

# Tensions and Reversals in Democratic Transitions

The Kenya 2007 General Elections

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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

Published by Society for International Development  
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Development Studies (IDS), University of Nairobi

ISBN: 978-9966 -786 -13-9

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## 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 Botswana, 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 Matthijias 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.<sup>1</sup> 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 18<sup>th</sup>-19<sup>th</sup> 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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<sup>1</sup> 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 Adejumbi'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.<sup>2</sup> 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,<sup>3</sup> 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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<sup>2</sup> 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.

<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup>

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<sup>4</sup> 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 jealousy of 'the most successful Gikuyu' unleashed a torrent of violence against them.

<sup>5</sup> 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.

<sup>6</sup> 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.<sup>7</sup> 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.

<sup>7</sup> 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 the 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.<sup>8</sup>

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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<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup>

## **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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<sup>9</sup> *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).

<sup>10</sup> 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.<sup>11</sup> 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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<sup>11</sup> 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 predictors 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,<sup>12</sup> was at variance

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<sup>12</sup> 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.<sup>13</sup> 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.

<sup>13</sup> 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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