path, and they would not proceed with the raid. It was taboo for a warrior to touch, step on or cross over this belt. If war broke out or was imminent, the women would remove their *legetoik* and place them on the warriors' path. The warriors, upon seeing them, would end the war at once. In *legetiet* lies women's absolute power over men. In Kalenjin women political circles, the powers of *legetiet* are constantly invoked through reference of the women as *legetio*. In particular, Linah Kilimo used it as her political symbol. This had a great psychological resonance in the community.

ii)   *Dr Sally Kosgei—Aldai Constituency*

Dr Sally Kosgei has served as a secondary school teacher[11] and lecturer at the University of Nairobi. She also worked as first Secretary at the Kenya mission to Habitat in Nairobi, Head of Africa division in the Ministry of Foreign Affairs, Kenya's first Secretary to Zimbabwe, High Commissioner to United Kingdom, Permanent

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given to a girl born after a child who died. *Song'ony* (a crest) is an indefinite noun that refers to the crest of birds. Its definite form is *song'onyet* (the crest). In an attempt to confuse the spirits, a crest-like amount of hair would be left on the girls' forehead after shaving. When the spirits (in this context symbolized by *ilet*—thunder) wanted to take her away through death, they would see the crest and confuse her for an abnormal child. The philosophy behind this is that, *Asiss* does not take away bad or abnormal people. A boy child would have been named *Kipsong'ony* (crested boy). In the context of traditional Marakwet, Kilimo was socially abnormal because she did not go through the circumcision rite of passage traditionally mandatory for all grown up Kalenjin women before marriage. The narrative is found in all Kalenjin dialects with slight variations in characters and settings, but the theme is the same.

[10] The indefinite form of the noun in most Kalenjin dialects is *legetio* in singular and *legetoi* in plural.

[11] She was Professor Helen Sambili's (present MP for Mogotio), history teacher at Nakuru High.

Secretary in the Ministry of Finance and Head of Civil Service and Secretary to the Cabinet. These national duties prepared her well for a parliamentary role. Her immense experience in handling public and diplomatic matters were put to good use in 2008 during the negotiations—led by the Panel of Eminent African Personalities—seeking solutions to the impasse between ODM and PNU following the disputed presidential election. Her input was so crucial that ODM—a multi-ethnic party—did not consider it ethnically skewed for two Kalenjins—herself and Eldoret North MP William Ruto—to represent its interests in the panel. Her election in Aldai was the constituents' acknowledgment of her special qualities.

For decades, the family of Kiptum Choge dominated Aldai politics. Although the Choge family were successful politicians, Aldai constituents had become weary of their arrogance and desired a change. Dr Sally Kosgei's victory was aided by weaknesses voters noted in the immediate former MP, Jim Choge, and his family. Aldai constituents desired to free themselves from the Choges' political stranglehold, characterized by arrogance, violence and even brutality. An informant said people were afraid to differ with any of the Choges on any matter, especially a political one, because they could easily harm opponents. For instance, the patriarch Kiptum Choge (Jim Choge's father) was charged and convicted for the murder of a councillor Tenai in Moi's Bridge in 1975 and later pardoned. Though it was reported that the two had a dispute over a boundary, oral testimonies suggest that Tenai had supported Samuel arap Ng'eny against Choge in the 1974 elections. To many Aldai voters, Tenai's death was politically motivated.

During the 2005 referendum, Jim Choge, who was Aldai MP, is alleged to have shot a man. Added to their proclivity for violence, the Choges were considered arrogant. The senior Choge would reportedly insult people in Aldai by asking the men why they could not sire sons worthy of leadership, leaving them (the Choges) the only worthy people to contest elections. He would reportedly suggest that the men take their wives to him so that 'he could help them'. A respondent alleged that at one of the rallies, the senior Choge said, "It seems a dog can even come to you claiming it belongs to the Choge family, and you will still elect it to parliament."

Further, the Choge family had exhibited greed for power in the previous two elections when family members contested against each other. In 2002, the senior Choge competed with his son Jim Choge for the KANU ticket. The son won, and his father became a NARC supporter. In the same year, Jim ran on a KANU ticket while his uncle, Sammy Kipcho Choge (a biological brother to his father), contested the Aldai seat on a FORD-People ticket. In the 2007 elections, the two were also cleared by ECK to contest the same seat, with Kipcho now running on a New FORD-Kenya ticket. The voters seemed to detest such greed in the 2007 elections. Therefore, the 2007 election was a vote in Aldai on whether to continue with the leadership of the Choges, or choose another new and pro-people leadership.

iii)   *Peris Simam—Eldoret South Constituency*

Peris Simam was a first-time contestant for the Eldoret South parliamentary seat. She surprised many when she declared her interest. Few took her declaration seriously until she resigned from her teaching job at Arnesen Secondary School and submitted her name for the ODM nomination. With the exception of her husband, Enock Simam, her family provided the first source of opposition. She is the daughter of a humble Kapmirmet family of Asururiet village near Moi University, but married to the affluent and influential Kapsimam family. Every aspiring candidate for a parliamentary seat in Eldoret South always enlists the support and endorsement of the Kapsimam family if they hope to win. The Simams are socially and economically endowed and can significantly influence the direction of politics in Eldoret South. Peris Simam, however, did not benefit from this influence. In fact, her brother in-law was the chief campaigner for her main opponent, David Koros, who had since crossed over to ODM-Kenya after Simam beat him in the ODM nomination. This lack of support from her marital family did not deter her constituents from giving her 62.62 per cent of the vote.

Simam did not have sufficient finances, and her supporters claim that she operated on a budget of between Ksh 5 million to Ksh 7 million raised from friends, borrowing and by disposing of some family assets.[12] Her benefactors are still embroiled in recovery disputes over money and vehicles loaned to her to launch her massive campaigns in 2007. Though her campaign budget was lean, her strategists helped her to set up one of the most elaborate outreaches in the constituency's history.

Her victory could also be attributed to the weak leadership of the previous MP, David Koros. Residents accused him of using nepotism in managing the Constituency Development Fund allocations and associating with an illegally armed group referred to as the Taliban, which terrorised perceived opponents in the constituency. The outgoing MP was reportedly so unpopular that informants said had he won the ODM nomination, they would have voted in someone else from any other party.

iv)   *Prof. Helen Sambili—Mogotio Constituency*

Prof Helen Sambili has a doctoral degree in curriculum studies. She was one of the surprise winners in the 2007 election. After losing the ODM nomination, she crossed over to the United Democratic Movement, a new party that was only popular in parts of Rift Valley Province. She won the Mogotio seat with 7,558 votes, representing 34.46 per cent of the vote. In her political quest, she encountered many challenges. She did not secure an ODM nomination and was, therefore, viewed as an outsider. She overcame this obstacle when UDM declared its affiliation to ODM. Therefore, constituents started accepting her probable win on the same terms as

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[12] Personal communication with a member of her campaign team

that of the ODM candidate. This position was threatened towards election time when the ODM leadership advocated for 'three piece suit' voting pattern, which comprised voting exclusively for its candidates at the ward, constituency and for the presidency. This call almost cost Sambili her victory, as seen in the very slim margin of 322 votes by which she won.

Sambili also faced the challenge of being termed a Moi protégé and a candidate who was politically elevated by two powerful institutions—former President Moi and her husband, who was once the Principal of Kabarak High School, later Deputy Governor of Central Bank, and then (as now) Permanent Secretary in the Ministry of Planning. Because of her husband's position in Kibaki's administration, her opponents viewed her as Moi and Kibaki's mole in ODM. Because of her relationship to these three powerful men, her opponents spread propaganda that she had been financed by PNU and Moi to buy votes. On the contrary, her family played a minimal role in her campaigns. Besides, Moi never campaigned for Sambili since he was only rooting for KANU candidates, one of whom was contesting against her. In 2007, Moi lost his grip over Kalenjin politics, as was witnessed in the defeat of his relatives, cronies and associates in various parliamentary seat contests.

The fact that there were five contestants for the Mogotio seat seems to have handed Sambili her ticket to parliament. The other candidates garnered a combined 14,445 votes, representing 65.18 per cent of the ballots cast, against Sambili's 7,558, the equivalent of 34.82 per cent of the vote. The difference between her votes and her first runner-up was 322, while the spoilt ballots were 363, a number higher than her winning margin. The opposition votes were distributed among the opponents, leaving her vote intact.

Other respondents suggest that her victory was largely due to her pleasant personality. Sambili identifies herself in word and deed with her constituents in all aspects of their lives–attending weddings and burials, and any other activity that requires her presence as a member of the community. Her campaigns were based on principles of network marketing systems, where positive information about her was spread by word of mouth throughout the constituency.

v)   *Lorna Laboso—Sotik Constituency*

Lorna Laboso contested the Sotik election on an ODM ticket. During her campaigns, and until her death in a plane crash on 10 June 2008, she was known as the Tigress of South Rift politics. Her victory resulted from patience and a desire to serve her constituents as an MP. She first contested the Sotik seat in 2002 on a NARC ticket but lost to Anthony Kimeto of KANU. Prior to her election, she had been one of the vocal opponents of female genital cutting, and a shrewd business woman. During the short period she was in office, she established a bursary fund for her constituency, into which friends and well-wishers would contribute. It is said that

she dedicated Ksh 100,000 of her salary to this kitty. By the time of her death, some 20 students from Sotik were studying in secondary school courtesy of fees paid from the bursary.

vi)   *Prof Margaret Kamaar—Eldoret East Constituency*

Margaret Kamaar was elected because of her educational and career credentials. She has a doctoral degree in soil science and had behind her a distinguished career in university teaching and administration since 1986. She served as a lecturer, Principal of Chepkoilel Campus, Moi University, and later Deputy Vice Chancellor of Moi University. In 2001, she was appointed a member of the East African Legislative Assembly (EALA), and still serves as the Rift Valley representative in Maendeleo ya Wanawake Organization (MYWO).

She also hails from the soft-spoken, affluent, socially, economically and politically influential Kapkamar family of Chepkorio village, Keiyo South Constituency. She is also financially stable. Her parliamentary bid did not face the usual financial challenges women candidates endure. Various respondents observed that her campaign budget was between Ksh 20 million to Ksh 30 million.[13] She is also one of the few contestants to use a helicopter during her campaigns.

Though she had very good credentials for parliamentary candidature, her bid was greatly undermined by two issues. First, her strong financial base provided ammunition for her opponents, who accused her of buying votes. The second challenge was her association with former Keiyo South MP, Nicholas Kipyator Biwott, whom in certain texts and quarters is claimed to be her husband.[14] It is alleged that Biwott did not make matters easy for Prof. Kamaar by often remarking that 'Keiyo South is my sitting room while Eldoret East is my bedroom.' Opposition to Kamaar's candidacy due to her perceived links with Biwott jolted her campaign, as it was once insinuated that the helicopter she was using to campaign was the same one Biwott flew around in. Since, among the Kalenjin, the 2007 election was a referendum on old political establishments and Moi's institutions, Eldoret South constituents were reluctant to elect Prof. Kamaar, fearing that doing so would perpetuate Moi's establishments.

Informants said that when it looked like Prof. Kamaar was going to lose the election because of her links with Biwott, she denounced him as her husband in one of the rallies. Many were convinced that because Prof. Kamaar did not refer to herself as Mrs Biwott, she probably was not married to him and was independent

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[13] Various respondents provided estimates of Prof. Kamaar's campaign budget.

[14] The media generally hailed election of women in Kalenjin Rift Valley as a cultural revolution. The profile of these women winners were publicised extensively. See The Standard on Saturday (2008), 'Quintet Turning Culture on its Head at the Ballot.' 13 September. The Standard on Saturday (2008), 'Overturning tradition: The Kalenjin coup: Cultural revolution in the Rift as five of the seven sub-tribes each pick at least one woman MP', 27 September.

of him. However, informants said that after the elections, Biwott would insist on thanking Eldoret East constituents for "sparing his bedroom when Keiyo South constituents took away his sitting room."

Besides her rich resume, Prof Kamaar's candidacy was boosted by two other factors. One was the weaknesses of the outgoing MP Joseph Lagat, which emanated from the misuse and embezzlement of Constituency Development Fund allocations during his tenure. It is alleged that a secretary of the constituency CDF committee fled with Ksh 17 million and was later arrested in Botswana before being deported back in October 2006. Later, two directors of a construction company were also charged with embezzling a further Ksh 25 million from Eldoret East CDF kitty. Both cases are still in court. Lagat also adopted an *absentee representative* style of leadership. Once he was declared the winner in 2002, the constituents claimed that he never came back to implement his pledges. Neither could those who sought to consult him find him. Secondly, Prof. Kamaar had received a request from elders of Eldoret East in early 2007 to vie for the seat.[15]

vii) *Dr Joyce Laboso—Sotik Constituency (2008 by-election)*

Dr Joyce Laboso was elected to parliament in a by-election conducted in Sotik after the death of her younger sister, Lorna, and Bomet MP Kipklaya Kones in a plane crash on 10 June 2008.[16] Like the other women MPs in Kalenjin-dominated constituencies, Joyce Laboso is well educated and holds a doctoral degree in gender studies. She was a lecturer at Egerton University prior to joining politics.

Her marriage to a non-Kalenjin—a Luo by the name Edwin Abonyo—who hails from Nyakach in Nyanza Province was one of her greatest challenges in her campaign. Her opponents used her marriage to portray her as a foreigner, sometimes going as far as printing posters with her portrait and the name *Obonyo.* At rallies, her opponents repeatedly referred to her as *Mrs Obonyo* instead of by her Kalenjin maiden name *Cherono.* The aim was probably to reinforce the image of her as a foreigner, thus creating social and political distance between her and the electorate. The switch from 'Abonyo' to 'Obonyo' was probably consciously made to emphasize the Luo cultural origin of the name. The aim was to portray Laboso as inappropriate and an imposition of ODM leader, Raila Odinga, himself a Luo, on the people of Sotik.

The odds against Dr Laboso's were so high that at one point, her defeat seemed inevitable. She managed to fight back by asking Sotik constituents to give her a chance to complete the work her sister had started. Secondly, though the Kalenjin political class was beginning to fall out with Raila Odinga, the electorate still believed in him. His influence was still as it was during the 2007 elections. Majority of the

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[15] Personal communication with Prof Kamaar, August 2007.

[16] In the ECK records, Mrs Kones is referred to as Pauline and not Beatrice as it was reported in various media.

Kipsigis—the biggest voting bloc in Sotik—still considered him a credible leader. From the time Raila was installed as a Kalenjin elder and given the name *Arap Mibeiy*, he was accepted and accorded respect equal to that accorded Moi when he was in power. Since he supported Joyce Laboso, the Sotik people felt obliged to vote for her.

viii)   *Beatrice Kones — Bomet Constituency (2008 by-election)*

Beatrice Kones was the first wife and widow of **Kipkalya Kones**. Although a primary school teacher, she had been a grassroots mobilizer throughout her husband's political career, with a vast network of supporters. When she contested the Bomet seat, she needed little introduction. Bomet constituents accepted her candidature because it was perceived that Raila Odinga had endorsed her during her husband's funeral when he said, "*Kones alikuwa simba na hata bibi ya simba anaweza kuwa simba* (Kones was a lion and a lion's wife [lioness] can also be a lion)".[17] Bomet voters understood this to mean that she was ODM's preferred candidate. Her election is, therefore, an indicator of the implicit power and influence Raila Odinga had acquired in the Kalenjin community.

The playing field and rules of the game were slightly changing, especially in ODM. By this time, the Kipsigis political elite, in particular, and Kalenjin in general, had started to cry foul over perceived marginalization in the distribution of ministerial positions and senior government appointments since the formation of the coalition government. Secondly, the impending evictions from the Mau Forest complex where many people had irregularly acquired land tilted the balance. Some Kalenjin MPs, all of them ODM members, campaigned for candidates in other parties against the two women contestants in the by-elections. Chepalungu MP, Isaac Ruto, led the campaigns for the ODM opponents. He overtly supported Brigadier Alexander Sitienei of UDM in Sotik and covertly lent support to KANU's Nick Salat in Bomet.

However, ODM deputy party leader and Eldoret North MP William Ruto's campaigns in support of ODM candidates in the two constituencies tilted the scales in favour of the women candidates. He told the voters that their complaints would be better handled from within ODM rather than by moving out of the party and freeing it from any responsibility in terms of ministerial and government appointments and in resolving the Mau issue. The Sotik and Bomet by-elections were also about sympathy and consolation for the bereaved families. It was the constituents' way of conveying their condolences and sharing the grief of the former MPs' families. In Sotik, in particular, the constituents were voting in Joyce Laboso as a way of securing a livelihood for Lorna's son.

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[17] The metaphor implied that even Mrs Kones was a leader like her husband; therefore capable of taking over the leadership of Bomet constituency.

Why Did Matriarchy Win or Lose?

Ten Kalenjin women have won parliamentary seats in competitive elections since Kenya's independence. The highest number was elected in the 2007 elections. What then are the issues that came into play within the Kalenjin community that have continued to motivate and increase the number of women seeking and winning parliamentary seats?

Kalenjin community social change

The participation of Kalenjin women in competitive politics has surged upwards since the re-introduction of multiparty politics in early 1992, unlike before during the one-party era. Several factors have laid the foundation for this continuing phenomenon. First, adherence to customary laws pertaining to the social, economic and political way of life that are universal to the community and specific to the sub-tribe has weakened over the years. Customary laws existed and operated within the Kalenjin traditional socio-political set up of pastoralism and militarism. Pastoralism has ended in many of the Kalenjin sub-tribes, except in some pockets of the Pokot sub-tribe. After independence, local militarism lost its agency. Secondly, militarism is interdependent with pastoralism. The diminishing pastoralist practices reduced the importance of the military system of governance and, therefore, weakened the strict adherence to the patriarchal assignment of roles according to gender. In communities whose systems of livelihood and governance are based on pastoralism and militarism, negative patriarchal discrimination and the exclusion of women from important decision making processes is prevalent because these two institutions are dominated by men.

Second, a silent gender revolution seems to have taken place within the Kalenjin community ever since Christianity and colonialism were introduced in Kenya. Christianity, which termed anything African as anti-Christ and, therefore, a sin, undermined the patriarchal practices and attitudes that were discriminatory to women and girls. Many Kalenjin converts, therefore, began to educate both their girls and boys against these values. With the advent of Christianity and an increase in the number of people receiving formal education, patriarchal practices and attitudes that discriminate against women just on the basis of gender came to be considered by many Kalenjins as backward and outmoded. Furthermore, the passing down of age-old traditions and cultures to younger generations no longer takes place because of changes in people's lifestyles.

On the other hand, colonialism undermined the pastoralist and militaristic way of life that formed the foundation of community patriarchy. In the pastoralist-nomadic set-up, roles were assigned along gender lines. Men went for *luhgeet* (what is now called cattle rustling), herded livestock and defended the community from external attacks. On the other hand, the women took care of the home, i.e. raising children,

preparing meals, making and preparing milk gourds and cleaning cattle kraals. Children took care of calves and *nehgo* (herds of sheep and goats). Colonialism disrupted this lifestyle. The colonialists de-stocked the Kalenjin, therefore rendering the traditional roles defined by the pastoralist lifestyle nugatory.

After the break-up of this traditional set up, many Kalenjins put their children in school in order to avoid a life of forced labour introduced by the colonisers. Independence too came with the concept of compulsory primary education, which saw an increase in the number of Kalenjin women going to school. Each passing decade saw an increase in the number of educated Kalenjin women and men. In the 2007 elections, majority of the voters were youth aged between 18 and 45 years. This educated lot did not live the former pastoralist life and had not been initiated into the former military system, which hinged on masculinity. They have little or no knowledge of customary laws that discriminated against women in many spheres. If they do, they do not consider them worthy of being used to deny women a chance to leadership.

The silent gender revolution has been accelerated by the increasing number of single mothers who have taken up roles as heads of households. These women fend for and raise their families successfully. Many children from such family situations become successful in life just like the children from 'two-parent' families. The impression formed is that if women can raise successful families on their own, then they can ably lead the community. Many women have taken up roles that were traditionally defined as men's, such as seeking paid employment, heading households and public institutions, and engaging in businesses. All these activities have highlighted the women's abilities in leadership. Furthermore, a money lending practice popularly known as the 'merry-go-round' has empowered the women financially. They use the money they collect to uplift their families' standards of living. These women, too, have formed groups, which they use to access money from microfinance institutions for their home-based businesses. Such activities have boosted men's perception of women's leadership abilities. Because of these successes on other fronts, Kalenjin women have also begun to believe in their own abilities to succeed in leadership.

Currently, many Kalenjin women have developed faith and positive attitudes towards fellow women in leadership. This is corroborated by the statement made by a woman supporter of Beatrice Kones in the Bomet by-election, who called the candidate 'a merchant ship': "*Mama ni kama meli anabeba vitu vingi* (A woman is like a ship, she carries many things)". Third, the whole community's social adaptation could have forced the people to realise that yesterday's rule of thumb is no longer applicable. Though the Kalenjin previously valued the boy more than the girl, currently the girl is regarded in the same way as the boy. Traditionally, girls, women and non-Kalenjins were not considered persons, who in this context referred to Kalenjin men. This attitude is captured by the statement made mostly

by the Nandi in the past when responding to a question of whether they met or saw a person. The common response was 'M*a tuiye/nyoru/aroo chii; aiya lahgoi ak Lemin[18], Kokoiyo, Turkanin, etc* (I did not meet/find/see anyone except children and/or a Luhya, Kikuyu, Turkana, etc). Children in this context include women. This response is hardly used. Many parents are sharing out inheritance, including land, to both daughters and sons. This has put the two sexes at par in the community's perception.

This change in perception has opened space for many women to participate in competitive politics as was witnessed after the introduction of multiparty politics. It has also emancipated and emboldened Kalenjin women to not only seek a place in the political leadership of the community, but also to pursue—through alternative means— other rights denied them by the patriarchal customary laws. An illustration is available in the civil case before the Court of Appeal in 2002, *Mary Rono versus Jane Rono & William Rono* (Civil Appeal No. 66 of 2002), in which appellant Mary Rono is challenging the decision to deny her the right to inherit her parents' property. The court ruled in her favour saying that since Kenya is a signatory to Convention on the Elimination of All Forms of Discrimination Against Women, it is right for daughters in a home to inherit property on equal basis with men (Chesoni, 2006: 247). This decision was in tandem with CEDAW's Article 2(a), and many other international and regional conventions to which Kenya is a signatory. Therefore, consciously or sub-consciously, the Kalenjin community had started eliminating discrimination against their women.

Fourth, voter gender demographics are increasingly becoming a significant factor in Kalenjin elections. Over the years, the Kalenjin female population is increasing compared to the male population, as it is the case nationwide. On the age axis, the youth are more than the mature and elderly persons. The tradition of the elderly guiding women and the youth on the community's political direction began to lose currency after the return of multiparty politics in 1992. The last leg in the Kalenjin community seems to have begun in the 2007 general elections when the youthful leaders contested against the old guard, and former President Moi's preferred candidates. These youthful leaders stood on the platform of change and transfer of leadership. Women voters also sought to uproot the old guard's institutions. In the Kalenjin community, the two groups were significant in determining winners in the 2007 elections.

Fifth, was overcoming the fear of executing out-of-the-norm acts. Every community develops and sets standards by which members' acts are judged as normal or abnormal. These standards become the reference by which every activity

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[18] *Lemin* is used differently across Kalenjin sub-tribes. Among the Nandi, it is used hyponymously. It is used to refer to three communities from Western Kenya, namely: the Luhya, Luo and Ateso. It is mostly used as an adjective such as *Lemin chalwoiyo* 'Lemin of Luo origin', *Lemin Tesoiyo* 'Lemin of Teso origin'. However, when referring to Luhyas, the term is used as a noun. They would say *lemindet inendet* 'the real/true *lemindet*.' The name Luhya is recent and seems not to have found its place in most Kalenjin dialects. Among the Kipsigis, this term is used to refer to Luos only. To them, it carries the connotative meaning of uncircumcised.

is judged. In most communities, it is the norm for men to lead. However, in the Kalenjin community, women leadership is not abnormal because it had precedence in 1974, 1979 and 2002. The election of eight women in the 2007 elections and 2008 by-elections was realized because the Kalenjin had conquered the *fear of out-of-the-norm act,* which inhibits many people from doing anything that has never been done before in his/her community because it is perceived as bad. In the norm reference measurement, people fear to do something despite knowing that the results are beneficial to them due to fear of the reaction and perceptions from significant others such as family, friends and community. Although the election of many Kalenjin women in 2007 general elections and in the 2008 by-elections is considered an abnormality by many non-Kalenjin Kenyans, to the Kalenjin it is not. Many hypotheses have been advanced to explain it, but to the Kalenjin, it is no longer considered an 'out of the norm act' to elect women to parliament.

Determinant factors in Kalenjin women elections in the 2007 elections

The first section of this paper discussed factors that prepared the political field for Kalenjin women to participate in competitive elections for political offices. This section looks at the main factors that made it possible for the eight Kalenjin women to win in the 2007 elections and 2008 by-elections. Some of the most significant factors that influenced election of women candidates included the political party that the community associated with and, therefore, the party on which the women candidates contested the election; the candidates' campaign strategy; and how they identified with the community needs. Candidate's experience, their personality and education background played a role too. However, social-cultural factors such as whether the candidate was circumcised or not and others such as marital status and religion had little or no impact. This finding, on its own, raises a need to begin re-appraising the role of culture in electoral politics. These issues are detailed below.

Candidate's political party

Party politics and identity in Kenya generally dictate the outcome of elections; those who contest the election on a party that appeals to a majority of the constituents, irrespective of preferred party win. Belonging to a political party thus has great significance in a people's political life, as seen in the followers' reasoning, which is likely to be more sentimental than rational. People weep, fight, die and even kill in the name of a political party. Party politics have inbuilt bisecting and balkanizing elements. In ethnically or ideologically near-homogeneous states, the bisecting element is evident, creating minimally two opposing camps such as the Labour and Conservative parties in the United Kingdom and the Democrats and Republicans in the United States of America. Thus, the party which people identify with contributes an important part in electoral party; candidates win or loose on basis of the party

they identity with because party politics tend to have balkanizing effect at the local or even national level.

In ethnically and ideologically heterogeneous states, such as those found in Africa, the balkanizing element is more pronounced. Almost each ethnic or ideological group has its own party. Such is the situation in Kenya, where political parties often belong to specific communities—most likely the communities of the individuals that lead them. For instance, FORD-Kenya is viewed as a Bukusu party, FORD-People is seen as a Kisii party, KANU in 2002 was seen as a Kalenjin party, NDP was seen as a Luo party and DP was viewed as a Kikuyu party. ODM-Kenya, in the 2007 elections, was seen as a Kamba party. Since the advent of multiparty politics in Kenya, the choice of a candidate's political party has been greatly influenced by the community's or region's balkanizing party, because this party predominantly determines the election outcome.

Kalenjin politics has experienced the power of 'party identity' or essentially political party balkanization thrice. First, during the pre-independence years, all Kalenjins who did not contest elections on a Kenya African Democratic Union ticket lost. Second, at the return of multiparty politics in 1992 when KANU was the party of the Kalenjin, it was the vehicle to electoral success in the community. Candidates who did not win the KANU nomination but contested on other parties, regardless of their popularity, lost. Kipkalya Kones was such an example in 2002 when he lost his Bomet seat to Nick Salat because he contested on a FORD-People ticket. However, three of the Kalenjin MPs survived the dominant party onslaught. They are Kipruto Kirwa in Cherangany, Linah Kilimo in Marakwet East and Stephen Tarus in Emgwen—all of whom ran on NARC tickets.

The Kalenjin's party identity played an important part in the victory of women candidates in the 2007 general elections and the subsequent by-elections. During the 2007 elections and 2008 by-elections in Sotik and Bomet, ODM was the Kalenjin community balkanizing party. Securing the ODM nomination was almost a sure ticket to parliament (Lynch, 2008b). All the Kalenjin MPs who won in the 2007 elections and the 2008 by-elections ran on ODM tickets, with the exception of Kilimo in Marakwet East and Helen Sambili in Mogotio. Sambili gained from ODM's zoning effects because from the beginning, UDM announced its affiliation with ODM. She, therefore, received many votes from ODM supporters. In the 2007 elections and 2008 by-elections, the Kalenjin women contestants gained immensely from the ODM party's balkanizing effects. The political party power was witnessed in ODM's last minute call for a "three-piece suit" voting pattern (voting for the party's presidential, parliamentary, and civic candidates). This call had great impact particularly in Eldoret East. Since ODM and UDM had agreed to work together, voters had accepted UDM's Kiprotich Daniel's likely victory or ODM's Margaret Kamaar's. However, ODM's call for three piece suit voting pattern changed the voters' attitudes in favour of Kamaar, heeding the party's argument that it needed a parliamentary majority to govern effectively.

Educational qualifications

Education has always been a significant election issue since the entry into competitive politics of Chelagat Mutai in 1974. All the Kalenjin women MPs—past and present—have had university education, except Zipporah Kittony, Alicen Chelaite, Linah Kilimo, and Beatrice Kones. Two are professors, three have doctoral degrees and four have bachelor's degrees. Though it was not a critical election issue, education became an added advantage supporting the main political denominator, which was securing ODM's nomination. The following are the educational profiles of the Kalenjin women MPs since 1974.

Table 17.3: Kalenjin women MPs since 1974 and their education profiles

Year	*Name*	*Education level*
1974 & 1979	Chelagat Mutai (Ms)	BA (Political Science, University of Nairobi)
2002 & 2007	Linah Kilimo (Mrs)	Diploma (Control & Management of HIV/AIDS, Kenyatta University)
2002	Alicen Chelaite (Mrs.)	Certificate (Secretarial, Government Secretarial College)
2007	Prof. Margaret Kamaar (Ms)	PhD (Soil Science, Toronto University)
2007	Peris Simam (Mrs)	BEd (Science, Kenyatta University)
2007	Dr. Sally Kosgei (Ms)	PhD (Political Science, Stanford University)
2007	Prof. Hellen Sambili (Mrs)	PhD (Curriculum Studies, Lancaster University)
2007	Lorna Laboso (Ms)	BA (Daystar University)
2008	Dr. Joyce Laboso (Mrs)	PhD (Gender Studies, Egerton University)
2008	Beatrice Kones (Mrs)	Certificate (Primary Teacher Education)
Nominated		
1998	Zipporah Kittony (Mrs)	Secondary school leaver (did not find other information)
2003	Dr. Esther Keino (Mrs)	PhD (Education, Harvard University)

However, in 2007, if a contestant had high educational qualifications but failed to win at the level of ODM primaries, little could change her fortunes if she contested the election on any other party, unless the contestant had other considerations that were significant, like those of Linah Kilimo. Such was the fate of Prof. Lonyangapuo

of KANU in Kapenguria Constituency and Dr Esther Keino of ODM Kenya in Belgut Constituency.

Role of Media

The media played a significant role in educating voters on what qualities to look for in electing their leaders. From the respondents, the favourite media among the Kalenjin in order of priority were Kass FM, Radio Citizen and Kiss 100 in the radio category; KTN and Citizen TV in the television category; and *The Standard* and *Weekly Citizen* among the newspapers. The least accessed nationwide media were KBC radio and television, NTV television and the *Daily Nation* newspaper. The most accessed media were perceived to be pro-ODM or objective in their reporting. Therefore, the ODM advertisements and programmes aired through these media seemed to have boosted the chances of Kalenjin women parliamentarians. Mobile phones also became an important political mobilizing tool, sometimes more than any of the mainstream media. The short text message service (SMS) provided a political arena where people with common political interests exchanged views and information, reviewed their progress, mobilized supporters and planned future actions. The mobile phone is a medium whose use is solely determined by the user, unlike other media such as radio, television, and newspapers, which have gate-keeping functions to filter information. Many of the women candidates and their campaign organizers monitored their candidates' progress in the campaigns through mobile phones.

Women candidates' personalities

The personalities of the Kalenjin women candidates were a critical election issue. At the time of elections, many constituents considered the women candidates who won as honest, approachable, down to earth and good listeners, as opposed to most of their male counterparts. There is a general perception that women are not corrupt and, therefore, unlikely to have the strong desire—like men—to steal public money. In these elections, Kalenjin women seem to have benefited from female leadership advantage perception that is growing in the corporate world (Eaglya and Carli, 2003). Women were perceived as having the right stuff and succeed well in assignments that require mental power over might. The scores show that most voters knew their female candidates' personalities and abilities sufficiently to make informed decisions in electing them.

Kalenjin Matriarchs' Political Future

Kalenjin women's future in politics looks promising. The community is happy with the performance of the women MPs for the short time they have served in parliament. Many have cited various development projects initiated in the constituencies that have women MPs. One of the much-talked development initiatives is the equitable use of devolved funds. Unlike before, many university

students in these constituencies are benefiting from Constituency Development Fund allocations for bursaries on merit. Equally, many schools have been expanded or renovated from these funds. For instance, in Aldai Constituency, many are very pleased with the rural electrification programme. Asked if, in gauging performance, respondents viewed their MP as a woman or a leader, only 16.18 per cent said that they view the MPs first as women—as opposed to 83.82 per cent who view them first as leaders. Of those interviewed, 82.66 per cent were youth and 17.34 per cent were mature citizens. On the gender axis, 83.24 per cent were men and only 13.87 per cent were women. From these statistics, the majority of those who support and are positive about women's leadership are youth and men, an indicator that future political leadership quests by Kalenjin women might not receive stiff opposition from within the community on the basis of gender. These statistics also indicate that the Kalenjin community might have entered another phase in their political development that is not discriminatory on the basis of gender.

Conclusion

The participation of Kalenjin women in the 2007 elections and the success of a significant number have provoked academic curiosity. The research carried out for this chapter has proved certain assumptions and disproved others. For one, it has proved that the Kalenjin community is still a patrilineal society, and it is not moving towards matrilinealism. The trend seems to suggest, however, that a neutrilineal society is being born.

The full participation of all genders in the victories of these women is a good indicator to such a direction. In particular, the input of men in women candidates' campaign teams was notable. Men constituted between 95 per cent and 100 per cent of these campaign teams. Male youth criss-crossed the constituencies campaigning for women. The women would likely not have won without the approval and support of the men. By men supporting women, the Kalenjin implemented many of the international conventions and instruments.

This chapter has also revealed that, there are certain issues and factors that are central to the Kalenjin people but which were insignificant in the past, as well as in 2007 elections and 2008 by-elections. These are customary law on gender and leadership, which bequeathed leadership to men only. Equally, marital and circumcision status of women have never been election issues among the Kalenjin. In 1974 and 1979, Chelagat Mutai was elected when she was a youth and unmarried. The current Kalenjin women MPs have varying marital status. While some are married to Kalenjin men, there are some married to non-Kalenjin or are widowed or divorced or separated. Still, there are those unmarried or in an ambivalent marital relationship. However, irrespective of these social-cultural values, they won the election.

These women, too, have not gone through female initiation rites, as was the Kalenjin customary requirement for any adult woman. Circumcision traditionally transformed a girl into a woman and a mother. This act ushered in the seclusion period of several months or years, in which a circumcised girl received formal education on how to become a woman in the community.

The Kalenjin women contestants appealed to the voters through appropriation of significant cultural materials as political symbols. Apart from **Kilimo**, who used *legetiet* as a political symbol and a foundation of her philosophy, all of the women used *sosyoot* as their symbol of authority and leadership. S*osyoot*— the stem of a palm tree branch is a cleaning tool for gourds and also a tool for *kesuute sotet*—to break hot charcoal of aromatic sticks used for milk preservation and to blacken the inner walls of milk gourds.[19] It is prepared and only used by women. Considering that Kalenjin traditions, cultures and belief systems, are founded on pastoralism, *sosyoot* is very symbolic. It symbolises prosperity, abundance and growth. *Sosyoot* symbolizes the role of the woman as a provider and homemaker because she is the one using *sosyoot* to prepare milk for her family.[20] Therefore, *sosyoot* is symbolic of holistic well-being for the Kalenjin. In political circles, *sosyoot* has been accepted as a Kalenjin symbol of a woman's authority. Women have used it since the days of Chelagat Mutai. It is a cultural requirement for leaders in the community to carry material that symbolise authority. The men carry the *kirok*—a small club like the one Moi carries.

For many years, the Kalenjin trained sophisticated soldiers to roam the terrains of the Rift Valley hunting, grazing and raiding cattle. These types of soldiers do not fit in the 21st century warfare. In the 2007 elections, the Kalenjin were in a different kind of warfare, which required different types of soldiers with different types of training and weaponry. The weapons are education, exposure, experience supported by age-old attributes of bravery, scheming, intelligence, diligence, resilience and humility. Warriorhood of the plains was a preserve of men, but that of parliament is a preserve of all who are prepared regardless of gender.

The election of the eight women in the 2007 elections and 2008 by-elections was not a coup by the women. The election of Kalenjin women in 2007 and 2008 had a precedent in 1974 and 1979 in the election of Chelagat Mutai. These elections have called for a re-look into the theories of patriarchy and matriarchy, because they have proved that not all patriarchal systems exclude its matriarchy from the management of important institutions; neither do they bar a matriarch from ascending to the highest office in the community regardless of its cultural perception on women.

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[19] *Sosyoot* is singular in definite form and *sosyo* in indefinite form. Its plural is *soosik* in definite form and *soos* in indefinite form.

[20] In the Kalenjin community, milk was a complete meal. Even in modern times when other foods are available, milk still occupies a central place in the Kalenjin culinary culture.

In the 2007 elections, some Kalenjin-dominated constituencies tried an alternative approach to their political life after four and half decades of Moi's dominance of the community's politics. The approach was to be markedly different from Moi's since his had not brought them meaningful development, apart from creating the 'big man's syndrome' (Lynch 2008: 18-43). The elections might signal that the community wanted an approach that was just and fair, all inclusive, democratic and emphasized cooperation as opposed to exclusive, dictatorial and elitist system seen under Moi. After Moi left power, Kalenjin political life reached a crucial junction in the paths by which the community was to decide on how to organize and conduct its politics (Rourke and Boyer, 2004: 11).

The election of several women members of parliament from Kalenjin-dominated constituency in one general election and subsequent by-elections does suggest that women can succeed in competitive electoral politics in a patriarchal society, in spite of the gender discriminations and cultural biases. It also suggests that some Kalenjin constituencies have taken a new or different path in Kenya's electoral politics. It does suggest that the Kalenjin community has taken a new political path.

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PART VIII:
THE CONSTITUTIONAL POLITICS OF KENYA'S POST-ELECTION MEDIATION PROCESS

Mediating Kenya's Post-Election Crises: The Politics and Limits of Power Sharing Agreement

Ben Sihanya and Duncan Okello

Abstract[*]

Political violence of unprecedented magnitude engulfed Kenya following a hotly disputed presidential election result in December 2007. International mediation by the African Union's Panel of Eminent Personalities began in January 2008. On 28 February 2008, Mwai Kibaki, leader of the Party of National Unity (PNU), and Raila Odinga, leader of the Orange Democratic Movement (ODM) signed a political settlement. Parliament enacted this as an amendment to the Kenyan Constitution as the Constitution of Kenya (Amendment) Act 2008, and as the National Accord and Reconciliation Act, 2008. The parties also agreed to undertake several actions to end the violence and address several long standing issues that if unresolved threatened recurrence of the crisis. The mediation process has had significant socio-economic, political and constitutional impacts on Kenya. It reduced the violence and the humanitarian crisis. It has also been critical in setting a home-grown agenda for Kenya's economic, constitutional and political governance. The mediation brought to fore the various interests vested by the international community and especially the West on Kenya. This Chapter examines the interests at play, the process, and the outcomes of the mediation. We note that the mediation process stopped blood-letting and ushered in a measure of political and constitutional stability through power sharing as an intervention to the post-election crisis. We argue that the outcome of the mediation process is ambivalent at best. On the one hand, the negotiated government attenuated the significance of competitive democratic elections and constitutional government and democratization itself. On the other hand, the

mediation process introduced or hastened constitutional reforms, which had been frustrated for over four decades. What then were the main power relations and political interests before the elections and during the mediation process? What were the international interests at play and how were they accommodated in the mediation process and the resultant outcomes? Second, how did the interests and power relations influence the structure and process of the mediation? Third, what are the major constitutional and political outcomes of the mediation process? Who were the winners and losers in the mediation outcome and what are the possible long term ramifications of this? In attempting to address these questions, the Chapter also grapples with the conceptual and practical issues around the concept of mediation. In so doing, and given Kenya's experience in mediating conflicts in Eastern Africa, the discussion in this chapter illuminates a subject well known as a Kenyan export than an import.

Introduction

Between January and July 2008, Kenya, for the first time in her history, went through an internationally-supported internal mediation process. This was occasioned by the post-election constitutional and political crisis that threw the country into an unprecedented civil crisis. On February 28, 2008, Mwai Kibaki, leader of the Party of National Unity (PNU), and Raila Odinga, leader of the Orange Democratic Movement (ODM) signed a political settlement. Parliament enacted this as an amendment to the Kenyan Constitution as the Constitution of Kenya (Amendment) Act 2008, and as the National Accord and Reconciliation Act, 2008. There were also agreements establishing the Commission of Inquiry into Post Election Violence (CIPEV), the Independent Review Commission (IREC), and related mechanisms to address other matters incidental to the settlement.

The mediation process has had significant socio-economic, political and constitutional impacts on Kenya. It has also been critical in lending support to a home-grown agenda for Kenya's economic, constitutional and political governance. It has introduced or hastened constitutional reforms, which had been frustrated for about 46 years by the regimes of Jomo Kenyatta (1963-1978), Daniel arap Moi (1978-2002) and Mwai Kibaki (2002-to date).

The mediation has demonstrated the nature and scope of the various vested interests in Kenya regarding the international community, and especially the West (Sihanya, 2009c). This Chapter examines the interests at play, the process, and the outcomes of the mediation. Specifically, this chapter examines the remote and proximate historical context of Kenya's 2007/2008 crises. It also examines the various interests at play or what Roy *et al* (2004) refers to as important stages of mediation and negotiation: blaming, naming, chairing, strategizing, building relations or constituencies for the mediation process, framing the mediation outcome and the challenges of implementing the deal.

We note that the mediation process stopped blood-letting and ushered in a measure of political and constitutional stability through power sharing and specifically through the formation of a Grand Coalition Government. We however argue that this type of power sharing, and the circumstances that created it, significantly undermines democratization. It permits 'rogue access' to power by both protagonists, besides being inadequate in dealing with the underlying causes of structural conflict. The opportunity for negotiated government undercuts competitive democratic elections and constitutional government by encouraging rogue incumbents to manipulate the electoral process so as to maintain power, and, by provoking violent protests from victims of this fraud as a strategy to at least share power. Thus, either way, negotiated government provides perverse incentives to, and actually does, undermine constitutionalism.

This Chapter attempts to answer three key closely related research questions, and their subsidiaries: First, what were the main power relations and political interests before the elections and during the mediation process? What were the international interests at play and how were they accommodated in the mediation process and the resultant outcomes? Second, how did the interests and power relations influence the structure and process of the mediation? Third, what are the major constitutional and political outcomes of the mediation process? Who were the winners and losers in the mediation outcome and what are the possible long term ramifications of this?

In attempting to address these questions, the Chapter also grapples with the conceptual and practical issues around the concept of mediation hoping, in so doing, to illuminate a subject so familiar to Kenya as an 'export' rather than an 'import'-given the country's record in mediating conflicts in its neighbourhood. We also attempt to situate our discussion within the context of broader discourses on conflict and peace studies.

In the end, this study makes a contribution to our understanding of the Kofi Annan-led African Union mediation process following Kenya's post-election violence in early 2008. It seeks to inform Kenya's constitutional and political reforms, which are undergirded by Agenda Item 4 and Kenya's constitutional making process.

Africa and Conflicts: A Historical Note

Most of Africa's post-colonial history has increasingly witnessed sudden outbreaks of serious systematic intra-state and inter-state violence (Gerner and Schrodt, 2001). Conflict in Africa has indeed raged, and shocked the world by its proportions. It is estimated that 8.5 million people have died as a direct result of conflict since 1947, the vast majority being civilians. At its peak in the early 1990s, conflict forced 23 million people to flee their homes (DfID, 2006). Conflict in the continent costs approximately US$ 18 billion per year (Oxfam, IANSA and Safeworld, 2007). Through international, regional and national peace interventions, there was a 50 per cent reduction in the number of violent conflicts in Africa between 1999 and 2004.

Some scholars have argued that 'the disappearance of communism as an ideological principle for organizing conflict (and the disappearance of coercive state institutions devoted to suppressing ethnic conflict) appears to have "removed the lid" from long-simmering regional and ethnic tensions and stimulated lethal disputes' (Oxfam, IANSA and Safeworld, 2007). Others have argued that the post-Cold War period has witnessed a rise in ethnic awareness and consciousness, which has led to the proliferation of conflict in less developed countries (Mugabowineza, 2005). Resource scarcities, ethnic tensions, elite mobilization of grievances, and weak post-colonial political structures have also been identified as the primary drivers of these conflicts (Khadiagala, 2007). This is the fodder that has fed the greed-grievance hypotheses debate with respect to internal conflict.

Scores of scholars have devoted their attention to the study of ethnicity in Kenya, and how it has influenced the country's socio-economic and political organization (see for example Atieno Odhiambo, 2004). Also, there seems to be consensus that ethnic identities existed long before colonialism, and subsequently independence. There also seems to be agreement that both the state and the political class generally have exploited ethnic identities and exacerbated ethnic divisions for political ends (see generally Oyugi, Atieno Odhiambo et al, 1988; Anyang' Nyong'o, 1987 and Hyden et al, 1999). But there is no denying that in the ensuing contest, communities have been scarred, their identities wounded, thus making elite greed and community grievance interlock in the political process-with devastating consequences. Kenya has been no exception to this experience, only that it took nearly four decades for it to explode into violent conflict in 2007. The twin conflict analysis theory focuses on relative deprivation, where the peoples' discontent about unjust deprivation is the primary motivation for political action, and group mobilization, where it is the leaders' calculated mobilization of group resources in response to changing political opportunities. These were evident.

Internal and external conflict in Africa has always received serious international attention because of two major reasons: first, even after attainment of independence, African states have maintained ties with their former colonial powers (especially Britain and France), which still have varying degrees of vested interests. Second, the proliferation of violence in a country generally creates regional insecurity and instability. These two factors played a significant role in the great interest that the international community took in the Kenyan crisis.

Against the backdrop of the previous Cold War and the post 9/11 war on terrorism, regional stability and security has been a core concern of world powers, led by the US and the international community generally. For this reason, conflicts in Africa have always invited international intervention. While the core objective for intervention has always been the restoration of peace, it has taken different forms. In fact, there has been a proliferation of conceptual typologies among scholars on the different types of peace missions attempted by the international community. According to Former UN Secretary General, Boutros Boutros-Ghali, these missions are preventive diplomacy, peacekeeping, peacemaking and post-conflict peace-building (Boutros-Ghali, 1992). In the perspective of Durch (2006), international interventions can be divided into traditional peacekeeping, multi-dimensional peace operations, peace enforcement, and humanitarian interventions. Authors such as Bellamy *et al* (2004) and Knight (2003) have proposed a typology constituted by categories, while Demurenko and Nikiting (1997) found different types of international interventions.

African mediators have, since the mid-1980s, been involved in efforts to resolve civil conflicts, especially in the Great Lakes region of Burundi, the Democratic Republic of Congo (DRC), the Sudan, Rwanda and Uganda. Different African mediators such as presidents, foreign ministers, elder statesmen and special envoys have intervened to help both combatant and non-combatant political leaders rebuild institutions of political order, social cohesion, and economic stability. The conflicts have also attracted

the attention of external mediators wearing various institutional hats (Khadiagala, 2007). However, whereas in 'most of these cases elder statesmen have mediated as individuals supported by a wide array of local and international institutions...the Kenyan case was the first time in which the African Union (AU) had requested the collective efforts of three elders in a diplomatic engagement that drew on the varying strengths and experiences of the mediators...the panel epitomized collective power-the coalescence of diverse diplomatic and moral skills....' (Khadiagala, 2008: 4).

Structural Conflict, the Mediation Process, and the Emerging Jurisprudence

The absence of large scale civil war, characteristic of the rest of Africa, had led to a rather routine but erroneous description of Kenya as 'an island of peace in a continent in turmoil'. Whereas the outbreak of open large scale violence in Kenya is something the country had avoided until 2007-08, Kenya has experienced structural conflict and at times violent conflicts.[1] Indeed, the post-election crisis was the maturation of this structural conflict into violence. While the proximate causes of the violence were election-related, the underlying causes were structural in nature, represented best by a constitution that had been ripe for serious reconsideration. As Ajulu (2006: 33) has observed:

> [T]he spiral of violence that erupted... was a symptom of a much deeper crisis in Kenya's political economy, reflecting, as it were, deep-seated frustrations rooted in the socio-economic injustices of landlessness, joblessness and poverty that have beset the country since independence... The state in post-colonial Kenya has predominantly been deployed as a 'site of eating,' that is, state power has been used to secure the economic interests of the dominant political classes and to enable them to dispense patronage and political manna to their client base, almost invariably, ethnic based constituencies. Such a state invariably appropriates state institutions and deploys them as instruments of primitive accumulation, pursuing policies and objectives which conflict with broader society interests. In the context of uneven capitalist penetration in Kenya and its tendency to engender regional (ethnic) inequalities, such contestation is bound to engender regional (ethnic disparities) which are then expressed as ethnic contests.

As Galtung (1969) observes, exponents of structural violence reject the dichotomy of peace and war and argue that a society can be in neither conditions of peace or war. This situation is described as 'unpeaceful,' and in such societies there is little or no

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[1] It should, however, be noted that despite this façade of peace, the country has experienced a number of high intensity, low visibility conflicts revolving around resources. Vast swathes of territory, especially in the Rift Valley and northern Kenya, are for all intents and purposes ungovernable as the state monopoly of violence has been successfully challenged. Furthermore, in the 1960s, the country experienced secessionist war (the Shifta war) and in the 1990s experienced political violence around election time.

physical violence in evidence, yet there is no peace. The absence of peace occurs because the relations in those societies are organized in such a manner that the potential for development of some significant numbers of the society is impeded. The potential for development is impeded by economic, social, psychological or other factors. Thus, the existence of structural conflict means that it is necessary to look beyond the immediate physical violence and take into account the structure that underlies social relationships, since it might itself be a source of conflict (Mwagiru, 2006).

In an ethnically plural and poor country such as Kenya, the task of nation-state-building has been faced with the challenges of balancing aspirations and managing fear of various groups in an attempt to create a modern state. Consequently, groups exhibit the desire to belong, but not be dominated; the polity recognizes the need for a central authority, but also the importance to have dispersal of power; and groups have ambitions for the future, but also hold expectations that their historical grievances, particularly those centred on land would be dealt with.

Suffice it to say that the Independence Constitution was largely a masterpiece in trying to deal with some of these issues. Most importantly, it created a structure of government that dealt with the problem of domination by creating various levels and centres of power. However, the numerous amendments after independence eroded these safeguards, thus disfiguring the ethnic, power and resource configuration of the country (Okoth-Ogendo, 1972; Anyang' Nyong'o, 1989). This laid the basis for the structural conflict in the country. The 2007 post-election violence represented maturation of this conflict, coming as it did, after the failure to review the Constitution in 2005 after the National Rainbow Coalition (NARC) came to power as discussed in detail below, thus wasting a 'correctional moment'.

The mediation process, more in terms of outcome than representation, is a reflection of the unattended structural nature of this conflict-the failure to provide relief to a social contract evidently under strain and stress. The delegates represented a significant but still incomplete face of the nation. Whereas the theatre of land grievances is in the Rift Valley and Coast, the latter was not directly represented at the mediation talks even though the assumption would be that the ODM party represented that interest, given that it enjoyed greater support there than PNU. The expression of this grievance was stronger in Rift Valley, which in turn had two representatives.

The outcome of this mediation, particularly Agenda 4, which focused on a new Constitution other long term issues such as land, poverty, inequality and regional imbalances in development was a reflection of the structural nature of the conflict. It was also an acknowledgment that the violence was a consequence of a failure to respond to a social contract under strain or even develop a new contract through a new democratic constitution. The mediation was based more on aspects of consociational democracy and the promise of a more enlightened leadership in resolving Kenya's immediated crisis and the underlying structural conflict (Chege, 2008:125-39).

Also, the mediation was based on the principles of inclusion, which resonates with some key prepositions of consociational democracy, yet it left out the possibility of Kenya's transition to a consociational democracy to the wider constitutional and institutional reform process.

Whereas under Agenda 3 power sharing was a key outcome of the mediation and a response to deal with the question of inclusion, it remains problematic both in detail and concept. Operationally, it is continuously undermined; philosophically, power sharing hardly permits the tackling of hard issues that sometimes generate it, such as those contained in Agenda 4. This means that the mediation may have been successful in creating a ceasefire but may fail to provide long term solutions unless the leadership is ready and willing to sacrifice and take risks.

The mediation has also spewed forth new jurisprudence, where an Act of Parliament has been elevated above the Constitution, at least in certain major respects. Ordinarily, the Constitution of Kenya is a special statute that is superior to ordinary statute law and other sources of law such as the Common Law, African Customary Law and statutes of general application.[2]

Mediation: The Concept and the Record

The most common response by the international community to violent conflict anywhere in the world has been mediation. It has been called a continuation of negotiation by other means that involve a third party in facilitating a negotiation process (Gerner and Schrodt, 2001). Indeed, mediation is an extremely common but not always successful form of conflict management. For instance, Bercovitch's (1997) study of 310 international conflicts between 1945 and 1974 found that in 82 per cent of the cases, there was some form of mediation. In 1983, Kal Holsti reported results of a study that found mediation occurred in 45 per cent of 94 post-WWII disputes examined (Bercovitch, 1997). In 70 per cent of the disputes that involved mediation, their outcome was at least partially 'successful.' Bercovitch (1996) identified 241 international disputes in the 1945-1990 period, of which 137 (57%) were mediated at least once. But what exactly is mediation?

International mediation is currently a favourite topic in studies in international relations. This is powered by the rise of new liberal internationalism in the post-Cold War era and its philosophy of Responsibility to Protect (R2P), whereby the international community is obliged to save states from descending into chaos. It marks the policy shift in Africa from the principle of non-interference to one of non-indifference.[3]

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[2] See section 3 of the Constitution of Kenya. It was amended so that any powers conferred on the Prime Minister under an Act are to be regarded as constitutional even if they contravene explicit provisions of the Constitution; Cf. section 1 of the Constitution of Kenya (Amendment) Act, No. 3 of 2008. Some of the sources of Kenyan law are listed in section 3, Judicature Act, Cap 8, Laws of Kenya.

[3] See the Constitutive Act of the African Union, Lome, Togo, 11 July 2000 on non-interference, and the African Charter on Democracy, Elections and Governance, Addis Ababa, Ethiopia, 30 January 2007 on its general non-indifference theme.

Although mediation attracted a degree of scholarly attention in the 1970s and 1980s, its popularity as an object of study has increased significantly in the 1990s. This emanates from the increasing pressure on international actors to restrain, if not prevent, mass violence in the conduct of their affairs. The pressure itself is a result of the development and acceptance of multi-lateralism and also the erosion of the concept of state sovereignty in the sphere of public international law. Scholars from diverse disciplines such as anthropology, psychology, political science, sociology, law and communications have attempted to explain how mediation works and under what conditions or contexts it yields optimum results (Bercovitch, 1996). These efforts have occurred amid difficulties in the studies, such as the scope of mediation, the secrecy that often surrounds mediation processes, and the difficulty of understanding unique global, regional and local contexts that weigh in on the nature of the conflict and on the mediation process. As a result, the definitions of mediation as a product and a process are as profound as the tactics employed by mediation practitioners.

An understanding of mediation as either a process or a product is crucial as it shapes the approaches that mediators use in conflict resolution. Indeed, it can be said that the reason why some mediation processes register sustainable peace, while others only secure a ceasefire, and others fail or undergo an outright collapse, is because of the conceptual approaches that the mediation practitioners employed in the particular conflict situations.

Therefore, a sampling of the definition by various authors is imperative. Moore (1996: 15) is concerned primarily with the mediated approach to conflict management. Parties who cannot negotiate together effectively may bring a mediator to facilitate the negotiation process. He has defined mediation as:

> *the intervention in a standard negotiation or conflict of an acceptable third party who has limited or no authoritative decision-making power but who **assists the involved parties in voluntarily reaching a mutually acceptable settlement of issues in dispute.***

He adds that within this definition, mediators may play a number of different roles (Moore, 1996),[4] and may enter conflicts at a variety of different levels of development or intensity.

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[4] Moore describes three general mediator roles: social network mediators, authoritative mediators and independent mediators. Social network mediators are usually respected members of the community who have existing relationships with the parties. While not neutral, they are perceived as being fair. Social network mediators are generally concerned with maintaining stable long-term social relations. Generally, they remain involved with the parties after the negotiations, and will participate in implementing agreements. They can draw on social or peer pressure to enforce agreements. Authoritative mediators are individuals who are in some position of authority over the parties, such as a manager or director. There are a number of differences among authoritative mediators. They may be neutral as to the outcome, or may have vested interests in achieving a particular settlement. Such mediators are generally able to use their authority to enforce agreements. Independent mediators are best defined by their neutrality and impartiality. Generally, they have no prior relationship to the parties, and are hired by the joint decision of the parties. Independent mediators seek to help the parties develop voluntary, mutually acceptable solutions. See Tanya Glaser, Book Summary of The Mediation Process: Practical Strategies for Resolving Conflict by Christopher Moore, Conflict Research Consortium, available at http://www.beyondintractability.org/booksummary/10403/, last accessed on December 21, 2009.

Folberg and Taylor (1984: 10) describe mediation as:

> *...a process by which the participants, together with the assistance of a neutral person or persons, systematically isolate dispute issues in order to develop options, consider alternatives, and reach a consensual settlement that will accommodate their needs. Mediation is a process which emphasizes the participants' own responsibility for making decisions that affect their lives. It is therefore a self-empowering process.*

The two definitions seem to place the dispute at the heart of the mediation process. Williams (2003) borrows from the above definitions, and proposes the following definition:

> **Mediation is a process whereby people choose to come together with the assistance of a non-partisan and mutually acceptable third party, who assists them to analyze and discuss the causes of differences between them in order to better understand and negotiate ways of fairly dealing with each other. It is a process which recognizes that disputes are shaped by the relationships between the disputants and that assisting disputants to build and manage their relationships with one another is central to any meaningful, sustainable and mutually agreed and acceptable resolution of disputed issues.**

The above three authors require mediators to evaluate if their process is emphasizing outcomes at the expense of relationships.

Mediation should not be confused with arbitration or negotiations, which are proximate concepts. Unlike arbitration, where the intermediary is an adjudicator who listens to the arguments of both sides and makes a decision for the disputants, a mediator assists the parties in conflict to develop a solution themselves. Although mediators sometimes provide ideas, suggestions, or even formal proposals for settlement, the mediator is primarily a 'process person,' helping the parties define the agenda, identify and reframe the issues, communicate more effectively, find areas of common ground, negotiate fairly, and hopefully reach an agreement. A successful mediation effort has an outcome that is accepted and owned by the parties themselves (Christopher and Yawanarajah, 2003).

Relatedly, negotiation is actually engaged in by parties to the conflict. In the simplest terms, negotiation is a discussion between two or more disputants who are trying to work out a solution to their problem (Conflict Research Consortium, undated). Mediation as a conflict resolution tool is often used in intractable conflicts, especially where there are long-running and deep-rooted conflicts.

Electoral Setting for the Kenyan Conflict

The electoral setting for Kenya's post-election conflict is mainly based on certain key perspectives in Kenya's constitutional political economy. These include the

relationship between structural or institutional conflicts and failed elite pacts, and institutional failure of electoral management and administration systems. These perspectives are discussed below as they relate to Kenya.

Structural Conflicts and Failed Elite Pacts in Kenya

In societies that are in structural conflicts, elite pacts, though largely inadequate, are important as devices for managing tensions. When these pacts fail, and elites become factionalized and fragmented, a potentially incendiary environment is created. This is the set of circumstances in which Kenya approached the 2007 general elections.

The 2007 general elections were perhaps the most fought-over elections in the history of modern Kenya.[5] The elections were billed as a two-horse race, consisting of Raila Odinga's Orange Democratic Movement (ODM), and Mwai Kibaki's Party of National Unity (PNU) (Clottey, 2007). The Orange Democratic Movement-Kenya (ODM-K) was a fringe breakaway faction of the original ODM and was led by Kalonzo Musyoka.

The issues that shaped the 2007 general elections can be traced back remotely to 1963, or immediately to 2002. As discussed above, the country was under the clutches of a structural conflict that expressed itself through the agitation for a new Constitution to revise the 'social contract' long frayed by economic, social and political developments of the last 40 years. Rising poverty and inequality deepened the sense of exclusion and marginalization, the impressive GDP growth rates of the NARC regime notwithstanding. In 2000, the Institute of Economic Affairs (IEA) and the Society for International Development had developed scenarios for Kenya (IEA and SID, 2000) and concluded that the model of political and economic development that the country had pursued since independence had run its full course. They advised that to avoid what they called the El Nino Scenario, which is breakdown of the Kenyan state and society, these needed to be revised and renegotiated through simultaneous economic and institutional reform. These were the undercurrents that raged as the country went into the election.

The 2002 general elections had ended the 40 year autocratic rule of the **Kenya African National Union (KANU)**, and brought the National Rainbow Coalition (NARC) into power. NARC was a coalition of two principal partners, Kibaki's National Alliance Party of Kenya (NAK), and Odinga's Liberal Democratic Party (LDP) (Odhiambo Mbai, 2003; Badejo, 2006). The LDP and NAK partnership was fashioned on a Memorandum of Understanding (MoU), a power sharing agreement that stipulated an equal share of Cabinet and Government positions between the two political parties.[6]

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[5] A general election is where Kenyans go to the polls to elect a President, Members of Parliament (in 210 constituencies), and councillors. See s. 32 of the Constitution; ss. 12-17 of the National Assembly and Presidential Elections Act, Cap. 7; s. 57 of the Local Government Act, Cap. 265.

[6] The main elements of the MoU were: First, Mwai Kibaki would be nominated as the single NARC Presidential candidate. Second, the membership of the Cabinet would be determined on a fifty-fifty power

NARC fashioned its campaign on a theme of change and reform, which resonated well as an anti-thesis to KANU's 40 years of corruption, impunity, tribalism, economic mismanagement, and general maladministration. The NARC Manifesto pledged to change these and, most fundamentally, to deliver a new Constitution within 100 days.[7] NARC won 67 per cent of the presidential vote, and 122 of the 210 Parliamentary seats. The NARC administration, therefore, enjoyed overwhelming goodwill from the whole country, with the exception of the Rift Valley, which had largely supported KANU's presidential candidate, Uhuru Kenyatta.

However, upon ascending to power, Mwai Kibaki reneged on the MoU, marking the first stage of elite fragmentation. Kibaki's NAK argued that it was the President's prerogative to appoint members of the Cabinet, and that the MoU had no constitutional or legal basis.[8] The MoU debate and its attendant elite fragmentation was to spill over into the Bomas Constitutional Conference, which undertook the review exercise.[9] This was witnessed in the positions that NAK and LDP backed regarding a number of aspects in the Bomas Draft Constitution. These aspects were to be known as the contentious issues. The bone of contention was devolution versus continued centralization, and the design of the Executive, especially Presidential versus Parliamentary system of governance. Secondly, NAK backed centralized authority under a powerful Presidency with a non-executive Prime Minister, while the LDP backed a less-powerful Presidency with an executive Prime Minister and a Parliamentary system of Government.[10]

At this point, the constitutional politics at play at Bomas also exposed the interests of various communities. For example, the Central Kenya tribes consisting of the Kikuyu, Meru and the Embu supported a strong presidency. This was widely interpreted to be as a result of one of their own occupying the seat.[11] The Luo, long marginalized from the development agenda by Kenyatta, Moi and Kibaki,

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sharing formula between NAK and LDP and would be composed of individuals proposed by the respective political parties. Third, the positions in Cabinet, namely, one position of Vice President and two positions of second and third Deputy Prime Ministers would be allocated to NAK while one position of Vice President, the Prime Minister, the first Deputy Prime Minister and one position of Senior Coordinating Minister would be allocated to LDP. See the two MoUs; also Odhiambo Mbai (2003); Badejo (2006).

[7] See Memorandum of Understanding between NAK and LDP of 2002; see also NARC Manifesto; Badejo (2006).

[8] In this regard, Dr Chris Murungaru, Kibaki's confidant and then Internal Security Minister, stated thus: "How do you honour the MoU yet the constitution does not recognize it and allow the creation of a second Vice President, a Prime Minister and his deputy?...It is time these people understood that the MoU is an impossibility and settle down for development." See *People* (2004).

[9] See generally National Constitutional Conference (2004), The Draft Constitution of Kenya 2004, adopted by the National Constitutional Conference on 15 March 2004, Constitution of Kenya Review Commission, Nairobi.

[10] In the event, Bomas settled on a parliamentary system of government. See Articles 120-145 of the Draft Constitution of Kenya, 2004, adopted by the National Constitutional Conference on 15 March 2004. See Oloo and Sihanya (2006).

[11] The Waki Report blames President Kibaki for receding to his Kikuyu ethnic grounds as soon as he was elected. See Republic of Kenya (2008b).

championed a reduction of presidential powers, the creation of a Prime Minister's post and, more significantly, the introduction of a devolved system of Government, which would ensure development at the grassroots. The Kalenjin, on the other hand, took the Bomas arena to re-invigorate the debate on land injustices in the pre- and post-independence Kenya. This was significant because the land agenda helped the Kalenjin communities, marginalized from mainstream politics with the removal of KANU from power, get back into the political mainstream.

During the 2002 election campaigns, NARC had pledged to investigate and secure justice for the victims of historical injustices. However, these injustices were, in the minds of the politicians and the citizens, perpetrated during the Moi presidency. There was, therefore, no political or other incentive to revisit the historical injustices perpetrated during the Kenyatta presidency (1963-1978). In fact, after the NARC Government came to power, the Minister for Justice and Constitutional Affairs, Kiraitu Murungi, appointed a taskforce chaired by Prof. Makau Mutua to look into the modalities of a Truth, Justice and Reconciliation Commission (TJRC).[12]

During the hearings, the Kalenjin took the opportunity to press forward their case for the revisiting of land injustices against their people by the Kenyatta Government (Republic of Kenya, 2003; Cf. Morton, 1998).[13] The land transactions conducted by the Kenyatta government immediately after independence saw many Kalenjins dispossessed of their land in the Rift Valley, and the Kikuyu becoming beneficiaries of the same land. Therefore, the Kalenjin took the opportunity to advocate for a truth, justice and reconciliation commission. By then, the focus of historical injustices had shifted all the way back to the Kenyatta presidency. This is one of the reasons that analysts have cited to explain the Kibaki Government's reluctance to initiate the TJRC (Republic of Kenya, 2003; Cf. Morton, 1998).

Another significant development that brought the Kalenjin community out of the political cold and into mainstream opposition politics was the appointment of William Ruto, a Nandi (Kalenjin) as the chairman of the Parliamentary Select Committee (PSC) on Constitutional Review in 2004. Ruto, an opposition (KANU) MP, was backed by the LDP, a government party, and KANU, against the NAK's candidate. This marked the beginning of a political partnership between the LDP and KANU, which was largely a Kalenjin party.[14] Suffice it to say that this partnership marked the fusion of the three main elements of structural conflicts in Kenya: inclusion/

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[12] The Taskforce was appointed on 17 April 2003 with the mandate to find out if a truth commission was necessary for Kenya and, if so, to make recommendations on the type of truth commission that ought to be established.

[13] Republic of Kenya (2003); See also Andrew Morton (1998).

[14] It is remarkable that Uhuru Kenyatta had been ambushed as KANU Chair as Leader of Opposition. He had closed ranks with Kibaki on some issues and refused or failed to lead the progressive front at Bomas, nor to lead a principled and organized attack on ethnic chauvinism, primitive accumulation and grand corruption in the Kibaki Government. Critics observed that ethnic affiliation with Kibaki mattered to Uhuru Kenyatta more than his constitutional and political role as a watchdog on the Kibaki government's performance. See Sihanya (2009a).

exclusion-domination theme; dispersal of power theme; and historical grievances theme. In a sense, it was a revival of the KANU-KADU rivalry at the Lancaster Constitutional Conference, save that the Luo had 'defected' from KANU's to KADU's platform.[15]

The LDP/KANU faction succeeded in pushing a number of their views through Bomas, which eventually passed on 15 March 2004 the Draft New Constitution (the Bomas Draft) after the NAK faction and its sympathizers boycotted the vote, led by the Vice President Moody Awori, Justice Minister Kiraitu Murungi and Lands Minister Amos Kimunya. In May 2005, the NAK faction of NARC regained control of the Parliamentary Select Committee on Constitutional Review, previously chaired by William Ruto of KANU, and pushed through Parliament amendments to the Bomas Draft, resulting in the Kilifi Draft, a markedly different draft Constitution.[16] The Kilifi Draft was subsequently amended by an NAK-controlled Parliament, resulting in the 'Wako' Draft New Constitution.[17] The Wako draft was then put to a referendum vote. It is the politics of the Referendum that largely shaped the nature of the 2007 general elections.

The Referendum was carried out on 21 November 2005. The NO (Orange) campaign, led by LDP and KANU, garnered 3.5 million votes against the YES (Banana) campaign's 2.5 million votes. The Draft Constitution was therefore rejected. It was a symbolic victory for LDP, KANU and their supporters who had pushed for radical proposals at Bomas.

Two weeks after the referendum, President Mwai Kibaki sacked all the Ministers allied to LDP who had backed the Orange campaign, marking the second major stage of elite fragmentation. This act moved the nation away from structural conflict and much closer to open violence. The Government had lost on the substance of the 'social contract' and, instead of showing humility, was exhibiting arrogance. Elite pacts, which would have helped manage the tensions, was thus certified dead and unavailable as an option. This set the stage and the agenda that would inform the 2007 general elections as the leaders of the ODM, newly-energized by their victory at the referendum, vowed to carry the same agenda to the 2007 general elections. The Banana campaign, still shocked from an unexpected loss, recoiled even further and strengthened their conservative stance against far-reaching reforms (Sihanya,

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[15] At independence, KANU had brought together the Luo and Kikuyu, among others, while the Kenya African Democratic Union (KADU) had been formed and organized by the 'smaller' tribes of Kalenjin, Luhya, Maasai, and Coastals, among others, to oppose (perceived) Luo-Kikuyu domination. See Ghai and McAuslan (1978).

[16] The PSC was now chaired by Simeon Nyachae of Ford People, who had been appointed to Kibaki's Cabinet in spite of opposing the idea of Kibaki as the single opposition presidential candidate. Invitations to meetings by Kibaki's faction of the government were reportedly secretive, sometimes by short message service (SMS) and excluded LDP.

[17] A neutral reference would be the Referendum Draft. It was actually a Democratic Party (DP)/NAK Draft.

2009a). In fact, immediately after the referendum, positions of the NAK and LDP factions hardened further. Under the threat of losing a hold on Parliament, considering that LDP (commanding 58 seats in the House) had joined hands with KANU (commanding 68 Parliamentary seats), President Mwai Kibaki raided the Opposition benches for KANU legislators. He appointed KANU legislators into Cabinet and appointed more Ministers and assistant Ministers from FORD-Kenya and National Party of Kenya.[18] These appointments contravened s. 16 (2) of the Constitution and s. 17 (5) of the National Assembly and Presidential Elections Act, which requires that:

> *No person who is elected or nominated as a member of the National Assembly with the support of or as a supporter of a political party (other than the party whose candidate has been elected President at an election) shall be appointed a Minister of the Government of Kenya under section 16 of the Constitution without the concurrence of the party which supported him for election or nominated him for appointment as a member of the National Assembly.*

However, there were two major constitutional and political developments that significantly altered the political equation, thereby influencing the course of the 2007 general elections. These constituted the third stage of elite fragmentation. First, in early 2007, KANU Chairman Uhuru Kenyatta, who had been in the NO campaign, walked out of the ODM-Kenya political union to President Kibaki's bid for a second term. This was a significant development because it reeked of ethnic solidarity triumphing over party or ideology.[19] Secondly, in August 2007, Kalonzo Musyoka, one of the Presidential aspirants under the ODM-K umbrella attempted a Party coup by pulling out of the Orange union, together with the nominal party officials and the party registration certificate. He entered a political union with Dr Julia Ojiambo's Labour Party of Kenya. This was also significant because Kalonzo Musyoka robbed the Orange Alliance of some of the Eastern Province support base (Obonyo, 2007). The Orange leaders then secured the Orange Democratic Movement (ODM) Party of Kenya, which had been registered by one Mugambi Imanyara. In September, Kibaki would also launch a new party, the Party of National Unity (PNU) as his re-election vehicle.

The above developments set the stage for a two-horse presidential race that would be closely contested, thereby precipitating the worst political and humanitarian crisis in the history of independent Kenya.

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[18] These included Bonny Khalwale, Enoch Kibunguchy, Raphael Wanjala and Musikari Kombo of Ford Kenya, and Charity Ngilu of National Party of Kenya (NPK).

[19] Uhuru Kenyatta was quoted as saying that mother's food is always sweetest.

2007 electoral process and crisis of results tallying

The campaign agenda pushed by ODM and PNU were instrumental in highlighting the deep-seated grievances that precipitated the post-election crisis that gripped Kenya upon the announcement of the incumbent President Mwai Kibaki as the winner on Sunday, 30 December 2007. Kibaki's PNU campaigned on the theme of continuity, with the campaign slogan *Kazi Iendelee* (business as usual; continuity). PNU's campaign manifesto lauded the economic growth that the Government had allegedly registered over the past five years of Kibaki's presidency. The Manifesto was largely a pledge to continue with the same kind of governance that had been practised since 2002.

ODM, on the other hand, adopted the campaign theme of change (*kazi ianze;* business unusual; let the work begin), which resonated well with all ethnic groups and regions in the country, except the Mt Kenya region, Central and lower parts of Eastern Province, which were PNU and ODM-K strongholds. ODM pledged to introduce radical changes in governance by enacting a new Constitution within six months of the Odinga presidency, and made the Bomas Draft an annex of its manifesto.[20] ODM promised to introduce devolution of economic and political power, in addition to introducing a zero-tolerance policy on corruption. The term *majimbo* (originally, regionalism or quasi-federalism) was used to refer to devolution. In the end, the theme of devolution as a campaign pledge raised the stakes of the general elections even higher. While ODM promoted devolution of economic and political power within the context of promoting ethnic and regional equity in resource distribution, PNU charged that this was a recipe for balkanization of the country into ethnic blocks.[21] The term *majimbo* ended up with such a negative connotation that ODM was forced to use the term *ugatuzi* to explain its version of devolution.[22] This debate engulfed the entire election campaign with paid-up television and radio advertisements being used to discredit arguments from either side.

In a sense, the *majimbo* debate captured the grievances that communities have had against tendency by past presidents to pursue ethno-hegemonic projects through control of strategic institutions and ministries so as to create ethnic exclusion. These are gievances other ethnic groups have had against the Kenyatta, Moi and Kibaki governments with regard to inequitable distribution of resources, and the marginalization of certain communities from the national development agenda.

On 27 December 2007, Kenyans went to the polls. According to (contested) official election results,[23] 9,886,650 Kenyans came out to vote. This figure is equivalent

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[20] See Orange Democratic Movement Manifesto.

[21] See Party of National Unity (PNU) Manifesto.

[22] *Ugatuzi* is Swahili word meaning devolution.

[23] See EU, AU, Commonwealth Observer Reports. Ben Sihanya was accredited and was an observer in Lang'ata, Westlands, Kikuyu constituencies etc, and at the national tallying centre at the Kenyatta International Conference Centre (KICC).

to a 69 per cent national voter turnout and represents the highest turnout ever experienced in Kenya. In addition, there were nine presidential candidates,[24] 2,547 parliamentary candidates, and 15,331 civic candidates vying for office, also the highest number in Kenya's history. All observers reported that the voting process was generally peaceful and regular in most of the polling stations, except for a few instances such as in Lang'ata Constituency where Raila Odinga's name was missing from the register.[25] Moreover, many voters whose names begin with 'O' (largely Luos) were initially missing from the voters roll.

On the evening of 27 December 2007, vote counting commenced in most of the constituencies and the media started announcing the vote results for presidential and parliamentary seats. Early signs that all was not well started showing when reports of attempts at rigging the parliamentary vote were reported in the media.[26] Vote counting was interrupted in some parts of the country due to allegations of fraud, or disagreements among officials of the Electoral Commission of Kenya (ECK) over the vote count. In Kajiado North, for example, George Saitoti, Education Minister under President Kibaki, and Kibaki's staunch (ethnic) ally, was stoned and chased away from Ololaiser Secondary School after violence erupted over alleged rigging. By the evening of 28 December, Raila Odinga's lead had widened to over a million votes.

In the early morning hours of 29 December, anxiety heightened among party agents and election observers at KICC over what was claimed to be inexplicable delays in announcement of results from President Mwai Kibaki's strongholds of Central and Eastern Provinces.[27] By that morning, official reports had come in to the effect that the Vice President, Moody Awori, together with 18 Cabinet Ministers in the immediate Kibaki Government had lost their parliamentary seats. Raila Odinga still held a strong lead against Mwai Kibaki, but it had narrowed significantly.

However, as more results were officially announced, the gap between Raila and Kibaki narrowed. By then, it was clear that all was not well at the tallying centre. On the third day of counting and tallying, results from Central and Eastern Provinces were still missing.[28] Samuel Kivuitu (a Kamba from Eastern), the ECK Chairman,

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[24] The presidential candidates included Raila Odinga (ODM), Mwai Kibaki (PNU), Kalonzo Musyoka (ODM-K), Joseph Karani (KPTP), Pius Muiru (KPP), Nazlin Umar (WCPK), Kenneth Matiba (SSA), David Ng'ethe (CCUP), and Nixon Kukubo (RPK).

[25] See EU, AU, Commonwealth Observer Reports..

[26] Meanwhile, as early as late afternoon, Ben Sihanya and other observers noted from the Intercontinental Hotel that police were, unlike previous elections, barricading the KICC, the would-be tallying centre.

[27] When William Ruto sought an explanation, an overzealous Commissioner, Daniel Wambua, told him he was not a party agent. Sihanya argued that as a Pentagon member, representing his party, Ruto was like a principal, whose decisions supersede an agent's. Ruto was allowed to speak. Later, Commissioner Wambua sneered that observers should just "watch." Sihanya and some observers argued that observers had a mandate to comment on irregularities, and if one side had more than its fair share of irregularities, then that was just a coincidence.

[28] Ugenya MP, James Orengo, ODM Chairman, Henry Kosgey, and Pentagon member, Charity Ngilu had now joined Ruto in the struggle for integrity in tallying.

admitted that the returning officers from Central and Eastern had switched off their phones and could not be reached. He also alleged that powerful people had tapped his phone and were preventing him from calling ECK's field agents. The Chairman also alleged that some of the ECK officials were 'cooking' results at the tallying centre.

On the evening of 29 December, ECK finally yielded to the pressure and agreed to form an inspection team consisting of ODM and PNU party agents, together with independent election observers.[29] The team spent the whole night inspecting electoral documents in the tallying room. On the morning of 30 December, the inspection team reported that they had noticed anomalies in 48 constituencies, and therefore there was need to conduct a re-tally in these constituencies.[30]

Paramilitary forces of the General Service Unit (GSU) were ordered to clear the KICC conference room, and all public broadcasting ceased. It was announced that only the state-owned radio and TV station, Kenya Broadcasting Corporation (KBC), would be allowed to broadcast subsequent actions of the ECK. Shortly thereafter, Kivuitu appeared on KBC and announced final presidential figures naming President Kibaki the winner. Less than an hour later, President Kibaki was sworn in for a second term at the Nairobi State House. Mwai Kibaki called for the 'verdict of the people' to be respected and for 'healing and reconciliation' to begin. He would also embark on constitutional reform. The historical injustices dating back to 1963, and especially Kibaki's intense ethnicization of Kenya's political economy and now the electoral fraud coupled by an electoral process that did not meet constitutional and judicial standards, tested Kenya's Constitution, its institutions and political stability.

The controversial swearing in of Mwai Kibaki as President simultaneously precipitated a political, constitutional, humanitarian, economic and social crisis in Kenya. The humanitarian crisis was characterized by both the violent and non-violent protests that broke out in all parts of the country, except Central and Eastern provinces, which were Mwai Kibaki's and Kalonzo's strongholds. Within minutes of the ECK's declaration of Mwai Kibaki as the winner, protests, rioting and violence broke out across Kenya. In addition to staging non-violent protests, ODM supporters, outraged at what they considered an open and blatant electoral fraud, went on the rampage. The violence escalated on 31 December and peaked on 1 January with the killing of over 30 civilians in a church in Eldoret, and a few days later, the burning

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[29] Orengo led ODM's team; Karua, then Justice Minister under whose docket ECK fell, led PNU's (Kibaki team). Ben Sihanya was one of the five observers. Wasn't there a fundamental conflict of interest in constitutional law and fact in the relationship between Karua and ECK tallying officials. See "Kenyan for Peace with Truth and Justice: 30 hours that destroyed Kenya," interviewing Ben Sihanya and other observers. Furthermore, Kibaki had appointed ECK Commissioners without consulting ODM, contrary to the Inter-Parties Parliamentary Group (IPPG) political settlement of 1997, which Moi had honoured in the run up to the 1997 and 2002 general elections. Cf. Adams Oloo & Ben Sihanya, 2006.

[30] In the meantime, Administration Police and General Service Unit only allowed persons they thought were affiliated to PNU into KICC by observation or by views held. Ben Sihanya and other accredited observers who could not pass the two tests were denied access to even their phones which were in the room; even ECK Commissioners or ECK staff they had worked with all night on tallying could not let them back into the tallying room to pick personal belongings.

of Luo families in a house in Naivasha. The Gikuyu also engaged in violence against groups considered ODM supporters, primarily Luos, Kalenjins and Luhyas especially in areas surrounding Naivasha and Nakuru. In Mombasa, ODM supporters, especially the Muslims, took to the streets to protest the electoral fraud. Here, ethnic tensions played a much lesser role that witnessed in other parts of the country.

Politics of the Mediation Process

Issues and Interests that Shaped the Mediation Process

The vortex of issues receipting the concept and practice of mediation revolve around the ripeness of moment; third parties and the notion of leverage and impartiality, or lack thereof; interests mapping; structure of the process; the value of symbolism and labeling; and the problem of re-entry. An examination of Kenya's mediation process needs to be examined within the context of some of these issues.

The literature argues that any attempt to mediate a conflict that is unripe will lead to failure (Mitchell, 1995). Zartman (1986) has argued that parties must be ready for process to begin, and that the ripe moment occurs when the parties reach a stage in their conflict when the cost of continuing with the conflict is higher than the cost of negotiation. In Kenya, it is clear that the conflict was ripe for mediation, as parties had reached a mutually hurting stalemate. Although Kibaki had been sworn in, the Government could barely control one third of the country, and its legitimacy both internally and internationally was greatly contested and nebulous. ODM, on the other hand, could not force Kibaki's resignation. And the casualties of its members from excessive and selective application of force by the police were forcing its hand to the negotiating table. Thus, in spite of the obduracy of both sides, all factors pointed to a mediated settlement as the only way out of this mutually assured destruction (MAD).

Mediation, unlike negotiation, needs third parties in the form of mediators. For mediation to be successful, the mediator needs to have leverage and enjoy some significant esteem and respect from the protagonists. As Touval (1975) pointed out, impartiality and lack of personal interests are not necessary preconditions for a mediator to engage successfully, as the mediator possesses certain resources the parties value. The effect of the entry of a mediator is that it changes the original dyadic structure of the conflict into a triadic one, thereby making the mediator a party to the conflict (Bercovitch, 1984). Further, third parties do not involve themselves in mediation for altruistic purposes; there are advantages that accrue to them, which may include prestige.

In the Kenyan mediation process, Kofi Annan, the former UN Secretary General, and the AU Panel of Eminent African Personalities had leverage, esteem, respect, and incentives to succeed. They commanded international support, and Annan had immense convening and calling power in the world. Presumably for him, there was

the incentive, even if unstated, to 'make amends' for his Rwanda failures when he headed the UN Peacekeeping Division at the height of the genocide in 1994, as well as put to test the Right to Protection doctrine of the UN Resolution.

In mediation processes, there is always the problem of third parties either in reality or in the horizon. In the Kenyan process, even though the ultimate mediation ended up being singular, the spectre of multiplicity of actors loomed large. It is a problem that Kofi Annan was acutely aware of, and of the three elements of mediation he established, the first was that 'he sought the assurances of Western and African leaders that there would be no competing mediators, a problem that perennially confronts African mediators' (Khadiagala, 2008). The mediation process attracted numerous players starting with the arrival of Bishop Desmond Tutu of South Africa operating under the aegis of the African Conference of Churches (ACC);[31] **then** Forum of Former African Heads of States, led by Joachim Chissano; then President **Kufuor**, as Chairman of the AU; and finally the AU Panel, which took over from Kufuor with the support of the USA, EU, and UK.

However, in between, Uganda's President Yoweri Museveni tried to meddle but was strongly rebuffed.[32] Other players that tried their hands but failed due to lack of respect and esteem were the Concerned Citizens for Peace led by Bethwell Kiplagat, as well as the World Bank led by the Kenya Country Director, Colin Bruce. That the mediation had a single third party was useful in hastening the pace of the process and as Annan was to note in reflection in the *New York Times* (Cohen, 2008): 'I said we have to make sure there is just one mediation process. Otherwise you have the protagonists trying to bottom shop, looking elsewhere if they don't like what you are offering. You get diplomatic tourism and that is not good.'

The taxonomy of interests was internal, regional and international. Internationally, because of Kenya's strategic location, the US, UK, and the EU had an interest in a functional and orderly country. The quest for stability in Kenya was desperate and it explains why the US State Department hastily released a statement congratulating President Kibaki only to withdraw it immediately when it realized that Kibaki could neither guarantee US interests nor govern. It was not lost on observes that only a few days after the signing of the National Accord, the US conducted a very high profile anti-terrorist incursion into Somalia. In regional terms, the violence had disrupted important trade routes and deliveries and the price of fuel in the neighbouring countries, particularly Uganda, Rwanda and Burundi, was rising exponentially (Wamuyu, 2008). Internally, there were the main protagonists, the civil society, led more authoritatively and solidly by the Kenyans for Peace with Truth and Justice

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[31] Tutu won the Nobel Peace Prize in 1994 partly for helping dismantle the oppressive Apartheid regime in South Africa.

[32] ODM and its supporters argued that Ugandan forces had been deployed to suppress protests in Nyanza, Western and Rift Valley during the conflict.

(KPTJ) and the Kenya Civil Society Congress (KCSC), and the private sector, which was suffering heavy losses due to the inability of goods to move freely within the country.

All these constituencies exerted sufficient influence in the mediation process: the international players had carrots and sticks; the regional players brought a sense of 'moral realism;' KPTJ and KCSC[33] brought remarkable clarity to the issues; while the private sector, led more visibly by the Kenya Association of manufacturers (KAM) brought 'material realism', in terms of the economic costs to the conflict.

The Blame Game

Parties usually seek to arrive at the negotiation or mediation table from a position of strength. For Kibaki, though reluctant to get into the mediation process as this amounted to an acknowledgement of his illegitimacy, he was keen to get into the mediation recognized as the Government. This is why Kibaki's side even refused to use the word 'mediation', hence the emergence of the 'Kenya National Dialogue and Reconciliation' as the official name of the mediation.

In this respect, he did two things: one, continued a crackdown on ODM public meetings to secure submission; and, two, insisting that in the National Accord, his side would sign as Government/PNU. On the other hand, Raila Odinga was keen not to confer legitimacy to a President he and others believed fraudulently crawled his way into office. Therefore, the mass protests were meant to undermine Kibaki's claim to legitimacy and show that ODM was in control of greater territory. Secondly, Raila refused to meet Kibaki at State House Nairobi. In terms of the symbolism of these moves, both parties lost and gained even though ODM's acceptance of the other side to sign as 'Government' was a rather serious concession of territory. It suggests that ODM went into the mediation the weaker side.

The beginning of the mediation process in Kenya can be traced to 1 January 2008. On 31 December 2007, under a wave of a bloodletting crisis, Britain announced that it was ready to broker a deal. The British Prime Minister, **Gordon Brown**, telephoned Raila with an offer to intervene to end the crisis, which Raila accepted but gave his own terms: first, President Kibaki to first step aside and publicly own up to the fact that he was not elected President; and second, the negotiation must be done by international mediators.[34] The United States, which had earlier on congratulated Kibaki, later withdrew its congratulatory statement to Kibaki, with the State Department raising 'serious concerns' over the conduct of the polls. The European Union (EU) declined to congratulate Kibaki, with its own election observer

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[33] Ben Sihanya played a role in these two initiatives and is documenting aspects of formation, policy, strategy, tactics, impact, and challenges. Some elements are in Sihanya (2009d) and herein.

[34] The Government had earlier banned all ODM rallies to protect the illegality of President Kibaki's declaration and swearing in as President. This ban was observed to be unconstitutional and illegal, for example, by the Waki Commission (CIPEV); see Republic of Kenya (2008b).

team and five top Kenyan election officials calling for an independent inquiry into the polls (Barasa, 2007).

On 3 January 2008, Kibaki ruled out the formation of a transitional government and told those dissatisfied with the election results to follow the law (Wamuyu, 2008). As the crisis continued, PNU insisted that Kibaki was the legitimate President. For example, Amos Kimunya, the then Finance Minister (now Minister for Trade) even said that if ODM did not allege fraud, that would make it easier for the two sides to talk (Wamuyu, 2008). Kimunya added that the Government wanted to mediate through Kenyan elders and did not want international mediation involving the African Union. Consequently, South Africa's Nobel Peace laureate, Archbishop Desmond Tutu, began a round of shuttle diplomacy. He separately met Mwai Kibaki and Raila Odinga in a bid to broker peace (Wooldridge, 2008). The outcomes of the Tutu consultations were not made public, and the extent of their fruitfulness remains unknown. Kibaki through the Government spokesman, Dr Alfred Mutua, responded that this would be possible only if the court ordered fresh polls.

These events were followed by the meeting between US Assistant Secretary of State, Jendayi Frazer and Mwai Kibaki at State House on 5 January 2008 and with Raila Odinga. Kibaki proposed to form a Government of National Unity (GNU), while on the other hand Raila argued that Kibaki 'should not come to the negotiating table as the President' and calling for the creation of a transitional government leading to a new election in three to six months (Wooldridge, 2008). At around this time, it was revealed that the Ghanaian President and Chairman of the African Union, **John** Kufuor, had agreed to broker peace. As a show of good faith, ODM agreed to call off the mass protests and Raila indicated that he was ready for face-to-face talks with Kibaki. It seemed that a break-through was imminent.

Upon the announcement that John Kufuor was coming to Kenya, the Foreign Affairs Minister, Moses Wetangula, travelled to Ghana ostensibly to brief the African Union (AU) Chairman on the situation in Kenya. Indeed, PNU's lethargy towards Kufuor's visit was manifest from the statements of Cabinet Ministers and the Government Spokesman, to the effect that Kufuor 'was coming to take tea' with Kibaki, and not to 'negotiate with the warring factions regarding the elections.'[35] They were averse to suggestions of international mediation, downplaying the magnitude of the crisis and arguing that Kenya was a sovereign country capable of solving its own problems. On his part, Raila insisted that he would engage Kibaki in talks only under an international mediator.

International pressure started weighing down significantly on Raila and Kibaki from 7 January 2008 with the US, through Jendayi Frazer, stating that there had been rigging in the elections. But she said that both sides could have engaged in

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[35] See also Dr Alfred Mutua's comments that President Kufuor came to Kenya to take tea with Kibaki in *The Standard* (2008), 9 January at www.eaststandard.net/archives, last accessed on 15 August 2008.

rigging. She had also previously said that, Kenyans had 'been cheated by their political leadership and their institutions (BBC, 2009). This was a significant development to the extent that the perspective of the international community on the conflict was changing. The US position on the polls was slowly changing to conform to the position of the majority of the European countries, especially Britain, who regarded the tallying of the Presidential vote to be flawed (BBC, 2009).

On 8 January 2008, President John Kufuor arrived in the country. At the same time, Kibaki appointed 17 Ministers to half of the Cabinet seats, and said that leaving the remaining seats was a sign that he was ready to dialogue with ODM and form a Government of National Unity. Notably, all the powerful ministries had been allocated to the PNU MPs (Standard, 2008p).[36] Immediately the Cabinet was announced, renewed violence erupted in Nairobi, Rift Valley and Western provinces in protest. The ODM statement by Prof Anyang' Nyong'o, the ODM Secretary General, stated that the new Cabinet was illegitimate because Kibaki had not won the presidential polls. Musalia Mudavadi, Raila Odinga's running mate, added his voice in denouncing the Cabinet appointments as undermining the very essence of mediation that was expected to commence soon (*Standard*, 2008p). Indeed, this view was shared by politicians, the international community, and the media. For example, the US State Department spokesman Sean McCormack said that it appeared Kibaki was setting up a *fait accompli*, that the US was "disappointed" by the move, and that it had 'expressed its displeasure' (Walis, 2008).

The following day, on 9 January 2008, John Kufuor commenced his diplomatic mission. He met Kibaki and Raila separately. While mentioning that he was committed to dialogue, Kibaki gave a speech in which he said that the elections were over and that whoever was aggrieved by the results should seek redress in the courts (Walis, 2008). In the meantime, ODM and most analysts argued that presidential election petitions had always been delayed and eventually won by incumbents who controlled the Judiciary.[37] On that day, both ODM and PNU agreed to 'an immediate cessation of violence as well as any acts which may be detrimental to finding a peaceful solution to the ongoing crisis.' These statements raised optimism that the Kufuor-brokered talks would yield some progress and respite to the violence. However, it did not materialize.

According to Nyong'o, Kibaki had in fact kept Kufuor waiting at his hotel for more than five hours (Ohito and Ayub, 2008). Indeed, on that day, Kibaki spent the **day at** State House in the swearing-in ceremony of the 17 newly-appointed Cabinet Ministers. PNU, on the other hand, blamed Raila for the failure of the talks, saying that he was not responsive to Kibaki's offer of dialogue. In the evening, a disappointed Kufuor left the country, but said that both the Raila and Kibaki camps had agreed to

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[36] Standard (2008) "Kibaki names Cabinet," 8 January 2008.

[37] Examples included Matiba v. Moi, Election Petition No. 27 of 1993 and Kibaki v. Moi, Election Petition No. 1 of 1998.

continue talks together under former United Nations Secretary-General Kofi Annan and a panel of eminent African personalities (Ohito and Ayub, 2008). Kofi Annan's office subsequently said that he would lead future talks but that he was not likely to go to Kenya before 15 January 2008. Despite this statement from Kufuor, Kibaki and Raila, amid recriminations, did not meet or agree on how to end the crisis (Ohito and Ayub, 2008).

Therefore, international pressure was brought to bear on the political protagonists, especially the Government/PNU. The European Union (EU) said on 12 January 2008 that there could not be 'business as usual in Kenya' without a compromise and a solution to the dispute. Jendayi Frazer also said that the US could not conduct 'business as usual in Kenya' under the circumstances, saying that Kibaki and Odinga should meet in person, 'without preconditions', and that both sides 'should acknowledge serious irregularities in the vote tallying which made it impossible to determine with certainty the final result'. In addition, she called for the lifting of the bans on live television coverage and rallies (BBC, 2009).

Despite the efforts and progress at initiating international mediation to end the crisis, the Government still remained reluctant to engage ODM under international mediators. This was seen from the statement by John Michuki, the then Roads and Public Works (later Environment and Natural Resources) Minister, that Annan was not coming at the Government's invitation. He reiterated the claim that Kibaki had won the election.[38] On the same day, international pressure continued to build up, with the EU Development Commissioner, Louis Michel, saying that EU aid to Kenya could be reduced as a result of the elections.

President Kufuor thereafter constituted an African Union (AU) mediation panel called the Panel of Eminent Africans led by former UN Chief Kofi Annan and assisted by Dr Graca Machel[39] **and** Benjamin Mkapa.[40] The feuding parties agreed and made commitments to participate in and support the mediation process (*Sunday Nation*, 13 January 2008). The US and UK governments through their representatives appealed to Kibaki and Raila to meet face to face so as to jumpstart the process in earnest. ODM, through its secretariat, called on its supporters to take part in peaceful mass demonstrations across the country to push for their aim-to reach a power sharing agreement. On 14 January 2008, the European Union (EU) backed Dr Kofi Annan's bid to mediate in the Kenyan crisis (Vision Reporter and Agencies, 2008). The EU urged the parties to the mediation to build on AU-led peace efforts and pursue a lasting solution to the political crisis prevailing at the time (Standard, 14 January 2008q). On 15 January 2008, the 10th Parliament was convened at a time when Kofi Annan was expected to arrive in the country. ODM Members of Parliament (MPs)

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[38] See Minister John Michuki's comments in Daily Nation (2008) Monday, 9 January.

[39] She is the wife of former South African President and Nobel peace laureate, Nelson Mandela. See Associated Press (AP) (2008).

[40] He is the immediate former President of Tanzania.

said that they would sit on the Government side in Parliament, asserting their claim that their party leader and presidential candidate had won the election (*Standard*, 14 January 2008q). However, they took the opposition side, with Raila Odinga taking the seat of the Leader of the Opposition. ODM candidate, Kenneth Marende, won the Speaker's election, while Farah Maalim-also of ODM-won the Deputy Speaker's position, amidst celebrations in most parts of Kenya.

On 16 January 2008, major Kenyan development partners warned that Kenya's future aid and international assistance was pegged on the success in resolving the political impasse. This proclamation came amidst mass protests in the major party bases of ODM as called by the party. Raila Odinga said that accusations by Martha Karua were 'outrageous' and he reiterated that the violence perpetrated by ODM supporters were reactions to the actions of the police, who he said had been ordered to shoot 'members of certain ethnic communities.'[41] This statement also followed the shooting dead of two unarmed protesters in Kisumu by the police.[42]

During a period in which international pressure began mounting, on 18 January 2008, ODM and Raila Odinga insisted that it could only negotiate with Kibaki's team through an international mediator. The party also asked the Government to table proposals to facilitate fresh talks. ODM, through its leader, said they would respect any team appointed by the Government/PNU, but ruled out a face-to-face negotiation unless in a panel that includes international eminent persons.

The Kenyans for Peace, Truth and Justice (KPTJ), which had been formed on 3 January 2008, released a report detailing how the Electoral Commission of Kenya (ECK) bungled the presidential poll. The report was entitled 'Countdown to Deception: 30 hours that destroyed Kenya.'[43] It showed that there were discrepancies in 130 out of the 210 constituencies in the country. The organization of 50 Civil Society Organizations (CSOs) observed that the discrepancies were such that it was difficult to determine who had won the presidential election.[44]

On 20 January 2008, Raila Odinga said that the post-election turmoil was 'only a temptation', and urged ODM supporters not to quail in their quest for justice. He thereafter repeated that ODM was ready to embrace dialogue 'even with a thief' if

[41] In an interview with BBC's HARDtalk, the ODM Party Leader responded to claims by Kenyan Justice and Constitutional Affairs Minister Martha Karua that the ODM had planned 'ethnic cleansing,' at www. bbc.com, last visited on 5 August 2008.

[42] Eric Kiraithe, the Police spokesman, alleged that KTN had manipulated the footage by computers and that it looked like a 'Rambo' movie, which he liked watching. See Republic of Kenya (2008b).

[43] Ben Sihanya was one of the observers who contributed to the report. See McLatchy Newspapers (2008).

[44] See the report, which was released on Friday, 19 January 2008 amid tight security in a media conference presided over by Kenya National Commission on Human Rights (KNCHR) Executive Director, Maina Kiai, 19 January 2008 at www.knchr.or.ke/downloads, last accessed on 3 July 2008. This ambivalence on the results was not quite a common position. Dr David Ndii had presented "results" and compared them to previous elections as well as the 2005 referendum. Ben Sihanya was part of the team that worked on an attempt to understand the fraudulent 2007 elections.

that would take Kenya back to the path of peace. To this effect, Raila stated that (*Standard*, 10 January 2008):

> *We want to see a united country and we have to embrace dialogue… If they [Kibaki's side] succeed, it will mark the end of democracy and it will be meaningless to vote. Kenyans have urged me not to retreat, but stand firm.*

This statement and those of its nature were majorly meant to push the unwilling parties into dialogue in two ways. First, if the PNU would be returned to an election thus facing non-recognition by the majority of the Kenyans. Secondly, that there was the dialogue option open for PNU if they did not want to face the determination of the people to fight for justice.

As political scuffles continued, Dr Kofi Annan, who chaired the Panel of Eminent African Personalities, arrived in the country on 22 January 2008, joining former Tanzanian President Benjamin Mkapa and Graca Machel, former South African First Lady. In affirming his readiness to begin the mediation process, Dr Annan was quoted saying that (*Standard*, 22 January 2008):

> *I am ready to begin work today. I will seek to meet and bring President Kibaki and Mr Raila Odinga together and urge them to seize the opportunity to end suffering and uncertainty that has plagued Kenya…We would explore all avenues to ensure we arrest the situation befalling Kenya… there can be no lasting peace and stability without co-operation and determined and sustained respect for the rule of law.*

Kenya remained in the wait-and-see books of the donor community. The World Bank and the African Development Bank warned that it would not be business as usual with Kenya if the impasse prevailed. The two institutions stated that:

> *The current situation could drive two million Kenyans into poverty, reversing the gains made over the last few years ….We wish to continue working with the people of Kenya… but it is difficult to do so effectively in an environment of instability.*[45]

The World Bank and the African Development Bank stated that they would monitor developments in the Kenyan mediation process closely and keep its relevant programmes under review by making necessary adjustments as the political situation progressed. ODM laid down the demands they would put before the Kofi Annan-led team of eminent persons (Nation, 22 January 2008).

An ODM Pentagon member said in Kisumu that the party would be calling for the resignation of Mwai Kibaki or a re-run of the presidential polls. The Vice President, Kalonzo Musyoka, asked ODM to name its negotiation team to seek political dialogue and reconciliation instead of criticizing the Government-led committee. This was after

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[45] See Joint Statement by the World Bank and the African Development Bank on 21 January 2008.

Kibaki's side named its negotiating team led by Vice President Kalonzo Musyoka. The International Commission of Justice-Kenya (ICJ-K) observed that the public had lost confidence in the Judiciary. It is in this context that Kofi Annan took up the role of Chief Mediator in the political gridlock that followed the disputed presidential election results.

Submitting to the Mediation Process

On 23 January 2008, Dr Kofi Annan began the task of bringing the Government and the ODM sides to the dialogue table, the most remarkable step since the talks stalled in the hands of President John Kufuor. Annan had earlier stated that President Kufuor did not appoint him with a task to fail. ODM announced its negotiating team for the Kofi Annan talks. ODM's team was led by Musalia Mudavadi and included William Ruto and Sally Kosgei with Caroli Omondi as the Liaison Officer. On the other hand, the PNU team was led by Martha Karua and included Mutula Kilonzo and Sam Ongeri. The significance of the PNU side, referring to itself in the mediation as Government/PNU, was to earn this side a power base in the negotiations given the considerable lack of legitimate locus to claim victory.

Raila Odinga and Mwai Kibaki issued public statements together on 24 January 2008 on their commitment to the dialogue process midwifed by Kofi Annan. On his part, Raila stated that he remained committed to dialogue and reconciliation at all levels of the society (*Standard*, 25 January 2008s). On the other hand, Kibaki stated (*Standard*, 24 January 2008g) that:

> *The Government welcomes the eminent African statesmen and woman and we shall have dialogue within the constitutional and legal framework. My party and I are ready for this long journey to restore peace in our land. We are grateful that the mediation team responded swiftly and I pledge that my team and I will spare no effort to resolve this crisis.*

The US Ambassador, Michael Ranneberger, French Ambassador, Elisabeth Barbier and their German counterpart, Walter Lindner, held talks with Annan and the Panel of Eminent Africans (*Standard*, 24 January 2008g). Annan expressed optimism that he would stay as long as it would take until a solution was reached.

On 25 January 2008, the mediation team turned its focus to meeting leaders and interest groups who could contribute to helping the team solve the crisis (Ngesa, 2008). The Panel met the Electoral Commission of Kenya (ECK) Commissioners led by Chairman Samuel Kivuitu and discussed tallying of the controversial presidential results that had led to the political crisis (*Standard*, 24 January 2008g). The team also met other stakeholders with legitimate concerns in the socio-political crisis, such as the inter-religious forum. This was strategic in gathering legitimacy in the process by obtaining the socio-political will of all concerned representatives of the people of Kenya. Kofi Annan and his team visited the internally displaced persons

(IDPs) on 26 January 2008. He then told Mwai Kibaki and Raila Odinga to be ready to make hard choices on the negotiation table for the sake of peace when he was still at one of the IDP Camps in the Rift Valley.

On coming back to Nairobi, Annan said in a press conference that (*Standard* 26 January 2008h):

> *The crisis has mutated from an electoral dispute into much deeper problems with a high potential for recurrence. We cannot accept that this sort of incident takes place every five years or so and no one is held to account. Impunity cannot be allowed to stand... Any attempt to resolve the issue must go beyond electoral dispute if a lasting solution is to be found. We must tackle the fundamental issues underlying the disturbances-like equitable distribution of resources-or else we will be back here again after three or four years.*

ODM leader Raila Odinga ruled out the option of taking up the post of Prime Minister in Kibaki's Government as a way of ending the political crisis (*Standard*, 26 January 2008).

The African Union Commission Chairman, Prof Alpha Omar Konare said, on 28 January 2008, that power sharing would not end the political crisis in Kenya. To him, the crisis could only be ended through 'respect of good governance and democratic principles' (*Standard*, 29 January 2008). He called on the Commission not to compare the crisis in Kenya to genocide in Rwanda in which an estimated 1 million Tutsis and moderate Hutus were killed.

The mediation process was formally launched on 29 January 2008 under the name Kenya National Dialogue and Reconciliation with a Secretariat in Nairobi. Kibaki and Raila witnessed the launch of the negotiations led by Annan. The launch was held **at the** County Hall in Nairobi. Both County Hall and Serena Hotel were regarded as politically neutral as compared to State House or Harambee House, which would have legitimized Kibaki's swearing in and would have given him control over the process through the bureaucracy that answered to him.

The two leaders emphasized their support for the negotiations. In a unifying tone, Raila stated (*Standard*, 29 January 2008i):

> *We are here to join hands with our international friends led by His Excellency Kofi Annan to begin what I believe is a critical step in the path of national healing and reconciliation. I will leave no stone unturned, nor fail to travel that extra mile, to ensure that Kofi Annan's mediation mission between PNU and ODM succeeds. This is the least I can do for our country.*

On his part, Kibaki pledged his support and that of the Government to the process. Furthermore, he said the process would seek to discuss short-term and long-term issues, and find solutions to the underlying issues that had caused the post-December 27 general election crisis.

It was reported that the European Union Council sat in Brussels on 28 January 2008 and made it clear that donor relations between its 27 member states and Kenya would be put on hold until a protracted and consensual political solution was reached between the parties to the conflict (*Standard*, 29 January 2008i). The Council also stated that the political impasse had greatly affected the EU-Kenya relations. In the statement, the Council stated (*Standard*, 29 January 2008i) that:

> *Until a legitimate solution is agreed, the EU and its member states cannot conduct business as usual with Kenya...*

In announcing the team's readiness to begin the process on 30 January 2008, Kofi Annan tabled a list of four issues to be discussed.[46] The order of priority was: First, immediate action to stop violence and restore fundamental rights and liberties of individuals; second, immediate measures to address the humanitarian crisis, promotion of reconciliation and healing process; and third, the political crisis. Under the political crisis, the team would discuss power sharing, constitutional review and reform of the Electoral Commission of Kenya. The fourth was long-term issues and solutions.

ODM wanted the third agenda on the Annan list given priority followed by discussions on ending the violence and addressing the humanitarian crisis in the affected regions. Moreover, during the discussion of the rules of engagement, ODM wanted the word 'dialogue' in the title substituted with 'mediation'.[47] ODM also gave a period of one week for the mediation on the crisis.[48] ODM had handed over their reply to the rules of engagement to the Annan Panel to set off the mediation talks at a time when Kenya was represented in the New Partnership for Africa's Development (NEPAD) summit by the Government/PNU Ministers.

Kenyan Foreign Minister, Moses Wetangula, failed to present the Kenyan case before the Summit. Other countries, such as South Africa, requested that the Kenyan situation be examined together with the other crises in Africa (*Standard*, 30 January 2008). The Government, through the Minister for Foreign Affairs, maintained

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[46] Annan's proposed agenda was titled: 'Suggested Agenda for the National Dialogue on the Resolution of the Political Crisis in Kenya.' Significantly, the National Civil Society Congress (NCSC) (now **Kenya** Civil Society Congress (KCSC)) had met Kofi Annan promptly and presented its proposed agenda. Ben Sihanya was part of that team that would subsequently engage the Annan team regularly, especially on constitutional questions. Some of the key drivers of NCSC were Njeri Kabeberi, Cyprian Nyamwamu, Sam Ongoro, Ann Njogu, Peter Kariuki, Kepta Ombati and Paddy Onyango (among others).

[47] These issues raise the question as to whether mediation in the Kenyan context meant a political and constitutional process as opposed to a loose-ended dialogue. Due to the political-constitutional intensity of the process and its drivers, the process was not a dialogue but a systemic mediation process aimed at addressing certain historical injustices.

[48] While PNU was keen on consolidating its claim to power, ODM was keen to secure its own (legitimate) centre. Indeed, PNU's numerous actions discussed above pointed to a Kelsenian revolution. According to Prof. Hans Kelsen, a civilian or military coup may become valid or legitimate [in the Weberian legal rational sense] if it becomes efficacious, the orders of the new regime are obeyed. See Kelsen (2001) Introduction to the Problems of Legal Theory, Oxford University Press, New York; See also Max Weber (1954) Max Weber on Law in Economy and Society, Harvard University Press, Massachusetts (Max Rheinstein (ed)), at pp. 11-33.

that Kenya was facing a crisis but not a civil war and did not need international intervention. He thus stated: 'We still can handle that situation and have enough internal capacities to solve the problem. There is no need for external support' (*Standard*, 30 January 2008).

It was reported that this statement by the Kenyan Minister was repulsed by a member of the Commission who stated that (*Standard*, 30 January 2008k):

> *The Kenyan crisis is a serious one and we cannot simply condone what the Kibaki regime is trying to feed us ... the Government will not be given a blank cheque at this summit.*

ODM dispatched its Secretary General, Prof Anyang' Nyong'o, to Addis Ababa to pressure the continental body and demand that Kibaki be excluded as his presidency was illegitimate (*Standard*, 30 January 2008k). ODM argued that inviting Kibaki would amount to an official recognition that his 're-election' was legitimate and would, therefore, undermine the mediation effort freshly launched by Kofi Annan.

The UN Security Council stated on 31 January 2008 that it could get involved in the post-election crisis in the country if it persisted and if the players did not reach a timely agreement (*Standard*, 8 February 2008). It accompanied other measures of international pressure for a quick settlement. The UN Secretary General, Ban Ki-Moon, warned of impending catastrophe. The Security Council condemned the violence in the country and fully supported Annan's mediation efforts (*Standard*, 8 February 2008o).

Australia said it would limit contact with Kibaki's Cabinet ministers in a bid to isolate his allies (*Standard*, 8 February 2008o). Canada said it would be difficult to envisage the maintenance of prior methods of direct Government-to-Government cooperation with the Kenyan Government (*Standard*, 8 February 2008o). The Canadian Ambassador to Kenya, Ross Hynes, said his country would not work directly with the Government in the absence of concrete progress towards resolving the crisis and 'restoring the confidence of the Kenyan people and the international community in the institutions of the Kenyan Government' (*Standard*, 8 February 2008o).

Hynes stated thus, regarding Canada's commitment to the mediation (*Standard*, 31 January 2008m):

> *With respect to official contact and visits, Canadian law precludes the admissibility to Canada of foreign nationals responsible for subverting democratic institutions and processes. The ongoing dialogue under the auspices of Kofi Annan offers the best hope for resolution of this crisis and restoration of Kenya's standing as a pillar of stability and democracy in Africa* (see also Brunnée *et al.*, 2006)

To reaffirm their earlier stand on the crisis in Kenya, France, Germany and the United Kingdom said that the Annan-led talks would have to be pursued urgently

to put in place a government 'representative of the will of the Kenyan people' (see for example *Nation*, 8 February 2008i).[49]

On 1 February 2008, Mwai Kibaki reiterated his ambivalent strategy and stood his ground that ODM should seek legal redress over its claims of a stolen victory in the presidential election. This was in his address to the AU Summit in Addis Ababa, Ethiopia. Kibaki's statement came as the UN Secretary General called for the cessation of violence and pursuit of dialogue in resolving the crisis. Ban Ki-Moon stated thus (*Standard*, 1 February 2008b):

> *My message to the leaders and the people of Kenya is to stop the violence immediately and resolve all issues through dialogue.*

On responding to Kibaki's remarks at the AU Summit, on 2 February 2008, Raila reiterated his party's commitment to dialogue and said ODM would not pull out of the talks despite the fact that Kibaki was engaging in talks that had the potential to derail the process. This followed Kibaki's remarks at the AU Summit that the problem in Kenya could be resolved locally through the courts. Kibaki is also said to have accused ODM of being behind the post-election violence that he claimed was premeditated. Raila Odinga stated as follows (*Standard*, 1 February 2008b):

> *We in ODM are committed to the success of the negotiations and are doing everything in our power to ensure the ground is stable for this to happen. Kibaki must also approach mediation in good faith.*

The Central Organization of Trade Unions (COTU) Secretary General, Francis Atwoli, criticized Kibaki for asserting that ODM had the option of seeking legal redress in the courts if the party felt aggrieved. Atwoli threatened that COTU would stop all its engagements with the Government if a solution to the political impasse was not found by 16 February 2008. Atwoli, in issuing the Union's ultimatum, stated as follows (*Standard*, 1 February 2008b): 'COTU will call a delegates meeting on March 15 or 16, where workers will take over even if they don't have gun.' The **Kenya** National Dialogue and Reconciliation issued a joint statement on the agreed agenda and timetable for the mediation process. This statement was in lieu of adopting the Kofi Annan proposals of 30 January.

Raila called for deployment of foreign troops, preferably peace keeping missions led by the AU or UN in Kenya. The reason was that the police and military officers deployed in several parts of the country for civilian duties were not neutral and were merely 'serving their masters'. Raila stated as follows (*Standard*, 3 February 2008j): 'The Kenya Army personnel are not neutral. They serve Kibaki's interests and are not fit to be used to restore peace.'

On 4 February 2008, the UN Security Council warned Kenyan leaders to immediately end post-election violence as mediation talks turned turbulent. At

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[49] See Joint Statement by the Kenya National Dialogue and Reconciliation on 1 February 2008 at www. dialoguelenya.org, last accessed on December 21, 2009).

the mediation talks, PNU and ODM stuck to their positions over the disputed polls (Onyango and Muiruri, 2008). These prompted Annan and the mediation team of eminent persons to appeal to both sides to compromise for a fast resolution (Onyango and Muiruri, 2008). Raila said that his party was willing to climb down on its demands that Kibaki resigns (*Standard*, 4 February 2008r). Mediation talks hit a stalemate when the two sides refused to cede ground forcing them to adjourn unusually. The PNU side accused the US, Britain, Canada and South Africa of coercing them to agree to certain proposals citing the imposition of visa bans on some of its members. The international community urged the wrangling sides to strike a deal to end the crisis or else the international community would intervene.

Annan issued a statement on the agreement between PNU and ODM on the measures to address the humanitarian crisis and measures to promote healing and reconciliation.[50] Annan also accepted with regret the withdrawal of Ramaphosa from the mediation talks. Cyril Ramaphosa is a South African businessman-cum-politician who brokered a new constitutional dispensation for South Africa in 1994. He pulled out because of reservations from the PNU side on his alleged association with Raila (Tattersall, 2008).

In Nairobi, ODM called for demonstrations to protest against the Kibaki Government hosting of the Inter-Governmental Authority on Development (IGAD) meeting in Nairobi on 5 February 2008. ODM Secretary General, Prof. Anyang' Nyong'o told IGAD leaders not to regard Kibaki as Kenya's Head of State and Government. Prof. Nyong'o stated that ODM would not allow moves to legitimize Kibaki's presidency through the 'back door'.

The Executive Secretary of the International Conference on the Great Lakes Region, Ambassador Liberata Mulamula, dismissed remarks by Kenyan Government officials, especially the Minister of Foreign Affairs, that the political impasse was an internal problem. He stated that the effects of the violence were being felt in Rwanda, Burundi, Tanzania and Uganda. He was emphasizing the fact that the political crisis was not an internal affair, as PNU officials and supporters had emphasized. This shows the importance of Kenya's stability not only to the West, but also to other African states.

The Panel welcomed the introduction of two more members, namely James Orengo (ODM) and Moses Wetangula (PNU). The inclusion of James Orengo was perhaps due to lack of a political lawyer on ODM's side. Omondi Caroli was the only lawyer, yet the mediation required a lot of political strategy, legal argumentation, and drafting. In addition, James Orengo is well known for his ability to stand his ground within activism circles. On the other hand, the inclusion of Moses Wetangula was similar to Orengo's inclusion to the extent that both were lawyer politicians. However, the two differ in terms of reform credentials and historical bases of legal activism.

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[50] See Joint Statement by the Kenya National Dialogue and Reconciliation on 4 February 2008 at www.dialoguekenya.org, last accessed on December 21, 2009.

On 6 February 2008, ten high profile PNU and ODM personalities were stated as having been banned from traveling to the US over alleged links to the post-poll violence. This came as the US actualized its threat to ban the detractors of the mediation process from traveling to and conducting business in the US.

International pressure intensified on 7 February 2008. The international community said in an unequivocal statement that it was demanding that the PNU and ODM protagonists strike a deal or face dire consequences in the form of international sanctions. The pressure came from the US, the UN Security Council and the EU (*Standard*, 4 February 2008r). The Chief Mediator later met the EU Commissioner for Development and discussed the agenda item of addressing the political crisis.[51]

In Washington DC, members of a US Congressional Sub-Committee on Africa said Kenya was too important in the region and the world to be allowed to go the way of Rwanda and Somalia. The sub-committee warned that time was running out for a local solution to the gridlock. Under the chairmanship of Donald Payne, the sub-committee stated thus (*Standard*, 8 February 2009): 'If the warring parties are not ready to compromise to stop the country from sliding into tribal anarchy, then the international community should move in to help.'

In New York, the UN Security Council recommended that the Kenyan leaders implement the 1 February 2008 agreement, which included taking action to dismantle armed gangs, improve the humanitarian situation and restore human rights (Swan, 2008). The pressure mounted as the Vice President, Kalonzo Musyoka, urged the US Senators and Congressmen not to recommend any actions that may be disadvantageous to the Kenyan majority poor.[52] On 8 February 2008, Raila said that ODM remained committed and hopeful that a political settlement would be arrived at soon so that normalcy could return and pave way for nation building. He said he was fully in support of peaceful resolution to the crisis.

On 9 February, Raila led 43 MPs in stating they would not relent in efforts to capture the presidency, which had been stolen from them. This was the commitment pronounced at the burial of the slain former Ainamoi MP, David Kimutai Too, in Kericho (Kimutai and Atsiaya, 2008). These MPs also said they would not betray the trust Kenyans had in them. Raila stated the aim of the party: 'We have accepted to talk with PNU but we assure our supporters we will not settle for a solution that betrays their cause' (*Standard*, 9 February 2008n).

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[51] This was read out to the media by the Kenya National Dialogue and Reconciliation on 7 February 2008 at www.dialoguekenya.org, last accessed on December 21, 2009.

[52] This perspective is reminiscent of the stance taken by those who supported Apartheid in South Africa. Whereas they wanted retention of the status quo, they opposed sanctions by hiding behind the mask of poverty of the majority. It is a status quo argument or fig leaf.

Kofi Annan issued a media statement cautioning the public against reports that the mediation talks had been concluded. He urged the public to be patient and stated that:

> *In negotiations, a deal is not done until it is done. I had urged all parties to refrain from making statements to the public on sensitive matters under discussion. All must understand that selective leaks in the middle of negotiations are not to anyone's benefit*[53]

On 10 February 2008, ODM leaders took the view that they would seek the consent of their supporters countrywide before committing the party to resolutions of the National Dialogue and Reconciliation Committee. The party leaders also took the perspective that they would not accept a solution to the current political impasse that did not address the controversial outcome of the general elections. The Committee proposed a power sharing deal between the two adversaries.

The proposed deal drew swift reactions from politicians. Two proposals were presented to the dialogue committee. First, the opponents, which mainly comprised the PNU team at the dialogue, called for a strong ODM opposition in Parliament. Second, they called for a President-Prime Minister type of government as provided in the Bomas Draft Constitution. The latter was a proposal by the proponents of the power sharing deal between Kibaki and Raila (Ong'ayo, 2008).

Indications of the materialization of a power sharing deal were manifest. On 11 February 2008, both sides gave a hint of a power sharing structure tailored to bring both teams into Government. This was a settlement delicately balanced to end the post poll crisis. More than 35 MPs meeting under the banner of Central Kenya Forum led by Ephraim Maina, PNU MP for Mathira Constituency, said the media talk that the Government and ODM had agreed to share power was based on speculation, which the mediation team leader had warned the media against.

On 12 February 2008, PNU MPs claimed that they had been ambushed by mediation proposals for a transitional government and fresh presidential elections. They would not accept it. Garsen MP, Danson Mungatana, and Secretary of the PNU Parliamentary Group (PG) said:

> *The Government has not given its mediation team authority to discuss issues of a transitional government. Our supporters are concerned and are calling us to clear the air. And that we note with concern that, in response to questions and comments, Annan touched on issues that have never been discussed*[54]

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[53] See Press Release by the Kenya National Dialogue and Reconciliation on 5 February 2008, at www. dialoguekenya.org, last accessed on December 21, 2009.

[54] Ohito and Savula (2008). Mungatana and his mentor, Martha Karua, have since resigned from government. They have been hostile to Kibaki and the Grand Coalition Government generally. While resigning, they cited lack of consultation by Kibaki.

As the party protested and expressed its possible actions against a power sharing **deal**, Annan and his mediation teams went to an undisclosed location (which the media revealed was the serene Kilaguni Lodge) to shape the final deal. Annan said the talks had reached a crucial stage and hoped a final deal would be reached between 48 and 72 hours. The people's patience was running out and anxiety had begun to show.[55]

On 13 February 2008, the UK and Switzerland once again demonstrated that the international community was in no disposition to entertain the collapse of the talks. They issued the harshest warning thus far to persons perceived to be pushing sectarian interests. The new international pressure was brought to sustain another momentous period of talks that began with a clarification by Annan, and tousled reports of the deal being discussed.

In a bid to buttress the mediation efforts, the US President George Bush told the Kenyan leaders through Secretary of State Condoleeza Rice on 15 February 2008 that Kenya must return to democracy.[56] Secretary Rice stated thus regarding a power sharing agreement for Kenya (Stolberg and Gettleman, 2008):

> *Power sharing will have to be genuine. Both sides must have responsibilities and authorities that matter,' she said. 'It can't be simply the illusion of power sharing. It has to be real.*

However, the two sides failed to agree on the issue of creating an executive Prime Minister's position and jetted out to their secret retreat for more consultations.[57] The Kenya National Commission for Human Rights (KNHCR), the country's statutory human rights watchdog, endorsed the proposal for the formulation of a Truth, Justice and Reconciliation Commission (TJRC) that would add power to summon potential witnesses, including the President, over post-election violence.

On 17 February 2008, Rice joined Annan for the peace talks in Nairobi the following day. It was argued that the Government never anticipated serious involvement by the US Government.

Kenya's Foreign Affairs Minister, Moses Wetangula, said the Government would not tolerate threats or intimidation from foreign nations on the way Kenya should take in resolving the political crisis. The Minister said (*Nation*, 17 February 2008a):

> *We will not be led, guided or given conditions by foreign States on how to reach a solution to solve the political impasse in Kenya. They will not tell us to do this or that. Holding a gun to our heads is something we will not take.*

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[55] See Press Release by the Kenya National Dialogue and Reconciliation on 11 February 2008 at www. dialoguelenya.org, last accessed on December 21, 2009.

[56] Some analysts regarded this as powerful rebuke of Kibaki and the fraudulent elections. Others thought that it was not strong enough, given the circumstances under which Kibaki had conducted elections and had himself sworn in.

[57] The media followed them at their hide out-Kilaguni Lodge.

These remarks appeared to be PNU's position on remarks by US President Bush, that a power sharing agreement was the only way out of the political crisis.

On 18 February 2008, PNU and ODM set their terms for meeting with Annan as Dr Rice was set to arrive in the country to push for a power sharing formula aimed at ending the political crisis. Public anxiety continued building and international pressure intensified. It emerged that both sides were agreeable to a coalition government. The difference, however, lay in their proposed government structures and the power of the President and the Prime Minister in the proposed arrangement.[58]

On 19 February 2008, the US through Secretary Rice asked Kibaki and Raila to cede ground and quickly agree on a power sharing deal to restore stability in Kenya. Kibaki and Raila gave their proposals on how to end the poll crisis on 20 February 2008.[59] Kibaki asserted that he was willing to work with and share Government responsibilities with ODM, but within the existing Constitution. This Government would be in place while a new Constitution would be written within 12 months. The ODM leaders wanted an executive Prime Minister appointed to share power with the President. The President would then be the Head of State and the Prime Minister would be the Head of Government. ODM also wanted Cabinet and other Government positions shared out proportionately according to the party strength in Parliament.

It was agreed that the Office of the Prime Minister be assigned a supervisory role in addition to coordinating the affairs of the envisaged Grand Coalition Government. The agreement was reached on 21 February 2008. The team also met the AU Commission elect Jean Ping, who the Panel stated had come to Kenya to pledge his and AU's moral support of the process.[60]

On 22 February 2008, the mediation process was challenged in court. John Livondo, a Lang'ata parliamentary loser on a PNU ticket, in the December 2007 general elections and a Kibaki ally went to court to seek temporary orders to restrain the Annan team from adopting any resolution arising from the talks.[61] The applicant accused the team of engaging in an unconstitutional and extra-legal exercise. He averred that the mediation team as constituted did not have the mandate to discuss and determine an electoral dispute between Raila's ODM and Kibaki's PNU.

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[58] Cf. discussions on the power sharing in the Bomas design as examined in Ong'ayo (2008). This repeated the divergent positions that Kibaki's group and Raila's group had taken during the Bomas and referendum processes.

[59] In the event, the US intervention helped move the mediation process. Secretary Rice met Kibaki at Harambee House (not State House) and Raila Odinga and members of the Pentagon at the US Ambassador's residence. CSOs were represented in the meeting with the Pentagon.

[60] See Press Release by the Kenya National Dialogue and Reconciliation on 21 February 2008, at www.dialoguelenya.org, last accessed on December 21, 2009.

[61] See the issues in contest as highlighted at http://www.ogiek.org/news-1/chronology-election-07-kenya.htm, last accessed on 1 October 2009.

During these attempts to seek legal solutions, Kibaki commended members of the Annan-led mediation team and urged them to resolve the outstanding issues. He asked the team to consider the broader national interests and ensure they reached lasting solutions that enhanced national cohesion.

The Law Society of Kenya (LSK) said Parliament had the power to anchor any proposal agreed on at the talks in the Constitution. Okong'o Omogeni, the Chairperson of the LSK stated that (*Standard*, 22 February 2008e):

> *Section 47 of the Constitution gives Parliament the power to carry out any amendments to the Constitution.... Whatever comes from the Annan talks would necessitate minor constitutional amendments. We only need to go to a referendum when the country wants an overhaul of the entire Constitution.'*

On 23 February 2008, ODM MPs told their colleagues at the Serena mediation talks to accept nothing short of an executive Prime Minister. The Parliamentary Group meeting pressured the negotiating team to go for a Prime Minister with executive powers. Prof Anyang' Nyong'o stated thus (*Standard*, 23 February 2008f): 'We don't know what is on the table but we are stating what should be on the table.'

The mediation team was expected to announce a final power sharing accord as was highly expected by the people on 24 February 2008. The team was to meet the following day to discuss the only unfinished agenda item remaining on the debate: whether the issues agreed on so far should be constitutionalized.

On 25 February 2008, Kofi Annan expressed his intention to engage the principals in the mediation on the structure of the Government. He stated thus:

> *I believe that the Panel of Eminent African Personalities working with the Kenya National Dialogue and Reconciliation has done its work. I'm now asking the party leaders, Hon Raila Odinga and President Mwai Kibaki to do theirs' (Standard, 10 February 2008c)*[62]

He later reiterated his disappointment with the members of the team on taking a hard-line stance. In a statement worded in a manner that showed his disappointment, he said: 'After four hours of intense negotiations this morning, the negotiating team made almost no progress toward reaching an agreement on governance, despite the fact that they had the entire weekend to consult on their positions (*Standard*, 10 February 2008c).

On 27 February 2008, talks remained suspended indefinitely and the leader of the mediation team, Annan, said that he had suspended the talks after tempers flared in the talk's room. The Chief Mediator said he would now engage with the principals; PNU's Kibaki and ODM's Raila, in a bid to give the talks a fresh lease of life (*Standard*, 10 February 2008c).

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[62] About this date, NCSC went to the negotiating room, which had been abandoned by the team, following the stalemate and declared itself the team to seek Kenya's way out.

The US State Department announced it was exploring a wide range of possible actions on Kenya. They said they would draw their own conclusions about who is responsible for lack of progress and take necessary steps. ODM said it was not to blame for the stalled talks. The party pointed fingers at their rivals in PNU for changing positions and sabotaging talks in a disturbing manner. The US threatened to mobilize the UN, EU and AU to impose a political solution on Kenya (*Standard*, 10 February 2008c).

Jakaya Kikwete, the President of Tanzania, and the new Chairman of the AU, arrived in Kenya on 27 February to assist Annan in the talks. On 28 February 2008, efforts to rescue the mediation talks were underway after suspension. ODM called off its planned mass action scheduled to begin on this day to pave way for more consultations over the proposed power sharing deal as requested by President Kikwete (*Standard*, 10 February 2008c). After Annan engaged the two principals and the AU Chairman, Jakaya Kikwete, Kibaki and Odinga signed the agreement meant to end the stalemate (Standard, 10 February 2008c). The agreement was called the National Accord and Reconciliation Agreement, which would later be transformed into an Act of Parliament.

The two leaders later agreed to form a Grand Coalition Government with Raila Odinga set to occupy the newly created position of Prime Minister, in which capacity he was to 'coordinate and supervise Government affairs.' Kibaki said that he would reconvene the National Assembly on 6 March 2008 so that it could make the constitutional changes required in order to implement the agreement.

In the immediate aftermath of the signing of the historical deal, on 1 March 2008, the mediation teams returned to a table together. PNU and ODM negotiators agreed on key proposals to seek long-term solutions to the political crisis. These included the TJRC, the Independent Review Commission (IREC), the Commission on Post-Election Violence (CIPEV), as well as initiatives on comprehensive constitutional review, land reform and poverty reduction.[63]

Mediation Agreements

From 30 January, 2008 when the mediation talks started until 31 July 2008 when the talks ended officially, a number of agreements were reached by the Parties to **the Kenya** National Dialogue and Reconciliation (KNDR). These agreements secured consensus on procedural and substantive issues. The agreements on procedural issues were as significant as the agreements on substantive issues because they influenced the shape of the latter. Each of the agreements is considered below in chronological order.

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[63] See Press Release by the Kenya National Dialogue and Reconciliation on 21 February 2008 at www. dialoguekenya.org, last accessed on December 21, 2009.

Agreement on the annotated agenda and timetable of the talks

On 1 February 2008, at their fourth session, the parties agreed on an annotated agenda for the dialogue. The agenda underscored significant constitutional pillars of the mediation process: firstly, immediate action to stop violence and restore fundamental rights and liberties. The parties agreed that modalities to implement immediate action aimed at stopping the wave of violence that had gripped the country since 30 December 2007 needed to be identified. The main aim of this agenda was to enhance security and protect the population and their property; restore the respect for the sanctity of human life; and ensure that freedom of expression, media freedom and the right to peaceful assembly were upheld. The aim was to create an environment for negotiations out of the political crisis.

Second was the need to install measures to address the humanitarian crisis, promote reconciliation, healing and restoration. Under this agenda, modalities would be put in place to ensure that assistance to the affected communities and individuals was delivered more effectively. In addition, it would ensure impartial, effective and expeditious investigation and justiciability of gross and systematic violations of human rights. Besides, the aim of this agenda was to ensure that the process of national healing, reconciliation and restoration commenced immediately.

Third, the annotated agenda included the pillar on how to overcome the political crisis then. Under this agenda, the parties would negotiate and agree on a solution towards resolving the political crisis arising from the disputed presidential electoral results as well as stopping violence. Moreover, the parties agreed that the political-constitutional crisis mainly revolved around the issues of power sharing and the functioning of State institutions. In this regard, it was recognized that resolution of the crisis would require adjustments to the current constitutional, legal and institutional frameworks (Sihanya, 2009d).

Fourth, the annotated agenda provided for a framework on the solution of long-term issues. This transpired because the crisis opened up debate on the root causes. At the height of the crisis, the protagonists all seemed to agree that the disputed election results were a mere trigger, and that there were deeper underlying injustices that were enduring. The parties, therefore, agreed that poverty, the inequitable distribution of resources, various perspectives of historical injustices as well as exclusion on the part of segments of the Kenyan society constituted and still constitute the underlying causes of the prevailing social tensions, instability and cycle of violence. The subsequent discussions under this agenda were conducted to examine and propose solutions for long-term issues such as: undertaking constitutional, legal and institutional reform; tackling poverty and inequality; as well as combating regional development imbalances. In addition, it was also agreed that the following were necessary to address such injustices: tackling unemployment, particularly among the youth; consolidating national cohesion and unity; and undertaking land reform that addresses transparency, accountability and impunity. These were necessary to address such injustices (Sihanya, 2009b).

Regarding the disputed presidential electoral results, the parties examined certain crucial options. First was complete re-count of the presidential election votes. The parties agreed that any re-count to be considered credible in the eyes of the Kenyan people would need to be undertaken nation-wide. This would involve a ballot by ballot scrutiny of all of the more than 11,000,000 ballots cast on 27 December 2007, in the presence of trained observers and party agents. The observers and the agents would have the right to scrutinize the counting and verify each and every ballot. They agreed that a re-count would need to be overseen by a specially appointed independent body that enjoys the trust and broad support of all Kenyans. The parties considered the timeline for a possible re-count and concluded that it would take a longer duration, which could significantly increase existing tensions and delay resolution of the current crisis, and also recognized that the result of a re-count might not further Kenyan unity. The parties, therefore, decided to review other options.

Second was the vote re-tallying option. The parties observed that any re-tally would need to be nation-wide, involving full scrutiny and re-tally of results sheets from all of the more than 27,500 polling stations' tally sheets and all constituency tally sheets. While they agreed that a re-tally could successfully identify problems or irregularities in the tally sheets, a re-tally could not, however, identify the correct result in those stations or constituencies where problems or irregularities had been were identified.

Third was the option of re-run of Presidential Elections. The parties were not in agreement on the need for a re-run of the Presidential Elections. It was agreed, however, that to safeguard the trust and confidence of the Kenyan people in the democratic process, the next election should take place only after electoral reforms, including but not limited to the reform of the Electoral Commission of Kenya (ECK).

Fourth, the utility of the judicial process was considered. The Parties concluded that this was no longer an option as the legal time limit had expired,[64] **and they** therefore decided to review other options.

Fifth, forensic audit of the electoral process involving the Presidential Election *in toto* would have the advantage of investigating and making findings regarding the conduct of the 2007 election, but would not reduce tension and violence. Furthermore, the legal and constitutional basis for such an audit in Kenya is unclear. They further agreed that the functions of a forensic audit would be best undertaken by an Independent Review Committee.

Finally, the Parties agreed to establish an Independent Review Committee (IREC) mandated to investigate all aspects of the December 2007 Presidential Election.

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[64] Section 20 (1) (a) of the National Assembly and Presidential Elections Act, Cap 7 provides that a petition to question the validity of an election shall be presented and served within 28 days after the date of publication of the result of the election in the Gazette.

IREC would make findings and recommendations to improve the electoral process.[65] They also agreed that the findings of the Independent Review Committee must be factored into the comprehensive electoral reforms that are envisaged. The legal and constitutional options were considered.

Need for a political settlement: Resulting agreements

Because the foregoing options did not offer an immediate solution to the power struggle in the crisis, the need for a political settlement to resolve the current crisis was examined. In this regard, it was recognized that a political settlement was necessary to promote national reconciliation and unity. It was also agreed that such a political settlement must reconcile and heal the nation, and reflect the best interests of all Kenyans-equitable justice, peace and unity. In such a context, political settlements are necessary in managing a broad reform agenda to address the root causes of the political crisis.

Such reforms and mechanisms comprise, but are not limited to, comprehensive constitutional reforms, comprehensive electoral reform, a truth, justice and reconciliation process, prosecution of perpetrators of violence, and security reforms. Others include legal and judicial reforms, and other necessary legislative, structural, political and economic reforms necessary.

The Parties also agreed that the issues in Agenda 4 were fundamental to the root causes of the crisis, and were closely linked to Agenda 3. Reforms focusing on implementation also required to be in tandem with the reforms under Agenda 3. The parties agreed that reforms under Agenda 4 would be hastened and completed preferably after one year. These included consolidating national cohesion and unity; land reform; tackling poverty and inequity, as well as combating regional development imbalances, particularly promoting equal access to opportunity; tackling unemployment, particularly among the youth; and reform of the public service. Others included strengthening anti-corruption laws and institutions, reform of public finance and revenue management systems and institutions; and addressing issues of accountability and transparency. Also important in the political economy of mediation was the recognition that a political settlement was about addressing the fundamental root causes of recurrent conflict.

Agreement on the structure of governance

The negotiations were centred on the governance structure that the Principals signed. The Agreement on the Principals of Partnership of the Coalition Government

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[65] The Committee would be a non-judicial body made up of recognized Kenyan and non-Kenyan electoral experts of the highest professional standing and personal integrity. The Committee would submit its report within 3-6 months and it would be published within 14 days of submission. The Committee would start its work not later than 15 March 2008.

contained a detailed annexure known as the National Accord and Reconciliation Bill.[66]

The Agreement created the office of Prime Minister of the Government of Kenya, with authority to coordinate and supervise the execution of the functions and affairs of the Government of Kenya. In addition, each member of the Coalition (ODM and PNU) was granted the power to nominate one person from the National Assembly to be appointed a Deputy Prime Minister. As a result, the Cabinet would, henceforth, consist of the President, Vice President, the Prime Minister, the two Deputy Prime Ministers and the other Ministers. In the composition of the Coalition Government, membership of the Cabinet would take into account the principle of portfolio balance and would reflect their relative Parliamentary strength. The Grand Coalition Cabinet could only be dissolved if the 10th Parliament is dissolved, or if the parties agreed in writing; or if one coalition partner withdrew from the coalition. Besides, the National Accord and Reconciliation Act was entrenched in the Constitution via the Constitution of Kenya (Amendment) Act No. 3 of 2008. The enactment of the power sharing arrangement into law officially signified the end of the post-election conflict and ushered in a new era in the constitutional history of the country. For the second time since the attainment of internal self-rule from the British, Kenya had a Prime Minister alongside the Head of State.[67]

However, the Accord has faced challenges relating to its interpretation by the Coalition partners, Civil Society Organizations (CSOs), academics, commentators and pundits. They question the implementation of the spirit and letter of the agreement itself. This became evident on 10 March 2008 even before the Accord was passed into law when the Permanent Secretary in the Office of the President, Secretary to the Cabinet and Head of Public Service, Francis Muthaura, stirred controversy by saying that the President remained both the Head of State and Government, and solely exercised executive authority.[68] Muthaura further 'clarified' that the Prime Minister ranked third after the President and Vice President, Kalonzo Musyoka. Indeed, the statements from PNU and the Civil Service Head stemmed from their interpretation of the Accord, whose text was admittedly ambivalent.[69] The Accord was ambiguous as regards the relations between the President and Prime Minister in

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[66] On 28 February 2008, the Panel of Eminent African personalities met with the Principals, Mwai Kibaki and Raila Odinga. In attendance was the African Union Chairman and President of the United Republic of Tanzania, Jakaya Kikwete.

[67] Jomo Kenyatta served as Prime Minister from June 1963 to 12 December 1964 when he was transformed into an imperial President through a constitutional amendment, not an election, or referendum contra-Njoya, contra Justice Ringera in Njoya & 6 Others v. Attorney General & 2 Others (2004) 1 KLR 261 .

[68] This was in an unusual press conference that he and Dr Alfred Mutua, the Government Spokesman convened.

[69] As we have indicated, the political and constitutional context was so fluid that perhaps such constructed ambiguity was desirable; a lot was left to interpretation and all parties could happily read what they liked to hear.

terms of stature. It was not very clear regarding the powers of the President as spelt out in the Constitution and the hundreds of statutes that give the President executive authority.[70] But the amended s.3, s.15A and the National Accord and Reconciliation Act (NARA) etc are clear that the Prime Minister has clear constitutional and statutory authority while the Vice President's powers are entirely delegated by the President (section 15).[71]

This spat was carried forward to the negotiations over the Cabinet posts to be divided between PNU and ODM, with ODM-K sharing PNU's 50 per cent part of the Cabinet. ODM staked a claim to Ministries such as Finance ministry, Energy Ministry, Ministry of Internal Security and Provincial Administration, and the Ministry of Local Government. Their argument was that these Ministries needed to be directly under the Prime Minister's office for him to run (or 'coordinate and supervise') Government effectively. However, PNU was not ready to relinquish these Ministries. In fact, during the initial appointment of half of the Cabinet in January 2008, President Kibaki appointed his key lieutenants to these key ministries. As regards portfolio allocation in the Grand Coalition Cabinet, Dr Kofi Annan advised the principals to implement both the spirit and the letter of the agreement signed, since the main elements for concrete decisions already featured in the agreement.[72]

The skeletal nature of the Accord left it to the casual Presidential Circular on the Organization of Government of the Republic of Kenya to define the working relationship between the President and Prime Minister. The drafting of the Presidential Circular was peppered with intrigues and delicate negotiations (Republic of Kenya, 2008a). This is because both ODM and PNU realized that the Circular would have the effect of either implementing or undermining the Accord.

Indeed, on 8 May 2008, the Office of the President issued the Presidential Circular No. 1 of 2008 on Organization of the Government of the Republic of Kenya (Republic of Kenya, 2008a). The Circular contained Organization of the Grand Coalition Government announced on 13 April 2008 and appointed portfolio functions for the offices and Ministries as established in the Circular.[73] From the allocation of duties, it is evident that the Circular effectively watered down the spirit of the Accord that had envisaged the sharing of executive authority between the President and the Prime Minister. The legal and institutional mechanisms have, therefore, not favoured

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[70] The main constitutional provisions regarding appointment, discipline and dismissal of the Cabinet and public servants includes ss. 15, 16, 17, 23, 24, 25 and 107. Most of these are subject to the Constitution and any other law. The numerous statutes that enhance Presidential authority include the Service Commissions Act, and the numerous statutes that establish and regulate state corporations, among others.

[71] Some new provisions are ambivalent; Prime Minister's powers are equal to President's, or Prime Minister's powers may override the President's or some of the imperil President's powers are intact.

[72] See the 2 April 2008 Press Statement by Kofi Annan, available at www.dialoguekenya.org/press.aspx, last accessed on 13 September 2008.

[73] It, however, remains an internal matter for each Ministry to determine its activities and programmes under the broad functions as allocated, which may vary according to circumstances and as the needs arise.

the implementation of the spirit of the Accord as regards the sharing of executive authority between the President and Prime Minister. Clearly, the agreement was ambivalently worded. Both parties, as protagonists, accepted it and pointed at gains achieved.

Agreement on the Independent Review Commission

The Parties to the National Dialogue and Reconciliation agreed that the Independent Review Commission (IREC) on the general elections held in Kenya on December 27, 2007 would be established under the Commissions of Inquiry Act, Cap 102. The IREC was later established as a non-judicial body, mandated to investigate all aspects of the 2007 Presidential election and make findings and recommendations to improve the electoral process based on specific terms reference. It was chaired by former South African Judge, Johann Kriegler. IREC reported on 22 October 2008.[74]

Agreement on the Truth, Justice and Reconciliation Commission

To address transitional justice issues in Kenya, the establishment of the Truth, Justice and Reconciliation Commission (TJRC) was agreed upon. The TJRC would inquire into human rights violations, including those committed by the State, groups, or individuals. This includes, but is not limited to, politically motivated violence, assassinations, community displacements, settlements and evictions. The TJRC would also inquire into major economic crimes, in particular grand corruption, historical land injustices, and illegal or irregular acquisition of land, especially as these relate to conflict or violence. Further, the Commission would inquire into such events that took place between 12 December 1963 and 28 February 2008. However, it would where necessary look into antecedents to this date in order to understand the nature, root causes, or context that led to such violations, violence or crimes.[75]

Agreement on long-term issues and solutions: Constitutional review

On 4 March 2008, the Parties reached an agreement on constitutional review in Kenya. It emanated from the 1 February 2008 agreement by the Parties to deal with long-term issues and solutions that may have constituted the historical and enduring injustices. In agreeing on modalities for the constitutional review process, the Parties

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[74] Republic of Kenya (2008c) Report of the Independent Review Commission on the General Elections held in Kenya on 27 December 2007, Government Printer, Nairobi.

[75] The TJRC was formed with Ambassador Bethwell Kiplagat as the Chair and Betty Murungi as the Vice Chair. There have been several criticisms of the capacity of Kiplagat to steer the quest for truth, justice and reconciliation in Kenya, given his lack of candour as Foreign Affairs Permanent Secretary, when Foreign Affairs Minister, Robert Ouko, was assassinated in 1990. There are also questions regarding whether the statute empowers the President to appoint a Vice Chair and what her political role is. There is no Vice Chair in the Act.

considered the substantial discussions that had been held concerning constitutional reform over recent years (Sihanya, 2009a, 2009b).

Utility of the Mediation Outcomes in Resolving Issues of Political Crises

The electoral fraud triggered violent protests over underlying issues that had festered over a long period of time. While there were deep-seated ethnic and related grievances, they also pointed to massive failure by the institutions of governance to build a nation. However, the ethnic pattern of the violence mostly mirrored deep-seated ethnic and related grievances wrought in Kenya's political processes by the use of the presidency to pursue ethno-hegemonic control of the state. It was the result of patronage and ethnic instruments that the Kenyatta government had institutionalized, Moi exploited, and Kibaki re-invented and perfected (Kanyinga, 2006; Sihanya, 2009a, 2009c and 2009d).

The utility of the mediation outcomes must be measured according to their ability to unravel the failure of institutions to build one Kenya. It is still too early to make a decisive conclusion of the utility of the mediation outcomes. This is because most of the outcomes are still in the process of being crystallized and implemented, or shelved. For example, recommendations of the Commission of Inquiry into the Post-Election Violence (CIPEV) on the International Criminal Court versus special local tribunal are still prevailing matters of debate. This is the case even though the Hague option has remained imminent in these debates. The long-term issues and solutions that the parties to the mediation talks agreed to tackle are hinged on constitutional and legislative reforms that are yet to take a progressive pattern. Witness the enduring and new contestations the Harmonized Draft Constitution published in November 2009.

The National Accord and Reconciliation Act must be credited for opening a new Constitutional chapter in the history of Kenya. The Accord has demonstrated that executive power can be shared between the President and Prime Minister, and by extension Parliament and other constitutional and statutory organs.[76] **Kenya** can easily move to a constitutional dispensation in which the Presidency and the Premiership can be held more accountable, and are not imperial. The National Accord has brought stability, albeit temporary, to the socio-economic, cultural and political scene.[77] This is because it has opened up space for a degree of more inclusive governance in Kenya, and encouraged the debate of sensitive governance issues such as equity and ethnicity, which could not easily be debated openly in the

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[76] This was a major contention at the 2003-2004 National Constitutional Conference at Bomas of Kenya, and in fact the main reason why Kibaki's NAK side of the NARC Government Coalition derailed the entire review process.

[77] We argue that the current political stability is only temporary, and its permanence is hinged on the implementation of all the agreements reached at the mediation talks.

past, in partisan governments. Indeed, the utility of the mediation outcomes have contributed to fast-tracking the constitutional review process as it has progressed today, hence facilitating reconstruction of the Kenyan Constitution and state towards constitutionalism.

Conclusion: The Future of Mediation and Power Sharing in Kenya and Africa

With the increase of negotiated settlements to civil wars in the past two decades, power sharing arrangements have proliferated. International intervention especially in ethnic conflicts has often focused both on the process by which groups re-arrange their relations (through violence or dialogue) and on the terms and structures of the outcomes that are reached. The principal decision that the international community has had to face is whether separation or power sharing is the most achievable, sustainable, and just outcome. This is especially true when the parties themselves cannot reach an agreement on this fundamental question (Sisk, 1996; East African 2008). Power sharing as a peace-building option has often won the day.

The international community has actively encouraged parties in conflict to adopt power sharing arrangements rather than use violence to settle disputes. It has 'promoted power sharing by offering formulas - institutional blueprints for post-conflict political structures' - and has often 'sought to induce disputants to accept them through a combination of diplomatic carrots and sticks' (Sisk, 1996; East African 2008; Cottrel and Ghai 2004). In Africa, power sharing is a prevalent tool of conflict resolution. The following all contained elements of power sharing: Sudan's 2005 Comprehensive Peace Agreement; Liberia's 2003 Accra Agreement; Burundi's 2001 Agreement; the DRC's (Democratic Republic of Congo) 2003 Sun City Agreement; Kenya's ODM-PNU National Accord and Reconciliation Agreement; and Zimbabwe's 2008 Agreement (Papagianni, 2006). In Ivory Coast, French mediators brokered a pact in early 2003 to end that country's civil war. Rebel commanders eventually took up appointments in a revamped Cabinet (Sisk, 1996). In difficult conflicts, particularly in societies divided by deep ethnic, racial or religious differences, parties intending to seek a compromise usually turn to power sharing arrangements as conflict-resolution instruments (Sisk, 1996).

The concept of power sharing in political crises has attracted as much attention among scholars as mediation, and has also resulted in many conceptual constructions. Sisk (1996) describes power sharing as a system of governance in which all major segments of society are provided a permanent share of power; this system is often contrasted with government-opposition systems in which ruling coalitions rotate among various social groups over time (Sisk, 1996). Papagianni (2006) describes power sharing as arrangements that bring former belligerents into joint governments and guarantee them representation in the executive, the legislature (Parliament), the

army and/or the management of the country's wealth (Sisk, 1996). Lipjhart (2004) defines power sharing as political arrangements that guarantee the participation of representatives of all significant communal groups in political decision making, and especially in the executive, legislature (Parliament), the judiciary, the police and in the army (Lipjhart, 2004).

Despite the variant definitional claims, power sharing arrangements essentially refer to multiple vehicles to create broad-based governing coalitions of a society's significant groups in a political system that provides influence to legitimate representatives of minority groups. According to Sisk (1996), the basic principles of power sharing as traditionally conceived are: grand coalition governments in which nearly all political parties have appointments; protection of minority rights for groups; decentralization of power; and decision making by consensus. Papagianni (2006) also adopts similar principles. In addition, she mentions other features such as group vetoes on contentious issues, and proportional allocation of funds and positions in Government.

Power sharing has, therefore, emerged as a favourite compromise for a number of reasons. First, especially in areas where the fault-lines of conflict are distinctly ethnic, racial, religious or other form of group differences, power sharing helps quell violence, which is usually an immediate concern for negotiators (Ghai and Reagan, 2002). By dividing power among rival groups, power sharing institutions reduce the danger that one party maintains dominance, or becomes dominant, and threatens the security of others (Hartzell and Hoddie, 2003). Second, power sharing, appropriately structured, can encourage moderation and discourage extremism (Ghai and Reagan, 2002). Third, power sharing can begin a profound movement of the society away from ethnicity or other strong group identifier such as religion. If successfully managed, such arrangements can replace such group identities with ideology or class identities (Sisk, 1996). Indeed, many scholars have advanced the thesis that power sharing regimes encourage group cooperation (at best), and avoid outright ethnic rebellion (at worst) in plural societies divided into distinct linguistic, religious, nationalistic, and/or cultural communities (Norris, 2005).

However, this does not mean that power sharing has worked as a peace-building instrument. While certain experiments in power sharing have resulted in sustainable peace, others have sowed the seeds for subsequent and even more cataclysmic violence. Successful examples of power sharing include South Africa where, without an agreement on transitional power sharing, the conflict over apartheid may not have been brought to an end, or a new round of killing may have occurred. Failed examples include Rwanda, where the worst case of genocide since the Second World War took place barely a year after the signing of the Arusha Accord, a power sharing deal.

This low success rate points to the various claims that have been made not only for and against power sharing, but also about the exact circumstances in which power sharing would be a viable option. Criticisms leveled against power sharing pacts

have been instrumental in assisting negotiators in evaluating the relevance of such arrangements to specific conflicts. First, power sharing pacts have been criticized for not aiding in solving the root causes of conflicts, but only postponing them until the power sharing arrangements run their course. This was the case with Rwanda, where combatants dissatisfied with the outcome of the 1993 Arusha Accord sabotaged the delicate peace deal, leading to genocide. Historically, the outbreak of civil wars in Angola, Cyprus, Lebanon, Sierra Leone, and Sudan have all been the result of broken power sharing arrangements that led to renewed violence (Sisk, 1996).

Second, the potential for political gridlock is significant. Power sharing governments are likely to stagnate in the short to medium-term. This is because power sharing arrangements are designed to make decision making slow and consensus-based in order to re-assure parties that they will be consulted on matters of importance. Third, power sharing arrangements have been labeled as undemocratic because they share political power among the leaders of the main parties to a conflict and often fail to include important social actors who did not participate militarily in the conflict. They may also lack grassroots support if they are seen by the population as an effort by the elite to share the spoils as opposed to moving the country towards reconstruction and reconciliation (Sisk, 1996). Lastly, power sharing arrangements are accused of encouraging belligerence among even illegitimate contenders to power as a means of forceful negotiation with the legitimate contenders (Tull and Mehler, 2005).

Because of the above claims, there have been strong assertions by mediation and constitutional scholars that power sharing arrangements should best be transitional arrangements that give way to elections and a new democratic and majoritarian form of rule. Sisk (1996) asserts that 'power sharing solutions make for good transitional devices, but in the long-run the best outcome may well be a much more fluid form of democracy that allows for the creation of flexible coalitions that bridge the (ethnic) divide.' If sustainable peace comes through 'conflict transformation', power sharing is often too rigid a system to allow for the social and political changes necessary for addressing the underlying causes of conflict that give rise to war (Sisk, 1996).

The upshot of this conclusion is that power sharing pacts are first of all stop-gap devices to violent conflicts, and are not in themselves lasting political solutions to the conflicts (Tull and Mehler, 2005).[78] The next question that the negotiators and parties to a conflict are confronted with is the types of constitutional and political institutions that should flow from the transition power sharing arrangements to allow democratic and majoritarian decision making to prosper in post-war environments

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78 Dean P.J. Kabudi, of the Dar es Salaam Faculty of Law has termed Kenya's a rescue government. See P.J. Kabudi (2009) "Constitutions in Pluralistic Societies - German Experiences and Kenyan Debates," presentation at the Colloquium on 60 Years of German Constitutionalism - Constitutional Debate in Kenya Conference, organized by the German Academic Exchange Service (DAAD) Regional Office for Africa, at the University of Nairobi, Main Campus, Kenya, October 22, 2009, on file at Innovative Lawyering, Nairobi & Sihanya Mentoring, Siaya, and at www.innovativelawyering.com.

in which politics remain deeply divided. Mediations and power sharing outcomes should lead to a comprehensive strategy for constitutional and political reforms. Because the Kenyan process failed to clearly outline in detail such a strategy-not mere aspirations-Kenya is faced with a reform crisis and that is why Kenya has not been able to point at particular reforms that have really impacted on the historical injustices. The reform endeavours as they are today largely remain cosmetic, with the enduring injustices remaining deep under the problem.

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Index

This book is a product of much reflection on the gaps and gains in Kenya's democratic process. The book is inspired by the desire to record, archive, analyse, and interpret that sad but immensely significant occurrence in Kenya's political evolution: the 2007 General Elections and the violent social convulsions that followed; the deeply hidden social-political divisions the post-election violence brought to the fore; and the resultant constitutional and institutional architecture of governance it created – the Grand Coalition Government. The book also reflects on the progress that has been made and the threats inherent therein. It sits on the side of the debate that takes the view that the democratisation process will not necessarily be peaceful, neat, or uni-linear. It acknowledges that the balance sheet of Kenya's democratisation project demonstrates mixed result. Whereas in the period leading up to December 2007 the 'assets' side of the balance sheet was arguably healthier, the post-election violence exposed huge liabilities mostly hidden in the structural inefficiencies of Kenya.

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