KENYA'S POWER – SHARING AGREEMENT, 2008: A CONSOCIATIONAL FORMULA?

By

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DECLARATION OF ORIGINALITY

The research for this thesis was carried out through the School of Politics. University of KwaZulu-Natal, Pietermaritzburg in 2009 – 2010.

The author hereby declares that the content of this dissertation, unless specifically indicated to the contrary, is his work, and that the thesis has not been submitted simultaneously, or in any form for any degree or diploma to any other University. Where use has been made of the work of others it is duly acknowledged in the text.

……………………………………………………………

In loving memory of my late grandmothers Tikholsile Mazibuko (D.O.D unknown)
and Sophie Mazibuko (1933-2010)

As with flowers, so with men

They blossom, bloom and wither away

But there are some who always

Leave a fragrance behind

In them you belong. -Japheth

ACKNOWLEDGEMENTS

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ABBREVIATION OR LIST OF ACRONYMS

ACK   **Anglican Church of Kenya**

AU   **African Union**

BBC   **British Broadcasting Corporation**

CDR   **Committee for the Defense of the Republic**

CNN   **Cable News Network**

CSR   **Congressional Research Service**

DDDG   **Donors Democratic Development Group**

EMRC   **Election Monitoring and Response Centre**

EC   **Electoral Commission**

ECK   **Electoral Commission of Kenya -** a government body established by
            The Kenyan Constitution

EU EOM   **European Union Election Observation Mission**

FORD   **Forum for Restoration of Democracy**

KADU   **Kenya African Democratic union**

KANU   **Kenya African National Union -** the ruling party in Kenya since
            independence until the 2002 elections

KHRC   **Kenya Human Rights Commission**

KNCHR   **Kenya National Commission on Human Rights**

LDP   **Liberal Democratic Party**

NARC   **National Alliance of Rainbow Coalition**

NGO's   **Non- Governmental Organization**

NKA   **National Party of Kenya**

ODM-K   **Orange Democratic Movement - Kenya**

ODM   **Orange Democratic Movement**

PNU   **Party of National Unity**

UNESCO   United Nations Education, Scientific and Cultural Organization

The Map of Kenya

Source: Horowitz (2008): v

Map Created by Siri Aas Rustad

Introduction

1.1 **Background of Research**

Different conflict resolution mechanisms have different effects. One of these, consociationalism, is the subject matter of this dissertation. Specifically the paper seeks to explore and investigate the consociational model as an applied political mechanism of generating cooperation in divided societies, with particular reference to Kenya, 2007 – 2008.

According to Kemenyi & Romero, in the post-independence period, up to but not including the 1990s, Kenya was a relatively peaceful country. "Kenya has remained fairly stable and peaceful during most of the post-independence period; violence between ethnic groups has tended to erupt around elections since the introduction of competitive multiparty politics". (Kemenyi & Romero 2008: 3) The country's relative tranquillity has been characterised by a stable political system and a well balanced economy, further, Kenya has for many years been regarded as a favourite tourist destination. However, Kemenyi and Romero do not take into account the oppression experienced by Kenyans under the regime of Daniel arap Moi, (1978-2001).

> One of the obvious results of the new authority of Moi, and of the Office of the President, over all aspects of political life, was the destruction of the National Assembly as an independent institution and therefore as a legitimizing tool for the state […] Kenyans believed they could change their leaders through political process […] After President Moi come into power, however, elections became expensive and subject to rigging (Throup and Hornsby 1998: 41).

The early 1990s saw the expansion of ethnic violence in Kenya. "Specifically, the worst ethnic conflict since independence erupted mainly in the Rift Valley, Western, and to some extent, Nyanza Provinces of Kenya in the 1990s" (Nangulu-Auku 2007: 142). The ethnic conflict started during the term of President Daniel arap Moi, who was also

referred to as a 'dictator'. The genesis of this conflict was to get rid of other members of ethnic groups who had political power for the purposes of excluding them from material and social resources. Moreover, since Kenya was a one-party state during President arap Moi's term, the Moi administration tried all possible means of retaining economic and political benefits as the country was moving towards a multi-party system. Specifically,

> Violent conflict between ethnic groups in Kenya since the advent of the multi-party system in 1991 has been deliberately manipulated and instigated by President Daniel arap Moi and his inner circle in order to undermine attempts to create an atmosphere conducive to political pluralism (Kearney 1999: 152)

The Kenyan ethnic conflict did not cease with the introduction of the multiparty system, instead there were outbreaks of violence in various parts of the country. For example, in 1992 approximately 2,000 people were killed in tribal conflict in the West of the country. In December 1992 Moi was re-elected in the multi-party elections. His party Kenya African National Union (KANU) won a majority of legislature seats. In 1997, after the death of Oginga Odinga, Kenya's first Vice president, Moi won a further term in widely criticised elections. In 2001, ethnic conflict culminated in several violent clashes in Kenya. "In December, thousands flee and several people were killed in rent battles involving Nubian and Lou communities in Nairobi's Kibera slum district" (BBC news online, 12 August 2009). Daniel arap Moi's term of office was ended by the victory of Mwai Kibaki in December 2002. Kibaki won over KANU rival Uhuru Kenyatta, this ended KANU's four decades in power.

The most recent outbreak of violence in Kenya occurred in February 2008. The genesis of the violence was the contested nature of the presidential election of 27 December 2007. The main protagonists were the incumbent, Mwai Kibaki, leader of The Party of National Unity (PNU), and Raila Odinga, leader of the (opposition) Orange Democratic Movement. Raila Odinga and his party believed that the elections were definitively flawed.

> Irregularities in the vote tallying process led to claims of fraud from opposition parties, with foreign and domestic observers casting doubt on the capacity and independence of the Electoral Commission. The announcement of Mwai Kibaki,

the incumbent president, as the winner of the presidential race on December 30 triggered a wave of ethnic violence across Kenya. (Horowitz 2008)

Rheault & Tortora (2008) further comment that " Kenyans, along with the rest of the world, heard reports of irregularities during the electoral process, including vote-buying, ballot stuffing, and data tallying issues and delays reporting the results…" Not only were election procedures flawed, but also ethnic tensions were exacerbated by the tendency of politicians to play the ethnic card.

Kenya's main ethnic groups include the Kamba, (11 % of the population), the Kalenjin (11%); the Kikuyu (20%); the Luhya (13%) and the Luo (14%). In combination, these major ethnic groups represent more than two-thirds of the national population in Kenya. The figure below illustrates the ethnic composition of Kenya.

Figure 1

Ethnic Composition of Kenya's Provinces
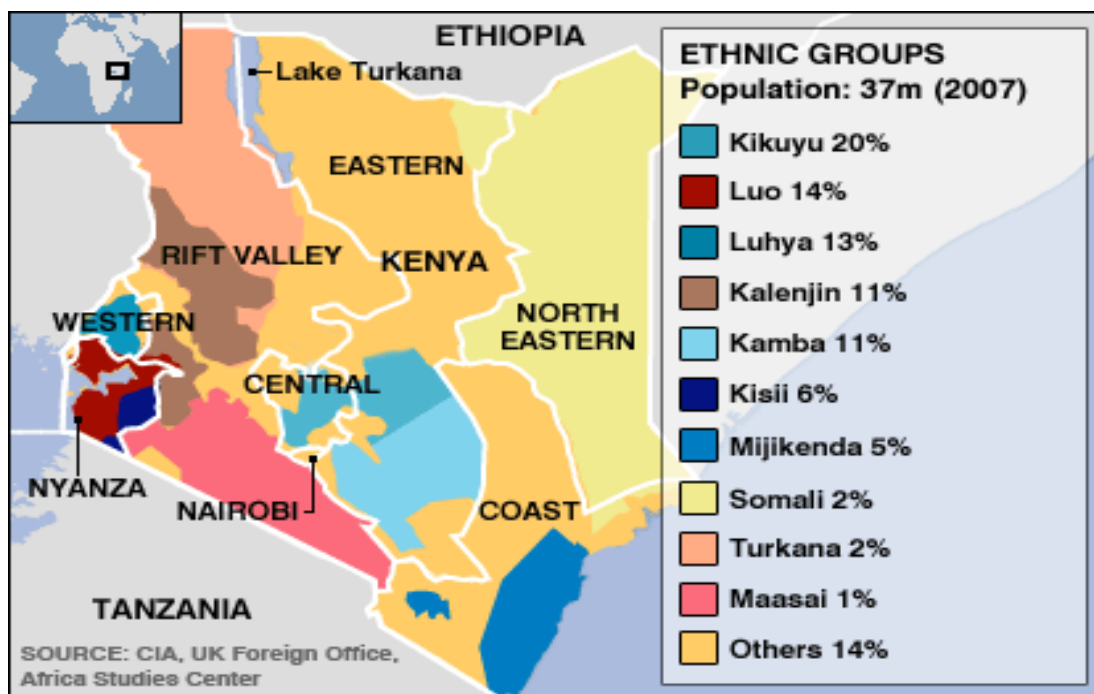
Source: (BBC News, 2008)

The two main contenders for presidential office largely drew their support from different ethnic groups.

> Kibaki was 'drawing his support mainly from the Kikuyu, Embu, and Meru communities,' while Odinga had the support of the 'Luo, Luhya, Kalenjin, and some smaller ethnic communities.' In light of the importance of ethnicity in the development of Kenyan politics, information about candidates' ethnic support is particularly relevant. (Rheault & Tortora, 2008)

As in other parts of the world, electoral systems in Africa often are characterised by 'identity politics', and from the 1990s onwards, Kenya is no exception. According to Fish (quoted in Kemenyi & Romero 2008: 4), in specific relation to identity politics in Africa,

> You are practising identity politics when you vote for or against someone because of his or her skin colour, ethnicity, religion, gender, sexual orientation, or any marker that leads you to say yes or no independently of a candidate's ideas or policies. In essence, identity politics is an affirmation of tribe against the claims of ideology…An identity politics voter says in effect, I don't care what views he holds, or even what bad things he may have done, or what lack of ability he may display, he's my kinsman, or he's my landsman.

The concept of 'identity politics' is reinforced by social identity theory. Korostelina (2007: 127) defines the theory as one that "accentuates the impact of status and self-esteem on stereotypes, attitudes and prejudice and provides explanation of a person's behaviour in situations of increasing status through the collective action or intergroup migration". This definition is instructive in light of the findings of a Gallup poll conducted after Kenya's 2008 elections. "The self-identified Kikuyu are the only group in which a majority (67%) say the presidential election was honest. No self-identified respondents such as Luo (1%), Luhya (3%), Kalenjin (12%), and Kamba (15%) believe the election was honest. Also, almost one in five Kamba (18%) do not have an opinion, which is by far the highest percentage of 'don't knows' among the top five ethnic groups". (Rheault & Tortora, 2008) The findings of the Gallup Poll are illustrated below.

Figure 2

Do you believe the election was honest?
Among selected ethnic groups

■ % Yes, honest   ■ % No, not honest   ■ % Don't know/Refused

	Kamba	Kalenjin	Kikuyu	Luhya	Luo
% Yes, honest	15	12	67	3	1
% No, not honest	67	86	27	92	95
% Don't know/Refused	18	2	6	5	4

June-July 2008
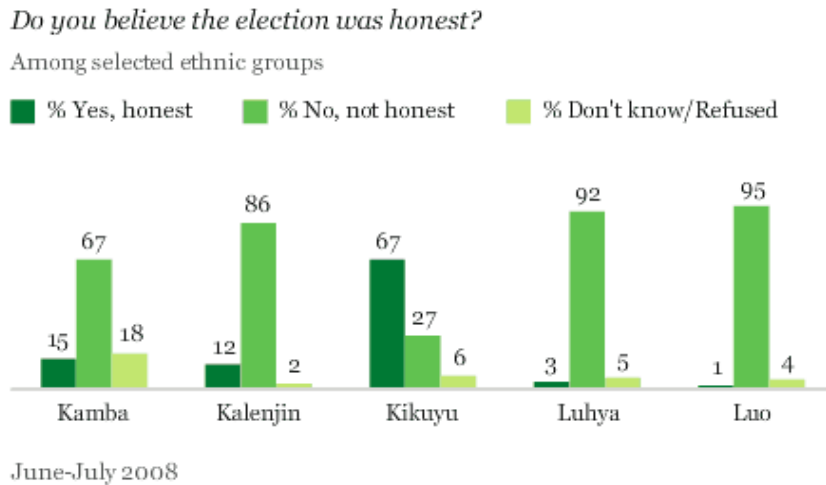
While the above survey by no means is extensive or conclusive, it nonetheless indicates a connection between identity politics and estimations of electoral failures, and thus illustrates (if only partially) an ethnicity problematic in the 2007 elections in Kenya. In this specific respect, it is noteworthy that "Much of Kenya's post-election violence in 2007 was characterized by inter-ethnic conflict which targeted thousands of people seen as either pro-government or pro-opposition". (BBC news online, 28 February 2008) Further, the Mungiki, a group that claims to have originated from the Mau Mau rebellion against British colonial rule, surfaced during the 2007 election, and operated in support of the Kikuyu ethnic group, and hence of Kibaki. According to a BBC report

> Warring groups [were] divided down ethnic lines, and while I was covering the violence I saw gangs wearing tell-tale Mungiki emblems (red scarves and bits of scarlet cloth tied around forearms) on the rampage. Police behaviour, Mungiki violence and now the murder of two human rights activists call into question the rule of law in Kenya. Kenyan society is trying to heal itself after the inter-tribal violence (BBC news online, 6 March 2008).

In the aftermath of the post-election violence, Kenya embarked on a conflict resolution process, during which the former Secretary General of the United Nation, Mr Kofi Annan acted as a mediator between the two rival presidential candidates. According to Horowitz,

> While the negotiations began with a wide gulf between the two sides, the adroit management of the lead mediator, Kofi Annan, produced an accord in March

2008. The main provision of the agreement was that a Grand Coalition government would be created in which the two parties would share power (Horowitz 2008).

The power-sharing agreement between Raila Odinga and Kibaki meant that there would be a creation of a prime minister post and government's top positions were to be shared between Odinga's party and Kibaki's.

> The agreement calls for an act of parliament within two weeks that would change the country's constitution, creating the position of prime minister to "coordinate and supervise" the government and its ministries. Odinga will assume that position. The National Accord and Reconciliation Act 2008 establishes that the president, vice president, prime minister and other ministers will form the government's cabinet -- with the addition of two deputy prime ministers who will be appointed by the president (CNN online, 28 February 2008)

The new power-sharing agreement, according to Kofi Annan, is known as the National Accord and Reconciliation Act and is entrenched in Kenya's constitution today.

As can be seen from the background to the 2007-2008 conflict in Kenya, two main features have been highlighted: an ethnic dimension to the conflict, and a power sharing formula intrinsic to the process of resolution. Since both these features fit the parameters of a consociational model of conflict resolution, this study's primary research problem is to analyse the extent to which a consociational formula has been applied in Kenya, as well as to interrogate the outcome of Kenya's conflict resolution effort with close reference to the literature on consociationalism.

1.2 Theoretical Framework

This study is guided by the consociational perspective as a theoretical framework. Within this broad framework, the project is guided by explanatory and predictive theories respectively. The explanatory theory determines relationships among the dimensions of the phenomena. It identifies how the properties and components relate to each other. The predictive theory carries with it a prediction of the relationship between the characteristics of phenomena (in this case having as the phenomena the application of consociationalism in Kenya).

The theory of consociationalism dates from the 1970s with the work of Arend Lijphart, Eric Nordlinger, Gerhard Lehmbruch and others; "it is also often called consociational democracy, consensus democracy, corporatism or proportional democracy" (Schneckerner 2002: 203). Managing and regulating conflict in conflict-prone countries is not only a priority to that country per se but rather it ends up being an international issue. This is because in one way or another, the conflict directly or indirectly affects neighbouring countries and regions. Consociational theory tends to focus on ethnic conflict which has claimed many lives in many regions of the world. For example, in Rwanda "At least half a million people perished in the Rwandan genocide […] Perhaps as many as three quarters of the Tutsi population, at the same time, thousands of Hutu were slain because they opposed the killing campaign and the forces directing it." (Shah Anup 2006). It is notable that these deaths took place in the space of one year (1994).

Granted, Kenya between 2007-2008 cannot be included in the category of widespread 'ethnic cleansing'. Firstly, the scale of deaths and injuries do not warrant the term 'genocide'. Secondly, there is no simple or overwhelming 'ethnic connection'. However, this study argues that the scale of violence – inflicted deaths and injuries warrant closer investigation, as does the presence of (following Afolayan's definition of tribalism: see Chapter 2)) tribalism as a contributing factor. The latter, in particular, suggests that application of a consociational model of conflict resolution in Kenya is – in theory, at least – apposite. The Waki Report (2008:305) acknowledges the multiple causes of post-election violence in Kenya. "The multiple-cause-of-death information from 1,133 deaths was in respect of the period between 27th December 2007 and 29th February 2008 … [T]he Commission relied upon information provided by respective hospitals in the five provinces under inquiry". These were: Western, Rift Valley, Nyanza, Nairobi and Coast. Furthermore, "The Kiliku Report which also investigated ethnic clashes in 1992 documented 779 deaths and 654 injuries in the districts that were the subject of the inquiry" (Waki 2008: 304). Below are figures 2 and 3 showing respectively the number of injuries and deaths per province in the post election violence of 2008.

Figure 3
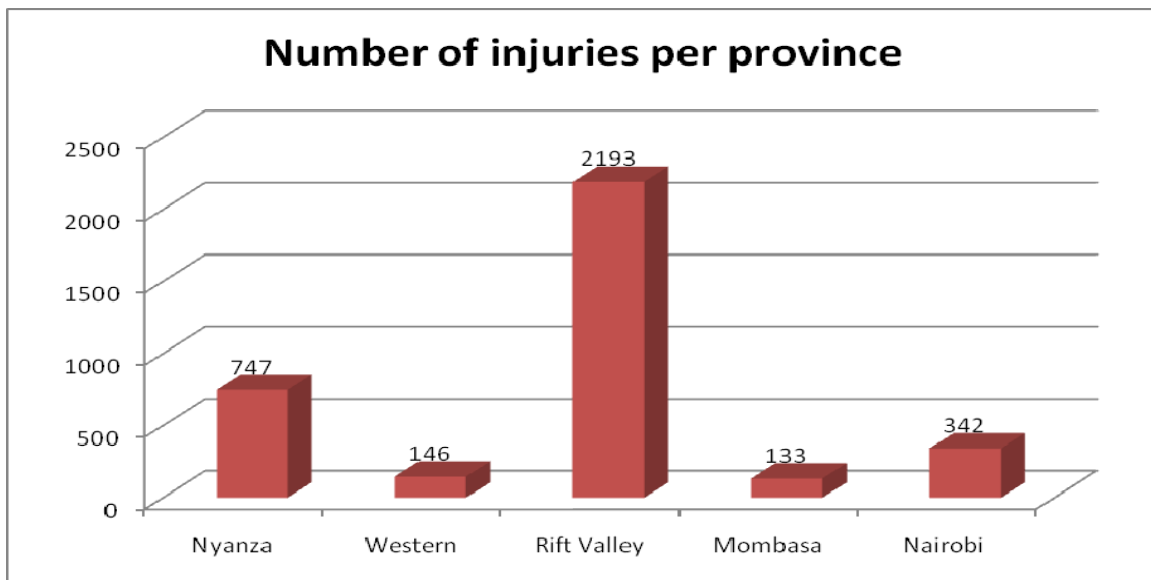
Source: (Waki Report 2008:335)

Figure 4
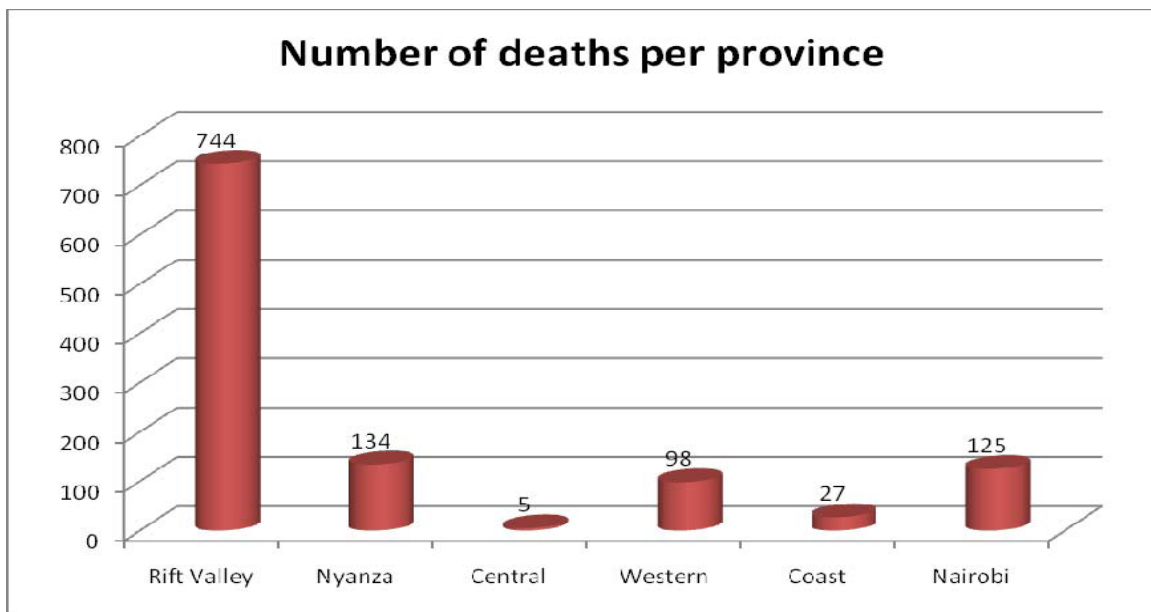
Source: (Waki Report 2008:309)

It should also be noted that the above figures do not reflect unreported deaths and injuries, but only those that were officially reported. As stated in the Waki Report (2008: 306) "While Commission has tried to establish the true extent of deaths and injuries we recognize that for various reasons not all deaths that occurred as a result of the post election violence may have been captured for various reasons". Some of the reasons are as follows:

a) Some deaths may not have been reported to the hospitals or to police stations due to the prevailing security concerns situation at the time.

b) In many cases those who were injured did not report to hospital or health centers for fear of their safety or because in the ordinary scheme of things the injuries were considered minor compared to other problems being experienced at the time;

c) In some cases injuries were not properly documented due to the fact that hospitals were understaffed and supply of drugs and other medical supplies were disrupted

d) In some instances, patient referrals were problematic as some roads were blocked paralyzing efficiency in documentation of injuries and violence.

e) Injured persons may have sought alternative medical attention, for example, through traditional healers or unlicensed practitioners. (Waki Report 2008:306).

The disputes in the Rift Valley have been mainly between the Kikuyu and the Kalenjin who dominate much of the region. "The clashes over land involve class and wealth as much as ethnicity. Many poor Kikuyu and Kalenjin farmers alike have had their livelihoods destroyed by land-grabbing elite politicians" (African Continental 2008:8).

It is noteworthy that the Rift Valley is the Kalenjin based stronghold of the ODM party which is Kenya's main opposition party led by Raila Odinga. The Kalenjin together with the Lou, the Luhya and some other smaller ethnic communities supported Odinga, whereas the Kikuyu supported Kibaki. According to Rice (2008).

> Looters used iron bars to smash the windows of shops belonging to non-Kikuyu businesspeople, and made off with television sets, groceries and clothing. ..[A]nd in the northern Rift valley, which saw the worst of the ethnic violence immediately after the election, gangs of Kalenjin warriors continue to cause havoc. On Saturday, for the second time in a week, hundreds of youths attacked a monastery in Kipkelion where more than 600 Kikuyus and Kisiis are sheltering.

According to Gentlemen (2008)

> In the Rift Valley, local elders organized young men to raid Kikuyu areas and kill people in a bid to drive the Kikuyus off their land. It worked, for the most part, and over the past month, tens of thousands of Kikuyus have fled. More than 650 people, many of them Kikuyus, have been killed. Many of the attackers are widely believed to be members of the Luo and Kalenjin ethnic groups.

In a nutshell, then, ethnic hostilities in combination with other factors such as poverty and disputes over land, contributed significantly to outbreaks of violence, particularity in the Rift Valley.

1.3 Research Design

From the two types of research design, empirical study and non-empirical study, the study will use the non empirical one; this includes philosophical analysis, conceptual analysis and theory building. According to Mouton, "empirical studies are observational or experimental rather than theoretical, whereas non empirical studies are based on theory" (Mouton 2004: 57).

1.4 Research Methods

This is a theoretical, qualitative and literature based study. As indicated by the literature review, there are numerous sources available on consociational theory, and there is an adequate basis in the literature from which to draw an analysis of the theory's application to conflict in Africa and elsewhere.

In the matter of researching consociational elements in Kenya's power-sharing agreement, this study to some extent breaks new ground. In this regard, the study will deploy a comparative approach; this means that Kenya shall be compared with countries such as a Lebanon, Rwanda and the Democratic Republic of Congo. The study will also rely quite heavily on internet and print media sources.

1.5 **The Structure Of The Dissertation**

This study is a critical exploration of Kenya's power-sharing agreement between the period of 2007 and 2008. Following the introductory chapter, the dissertation is structured in five chapters. The second chapter broadly explains consociationalism, looking both to its origin as a different school of thought and as a theory; the chapter shall further highlight the key elements of the theory and the conditions that favours its application. The third chapter focuses on Kenya as a case study. It highlights the era of Kenya's multiparty elections (1990 -2006). The fourth chapter focuses on Kenya's Power-sharing agreement of 2007-2008 and the consociational elements in Kenya's democracy.

Chapter five argues that Kenyan elite play a significant role in Kenya's democracy and that if Kenya's ruling elite honors the consociational commitment to segmental autonomy (in the form of devolving power to the 47 regions) it will be a significant step towards social and political stability. The study concludes that one key aspect of the 2008 power-sharing agreement (subsequently embedded in the constitution of 2010) qualifies as authentically consociational is the plan to devolve power to the forty-seven counties.

CHAPTER TWO

THEORETICAL FRAMEWORK AND LITERATURE REVIEW: ETHNICITY AND CONSOCIATIONALISM.

As a review of the literature reveals, 'consociationalism' is a contested concept and, like many other terms, is subject to a variety of interpretations. Dixon (2005: 358) contends that "while all text is open to interpretation, consociationalism, for all its 'scientific' claims, is particularly difficult to underpin". Further, Jastad takes exception to the notion that 'power sharing' and 'consociationalism' are coterminous and points out that separate strands of research have used the term 'power-sharing' in different ways: Firstly, power sharing in terms of democracy, secondly, power-sharing in terms of conflict management. She argues that

> Conceptual confusion has hampered research on power sharing. Two, actually separate strands of research use the term 'power sharing', often without recognising the difference in terms of democracy and conflict management. However, power sharing stipulated in part of the conflict management literature differs from power sharing in accordance with democratic theory. Because of different definitions, there is little overlap between the characteristics, the cases and the mechanisms of these two concepts of power sharing (Jastad 2006: 14)

One way of understanding power sharing is in terms of conflict management. The main function of power-sharing in this discourse is to end violence and not necessarily to build democracy. "Power sharing serves as the mechanism that offers this protection by guaranteeing all groups a share of state power. By dividing and balancing power among rival groups, power-sharing institutions minimize the danger of any one party becoming dominant and threatening the security of others" (Hartzell and Hoddie 2003 :319). However, the claim that power sharing intends to end violence but not necessarily build democracy, does not automatically mean that power sharing and democracy are not compatible. It simply means that less emphasis is put on democratic representation and election when efforts are made to implement power sharing. Spears (2000:105) contend that "power-sharing does not have to mean that democratic principles and procedures must be abandoned; indeed, power-sharing arrangements can be compatible with democracy while diminishing its most destabilizing side effects".

Another way of understanding power sharing is by viewing it as a mechanism for making democracy work in societies divided along ethnic lines. This is where Arend Lijphart's theory of consociationalism comes in. "Consociational democracy means government by an elite cartel designed to turn a democracy with a fragmented political culture into a stable democracy". (Lijphart 1969:216) One of the main functions of any democracy is to ensure the equality of citizens so as to avoid potential disputes arising from inequalities. Dlamini (2008:12) states that "democracies seek to manage conflicting interest by allowing the people to compete according to agreed upon rules, mediated by institutions".

It thus seems evident that power sharing and consociationalism share one common essence, and that is, they both seek to regulate and minimize conflict in multi-cultural or multi-ethnic societies. Therefore, for the purposes of this study, 'power-sharing' in Kenya will be examined with reference to mainstream consociational literature as exemplified by scholars such as Lijphart (1990;1977), Eisenburg (2002), Uzodike (2004), and Lemarchand (2006), among others. Given the recent nature of 2007-2008 conflict in Kenya, and the subsequent application of a power-sharing formula in 2008, much of the available literature is electronic but includes – particularly in regard to the ethnic dimension – scholars such as Housdale, (2008), Ong'ayo (2008) and Prunier (2008).

2.1 Defining 'Ethnicity'.

The study argues that, identity politics in the form of ethnicity is sufficiently significant in the Kenyan context to warrant investigation. As Kearney (1999: 50-51) puts it:

> The mere existence of different ethnic groups is not necessarily cause for concern, in fact it merely adds to the richness and diversity of human cultures; but what is problematic is the manipulation of ethnic identities for political reasons, in which case ethnic loyalties and differences are used by politicians to ensure their continued dominance, (if they are from a ruling regime) or attempt to win the means by which they *may* dominate (if they are from opposition)….

Prunier argues that what best explains the post election violence in Kenya is by reference to the evolution of its ethno-political mosaic since independence. By this he means that

the historical experiences of Kenya's different leaders is the best way in which one can understand the post - election violence in Kenya. For example he states that

> In Kenyatta's time the deal was simple: the Kikuyu and their smaller relatives, after making an agreement with the minority tribes, ran everything. The Luo, who eventually tried to challenge this ordering, were forcefully marginalized as the prudent Luhya looked on. After Kenyatta died in 1978, his vice-president Daniel Arap Moi - who was from the Kalenjin minority tribe - inherited the mantle of power on the understanding that he would not upset the arrangement designed to keep the two other large tribes (and particularly the Luo) out of power. (Prunier 2008: 2)

In short, ethnic patterns of inclusion and exclusion have been a feature of Kenyan politics since independence, and have contributed to conflict. Successive Kenyan leaders have been implicated in this conflict. As Esman (1989:55) argues

> One function of leadership is to establish and propagate the goals of the ethnic movement […] Much of the energy of ethnic group leaders must often be committed to managing and conciliating these internal tension and conflicts in order to maintain control of their constituency and to battling opponents within the ethnic community.

Moreover, in light of conflict issues in Africa, not least the ethnicity problematic, the majoritarian model of democracy is not necessarily Africa's best option. For example, Uzodike argues that "the idea of power sharing or consociational democracy appears to be a potentially useful phenomenon in addressing Africa's societal segmentation and the challenges it poses towards continental development" (Uzodike 2004: 288). His position is that what provides the wrong context for majoritarian experiments in democracy is the resource – starved African social and political environment. "The winner takes all format of majoritarianism is precisely why tensions have remained rife within African states despite the introduction of political liberalization and democratic politics" (Uzodike 2004:288)

Similarly, Lumumba-Kasango contends that "while Africa is promoting liberal democracy as the most promising formula for unleashing individual energy and generating political participation, Africa's social and economic conditions are

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worsening". (2005: 5). In short, emerging instances of conflict and past experiences have brought evidence that the majoritarian model is not necessarily the best system for resolving internal differences, and that consociational democracy may be a viable alternative.

While ethnic divisions might appear to be the main contributing factor to conflict in African countries, there are other factors that need to be taken into consideration when analyzing conflict in African societies. In some instances, ethnicity has been confused with class struggle as the cause of conflict; in others, class struggle has been confused with ethnicity. Highlighting some of the major political problems in Kenya, Kearney contends that

> There are also elements of 'class conflict' here, whereby for example richer farmers, or businessmen working in the village, will be quite content to exploit the humble villager in their own 'capitalist' interests. It should also be remembered that capitalism has penetrated these rural areas to some extent and that even here, Western influences cannot be denied. (Kearney 1999: 275)

Moreover, As Gordon (1995: 890) puts it, "[T]he ideology of appeals to custom and ethnic solidarity becomes a disguised form of class struggle as the poor and disadvantaged ethnic groups struggle against class closure among the wealthy elite".

Conflict could be an outcome of both ethnic disputes and class struggle. In the Kenyan case for example, the existence of many different ethnic groups does not necessarily mean that conflict will be caused by ethnic clashes, but other factors are likely to play a role in this regard. For example, Gordon (1995:894) argues that "The conflict between the Lou and the Kikuyu cannot be reduced to tribalism, however. These conflicts have been largely the result of the differential impact of underdeveloped capitalism and class formation on the Lou and Kikuyu".

Further, as Alwy and Schech point out, Kenya's different ethnic groups were exposed to different opportunities and privileges during and after Kenya gained independence in 1963. This created class hierarchies which in turn brought inequality in education,

business and other demarcating factors. "The colonial legacy in Africa created uneven development in agrarian commercialization, transport investment and educational opportunities, and thus the allocation of an ethnic group's home territory determined its access to public goods such as education". (Alwy and Schec 2004: 267). Thus while the research largely is limited to the ethnic base of conflict, the dissertation does not posit that class formations and struggle do not play a role in the construction of conflict in African societies.

That said, it is arguable that ethnic consideration often outweigh economic class interests. For instance Mazrui distinguishes between socio-cultural and socio-economic ideologies in Africa. He includes ethnicity in the former category, and posits that "when the grassroots have been able to express ideological preferences, it has been socio-cultural ideologies that have exerted greater influence" (Mazrui 2000: 97) By way of illustration, Mazrui cites the example of Nigeria and Kenya.

> The manifestation of the tribal tradition in African political culture is either through the oral tradition or through the political behavior of African societies, in spite of alien postcolonial constitutions. The preference of kinship solidarity as against theoretical ideology has manifested itself behaviorally in many African elections. The late chief Obafemi Awolowo in Nigeria was sometimes the most prominent voice of the left in his country. He articulated socialist rhetoric, trying to reach the disadvantaged of Nigeria regardless of ethnic origin. But whenever an election took place, and the chief looked to see who was following him, he discovered that his followers were almost invariably fellow Yoruba regardless of social class, rather than the disadvantaged of Nigeria, regardless of ethnic origin. In East Africa, Oginga Odinga was the Awolowo of Kenya. Again, he often articulated the rhetoric of the left in Kenya. But apart from a few intellectuals and academics, those who responded to Odinga's trumpet-call were not the disadvantaged of Kenya regardless of ethnic group but rather Oginga Odinga's ethnic compatriots, the Luo, regardless of social class. What this evidence reveals is the preference of the electorate in countries like Nigeria and Kenya for concrete kinship solidarity as against ideological theory, a preference for shared sacred ancestry as against commitment to radical change. The conservative tradition in Africa is thus manifested and expressed behaviorally, rather than in written texts. […] the ethnicist tradition in Africa tends to have invisible authors, a body of thought without attribution to specific individual thinkers. Ethnicism and tribality tend to be collective political culture rather than a theoretical masterpiece from one individual mind. Tribality is captured in the accumulation of specific attitudes

across generations rather than in a specific text from a particular pen. (Mazrui 2000:101-102)

Mazrui concludes that in countries like Nigeria and Kenya, the electorate tends to favor "concrete kinship solidarity" (Mazrui 2000:102). He notes that grassroots preference can be put to instrumental use by politicians in the struggle over scarce resources – indeed, in some cases "the whole market can be cornered or monopolized by an ethnic group"(Mazrui 2000:115). Mazrui defines this phenomenon as "ethnic nepotism".

Mazrui tends to use the concept of tribalism and ethnicity interchangeably. However, as Piper suggests, 'ethnicity' is a more neutral concept.

"[T]he 'objective' aspects of ethnic identity do not constitute the fundamental criterion for membership of the ethnic group at all, but are understood as indicae of this membership" (Piper 1998: 39). 'Tribalism', on the other hand, often is used pejoratively. The concept contains negative connotations derived from the colonial era. For instance, as Kearney notes "modern African politicians have and do use the words tribe and tribalism to describe other ethnic groups whom they perceive as threatening" (Kearney 1999:49).

Leys (cited in Kearney 1999:49) argues that "tribalism consist in the fact that people identify other exploited people as the source of their insecurity and frustrations, rather than their common exploiters...he thus posits a direct link between economic misfortune and ethnic revival (tribalism) in the African context". By contrast, Piper (1998:40) defines ethnicity as "a sense of people-hood, or community by virtue of perceived common descent, as indicated by shared cultural endowments". According to Afolayan (1997: 50-51), "the word tribalism is a "catch-all" term. The phenomenon rears its head in almost every sphere. It is associated with corruption, class formation, nepotism and the sociopolitical malaise bedeviling the nation. The failure of nation building and integration has most often been explained through reference to the pernicious evils of tribalism".

Afolayan further acknowledges that ethnic nationalism and tribalism are conterminous and that it may be often difficult to differentiate the two. Nevertheless, he makes a distinction between the two concepts by stating that:

> Ethnic nationalism can be a positive commitment to the advancement of the interest of one's ethnic group without prejudice to the interest of others. But in its negative and extreme form it can become tribalism. Tribalism can be described as a kind of morbid loyalty and commitment to one's ethnic group to the exclusion, prejudice and often at the expense of other ethnic groups. It is usually inward looking, ethnocentric, and parochial in its exclusiveness. The ultimate objective is the survival, aggrandizement and supremacy of one's ethnic group, usually to the detriment of other groups. In its strategies it entails the appeal to and mobilization of ethnic consciousness and the use of ethnic favors and preferences, as well as nepotism and corruption. (Afolayan 1997: 50-51)

Thus, for the purposes of the study Mazrui and Afolayan's definitions of ethnicity shall be adopted. Mazrui's definition of ethnicity takes into account the preference of the electorate for "concrete kinship solidarity" rather than ideological theory which mean ethnicity is not viewed as commitment to radical change but instead as a preference for communal origin. And Afolayan's definition embraces 'ethnic nationalism' as a positive obligation in advancing the interests of one's ethnic group without prejudice to the interest of other but which may be referred to as 'tribalism' in its extreme form it may be detrimental to other ethnic groups. These two definitions are adopted because they are the most relevant in the Kenyan case as they bring sense to the actual role of ethnicity in Kenyan politics.

Having highlighted the extent in which both 'consociationalism' and 'ethnicity' are contested concept, the chapter now investigates the origins of consociational theory.

2.2 Origins Of Consociational Theory

Even though consociational theory is well known to be associated with Arend Lijphart, (regarded as the 'father of consociationalism'), the term 'consociation' has its own deep historical origin. The term 'consociatio' was first used by Johennes Althusius in 1603. He used this term to denote a form of political union. However, it was in the 1960s that the term received its current meaning "when it was utilised by scholars concerned with a number of small democracies that challenged predominant plural and social determinist accounts of the relationship between political cleavages and democratic stability". (Clarke & Foweraker 2001: 92). This means that consociationalism was not a common

concept until its development in the 1960s. As Bogaards (1998: 475) states "In the late sixties Arend Lijphart (1968, 1969, 1975a) introduced the model of consociational democracy to explain political instability in plural societies" A plural society being a society divided by what Harry Eckstein calls "segmental cleavages". (Lijphart 1977:3) Lijphart presented elite behaviour as the missing link between a plural society and political stability.

In explaining the cases of Austria, Belgium, the Netherlands and Switzerland, three broad approaches emerged in the early literature on consociationalism. "The application of consociationalism specifically was intended to explain the "paradoxical combination of a fragmented political subculture and democratic stability". (Clarke & Foweraker 2001: 92). Val Lorwin exemplified the first approach which

> Suggests the immobilistic potential of mutually hostile subcultures can be effectively countered by 'segmented pluralism': a degree of vertical sub-cultural encapsulation and autonomy sufficient to minimise the opportunity for conflict between subcultures. The second (Associated with Hans Dealder, Gerhard Lehmbruch and Jurg Steiner) argues that these countries' capacity to maintain stable democracy is a product of their tradition of decision making, characterised for centuries by the principle of 'amicable agreement' and proportionality. (Clarke & Foweraker 2001:92)

Arend Lijphart is mostly associated with the third approach. His early works focused on a typology of democracy based on two major factors, namely, that their political cultures are homogeneous or fragmented and secondly, and that their elite behaviour is competitive. The term 'consociational' was therefore a term used by Lijphart to refer to those democracies "where fragmented political culture co-exists with accommodative elite behaviour, which builds a metaphorical bridge (or 'arch' over the gulf separating the subcultures (or 'pillars') and this ensures democratic stability". (Lijphart cited in Clarke & Foweraker 2001:92). It is worth noting that only in systems where subcultures' leaders realize the dangers of not cooperating is consociational democracy viable. "Consociational democracy entails the cooperation by segmental leaders in spite of the deep cleavages separating the segments. This requires that the leaders feel at least some commitment to the maintenance of the unity of the country as well as a commitment to

democratic principles". (Lijphart 1977: 53) By retaining and maintaining the support and loyalty of their followers, the leaders must at the same time put forward the spirit of working together and compromise with leaders of other segments. The term 'followers', according to Lijphart, "refers more specifically to the middle-level group that can be described as sub-elite political activist" (Lijphart 1977: 53)

> Lijphart attributes this to a strategy of 'prudent leadership' by rival sub-cultural elites facing the potential collapse of a political system and maintains that Consociational democracy is only viable if sub-cultural leaders have the ability to recognize the dangers inherent in fragmentation; commitment to system maintenance; the ability to transcended sub-cultural cleavage at the elite level and the ability to forge appropriate solutions for sub-cultural demands (Clarke & Foweraker 2001:92).

2.3 Key Characteristics of Consociationalism

The term 'consociational' is closely associated with power-sharing and consensus democracy. As Lijphart (1977) in Taylor, (2006: 217) puts it:

> Consociationalism holds that 'deeply divided' societies can become democratic through pragmatically driven elite-level bargaining for a form of executive power-sharing in which the autonomy of contending groups is constitutionally guaranteed and protected through mutual veto rights, and where there is strong respect for principles of proportionality in elections, civil service appointments and government subsidies.

This is because consociational 'power-sharing' and consensus democracy were frequently regarded as acceptable alternatives to the adversarial politics and the majoritarianism of the Westminster model. As Taylor (1992:1) puts it

> Since the initial formulation in the late 1960s consociationalism has led to a highly influential school of studies and consociational engineers have been marketed, particularly by Lijphart, as a genuinely attractive option to address the seemingly intractable ethnic divisions […]. Mainly, it is argued, because unlike the 'British' Westminster model of democracy, consociationalism does not result in the permanent exclusion of minority interest from government.

As a result, consociational theory was frequently prescribed for countries with acute sub-cultural diversity such as South Africa and Northern Ireland. According to Lijphart, "The majoritarian model holds that majority rule comes closer to the democratic ideal

than a government responsive to a minority. However, the consensus model argues that majority rule and the government vs. opposition pattern of administration may be inequitable because it is exclusionary". In his analysis, Lijphart shows that only in homogenous countries can the majoritarian model of democracy be stable and this is because destructive competition is prevented when full power is allocated to the majority party. In short "consociationalism violates the principle of majority rule, but it does not deviate very much from the normative democratic theory" (Lijphart 1969: 214)

Moreover, consociational democracy is suitable in heterogeneous countries where societies are divided along religious; ideological, linguistic, cultural, ethnic or racial lines. Lijphart argues that "social homogeneity and political consensus are regarded as prerequisites for, or factors strongly conducive too, stable democracy. Conversely, the deep social divisions and political differences within plural societies are held responsible for instability and breakdown in democracies". (Lijphart 1977: 1) It is emphasized that "for many of the plural societies of the non-Western world, therefore, the realistic choice is not between the British normative model of democracy and the consociational model, but between consociational democracy and no democracy at all" (Lijphart 1977: 238).

Consociationalism can be understood in two interconnected ways: as a (democratic) political system and as a political mechanism for conflict resolution. According to Lemarchand (following Lijphart) "Consociationalism has a very specific meaning; it means a great deal more than the mere inclusion of representatives of minority groups in institutions of government. There is, to be sure, the notion of elite cooperation through a grand coalition cabinet, where executive power is shared by opposition and majority parties". (Lemarchand 2006:3) The sharing of executive powers – *mutatis mutandis* - has been regarded by some scholars as one of the most important elements of consociationalism. This sharing takes the form of a grand coalition of the political leaders of all significant social elements. (Lijphart 1977:25)

Other fundaments of consociationalism are: mutual or minority veto, which is regarded as the minority's ultimate weapon which helps them to protect their vital interests. According to Lemarchand (2006:3) "this works best when it is not used too often and

only with regard to issues of fundamental importance". Lemarchand also cites proportional representation, which he defines as the basic standard of political representation, public service appointments and allocation of public funds. As such, he argues, it serves as a guarantee for the fair representation of ethnic minorities. The last condition of consociationalism cited by Lemarchand is segmented or group autonomy. This means that "while on issues of common interest decisions are made jointly by all members of the coalition cabinet, on all other issues autonomy is the rule, with each community free to attend to its own affairs as it wishes" (Lemarchand 2006:3). With this condition, minority groups are given the right to protect their own interests. As Eisenberg puts it, "Segmental autonomy or limited forms of self-government provides each minority with the security it needs to ensure that its distinctive interests are protected and minimizes the degree to which it must coordinate, compromise and negotiate with other minorities" (Eisenberg 2002:8)

McGarry and O'Leary outline key elements of consociationalism by stating that "Consociations can be both democratic and authoritarian, but complete consociational democracies respect four organizational principles". They summarise these principles as follows:

1) *Executive power-sharing (EPS).* Each of the main communities share in executive power, in an executive chosen in accordance with the principles of representative government.

2) *Autonomy or self-government*. Each enjoys some distinct measure of autonomy, particularly self-government in matters of cultural concern.

3) *Proportionality*. Each is represented proportionally in key public institutions and is a proportional beneficiary of public resources and expenditures.

4) *Veto-rights*. Each is able to prevent changes that adversely affect their vital interest.

(2006:43-44)

To sum up:

Consociationalism is a mechanism for making democracy work in societies divided along ethnic lines. "Consociational democracy means government by an elite cartel designed to

turn a democracy with a fragmented political culture into a stable democracy" (Lijphart, 1969: 216). One of the main functions of any democracy is to ensure the equality of citizens so as to avoid potential disputes arising from inequalities. Dlamini (2008: 12) states that "democracies seek to manage conflicting interest by allowing the people to compete according to agreed upon rules, mediated by institutions". Therefore, consociationalism in this sense is concerned with the consolidation of peace, stability and equality of the citizenry in unstable democracies. Since no political system of government is perfect, even the hegemonic 'liberal democracy' has manifest drawbacks. Consociational democracy therefore seeks to address these problems through devices of accommodation.

In its capacity as a conflict resolution formula, consociationalism is sometimes regarded as synonymous with 'power sharing', and often is applied in countries where conflict is generated by social, cultural and ethnic differences. As Hoddie and Hartzel (2003:306) put it "The unambiguous intent behind the creation of power-sharing and power dividing institutions is to limit the capacity of any one party to the conflict to dominate the postwar state and use its advantaged position to harm the interests or survival of its rivals." Further, Jastad takes exception to the notion that 'power sharing' and 'consociationalism' are conterminous, and points out that separate strands of research have used the term 'power-sharing' in different ways: Firstly, power sharing in terms of democracy, secondly, power-sharing in terms of conflict management.

One way of understanding consociational theory is by viewing it in terms of conflict management. "Power sharing serves as the mechanism that offers this protection by guaranteeing all groups a share of state power. By dividing and balancing power among rival groups, power-sharing institutions minimize the danger of any one party becoming dominant and threatening the security of others" (Hartzell and Hoddie 2003 :319). However, the claim that power sharing intends to end violence but not necessarily build democracy, does not automatically mean that power sharing and democracy are not compatible. It simply means that less emphasis is put on democratic representation and election when efforts are made to implement power sharing. Spears, (2000: 105) contends

that "power-sharing does not have to mean that democratic principles and procedures must be abandoned; indeed, power-sharing arrangements can be compatible with democracy while diminishing its most destabilizing side effects". The aim of consociationalism as a conflict resolution mechanism is to instill and emphasize the importance of incorporation. "…the aim is to bring about a major restructuring of power relations through a more inclusive participation in policy making, accompanied by corresponding spheres of autonomy for the groups concerned. Incorporation than exclusion is seen as key to conflict resolution" (Lemarchand 2006:2)

2.4 Conditions Conducive To The Application Of Consociational Schema

Consociational democracy is a model that is both empirical and normative. "As an empirical model it is seen to explain democratic political stability in Austria, Belgium, Holland and Switzerland, whilst, as a normative model, its chances of success in plural societies are related to a constellation of nine favourable factors" (Taylor 1992:1). According to Lijphart, there are 'seven' favourable conditions of consociationalism. However, "these factors are helpful but neither indispensable nor sufficient in and of themselves to account for the success of consociational democracy" (Lijphart 1977: 54). Two issues are worth noting about these favourable factors. Firstly, originally, these favourable factors are not derived deductively from consociational theory but instead they have been inductively derived from the experience in consociational democracies. Bogaard (1998:476) states that

> To assess the factors that are conducive to consociational democracy in an inductive way, the experiences of more than one country need to be compared. This is why the favorable factors make their first appearance in Lijphart's (1968, 1969) comparative work, not in a country study. From then on, the favorable factors occupy a prominent place in Lijphart's work on consociationalism; indeed, in his three earliest major comparative publications (Lijphart 1968, 1969, 1977) favorable factors take up more space than the characteristics of consociational democracy.

Jurg Steiner has criticized these favorable factors for their 'ad hoc' character. For example, Steiner does not dispute the relevance of these favorable factors but states that

the rationales for their significance "are not sufficiently interrelated, because they are not deduced from a common set of assumptions" (Steiner 1981:351).

In short this means that these favorable factors were originally not part of Lijphart's consociational theory but were developed over time from the experiences of countries that applied consociational theory. The second issue to note is that, these favorable factors have undergone certain changes over time. As noted by Bogaards (1998:476)

> The lack of theoretical coherence shows in the considerable changes the favorable factors underwent in both number and content in the course of time. In four publications, spread over almost two decades, Lijphart (1968, 1969, 1977, and 1985) mentions a total of 14 favorable factors.

For instance, in Lijphart's first publication 1968 there are six favorable factors, on the second publication 1969 they are eight; on the third (1977) there are nine and on the forth one, the 1985 publication contains eight favorable factors. As Bogaards (1998:482) states:

> Apart from making their own selection of favourable factors from Lijphart's lists, authors have supplied additional favourable factors. Jimmy K. Tindigarukayo (1989) selects segmental isolation, traditions of elite accommodation and overarching cleavages and adds popular legitimacy of the ruling elites, respect for institutional rules and procedures, and compromise, trust and good will among political leaders as favourable factors for consociationalism and federalism in cultural plural societies of post-colonial states. Favourable factors do not suffice for H.E. Chehabi (1980) to explain the absence of consociationalism in Sri Lanka. Chehabi suggests adding three historical and socioeconomic factors: militant Sinhala nationalism, economic rivalry, and the constitutional framework.

We therefore can conclude that estimates of favourable factors vary according to individual scholar's conceptualization, and also according to conditions prevalent in the case-study countries. For example, the success of some favorable factors in the application of the consociational model in South Africa and Nigeria may depend on the different political climates pertaining in each country. A Bogaards puts it:

> In other countries and from other perspectives, still other favourable factors could show up. The marginal utility of these additions might decrease, but there is no

way to determine their usefulness a priori. The inductive character of the favourable factors impairs a selection of relevant favourable factors on a theoretical basis. Their relevance has to be re-assessed for every specific case. (Bogaards 1998: 482)

Having highlighted the variables and shifting patterns of conditions favourable to the application of consociational formula, the chapters will now itemize and discuss Lijphart's (1997) 7 favourable conditions.

1. A multiple balance of power
2. smaller rather than larger countries
3. Multiparty systems
4. Homogenous, isolated pillars not internally divided and scattered
5. Over-arching loyalties
6. A tradition of elite accommodation
7. Cross-cutting cleavages

A balance of power among the segments of multiple societies works better for consociational democracy than a society where there are two major segments. This according to Lijphart is because "if one segment has a clear majority its leaders may attempt to dominate rather than cooperate with the rival minority. And in a society with two segments of approximately equal size, the leaders of both may hope to win a majority and to achieve their aims by dominating instead of cooperation". (Lijphart 1977:55) Furthermore, there are two elements that form part of the notion of 'multiple balance of power'. Firstly, there is a need for a balance of power among the different segments of society, and secondly, there is a need that at least three different segments of society are present for the proper application of the consociational model. These elements are crucial because "a society with relatively few segments, say three or four, constitutes a much more favourable base than a highly fractionalized society. The reason is that cooperation among groups becomes more difficult as the number participating in negotiations increases" (Lijphart 1977: 56)

Secondly, the multiparty system tends to be favorable condition of consociational democracy. According to Lijphart (1977: 61)

> In plural societies with free elections, the salient social cleavages tend to be translated into party system cleavages; the political parties are likely to be the organized political manifestation of the segments. The presence of such segmental parties is favorable to consociational democracy. They can act as the political representatives of their segment, and they provide good methods for selecting the segmental leaders who will participate in grand coalition.

It may be true that other countries with consociational elements which have a two-party system have had a stable political system than those with multiparty system. Lijphart (1977:62) acknowledges this claim,

> When one explains the stability of Austrian democracy in terms of the consociational model, however, one arrives at the opposite conclusion: Austria's stability was largely due to the cooperation of the rival elites in a grand coalition, and the two-party system, especially in the earlier years, was a strain on this overarching cooperation rather than a support for it.

To iron out this contradiction, Giovanni Sartoris divides the multiparty system into two categories, namely, moderate multiparty system and extreme multiparty system. Moderate multiparty systems are characterized by three or four parties as the normal number whereas extreme multiparty systems are characterized by a minimum of five parties. It therefore appears that in line with Sartoris ideas, moderate multiparty systems presents the most favorable factors for consociational democracy. But a few qualifications have to be met according to Lijphart (1977:64).

- The argument in favor of moderate multiparty system is limited to plural societies only. In homogenous countries, a two – party system will be more stable and effective than a multiparty system, and it also has considerable advantages in terms of the quality of democracy.
- Moderate multiparty is a favorable factor only on the condition that all parties are minority parties; furthermore, it is helpful if they are not too unequal in size

- In plural societies that are not moderately segmented – that is, those with either only two or more than five or six significant segments – a two-party or an extreme multiparty system is preferable to moderate multipartysm. The most important criterion is that the political parties clearly and separately represent all the segments.

Thirdly, with regard to size and consociational democracy, it appears that consociational democracy works best when the size of the country is small, and a greater number of small states have become consociational democracies than larger ones. It is important to note that there are direct and indirect effects on the probability that consociationalism will be established and will be a success and these effects of smallness are derived from both internal characteristics and external positions. As Lijphart states

> Small size has both direct and indirect effects on the probability that consociational democracy will be established and will be successful; it directly enhances a spirit of cooperativeness and accommodation, and it indirectly increases the chances of consociational democracy by reducing the burdens of decision making and thus rendering the country easier to govern (Lijphart 1977: 65)

Another reason that consociational democracy works effectively in smaller countries is that leaders of different segmental societies interact relatively frequently. This, according to Lijphart, is likely "to lead to a relatively high level of mutual goodwill, which in turn makes the political leaders prefer not to perceive politics as zero-sum game, in which a strategy of 'all or nothing' is applied". (Lijphart 1977:66) It is worth noting that the contrary is true of larger states or countries. Leaders of different segmental societies tend to be scattered all over the country, this as a result makes it difficult to forge relations through constant interactions, thus consociational democracy is less likely to be a success.

With regards to the external effects of the size factor, consociational democracy is more likely to be a success because smaller countries are likely to feel more threatened than larger countries.

Inasmuch as foreign threats may encourage and motivate unity in these smaller countries, another qualification needs to be added "such a threat must be perceived as a common danger by all of the segments in order to have a unifying effect" (Lijphart 1977:67). Cross-cutting cleavages can also be regarded as one of the favourable conditions for consociational democracy in that the examination of how two or more cleavages relate to each other is crucial in understanding the successes and failures of consociational democracies. Lijphart (1977: 75) states that

> perfectly cross-cutting and perfectly coinciding cleavages occur rarely, but differences in the degree to which they crosscut can be critically important for two reasons. In the first place, the way in which cleavages cut across each other affects the chances for consociational democracy because it affects the numbers and relative size of the segments and thus the balance of power among them. Secondly, crosscutting can have important consequences for the intensity of feelings generated by the cleavages.

An example of the significance of cross-cutting cleavages as favourable factor for consociationalism is that, if for instance, a political cleavage and a social cleavage cross-cut to a high degree, there will develop a feeling of equality among the political groups, but if the two cleavages tend to coincide one of the groups is more likely to feel relegated and unjustly represented.

The last three favourable conditions for consociational democracy are: a tradition of elite accommodation; homogenous, isolated pillars not internally divided and scattered; and over-arching loyalties. The unification or cooperation of elites may be encouraged by their awareness of the dangers inherent in segmental cleavages. If political leaders engage in coalescent rather than adversarial decision making, plural societies are likely to enjoy a stable democratic government. "An alternative or additional factor predisposing political leasers to be moderate and cooperative is the prior existence of a tradition of elite accommodation" (Lijphart 1977: 100) In regard to 'segmental isolation and federalism' as the second to last favourable factor for consociational democracy, the idea is that a clear distinction of the boundaries of different societies may positively contribute towards sustainable democracy in plural societies. This is because danger may arise if these groups are in close contact. "[C]lear boundaries between the segments of plural society

have the advantage of limiting mutual contacts and consequently of limiting the chances of ever-present potential antagonism to erupt into actual hostility". (Lijphart 1977:88)

The final favourable condition for consociational democracy is based on 'Over-arching loyalties'. Berg-Schlosser (1985:103) states that "The internal fragmentation of a society is usually supplemented by various common traits and points of identification which set it apart from other societies and serve, in one way or another, as a common bond". This simply means that there is a need for social elements that characterise convergence among those plural societies for consociational democracy to be a success.

Thus conflict is more likely to emerge is societies that are characterised by less overarching loyalties. This is because having less or no commonalities between groups may lead to one group segregating and considering the 'other' as totally distinct from the other and as a result conflict is likely to be an eventuality. "The conflict potential of cleavages also depends on the degree to which their inherent intensities are moderated by overarching loyalties". (Lijphart 1977:80)

This chapter has explored the consociational model as outlined in the literature. The chapter has argued that in Kenya, the relationship between conflict and ethnic nepotism or tribalism is sufficient to warrant application of consociational theory as an organizational and explanatory framework. The study now provides a detailed account of electoral conflict in Kenya between 1990 and 2006.

CHAPTER THREE

KENYA: HISTORICAL & POLITICAL BACKGROUND OF ELECTORAL CONFLICT, 1990 – 2008

3.1   Introduction: Sources of Violence In Kenya

Commenting on conflict in Kenya, Mueller (2008:191) argues that,

> A good deal of the statistical work in the political economy literature on conflict argues persuasively that conflict, particularly civil war, is driven mainly by greed rather than grievance, while others disagree. From the standpoint of the elite, many of whom already owned large tracts of land in the Rift and elsewhere, greed for political power, both by MPs from the area and by President Moi, appears to have been the motivating factor in the face of multi-party elections.

As Mueller highlights, there is a connection between power and wealth in Kenya. The practices of the ruling elite tend to undermine the poor in Kenya. According to Kearney (1999:119) "Elite monetary interest and politics become inextricably intertwined, further estranging political action from the needs and demands of ordinary people and hampering a genuinely democratic form of leadership". One of the resource sectors of which the elite in Kenya take advantage is the agricultural sector.

Agricultural production is an important factor in Kenya's economy. As Kearney (1999:99) notes: "Agricultural activity is concentrated in the highlands, the previous heart of the white colonial community and thereafter the Kikuyu ethnic group". The Kikuyu had managed to dominate business and politics for decades because they have been favored by the colonialist for a long time. Anderson (2005:4-5) puts it more succinctly,

> The Kikuyu occupied the rich highland in the central region of the colony close to Nairobi and adjacent to the main areas of white settlement. These energetic farmers worked the deep, red soil to good advantage. They were enterprising in business and, much as the advent of colonial rule had deprived them of lands and exploited their labor, many Kikuyu made the most of the opportunities afforded by the connections to an imperial economy.

Thus the accumulation of wealth by a particular ethnic group during the colonial era created economic imbalances in post-colonial Kenya, and thus the economic factor can

be regarded as a seminal cause of violence. As the above quotation suggests, colonialism instituted a process of conflating ethnicity and socio-economic class. For example, the Kalenjin may have historically accumulated more wealth than the Lou, thus to ensure that goods and resources are kept within ethnic domain, they (Kalenjin) would find it hard to release political power to a different ethnic group. "[B]ut it has also been observed that in the process of colonial 'development' some groups adapted much earlier than the others. The Kikuyu are said to have been the first to adapt their social structure and culture to the capitalist mode of production" (Leys 1975: 200)

Particularly when Moi was in power, Kenya's politics revolved around money and many politicians utilized high government position in order to accumulate wealth. As Bakari puts it; "Kenyan politics was for a long time all about money. He who had the money controlled the politics, and Moi used money, or access to money in the form of fat government contracts, high governmental positions that were virtually sinecures, and in the last decade, access to land" (2002:271). Indeed, even Kenya's first and most illustrious President, Jomo Kenyatta, was not an exception to this rule. According to Klopp & Kamungi (2008:13), "[B]oth these presidents- Kenyatta and Moi— the former Kikuyu, the latter Kalenjin—used their power to reward a small group of supporters with business opportunities and, most crucially, land".

The manifestly unequal allocation of state resources generates hatred and vendettas amongst different ethnic groups. Arguably, violence is inevitable as a result of differences and inequality created between ethnic communities. Furthermore, unequal allocation began with colonialism and was replicated by successive post-colonial regimes. As earlier stated, the correlation between ethnicity and access or non-access to wealth began with colonialism –a point reinforced by Klopp and Kamungi

> Land has been a key issue in Kenyan politics ever since the British colonial government claimed large tracts of fertile land in the Central Province and the Rift Valley for white settlement and abetted grossly unequal property relations between ethnic communities along the coast. At independence— prodded by the 1950s Mau Mau rebellion over land rights and freedom, which claimed as many as 13,000 Kenyan lives and led to the arrest of an estimated 70,000 Kikuyu

tribesmen—President Kenyatta quickly moved to recentralize power in the office of the president. Land owned by displaced white settlers was bought on a "willing buyer, willing seller basis" and turned into settlement schemes. Elites, especially Kenyatta and his family, gained access to large tracts of land and pushed the poorer Kikuyu, many of whom fought in the Mau Mau rebellion, into informal settlements in Nairobi or farther afield in the Rift Valley in search of small pieces of land opened up by the sale of settlers' farms. (2008:12)

The personalization of power within a particular ethnic group in Kenyan society has had many effects, not only in regard to rigging elections but also in terms of creating doubt in the minds of many citizens about the proper functioning of the state. According to the Waki Report (2008: 23)

> [V]iolence has become a factor not just of elections but in everyday life. What this means in practice is that violence is widespread and can be tapped for a variety of reasons, including but not exclusively to win elections. Second is the growing power and personalization of power around the Presidency. This has had a twofold impact. First, it has given rise to the view among politicians and the general public that it is essential for the ethnic group from which they come to win the Presidency in order to ensure access to state resources and goods. Second it also has led to a deliberate denudation of the authority and legitimacy of other oversight institutions that could check abuses of power and corruption and provide some accountability, and at the same time be seen by the public as neutral arbiters with respect to contentious issues, such as disputed elections results.

Thus, a characteristic of Kenyan politics is ethnic accumulation of state resources. According to Stevees (2006:214)

> The key to understanding Kenyan politics is that political leadership is grounded in ethnic communities. Aspiring politicians must gain the support of their ethnic community whether at the level of their sub-clan, their clan or the community as a whole. This means that those who have been elevated as leaders must fight for their community at the centre and bring valued resources back home. If politicians fail to deliver the goods, they will be rejected at the next election. Leaders are those who are successful in advancing the interests and addressing the needs of the group. Individuals vote along the lines of ethnic ties. Political representation within the Kenyan context, therefore, means group representation.

The accumulation of resources by a particular ethnic group reinforces and perpetuates ethnic voting. In consequence, it is arguable that Kenya's political and electoral system is informed by 'identity politics' "Such voting implies that voting is not the outcome of a

careful evaluation of policy positions or the performance of leaders. Instead, it is identity that matters" (Kimenyi and Romero 2008: 4) Factors determining the voters' decisions could be skin color, religion, sexual orientation; ethnicity etc. "Race, gender, and other identity categories are most often treated in mainstream liberal discourse as vestiges of bias or domination-that is, as intrinsically negative frameworks in which social power works to exclude or marginalize those who are different" (Crenshaw 1991: 1242). This is a problematic that is particularly applicable in post-colonial states like Kenya that have inherited from the colonial state the notion of ethnic entrenched 'difference'. As Oyugi (1997:42) puts it:

> The notion of 'a people's own area' which resulted from the formal politico-administrative regimentation of the colonized people into ethnic administrative enclaves was later to lead to the heightening of ethnic self-identity or sense of belonging. It also in the process, created a sense of exclusiveness which sooner or later manifested itself in the rejection of 'outsiders'.

3.2 The History of 'Ethnic Nepotism' or 'Tribalism' In Kenya Between 1963 – 1990

3.2.1 The Kenyatta era

At independence in 1963, Kenya had a multiparty constitution. In 1969 however, KANU merged with Kenya African Democratic Union (KADU). Also in 1969 an important opposition party – Kenya People's Unity (KPU) was banned and Kenya became a de-facto one-party state. As stated in the IFES final Report (2008:6)

> After KANU and the opposition party, Kenya African Democratic Union (KADU), merged to pave the way for a *de facto* single-party system. An opposition party formed in 1966, the Kenya Peoples' Union (KPU), was banned three years later and its leaders detained.

In 1982, Kenya's constitution was amended to make Kenya a de-jure one party state. In other words, KANU was made the only legal party in Kenya. KANU's ethnic base consisted of the Kikuyu and the Lou as major ethnic groups. However, under Kenyatta, elite members of the Kikuyu ethnic group received preferential treatment in the distribution of wealth.

Jomo Kenyatta consolidated power by dispensing privileges and economic favors to placate the country's various ethnic groups and by using authoritarian methods to silence critics and potential rivals. Nevertheless, opponents perceived favoritism towards the Kikuyu and suppression of non-Kikuyu leaders. (Chenoweth & Young 2007)

Indeed it was evident that Kenyatta was playing the ethnic card during his time in power. Many Kikuyus held prominent positions in government and also in institutions of Higher learning; in fact most Kikuyu were responsible for any areas where authority was to be exercised. As Murunga (2004:187) states;

> The provincial administration and strategic positions in the bureaucracy were heavily ethnically partial in favor of the Kikuyu. By the time of Kenyatta's death, four out of the eight Provincial Commissioners were Kikuyu. In 1974, seven out of the twenty cabinet ministers were Kikuyu and five of these seven were from Kiambu, Kenyatta's home district. In the University of Nairobi, for example, then Kenya's only public University, 'all the top 10 administrative positions... were held by members of the Kikuyu community'. While in colonial times the army was composed mainly of the Kamba and Kalenjin, by 1967, 22.7 percent of the officers were Kikuyu. So ethicized was the provincial administration and strategic positions in the civil service that even the permanent secretary in charge of provincial administration was a Kikuyu. There were in 1970 nine Kikuyu permanent secretaries out of the total twenty-two. Their selection and posting was so irregular that even illiterate ones would be posted to such crucial positions.

As noted, then, in the first instance, Kenyatta was responsible for the ethnicization of government in Kenya. This ethnicization of government created experiences of inequality amongst Kenyans; such experiences were constructed as ethnic nepotism or tribalism[1] by non-Kikuyu Kenyans. The creation of ethnic representation further affected the sense of belonging as many Kenyans felt excluded from the government. Murunga (2004: 187) contends that;

> The ethnicization of government institutions affected the sense of belonging to Kenya among groups and people who were excluded. A long lasting effect of this is that positions in the bureaucracy and provincial administration are now perceived and allocated using ethnic prisms. Holders of government positions are perceived as ethnic representatives. There were some presumed gains for the

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[1] As defined by Mazrui and Afolayan – see chapter 2

Kikuyu community when Kenyatta was the head of the state that translated into non-Kikuyu resentment of the Kikuyu precisely because they felt marginalised from the very state that needed their allegiance.

As Barkan (2004:88) puts it;

> If Kenyatta's Kenya had a basic flaw, it was that most of its prosperity was concentrated among the members of Kenyatta's ethnic group, the Kikuyu. Residing mainly north and west of Nairobi and comprising the largest ethnic group in Kenya,… the Kikuyu formed the core of Kenya's nationalist movement and came to dominate the civil service and the private sector during the 1960s and 1970s.

The above findings show the prevalence of ethnic nepotism or tribalism in Kenya, and therefore the significant role that consociational formula may play as a theoretical framework in understanding the extent to which ethnicity (negatively conceptualized) has shaped power configuration and contestation in Kenya.

3.2.2 The Moi Era

Moi took the Presidency in 1978 when Kenyatta died, before then he had been Kenyatta's vice president for twelve years. Interestingly, Moi did not come from the same ethnic group as Kenyatta. Instead Moi comes from the Kalenjin ethnic group in the Rift valley. However, a predisposition that Moi shared with his predecessor was the centralization of power in the person of the President. As Murunga (2004:188) puts it

> If the strong imprint of the personality of the president characterised the state in the Kenyatta era, presidential powers were not reduced following Moi's ascension to power. Rather, the person of Moi took over that of Kenyatta in redefining state operations in Kenya.

Moi also earned the presidential seat partly because he did not participate much in political conflicts perpetrated by ethnic groups; he also earned the presidential seat because he lacked an influential political base. Thus, Moi was perceived – incorrectly, as it turned out – as neutral or impartial in the arena of ethnic – based powers. In fact, once in power, Moi played the ethnic card.

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He set out to redress the ethnic imbalances created by Kenyatta by "pursuing a set of redistributive policies that favored his own ethnic group the Kalenjin -and other disadvantaged tribes in the Rift valley" (Barkan:2004: 88). Moi was also faced with a challenge of consolidating his power since he did not come from the Kikuyu ethnic group. To do this effectively, he needed to form a coalition that was going to be in his favor. "The need for a new coalition was important given that the clique surrounding Kenyatta had tried to block Moi's ascension to power when they fronted the change-the-constitution movement" (Murunga 2004:188).

As Adar and Munya (2001) explain;

> … [M]oi also embarked on the gradual Kalenjinization of the public and private sectors from the 1980s. Moi is a Tugen, one of the smaller Kalenjin ethnic groups. He began to "de-Kikuyunize" the civil service and the state-owned enterprises previously dominated by the Kikuyu ethnic group during Kenyatta's regime. He appointed Kalenjins in key posts in, among others, Agricultural Development Corporation (ADC), Kenya Commercial Bank (KCB), Kenya Posts and Telecommunications (KPT), Central Bank of Kenya (CBK), Kenya Industrial Estates (KIE), National Cereals and Produce Board (NCPB), and the Kenya Grain Growers Cooperative Union (KGGCU). He created Nyayo Tea Zones (NTZ), Nyayo Bus Company (NBC) and Nyayo Tea Zones Development Corporation (NTZDC).

Moi was also involved in corruption and abuse of power which eventually affected Kenya's economy. According to Holmquist et al (1994:92)

> Moi inserted ethnic cohorts and allies into key positions in the state and parastatal and nongovernmental organizations that service the modern urban and large-holder sectors, and sometimes market the coffee, tea, and other crops of the large-holder and competitive sectors. But because of state sector intervention, the performance of several agricultural institutions was impaired and large-holder, and probably competitive, sector growth was compromised with negative ramifications throughout the economy.

Another factor that drew attention to the ethnic trajectory of Moi's leadership was his suspected involvement in the murder of a government official whose ethnic origin was Kikuyu. Arguably, this was part of his effort to undermine the Kikuyu base of national government and replace it with his own people, thereby enabling the perpetuation of his

term in office. It is also alleged that Moi utilized his dominance within KANU to undermine not only other ethnic groups but also civil society organization. For example, according to Adar and Munyae;

> Peaceful rallies calling for political and constitutional reforms were persistently violently broken up by the security forces. On June 10, 1999, the police, complemented by a squad of "KANU youth" and the infamous jeshi la mzee (which in Swahili literally means, old man's militia), violently disrupted a peaceful rally organized by religious and civil society groups to protest the government's handling of the constitutional review process. A number of people, including the Reverend Timothy Njoya who has been vocal in criticizing the government, were seriously injured (Adar & Munyae 2001:12)

Adar and Munyae further note that Moi's manipulative tactics included mobilizing the KANU youth wing to conduct membership recruitment which attracted approximately four million new members for the ruling party. Citizens without a party card were not allowed to undertake business transactions. Butler (2010:17), states

> The ability of Moi to manipulate the judiciary in the past ensured that impunity would remain constant. As a result of the power enjoyed by the Executive branch, cases were brought before "politically correct judges" who because of their desire to protect their jobs and secure state favors, were willing to do everything possible to rule in favor of the presidency

Finally, Nangulu-Ayuku (2007:127) argues that "in any case, Kenya is not an easy country to govern; it has over 40 ethnic groups, volatile politicians, a sophisticated and powerful elite representing a variety of different and sometimes conflicting interests scattered over a wide and varied geographical landscape". Thus, as this section has sought to make clear, problematics of politics and governance in Kenya are deep-rooted. This did not augur well for a peaceful constitutional transition to a de jure multi-party system.

3.3   Transition To Multi-Party System 1992

In December 1992 a multi-party system was re-introduced in Kenya. As Bakari observes;

> By the early 1990s KANU was seen more as a tool of self-enrichment and self-aggrandizement by both the party politicians and the general public at large. It had

increasingly lost its credibility as development oriented and it had degenerated into the classic Fanonist conception of post – independence African political parties, which start off well as nationalistic, anti-colonial and well- intentioned, until the national bourgeoisie discover the usefulness of the party as a conduit to personal wealth, self-preservation and absolute power. (2002: 270)

Moi was reluctant to accept constitutional reform, but came under increasing pressure from Forum for the Restoration of Democracy (FORD), along with other new parties and the international community. As Haugerud (1995:20) puts it … "the effectiveness of pro-democracy voices in Kenya and elsewhere strengthened by ties with the international press and with international church and human rights organizations such as Amnesty International and Human Rights Watch".

It is noteworthy that FORD played a significant role in the introduction of multiparty politics in Kenya. FORD was formed in 1991 by six opposition leaders, including Oginga Odinga (who went on to become Vice-President). As a political movement, FORD's main intention was to oppose a political culture which was mainly characterized by power centralization, nepotism and the self-aggrandizement of dominant groups. FORD extended the national arena of Kenyan politics when President Moi bowed to international pressure to allow the registration of political parties. It is also noteworthy that FORD received most of its professional and political leaders from former members of KANU. As Throup and Hornsby (1998:93) state;

> With the restoration of multi-party politics after 22 years, in December 1991 and January 1992 new recruits flocked into FORD as disgruntled politicians abandoned KANU and Kenya's professionals considered that it was now safe to identify with the opposition. From 2 December onwards, Central Province and to a lesser extent Nyanza were swept by waves of resignation from KANU, as political leaders and ten of thousands of voters defected *en masse* to the new movement. They included many well respected politicians outside the current leadership, and some senior figures within the existing government.

Unfortunately, however, the existence of a viable opposition party and the reintroduction of multi-partysm did not necessarily address the longstanding problematic of ethnic nepotism or tribalism. Indeed, it complicated the picture. For instance, according to the Los Angeles Times, (2 January 2008), "Tribal tensions have simmered in Kenya since

multiparty elections were reintroduced in 1992 and the country's more than 40 tribes competed over power and resources. Much of the resentment is directed at Kibaki's [Leader of the Democratic Party] Kikuyu tribe, the largest ethnic group, seen by others as having dominated politics and business for decades", specifically since the decolonization period.

By the same token, When Raila Odinga [current leader of the Orange Democratic Movement] was interviewed by the Mail and Guardian; he was asked if the [Electoral] violence has permanently transformed ethnic relations in Kenya. His response was

> Certainly it has confounded things, so the country is more polarized along ethnic…lines than any time since before independence. We will need to work on reconciliation for society, so that were refuse the polarization that has taken place in the past two months. (Wolters 2008: 14)

3.4   Fragmentation Of The Opposition And Increased Ethnic Tensions

In August of 1992, FORD split into two separate factions, the first being FORD – Asili and the second being FORD – Kenya. These two groups were led by ex-government minister Kenneth Matiba and Raila Odinga respectively and these two parties were ethnically based. "The party fragmented further into FORD-PEOPLE, led by Kenneth Matiba, who had fallen out with Moi, and became the focus of Kikuyu support and mobilization" (Bakari 2002:276) During the general elections, two thousand people were killed in tribal conflict , especially in the Rift Valley (see Figure 1,chapter 1,p 3).

This kind of factionalism within FORD undermined its prospects of victory in the 1992 elections, an outcome which benefited Moi who was voted in as Kenya's president for another five-year term. "The Forum for the Restoration of Democracy (FORD) was unable to agree on a leader, by splitting into three parties, FORD's much-vaunted cause became hopeless. Moi, the beneficiary of his opposition's vanity, won with just one third of the vote".[2] According to Tordoff (1997:16) the Presidential and parliamentary

elections of 1992 were bedeviled by "the oppositions' lack of cohesiveness and inability to form an alliance against KANU". Thus Moi and KANU were able to remain in control.

3.5   1997 Election

The 1997 elections in Kenya followed a pattern of violence similar to that encountered during the 1992 election. "The elections were conducted in the glare of international publicity, not least because the international community was seriously concerned about whether the elections would be free and fair" (Kanyongolo & Lunn 1998:1).

There are divergent views about Moi's victory. Some scholars argue that Moi's second consecutive victory was the result of other parties failing to form an alliance against KANU. For example, (Tordoff 1997:16) argues that "…[B]ecause of the oppositions' lack of cohesiveness and inability to form an alliance against KANU, Moi and KANU were able to remain in control." Furthermore, Nystrom (2000) attests that "Factionalism among the opposition prevented them (opposition parties) from presenting a unified front against Moi and KANU in the 1997 elections as was the case in the 1992 elections" (Nystron, C.,2000)

3.5.1   Moi's Questionable Victory

On the other hand, Engel argues that the regime contributed greatly to Moi's victory by using its incumbent status to control the results. "All the signs are that Moi is falling back on host of other tried and tested manipulations – from a lopsided electoral system to organized violence" (Engel 1997:26). Since Moi had been in power for a long time, he used every possible mean to ensure his stay in power; this may have included bribing electoral officers and others who were involved in the electoral process. For instance, according to the Donors Democratic Development Group (DDDG), there were a number of irregularities during the 1997 elections, all pointing towards Moi as the manipulator of the election. These kinds of irregularities ranged from misprints to bribery. Foeken and Dietz (2000:145) state that

> First, there were cases of misprints and omission of candidates' names on the ballot papers. Even the Electoral Commission itself had to admit (in the press

release of 31 Dec 1997) that under such circumstances 'it cannot be said such elections were fair'. Second, in 13 per cent of the stations the secrecy of the vote was not guaranteed. Third, bribery and vote buying were common, even on Election Day.

It appears that the irregularities and malpractices during the 1997 election could be found in most sectors. The Electoral Commission was also blamed during the election process. For example, there were reports that the Electoral Commission (EC) had delayed in opening some of the polling stations and this was due to the late arrivals of voting material such as ballot boxes, ballot papers and stamps. Some of these malpractices and irregularities included vote buying, harassment and intimidation of voters, particularly by the youth of KANU'92 (YK '92). Corruption and spending of state money to support Moi and his party was the order of the day.

> Unlike the opposition parties, KANU disposed of large sums of money (state money according to many) and was, for instance, able to set up national and provisional secretariats for its support group with full-time staff. An estimated US$60 million was spent on vote buying, mostly by KANU supporters. Expenses ranged from hiring transport for voters and bodyguards for candidates, to employing thugs and distributing party T-shirts or even cash money to passer-by. (Foeken and Dietz 2000: 135)

This was Kenya's second set of multiparty election since the introduction of multiparty politics in 1992. Moi's main opposition was led by Odinga (Raila), the son of Oginga Odinga and ex vice- president Mwai Kibaki representing the National Democratic Party (NDP). These elections further received tremendous criticism from the international community. The international community was concerned about the outcome of the elections. According to Kanyongolo and Lunn (1998: 1-2)

> Amnesty International and Human Rights Watch decided to send a joint mission to Kenya to carry out research into the roots and repercussions of the violence. The joint mission, which visited Kenya between 29 March and 9 April 1998, had four main objectives: to obtain first-hand information on the post-election violence in Rift Valley Province; to provide support to human rights activists at risk; to explore the human rights dimensions of the ongoing process of constitutional reform; and to seek to persuade government officials, representatives of local non-governmental organizations (NGOs) and

representatives of the donor community to place human rights at the heart of that process.

It is noteworthy that little was done by the Kenyan government to prevent or control outbreaks of violence, nuch of it ethnicity based, in the post election period. The main ethnic clashes broke between the Kikuyus and the Kalenjins. Supporters of KANU, the Kalenjins were against relinquishing political power to the Kikuyu. The Kikuyu were opposing KANU which had been under Moi's rule and were supporting Mwai Kibaki, leader and founder of the Democratic Party.

Below is a summary of violent attacks that took place after the elections.

- On the night of 11 January 1998, some members of the Pokot and Samburu ethnic groups raided the home of a Kikuyu widow at a place called Mirgwit in the Laikipia District of the Rift Valley Province. The raiders raped the woman and stole some livestock from the household. A group of Kikuyu men followed the raiders but, having failed to catch up with them, entered a Samburu compound where, in retaliation, they mutilated livestock that they found there. Mutilation of livestock is highly taboo for pastoralists such as the Samburu and Pokot.
- On the night of 13 January 1998, some Pokot and Samburu men attacked Kikuyu communities in the Magande, Survey, Motala, Milimani and Mirgwit areas of Ol Moran in Laikipia. It appears that the attackers were armed not only with spears, bows and arrows, but also with guns. It was claimed that some of the attackers were dressed in military-type clothing. It has been estimated that over 50 Kikuyus were killed during these attacks and over 1000 others fled the area and sought refuge at the Roman Catholic Church at Kinamba, from where they were later relocated to temporary shelters at Sipili and Ol Moran.
- On 21 January, about 70 unidentified people invaded three farms in Njoro including one belonging to the newly elected DP Member of Parliament for Molo Constituency, Kihika Kimani. Three days later, groups of what local residents described as Kalenjins attacked Kikuyus in parts of Njoro in the same constituency.

- The attack on Kikuyus on 24 January provoked a counter-attack by a group of apparently well organized Kikuyus, who on 25 January attacked Kalenjin residents of Naishi or Lare in Njoro. According to police reports, 34 Kikuyus and 48 Kalenjins were killed during these initial attacks and over 200 houses were burnt down. Hundreds of people from both communities were displaced by the fighting, and many of them fled to temporary 'camps' at Kigonor, Sururu, Larmudiac mission and Mauche. (Kanyongolo and Lunn 1998: 5)

Thus, as did the 1992 election that re-introduced the country to multiparty democracy, the 1997 election also carried with it patterns of violence characterized by ethnic rivalry and identity politics.

3.6   2002 Election

By the end of Moi's term of office in 2002, Moi tried other political strategies and devices to ensure that his party remains in power so as to enable him to still benefit from the Kenyan government. For example; "Moi unilaterally endorsed Uhuru Kenyatta, the son of his predecessor, Jomo Kenyatta, as his *de facto* successor as part of a grand scheme to perpetuate his patrimonial rule by proxy" (Kwagwanja 2005: 52). Despite Moi's attempt of forming strategies of instrumentalising generational identity, the party eventually experienced intra-conflicts, functionalism and this led to its electoral defeat in 2002. "[O]ther signs indicated that all was not well within KANU as several other senior party members, including several cabinet ministers and Vice President Saitoti, were interested in challenging for the party's nomination". (The Carter Center 2003: 17) National Rainbow Coalition (NARC)'s presidential candidate Mwai Kibaki won the election and took over as president of Kenya. "Mwi Kibaki won a comfortable 62.2 per cent of the vote (3,646,713) to Uhuru Kenyatta's 31.3 per cent (1,834,468)." (Bakari 2002: 284). The table below shows the votes cast and the percentage votes cast in the presidential elections of 2002.

Table 1 Votes Cast in the Presidential Elections

	Kibaki	Kenyatta	Nyachae	Orengo	Ng'ethe
Nairobi	281,535	76,007	8,751	863	297
Central	690,478	299,213	4,170	1,580	1,949
Eastern	733,776	249,906	9,392	3,913	2,170
Northeastern	29,798	49,641	737	70	36
Coast	223,979	111,795	11,934	1,406	649
Rift Valley	616,336	759,075	52,077	3,345	1,751
Western	507,386	146,582	17,826	3,437	1,865
Nyanza	495,684	65,993	269,843	9,361	1,064
TOTAL	3,637,318	1,839,575	380,097	24,547	10,344

Source: (Throup 2003:7)

Table 2 Percentage Votes Cast in the Presidential elections

	Kibaki	Kenyatta	Nyachae	Orengo	Ng'ethe
Nairobi	76.6%	20.7%	2.4%	0.2%	0.1%
Central	69.2%	30.0%	0.4%	0.2%	0.2%
Eastern	73.4%	25.0%	0.9%	0.4%	0.2%
Northeastern	37.1%	61.8%	0.9%	0.1%	0.0%
Coast	64.0%	32.0%	3.4%	0.4%	0.2%
Rift Valley	43.0%	53.0%	3.6%	0.2%	0.1%
Western	74.9%	21.6%	2.6%	0.5%	0.3%
Nyanza	58.9%	7.8%	32.0%	1.1%	0.1%
TOTAL	62.3%	30.6%	6.5%	0.4%	0.2%

* Based on incomplete figures calculated with 99 percent of the results in.

Source: (Throup 2003:7)

Elischer argues that the main reason for KANU's defeat was the coalescing of ethnically based parties around the National Rainbow Coalition (NARC). FORD Asili and FORD-Kenya remain two separate ethnically based political parties. The ethnically based parties around NARC were; "Kibaki's Kikuyus, Ngilu's Kambas, Wamalwa's and Musalia's Luhyas, and Odinga's Luos, it (NARC) managed to beat New KANU using the same means Moi had so successfully employed for over a decade" (Elischer 2008: 20). (Note that, it was the National Alliance Party of Kenya (NAK) that allied itself with the Liberal Democratic Party (LDP) to later on form the NARC in preparation of the 2002 elections).

While it is significant that this year (2002) marked the end of Daniel arap Moi's 24 year rule, it also marked Kenya's new era of electoral violence under a different leader. As a result of the 2002 election in Kenya,

> Kibaki defeated KANU's Uhuru Kenyatta by 61.3 percent to 31.6 percent of the popular vote, while FORD- PEOPLE's Simeion Nyachae won 6.5 percent of the presidential vote, and James Orengo of the Social Democratic Party (SDP), and Waweru Ng'ethe of Chama cha Umma, secured only 0.4 and 0.2 percent. (Throup 2003: 3)

According to Kwagwanja (2005:51)

> The electoral victory of the ethnically [Kikuyus Kambas Luhyas and the Luos] based parties coalesced around the NARC ended Daniel arap Moi's 24-year patrimonial rule, which many Kenyans blamed for their economic miseries and for the erosion of accountability of state power and of respect for citizenship rights and the ideals of nationhood, reduced by corruption, greed and the cynical manipulation of ethnicity.

According to Wrong (2008) "When Mwai Kibaki won the 2002 elections at the head of the multi-ethnic coalition; many expected such tensions would dissipate. But the new president threw out the draft of the new constitution trimming his executive powers, sacked his coalition partners and withdrew into an ethnic citadel" (Wrong, M., 2000). According to Wrong (2008), "Kenyans complained that the Kikuyus were at it again. The "Mount Kenya Mafia" - cronies from Kibaki's Kikuyu tribe and its neighboring Embu and Meru groups - was playing the old patronage game" (Wrong, M, 2000). Thus tensions trigged violence in the 2002 election.

The violence of 2002 included; personal and physical attacks amongst citizens; domestic violence which included marital rape and female genital mutilation; violence against women in communities such as rape; violence against women perpetrated by the state such as torture and impunity, police treatment and prison conditions. This conflict also carried with it tensions arising from ethnic rivalry. As Ali Dinar puts it;

> [P]arliamentary by-elections in early 2001 were associated with serious violence. …[S]poradic violence between members of ethnic groups seen to be allied to the

ruling party and those perceived to support the opposition continued in the run-up to the 2002 election. Inter-ethnic fighting in late 2001 in the interior of Coast Province, as well as episodes of such violence in Nairobi in late 2001 and early 2002, claimed dozens of lives.[3]

As a way of trying to end the violence and bring peace amongst the Kenyan people, President Mwai Kibaki promised to implement a new constitution in 2002. He had intended to implement the constitution within 100 days in office, but these kinds of promises ended up fading away once he got into office. It was only in 2003 that the Kibaki government started working on a constitutional review process. As Horowitz (2008:3) writes.

> In 2003 the Kibaki government established a constitutional review process, ostensibly with the aim of developing a new draft constitution that could be put before the public in the national referendum. However, the review process became highly contentious and ultimately produced a draft – the so called "Bomas" draft – that divided the political elite. The Bomas draft contained both inclusive and exclusive power-sharing provisions. The draft however was never put to the public vote. Before the referendum, which was held in November 2005, the Attorney General modified the draft, stripping the main power-sharing features from the bill. The final referendum vote, which saw politicians and voters divide largely along ethnic lines, failed by a wide margin. Once again, fundamental reform was deferred.

3.6.1 The 2005 National Referendum

According to (Kimenyi and Shughart II 2008:3) "In November 2005, Kenyans voted in a constitutional referendum asking them to accept or reject a proposed constitution which, if approved by the majority of the voters, would have replaced the current constitution". The proposed constitution was brought about by President Kibaki in his inaugural address to demonstrate his commitment to advancing democracy after bringing to an end 40 years

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[3] Ali Dinar (2002), Kenya: political violence 11/06/02 ,http://www.africa.upenn.edu/Urgent_Action/apic-061102.html

of rule by President Moi. The voting of the referendum was divided into two campaigns, the "NO" campaign and the "YES" campaign. The "NO" campaign was to vote for a constitutional reform while the "YES" campaign was to vote against constitutional reform, meaning being resistant to change and being in favor of the status quo.

As a result,

> It [the referendum] was rejected by a landslide of ''No'' votes. The principal reason for defeat, in the eyes of its opponents, was that the proposed constitution, much like the one it was meant to replace, endowed the executive branch with excessive political authority. The majority of voters instead favored a system in which substantial power would be devolved to the national legislature, with a prime minister serving as head of government. Thus, the proposed constitution's failure to deal with the most salient political issue—constraining executive power—was the proximate cause of its overwhelming rejection. (Kimenyi and Shughart II 2008:3)

The key aim of the referendum was to bring about accountability and transparency to Kenya's political system. According to Juma (2007: 15)

> The main objectives of this campaign were to inter alia: enhance transparency and accountability in the public sphere by working to strengthen democratic governance; and, to expose statements and or speeches by political 'leaders', which amounted to incitement or calls for ethnic nationalism and/or hatred of external ethnic groups.

It can therefore be noted from the above incidences that Kenya appears to find it hard to deal with issues emanating from identity politics. Even when new leaders are voted into power, there seems to be a lack of confidence in their ability to deal effectively with ethnic tensions. For example, the November 2005 national referendum

> [W]as rejected by 58% of voters. This result was also widely viewed as a vote of no confidence in President Kibaki's government. This prompted President Kibaki to dismiss his entire government and start with a new team which excluded all those Ministers (mainly from the LDP faction of the NARC Coalition) who campaigned and voted against the Wako Draft. Some ministerial nominees rejected their appointments. This effectively marked the end of the NARC Coalition. (Owiti 2008:13)

Thus, in highlighting significant points of political convergence in Kenya, it is critical to look at Kenya's political conflict and the significance of the power-sharing agreement of 2008 in order to address issues such as ethnic nepotism or tribalism and the impact these phenomena have on Kenya's political system.

3.7   Kenya's 2007- 2008 Elections

In March 2007 Kenyans went to the polls to participate in the presidential, parliamentary and civic election. The elections of 2007 were Kenya's fourth election since the re-introduction of multiparty politics in 1991[4]. According to Dagne (2008:2),

> An estimated 14.2 million (82% of the total eligible voters) Kenyans were registered to vote, while 2,547 Parliamentary candidates were qualified to run in 210 constituencies, according to the Electoral Commission of Kenya (ECK). A total of 15,331 candidates were approved to compete in the 2,498 local wards. Nine candidates competed in the presidential election.

Party contenders for the presidential election of 2007 included Mwai Kibaki, Raila Odinga and Kalonzo Musyoka. These contenders had their own complex histories of party affiliation.

> Kibaki reconstituted his coalition as the Party of National Unity (PNU), which included members of Moi and Kenyatta's KANU. In the meantime, ODM constructed a coalition of leaders labeled the 'Pentagon' from the spread of Kenyan provinces: Odinga from Nyanza province…[F]alling out with ODM, Kalonzo Musyoka formed the splinter ODM-Kenya (ODM-K). (Gibson and Long 2009:2)

Musyoko [the extant Vice President of Kenya] however did not receive much support outside the Ukamban region in the Eastern province which is where his home is based, and for that reason, Kenya's presidential election was a race between Odinga from the ODM and Kibaki for the PNU. It is noteworthy, that both candidates formerly had been members of KANU – but had different ethnic origins.

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[4] Previous multiparty elections were held in 1992,1997 and 2002

The race, which was closely fought by Kibaki and Odinga, was the first election in Kenya's history to pit a Kikuyu against a Luo. Leaders from the two groups have at times worked together, as in the early days of KANU or more recently when Odinga and Kibaki joined forces in 2002 to defeat Moi. However, there is a long history of bad blood between the two groups that dates back to the independence era. (Horowitz 2008: 3)

Noteworthy, also, is that Odinga and Kibaki respectively targeted different socio-economic groups, thus ensuring that class distinctions were highlighted as a feature of the election.

Both Odinga and Kibaki took positions that played on their policy strengths, highlighting differences over salience and solutions. In appealing to Kenya's wealthier and growing urban middle class, Kibaki touted his performance in achieving a robust growth rate. Odinga fashioned a more populist message, charging Kibaki with helping the rich and ignoring the country's poor.

This election was observed by a number of internal and external organizations, including President Mwai Kibaki's advisors, the Electoral Commission of Kenya (ECK), the United States and the European Union Election Observation Mission (EUEOM) which was an independent European body ensuring a high standard for democratic elections.

For the purpose of ensuring accountability and equality in Electoral Governance in Kenya, the Election Monitoring and Response Centre (EMRC) was established. Commenting on Kenya Human Rights Commision Report (KHRC), Juma (2008:16) states that "The goal of the EMRC was to support the creation of a conducive electoral environment where voters and candidates would not face limitations that would adversely undermine their fundamental freedoms in the course of participating in the 2007 General Elections". The figure below shows the areas KHRC monitored; it also depicts the number of monitors by province and respective constituencies.

Figure 5

Provinces, Constituencies and Monitors
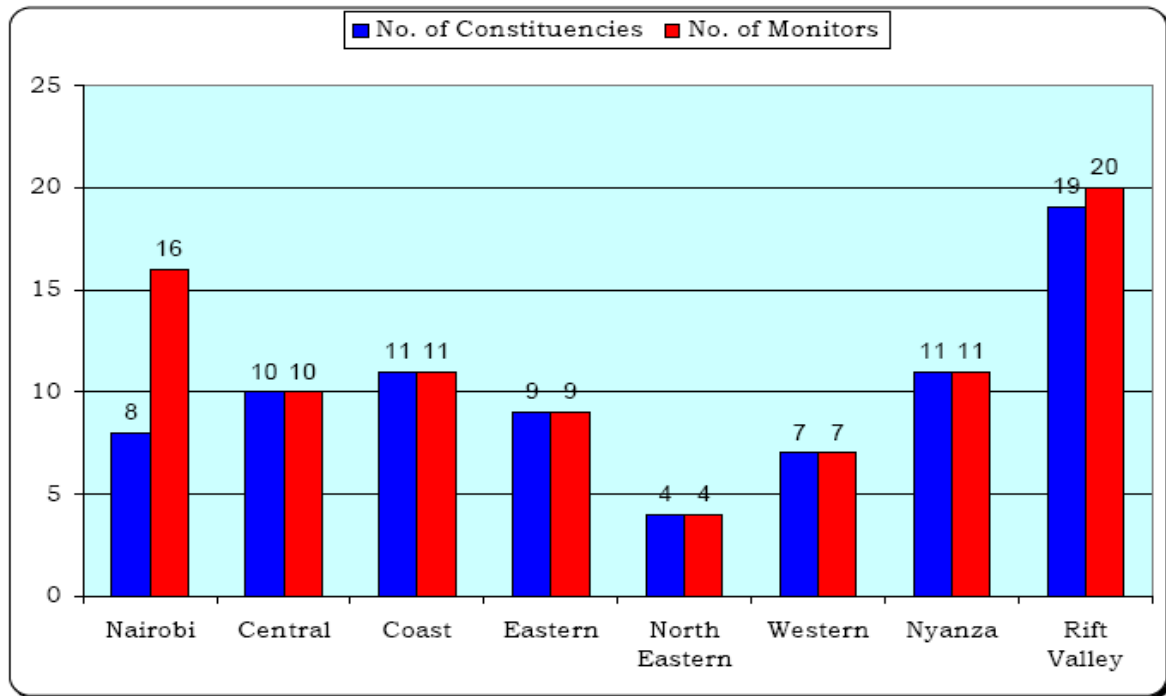
Source Juma (2008: 18)

According to Juma, the brief of the EMRC was to

> Monitor and document the observance of human rights standards by all actors in the electoral process and, to campaign and lobby for the observance of human rights standards through public interest media campaigns and civic engagement. (Juma 2008:16).

(See appendix 1 for a full account of activities undertaken by the EMRC)

A number of observers, especially the ones based in Kenya had anticipated Kibaki's defeat. "Many observers, including key President Mwai Kibaki advisors, acknowledged that President Kibaki and his party would lose in December." (Dagne 2008: 2). This prediction however, was proven incorrect when the results were released. Kibaki was declared the winner of the 2007 elections. "In the presidential race, the incumbent, Mwai Kibaki, defended his seat on a Party of National Unity (PNU) ticket against Raila Odinga

of the Orange Democratic Movement (ODM), Kalonzo Musyoka of ODM-Kenya, and six other presidential hopefuls."(Lynch 2008: 541)

3.7.1 ECK's Findings

Below is a table showing the official National results

Table 3 Electoral Commission of Kenya: Official Nation Results

Other Names	First Name	Votes	Party Abrev	Party
Mwai	Kibaki	4,578,034	PNU	Party of National Unity
Raila Amolo	Odinga	4,352,860	ODM	Orange Democratic Movement
Stephen Kalonzo	Musyoka	879,899	ODM-K	Orange Democratic Movement - Kenya
Joseph Ngacha	Karani	21,168	KPTP	Kenya Patriotic Trust Party
Pius Muiru	Mwangi	9,665	KPP	Kenya People's Party
Nazlin Omar Fazaldin	Rajput	8,624	WCP	Workers Congress Party of Kenya
Kenneth Stanley Njindo	Matiba	8,049	SSA	Saba Saba Asili
David Waweru	Ngethe	5,976	CCU	Chama Cha Uma Party
Nixon Jeremiah	Kukubo	5,926	RPK	Republican Party of Kenya

Source: (RescueKenya: 2008)

Since the constitution requires a presidential candidate to meet certain constitutional requirements in order to become president, president Kibaki according to the ECK seemed to have met all the requirements demanded by Kenya's Electoral rules. There are three main requirements set out by Kenya's Electoral rules to become president. Namely:

1. The candidate must win the most votes in a nation-wide count
2. The candidate must secure at least 25% of the vote in five of any eight provinces
3. The presidential victor must also win the parliamentary seat in their own constituency. (Gibson and Long 2009:2)

Since the elections of 2007 were monitored and run by the ECK, in justifying Kibaki's victory, according to Gibson and Long (2009:3), ECK reported that,

> Kibaki, Odinga, and Musyoka all won parliamentary seats. It also reported that Kibaki tallied 225,174 more votes than Odinga, producing a 46.4– 44.1% win. Musyoka polled a distant third with 8.9% of the vote. The ECK reported that

Kibaki met the 25% threshold in every province except Nyanza, Odinga's homeland; and that Odinga surpassed 25% in all provinces except Central and Eastern, Kibaki's homeland.

3.7.2   Contrary Findings

As things turned out, however, the ECK's findings were deceptively unproblematic.

Firstly, cases of violence were overlooked. According to Gibson and Long (2009:5),

> During December 2007–February 2008, Kenya experienced shocking levels of post-election hostility: battles between government officers and ODM supporters; between members of both main political coalitions; and between various ethnic communities, particularly over long- standing land disputes.

As Owor (2008:114-115) reports:

- In general the proceedings on Election Day went well. Kenyans turned out in large numbers to vote, electoral material were supplied well in advance to most polling stations and the conduct of the ECK personnel during the voting period was exemplary.

- Essentially, the problem began on 28 December, when results began to trickle in from the various constituencies. By that evening the preliminary results released by the ECK revealed a 1 million vote gap between the ODM-Kenya candidate, Raila Odinga, and the PNU candidate, sitting President Mwai Kibaki.

- Then things began to go wrong
    - Returning officers covering areas regarded as Kibaki strongholds disappeared, causing delays in the transmission of results from Central and Eastern Provinces.
    - When the results from Central and Eastern provinces were finally released there were clear disparities between the provisional results at the polling station and the official results contained in the statutory forms at the ECK national tallying centers.
    - Other abnormalities included the submission of photocopied results contrary to the legal requirements, the absence of the signatures of presiding officers and party agents and of the ECK stamp that was crucial

to authenticating the documents, and the correction of results that revealed discrepancies, for example, in areas that reflected a turnout of more that 100%.

- As a consequence the final results released by the ECK on 30 December in response to pressure from both the PNU and the ODM-K revealed that President Kibaki had won with 4,5 million votes against Raila's 4,3 Million.

- Within an hour after the ECK's announcement President Kibaki was sworn in at State House, Nairobi, for a second five-year term. Within minutes fighting and mass protests broke out in different parts of the country, with the majority denouncing the results.

Moreover, Juma notes that,

> Generally, there was violence throughout the pre-election period, albeit incidental. Incidences of political violence reported to the EMRC totaled 72, with Central province leading with 19 cases of violence. These incidences of violence were in the most part incited by politicians. (Juma 2008: 24).

Below is a figure reflecting the cases of violence and incitement to violence during the pre-election period.

Figure 6
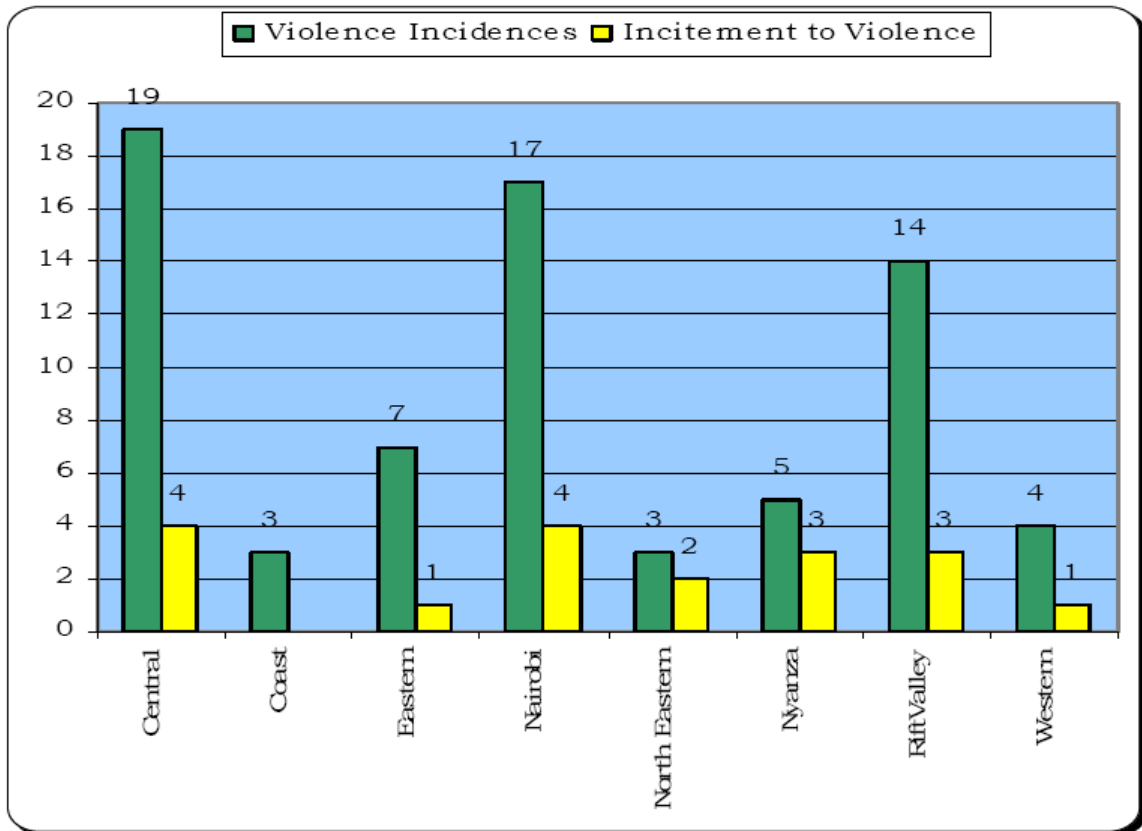
Source (Juma 2008:24)

Secondly, the EU Observation mission reported that

> By 5 January 2008, six days after the official announcement of the results, the EU
> EOM was informed by ECK officials that the ECK had still not received the
> original result forms and supporting documentation from more than 20
> constituencies. Serious inconsistencies and anomalies were identified in various
> constituency results as announced by the ECK. For example, in Molo (Rift Valley
> Province) and Kieni (Central Province), there were significant differences
> between presidential election results reported by EU EOM observers at the
> constituency level and the results announced by the ECK. (European Union
> Election Observation Mission 2008:33)

In general, the ECK's strategic omissions undermined confidence in the vote which in
turn produced widespread protest and violence (Gibson and Long 2009:5).

To be sure, recent reports noted significant managerial failures. A 2008 final report by the International Foundation for Electoral Systems (IFES), for instance, cites numerous shortcomings of the Electoral Commission of Kenya (ECK), the management body responsible for the administration of elections. The report highlights substantial problems with the independence of the ECK and cites a blatant disregard for constitutional law in the executive's appointment of ECK commissioners. (McGee 2008:17)

Accordingly, the International Foundation for Electoral Systems (IFES) described the ECK as having "weak accountability mechanism, poor capacity for maintaining the voters register and weak organizational structure" (International Foundation for Electoral Systems 2008:17). This was confirmed by a senior member of the ECK, Jack Tumwa, who conceded that "Although all the parties had breached election regulation during the primaries, the ECK lacked the machinery and personnel to enforce security and curb bribing" (Kwayera 2008: 22). In short when the results were announced nationally they failed to correspond with tallies recorded at the local polling station.

Significantly, McGee (2008:18) argues that "In fact, much of the failure in the actual execution of the election was deliberately undertaken to either maintain power (by Kibaki's incumbent government) or secure it (by Odinga's opposition front)". A Kenyan (living in South Africa) summed up the atmosphere of suspicion and distrust:

> As Kenyans we want change. We recognize Raila Odinga as our president. We do not recognize Kibaki – he's a thief. He has stolen the election and that is the reason why there is violence in the country. The Kikuyu are greedy people. They believe in stealing and not going to school. They are mostly the crime promoters, with the majority of them in jail. (Olo quoted in Mail and Guardian 11-17 January 2008, p. 11)

The monopolization of national resources by a particular ethnic group generates socio-economic inequalities, and ultimately, generates a correspondence between ethnic and class antagonism. Warah (2008:13) sums up socio-economic disparities as follows:

> Kenya is one of the most unequal societies in the world. Ten percent of the country's 35 million people control 42 percent of the nation's wealth, leaving nearly half the population to subsist below the poverty line. Inequalities within cities such as Nairobi are stark- resident of the capital's ethnically diverse slums,

rated as the biggest and most deprived slums in the world, service some of the wealthiest homes and neighborhoods in Africa.

McGee (2008:18) highlights the ethnic problematic:

> The violence that erupted in Kenya was…a political matter of ethnicity and representation. While enhancing administrative procedures can improve electoral efficiency and curb the possibility of violence, without a fundamental re-examination of the manner in which the electoral system can yield better representation, the root problem will remain.

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As succinctly put in 2008 in the preamble to 'Agreement on the Principles of Partnership of the Coalition Government', "there is a crisis in this country". The next chapter investigates the attempt to resolve this crisis, and compares conflict resolution efforts in Kenya with the consociational model (as outlined and elaborated in chapter 2 above).

CHAPTER FOUR

THE POWER –SHARING AGREEMENT AND CONSOCIATIONAL ELEMENTS IN KENYA

4.1   Introduction

This chapter will focus mainly on the description of the power-sharing agreement of 2008 and the application of consociationalism in Kenya; precisely, it seeks to address the following questions, what led to the power sharing agreement? Who was involved in the mediation efforts towards the power-sharing agreement? What is the nature of the power-sharing agreement? What is the significance of the National Accord and Reconciliation Act 2008? Moreover, in an attempt to elucidate the applicability of consociational formula in Kenya's democracy, the chapter will apply and test some of the elements of consociationalism to the case of Kenya. It shall also compare and analyze the National Accord and Reconciliation Act of 2008 against the consociational 'ideal model'.

4.2   Mediation Efforts Towards Power-Sharing.

Initially, Kenya's mediation efforts were not easy to execute. This is because mediators found it hard to bring the two rivals together in search of a peace agreement. Much of the difficulty came from Odinga's side which was reluctant to comply with the agreement without clear assurance from the international community that Kibaki will not eventually turn against him on the power-sharing deal as it was previous elections. As (Dagne 2008:8) put it,

> International efforts to bring a negotiated settlement failed in the initial phase of the crisis. The African Union, the Kenyans, and the European Union all encouraged a power-sharing arrangement between Odinga and President Kibaki. Odinga, while willing to negotiate with Kibaki, was reluctant to agree to a deal without international guarantees. Kibaki was elected president in 2002 largely due to strong support from Odinga and current opposition leaders. As part of the coalition agreement, Odinga was to become prime minister in the Kibaki government, although Kibaki reportedly reneged in that agreement.

Initially, the President of the African Union (AU) John Kufour of Ghana was unsuccessful in bringing the two rivals to the negotiating table. However, the mediation

efforts in Kenya's conflict received solid support from the United Nation's former Secretary General– Kofi Annan who actively involved himself to ensure that the two parties eventually arrived at a peace agreement. Moreover, the African Union (AU) supported Annan's mediation. Thus, the consensus to begin mediation within an African framework was quickly endorsed by the AU. Annan was also influential with the establishment of a seven member Independent Review Commission which was to be part of the Kenyan election and was to be headed by the retired South African Judge Johann Kriegler. "Specifically, the Kriegler Commission was mandated to examine all aspects of the controversial 2007 presidential poll through consultations with officials of the ECK, election observers, politicians, and citizens" (Murithi 2009:5). Some of the responsibilities of the Kriegler Commission were to review "the organization and conduct of the 2007 elections, extending from civic and voter education and registration through polling, logistics, security, vote-counting and tabulation to results-processing and dispute resolution" (Murithi 2009:5).

The Commission was also tasked with assessing the independence of the structure and composition of the ECK, and to also contribute towards improving future elections in Kenya. As Horowitz (2008:9) puts it,

> Given the bitterness and distrust that existed at the start of the negotiations, the fact that a deal was reached is a credit to Annan's skillful management of the process… [T]he personal dedication and adroit management of the lead mediator, Annan, was of considerable importance in maintaining progress. Early on Annan managed to end the acrimonious war of words that was being waged between the two sides in the media by demanding that both sides stop airing their grievances to the press. At a critical point, Annan also sequestered the entire negotiations process for several days in Tsavo, one of Kenya's wildlife preserves, to remove the process from the limelight in Nairobi, the nation's capital. Finally, in the last stages, when the negotiations were stalled over key details, Annan bypassed the negotiation teams appointed by each party and appealed directly to the principals, the heads of the two parties.

According to Juma, there are four contributing factors to a successful mediation, and thus the final signing of the National Accord.

First was a clear framework of mediation within the ambit of the AU which was identified early in the crisis, within the second week of the violence, and around which support and momentum grew over time. Accepted by both sides of the conflict, this mechanism enjoyed legitimacy and hence became a rallying point for all actors interested in resolving the crisis. (Juma 2009:408)

In other words, the two leaders or party rivals would have not agreed to the deal if the mediation framework was unclear. Also, having the AU coming up with such a framework gave confidence to the two rivals and contributed towards their willingness to cooperate. Another reason, as Juma (2009:408) puts it "Second was the role of Kenyan stakeholders in mounting and sustaining pressure on both the mediating team and parties to the conflict to return Kenya to peace, mobilizing across party lines". Most Kenyans had seen the impact of the dispute between the two leaders and thus they also offered a contribution towards the solution.

Most of them put pressure not only towards the mediating team but also to their leaders. Kenyans from various constituencies engaged in the peace process from start to beyond the signing of the accord. In many ways, this translated into local ownership and identification with the peace process and built a constituency of support around it. (Juma 2009:408)

Thirdly, without the character of the team, the mediation would have had little chance of success. The mediating team received not only respect in Kenya during their attempt to resolve the dispute, but also international recognition. This in turn raised confidence of many Kenyans. As Juma (2009:408) observes "their being African [*the mediation team*] diminished any resistance that could have been associated with Western or other external influence on the Kenyan process".

4.3   Power-sharing Agreement 2008

At the outset, it is important to note though, that debates on the implementation of the power-sharing deal had been a topic of discussion and consideration for many years in Kenya. Horowitz (2008:6) asserts that, "The post-election violence in 2008 was the catalyst for a power-sharing deal. But debates about power-sharing in Kenya predate the 2008 deal by several decades." Thus, the power-sharing deal of 2008 was a continuation of past efforts in Kenya.

In March 2008, a power sharing deal was reached between the two rival political parties, respectively led by Kibaki and Odinga. "The agreement, which calls for a new coalition government, was known as the National Accord and Reconciliation Act of 2008 and was unanimously passed by the Parliament" (Kwaja 2009:43). Onyango in (Kwaja 2009:43) states that, under this peace agreement, 40 ministers were named as cabinet together with 50 assistant ministers. This faction of politicians was also referred to as a "peace cabinet" (Onyango 2008).[5]

During the course of the negotiations, the two sides were threatening to sabotage the process. This was due to demands that were advanced by the ODM with which the PNU disagreed. "First was the creation of the Prime Ministerial post who would be the Head of Government and who would have powers to appoint and remove government officers, including cabinet members" (Horowitz 2008:8). Secondly, the ODM demanded the equal division of cabinet portfolios and that the two sides must share high ranking profile ministries such as the Interior and Finance. "Thirdly, ODM called for proportionality of all levels of government" (Horowitz 2008:8). The entrenching of the deal in the constitution was ODM's last demand. On the contrary, the PNU insisted on that the President remain the Head of Government "and retain the authority to determine the composition of the cabinet. The Prime Minister position would oversee the ministries but would not have executive functions related to hiring or firing." (Horowitz 2008:8)

It was not easy for both parties to reach a consensus on the deal, and since parties were coming up with their own demands, some provisions were agreed upon but some were not, as Table 6 illustrates.

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[5] For a description of the National Accord and Reconciliation Act and the Agreement on the Principles of partnership of the coalition government see (Appendix 2).

Table 4   Provisions of the Power-Sharing Agreement

Unanimity rules	None in legislative arena. In the Cabinet, appointments and removals must be approved by both parties.
Grand coalition	Yes
Fixed equality of representation among different groups	No, except that Cabinet positions and top administration posts will be shared evenly by the two main political parties. No specific provisions for particular ethnic or religious groups.
Proportionality in election results	No. Kenya retains a presidential system with first-past-the post constituencies for Parliament.
Proportionality in gov't appointments, contracts, rewards	Yes, only with regard to higher-level appointments. No specific provision for lower-level appointments in civil service, contracts, or other rewards.
Federalism	No
Group autonomy provision, for example with respect to legal regulations, education, or religious matters	No
Guarantees of individual liberties	No new provisions added above those already contained in the existing constitutions.
Power-dividing rules (restricting the gov't from regulation of certain policy areas, such as religious practices, language)	No
Wealth-sharing	No
Sunset (temporary) provisions with respect to any aspects of power-sharing	Yes. The coalition government will be dissolved if the tenth parliament is dissolved; if the parties agree in writing; or if one coalition partner withdraws from the coalition.

Source: Horowitz (2008:9)

4.4 The Constitutional Referendum 2010, Leading to the Kenyan Constitution of 2010

It is worth noting that (in August 2010) both Kibaki and Odinga backed in principle a new constitution. Divided into two campaigns, the "Yes" campaign – seeking to win the referendum - and the "No" campaign - against the proposed new constitution - Kenyans were to vote either for or against the new constitution which intended to provide a peaceful resolution, not least to ethnic disputes. According to the Economist (July 29 2010), "The referendum on a comprehensive new constitution… [I]s being hailed as a big

step towards overhauling Kenya's creaking political system and giving people a better chance of peaceful reform"[6].

The Economist-July 29 2010 further states that,

> The proposed constitution provides for an overhaul of the executive, legislature and judiciary, together with a measure of devolution to the regions. The country will still be ruled by an executive president, but he (there is no prospect yet of a she) will be constrained by checks and balances, and parliament will vet key appointments that had previously been made by presidential fiat. President and parliament will have fixed terms, with elections every five years. To win the top job, a candidate will have to win support from across Kenya's 40-plus recognized ethnic groups by winning at least half of all votes cast and at least a quarter of them in more than half of the 47 newly demarcated counties.

The proposed constitution also provided a number of gains for both women and children, some of the provision in the constitution include issues of violence against women and children, discrimination of women, the protection of matrimonial property during and after marriage and the inheritance of land by women.

The constitution was accepted by more than 4.1 million voters, or 67 percent of about 6.2 million votes that have been counted, according to initial commission data broadcast by NTV, an independent television station based in Nairobi, Kenya's capital. The country has about 12.7 million registered voters. (Mcgegor & Ombock 2010 – 5 August)

The chapter now moves on to consider the extent to which Kenya's new constitution - in which the power sharing agreement is embedded in statutory form - contains consociational elements.

4.5   Four Elements Of Consociationalism In Kenya

First and foremost, it should be noted that,

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[6] See appendix 3 for the results of the Interim Independent Electoral Commission (IIEC) final tally of referendum results

The most important method of consociational government – the grand coalition in one form or another is complemented by three secondary instruments: mutual veto, proportional representation and segmented autonomy. All four are closely related to each other, and they entail deviations from pure majoritarian democracy. (Lijphart 1977:36)

4.5.1 Grand Coalition

Grand coalition (also known as executive power-sharing) is one of the main elements of the consociational model in which each of the main communities share executive power in an executive chosen in accordance with representation as the main principle of democratic governance. Helms (2006:47) refers to a grand coalition as "the strong power-sharing character of public policy-making, [w]hich is largely a result of the exceptionally numerous and powerful institutional checks and balances". There are many forms of grand coalition government. The usual grand coalition entails the inclusivity of linguistic, ethnic and religious parties. Other possibilities could be "the formation of grand governing coalitions in sites other than the cabinet, such as the Dutch pattern of permanent or ad hoc "grand" councils or committees with much greater influence than their formal advisory role" (Lijphart 1996:259).

In another form, the grand coalition is defined precisely in a predetermined fashion that is intended to be a representation of linguistic and other groups. Lijphart (1996: 259) makes an example of the Belgium cabinets which "have rarely been coalitions of all significant parties, but they have been ethnically "grand" because of the constitutional rule that cabinets must consist of equal numbers of Dutch-speakers and French-speakers. Lastly, a government of grand coalition may entail "neither the cabinets nor parties" (Lijphart 1996:259); instead top government positions are specified according to ethnic and religious groups. Such government positions may include: the Presidency, Prime Ministership and assembly speakership. Grand coalition is usually formed during times of crisis and is usually strengthened also during these times. Lijphart (1997:29) states, "Grand Coalitions have achieved unity and stability during critical transitional periods by stilling partisan passions and strengthening consensus".

Kenya's case seems to add even greater variety, since its grand coalition is formed along party lines. Another problematic is that, although Kenya's main parties are not strictly speaking 'ethnic', they are informed by a sense of ethnic identity. Yet, the Kenyan constitution condemns the foundation of political parties on ethnic basis. Section 91 (2) (a) of the constitution of the Republic of Kenya states: "A political party shall not be founded on a religious, linguistic, racial, ethnic, gender or regional basis or seek to engage in advocacy of hatred on any such basis[7]."

Looked at from a consociational angle, the Kenyan case is rather difficult to define. In Kenya, the grand coalition entails the distribution of top government offices to specific political parties which draws much of their membership from discrete ethnic groups. For example, the coalition cabinet has its ministries distributed along party and therefore, by inference, ethnic lines. The ministry of Defense, for instance, has its Minister Yusuf Haji from the PNU, its Assistant Minister David Musila from ODM-K and another Assistant Minister Joseph Nkaisserry from the ODM party.

Nonetheless, commenting on Kenya's ethnic diversity and the 2008 agreement, Chege 2008:126) states,

> The political tools used to end the conflict are well known. They include a "grand coalition government" of all major parties and leaders; "power sharing" between ethnic-based factions; and allocation of executive positions so that all major groups are fairly represented. Such practices represent important elements of the "power-sharing" or "consensus" model of democracy that Arend Lijphart prescribes for conflict-prone plural societies like Kenya.

Accordning to Chege, therefore, a consociational model would have been appropriate in the Kenyan case. Yet, as this chapter has already suggested, Kenya deviates from this model.[8]

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[7] The constitution of the Republic of Kenya 2010, section 91, clause 2(a)

[8] For more details on the distribution of ministerial portfolio along party lines see Appendix 4 (The grand coalition cabinet)

Furthermore, Clause 4 (3) of the Description of the National Accord and Reconciliation Act states that "The composition of the coalition government shall at all times reflect the relative parliamentary strengths of the respective parties and shall at all time take into account the principle of portfolio balance". Power sharing is also seen prominently from the two leaders who were contesting for the presidential post (Raila Odinga and Mwai Kibaki) , to avoid further disputes, Kenya created a Prime Ministerial post with other Deputy Ministerial posts which were mainly intended to bring peace and cooperation among the two competing leaders. As entrenched in Section 15A of the Constitution of the Republic of Kenya

15A.   (1) There shall be a Prime Minister of the Government of Kenya.

(2) There shall be two Deputy Prime Ministers of the Government of Kenya.

(3) Parliament may, by an Act of Parliament and notwithstanding any other provision of this Constitution, provide for-

(a) the appointment and termination of office of the Prime Minister, Deputy Prime Ministers and Ministers;

(b) the functions and powers of the Prime Minister and Deputy Prime Ministers;

(c) the establishment of a coalition Government;

(d) any other matter incidental to or connected with the foregoing.[9]

Considering that all members of government must also be elected Members of Parliament, a comment made by Berg-Schlosser in 1985 still holds true: "not all members of government are necessarily those which would have been put forward by the majority of their respective ethnic groups" (Berg Schlosser 1985:100), For example,

Yet the constitution of the Republic of Kenya states that Parliament shall enact legislation to promote the representation in parliament of -

(a) women;

(b) person with disabilities;

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[9] The Constitution of the Republic of Kenya 1963 (as Amended in 2008)

(c) youth;

(d) ethnic and other minorities; and

(e) Marginalized communities[10].

Thus, the formation of a grand Coalition dominated by parties informed by the identities of ethnic majorities is against the spirit of the constitution which contains consociational requirements. In terms of proportional representation, however, as we shall see, the same does not necessarily hold true of the Kenyan parliament.

4.5.2   Proportional Representation

In consociational theory, this element can be understood as the basic standard of political representation, public service appointments and allocation of public funds. The main purpose of proportional representation "is to enable government decisions to be influenced according to the approximate numerical strength of the most important social groups and to allow civil service appointments and public financial resources to be allocated according to the same principle". (Berg Schlosser 1985:101) Moreover, Lewis (1965:79) argues that "One of the advantages of proportional representation is that it tends to promote coalition government. This is a frequent, but not necessary outcome".

In Kenya, however, members of parliament are voted directly from their constituencies. A system of direct and simple majority vote in single-member constituencies is used. Thus Kenya has a Plurality-majority system and a majoritarian democracy. This kind of system "gives more emphasis to local representation via the use of small, single-member electoral districts than to proportionality. Amongst such systems are plurality (first-past-the-post), runoff, block and alternative vote systems" (Reilly 2003).

That said, Lijphart (1996:261) the 'father' of consociationalism, does not believe that a plurality-electoral majority system necessarily disfavors geographically concentrated minorities. Here it is worth noting that Kenya's minorities are regionally based. Kenya has preserved the geographical separation of the main areas of ethnic settlements to a

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[10] The constitution of the Republic of Kenya 2010, section 100

very large extent. Given this degree of geographical demarcation and social segmentation, it can be argued that Kenya's Parliament is organized along relatively proportional lines. "Elections for the seats in Parliament provided for under Articles 97 (1) (c) and 98 (1) (b), (c) and (d), and for the members of county assemblies under177 (1) (b) and (c), shall be on the basis of proportional representation by use of party lists"[11].

It, however, cannot be argued that there is any significant element of federalism in Kenya, which is constitutionally a unitary state, meaning that Kenya's regions do not have their autonomy. Instead, by way of compromise, Kenya's electoral boundaries reflect (at least in principal) the ethnic diversity of Kenyan people. According to the constitution:

- The Independent Electoral and Boundaries Commission shall be responsible for the conduct and supervision of elections for seats provided for under clause (1) and shall ensure that— c) except in the case of county assembly seats, each party list reflects the regional and ethnic diversity of the people of Kenya[12].
- The composition of the national executive shall reflect the regional and ethnic diversity of the people of Kenya[13].
- The composition of the command of the Defence Forces shall reflect the regional and ethnic diversity of the people of Kenya[14].
- The composition of the National Police Service shall reflect the regional and ethnic diversity of the people of Kenya[15].

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[11] The constitution of the Republic of Kenya 2010, section 90, clause 1

[12] The constitution of the Republic of Kenya 2010, section 90, clause 2(C)

[13] The constitution of the Republic of Kenya 2010, section 130, clause 2

[14] The constitution of the Republic of Kenya 2010, section 241, clause 4

[15] The constitution of the Republic of Kenya 2010, section 246, clause 4

According to the constitution, proportional representation also applies to the general allocation of portfolios, As indicated in the National Accord and Reconciliation Act Clause 4 (3) "The composition of the coalition government shall at all times reflect the relative parliamentary strengths of the respective parties and shall at all times take into account the principle of portfolio balance". However, in the power-sharing agreement of 2008, the two main parties did not agree to a fixed equality of representation among different groups. They merely agreed that post should be shared evenly by the two main political parties and this only applies to cabinet positions and top administration posts.

In a nutshell, in regard to both the composition of the Grand Coalition and the limited extent to which the principle of proportional representation has been applied, power-sharing in Kenya is more a matter of sharing power between two dominant parties and their leaders than it is about securing the representation and welfare of minority groups, ethnic or otherwise.

4.5.3 Segmental Autonomy

Segmental autonomy is also known as self-government in which each group enjoys some significant measure of autonomy, particularly in the area of cultural concerns. This chapter will now look closely at the consociational principle of segmental autonomy.

Lijphart (1977:41) defines this element as "rule by the minority over itself in the area of the minority's exclusive concern". Some of the features that distinguish these groups are language, religion and cultural practices. Lijphart (1996: 260) states that,

> Cultural autonomy for religious and linguistics groups has taken three forms in power-sharing democracies. (1) federal arrangements in which state and linguistic boundaries largely coincide, thus providing a high degree of linguistic autonomy, as in Switzerland, Belgium, and Czecho-Slovakia; (2) the right of religious and linguistic minorities to establish and administer their own autonomous schools, fully supported by public funds, as in Belgium and the Netherlands; and (3) separate "personal laws-concerning marriage, divorce, custody and adoption of children, and inheritance- for religious minorities, as in Lebanon and Cyprus.

We have already established that Kenya is a unitary state. The question therefore is one of devolution. How much autonomy, if any, has been devolved to regions with distinctive languages, cultures and/ or religion of their own? As noted above, Kenya has preserved the geographical separation of ethnicities, at any rate, in the rural areas. For example, the North Eastern Province is dominated mostly by Somali-speaking people; the Rift Valley by the Kalenjins; the Central Province by the Kikuyu; and the Nyanza Province by the Luo. It is only a few provinces that have a mixture of different ethnic groups. According to the constitution of the Republic of Kenya,

(1) Every person has the right to use the language, and to participate in the cultural life, of the person's choice.

(2) A person belonging to a cultural or linguistic community has the right, with other members of that community—

      (a) to enjoy the person's culture and use the person's language; or

      (b) to form, join and maintain cultural and linguistic associations and

      other organs of civil society.

(3) A person shall not compel another person to perform, observe or undergo any cultural practice or rite[16].

Note, however, that the constitution does not refer to regional-cultural autonomy. Instead, the constitution refers to 'devolution' (Ghai, Y & Ghai,J,. 2010) There will be 47 counties, each with a county assembly. County votes will elect their own assemblies and governors who, in turn, will appoint an executive committee, which will implement the policies of the committee. Arguably, devolution will be a major step forward in the empowerment of geographically distinctive ethnic group, and thus will approximate to a consociational model. However, as Ghai (2010) points out, devolution will come into effect only after the next Kenyan election, and is to be phased in gradually. Ghai (2010) also notes that "minorities are to be proportionally represented in county assemblies and the executive". Granted, this system has yet to be implemented. Hopefully, however, it

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[16] The constitution of the Republic of Kenya 2010, section 44 (1)(2)(3)

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will prove to be a significant shift towards a significant aspect of the consociational 'ideal model'.

4.5.4   Minority Veto or Mutual Veto

The final key element of consociationalism is minority veto. Lijphart in (Lemarchand 2006:3) describes minority veto as "the ultimate weapon that minorities need to protect their vital interests and which works best when it is not used too often and only with regard to issues of fundamental importance". A good example of informal veto is found in Indian politics in the 1965 agreement, in which Lijphart (1996:261) states,

> The informal veto in Indian politics is the 1965 agreement by the central government that Hindi would not be made the exclusive official language without the concurrent approval of the major non-Hindi speaking regions, in effect giving a veto to the southern states, which had opposed dropping English as a language of administration. The provision works best if the minority veto does not have to be used very often in order to protect minority rights and autonomy, and this has been the case in India.

The application of the minority veto element is often not formalized in power-sharing democracies, but rather "power-sharing democracy usually consists of merely an informal understanding that minorities can effectively protect their autonomy by blocking any attempts to eliminate or reduce it" (Lijphart 1996:261). According to Berg-Schlosser, minority veto "serves to protect vital minority interest even against majority decision… [T]he fact that this veto is mutual usually prevents its overuse, a problem which, in the long-run, would otherwise lead to immobilism and deadlock" (1985:103).

In Kenya, there has not been formal institutionalization of this consociational element in any of the constitutions, including the most recent constitution. However, the history of Post Colonial Kenya indicates the presence of an informal minority veto in regard to land rights in traditional areas of settlement (Berg-Schlosser 1985:103), notably in Busia and Teso district (Miguel and Gugerty 2005). The inhabitants of these districts are believed to have historically acquired land rights and thus deserve to protect themselves from majority decisions. Arguably, a second instance of informal minority veto can be found

in the distinction successive Kenyan constitution (including the 2010 constitution) have made between church and state , along with a commitment to freedom of conscience , religion, belief and opinion as fundamental human rights. Given that 66% of Kenyans are Christians (Waris 2007: 39). "Muslims qualify numerically as a religious minority group" (ibid) in possession of an informal minority veto. However, much the same can be said of any country with a constitution that protects freedom of religion.

Taken all round, then, Kenya's power-sharing agreement and the constitution of 2010 bear no more than a passing resemblance (if any) to a consociational model. However, if the planned devolution appears to empower ethno-regional groups, then there will be at least one key consociational element in Kenyan democracy. The final chapter will argue that if Kenya's ruling elite honors the consociational commitment to segmental autonomy (in the form of devolving power to the 47 regions) it will be a significant step towards social and political stability.

CHAPTER FIVE

CONCLUSION: KENYA, CONSOCIATIONALISM AND ELITES

"My own view […] is that there are no real conflicts between the people of Africa. There are only conflicts between their elites" Amilcar Cabral (quoted in Davison, 1994:354)

Emphasizing that Africa is "the world's most conflict-ridden region" (2004: 297) Uzodike makes a convincing case for consociational democracy as distinct from majoritarian democracy. Uzodike highlights the colonial contribution to post-colonial conflicts in Africa, specifically in relation to the boundaries of colonial states. "It mattered little (if at all) to the metropolitan centers that the new entities were frequently made up of societies and cultural groups that either shared few interest or harbored abiding historical rivalries or animosities towards each other" (Uzodike 2004:287). Referring to the "severe structural segmentation" of many African countries, Uzodike makes the position that "the resource-starved African social and political environment provides the wrong context for majoritarian experiments at democracy" (Uzodike 2004:288). Uzodike recommends "power sharing modes of government" [which] "would mean that no cultural group would be left out of the political system (Uzodike 2004: 89) Citing Lijphart (1977), Uzodike highlights the significance of "a high degree of internal autonomy for groups that wish to have it". He also highlights, as a prerequisite of the above, the ability of elites to meet four requirements. Namely,

- Ability of elites to accommodate the divergent interests and demands of the subculture;
- Ability of elites to transcend cleavages and to join in a common effort with the elites of rival subcultures.
- Elites commitments to the maintenance of the system and to the improvement of its cohesion and stability; and
- The degree of elite understanding of the perils of political fragmentation. (Uzodike 2004:301-302).

It thus is arguable that the responsibility for implementing consociational solutions to ethnic conflicts rests squarely on the shoulders of African elites. This contention is supported by Vandeginste's analysis of problematics embedded in Burundi's power-sharing agreement.

> Burundi's Constitution of 18 March 2005 and the many consociational features of its current political regime are strongly rooted in the peace process that started in June 1998. In a way, also the political resistance against implementing and maintaining the consociational power-sharing equilibrium can be explained by taking into account the positions of the different political and military actors during the peace process. (Vandeginste 2009:71)

She further argues that "the notion of power-sharing mainly referred to the dividing of the cake between competing political elites and their networks, in particular the distribution of posts […]. (Vandegiste 2009:71). Vandeginste concludes that while in key respect; Burindi's constitution of 2005 follows a consociational 'ideal model', "In several respects, Burundi's constitutional and institutional setting stands out as a model of consociationalism, even though, in actual political practice, important gaps remain between the model and its implementation" (Vandeginste 2009: 74). In the final analysis, she attributes the disjuncture between theory and practice to "an unstable scene of ever-shifting alliances built around the neo-patrimonial interests of their leaders. The corporatist foundations and ramifications of classical consociationalism are clearly lacking" (Vandeginste 2009:84).

The study concludes that one key aspect of the 2008 power-sharing agreement (subsequently embedded in the constitution of 2010) qualifies as authentically consociational is the plan to devolve power to the forty-seven counties. As Kagwanja puts it, "One of the most revolutionary aspects of the new constitution is the redrawing of the political map of Kenya as 47 counties replacing the existing eight provinces as the centre-piece of devolution of resources and decision-making to Kenyans at the grassroots" (Kagwanja, P., 2010). Kagwanja adds that "This system marks a remarkable triumph of 'developmental devolution' over the ideology of ethnic federalism (*Majimbo*)

as an idiom of ethnic polarization. However, he sounds a note of warning with regards to "post-referendum elite alliances and jostling for 2012 presidential elections".

If Kenya's ruling and would-be ruling elite prove incapable of conforming with the four requirements as outlined by Uzodike (above), then – as is the case in Burundi- power-sharing efforts will be deeply compromised and perhaps doomed to failure not by the people of Kenya, but by their 'power-hungry elites'.

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APPENDICES

Appendix 1: Specific activities undertaken by the EMRC during the election of 2007-2008

a) Recruiting, training and managing a network of election monitors. A total of 117 monitors were recruited, trained and deployed as 88 constituency-based monitors and 29 media correspondents;

b) Assessing adherence of election monitors to the *KHRC Code of Conduct for Election-Monitors* in order to affirm their impartiality and commitment to upholding the integrity of the electoral process. The Monitors were supervised throughout the electioneering period (pre-election and the immediate post-election period) to ensure compliance with the *Code*;

c) Collecting, collating and verifying information from the field and other sources such as reports of other observer groups and media houses;

d) Entering data, analyzing it and generating cumulative statistics on the nature and types of incidents of human rights violations related to the elections. A total of 387 Election Monitoring Tools were keyed into the database.

e) Processing complaints requiring the intervention. The EMRC received numerous complaints from monitors through call-ins and e-mails, which were promptly dealt with;

f) Releasing bulletins and press statements on major incidents or patterns of violations as the situation dictated. The EMRC released a bulletin in October 2007 and also wrote numerous statements on election-related offences; and,

g) Working with other election observers, the Electoral Commission of Kenya (ECK), major political parties and civil society groups during the monitoring process.

Appendix 2: Text on Power-Sharing Agreement

ACTING TOGETHER FOR KENYA

AGREEMENT ON THE PRINCIPLES OF PARTNERSHIP OF THE COALITION GOVERNMENT

Preamble:

The crisis triggered by the 2007 disputed presidential elections has brought to the surface deep-seated and long-standing divisions within Kenyan society. If left unaddressed, these divisions threaten the very existence of Kenya as a unified country. The Kenyan people are now looking to their leaders to ensure that their country will not be lost.

Given the current situation, neither side can realistically govern the country without the other. There must be real power-sharing to move the country forward and begin the healing and reconciliation process.

With this agreement, we are stepping forwarding together, as political leaders, to overcome the current crisis and to set the country on a new path. As partners in a coalition government, we commit ourselves to work together in good faith as true partners, through constant consultation and willingness to compromise.

This agreement is designed to create an environment conducive to such a partnership and to build mutual trust and confidence. It is not about creating positions that reward individuals. It seeks to enable Kenya's political leaders to look beyond partisan considerations with a view to promoting the greater interests of the nation as a whole. It provides the means to implement a coherent and far-reaching reform agenda, to address the fundamental root causes of recurrent conflict, and to create a better, more secure, more prosperous Kenya for all.

To resolve the political crisis, and in the spirit of coalition and partnership, we have agreed to enact the National Accord and Reconciliation Act 2008, whose provisions have been agreed upon in their entirety by the parties hereto and a draft copy thereof is appended hereto.

The key points are:

• There will be a 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.
• The Prime Minister will be an elected member of the National Assembly and the parliamentary leader of the largest party in the National Assembly, or of a coalition, if the largest party does not command a majority.
• Each member of the coalition shall nominate one person from the National Assembly to be appointed a Deputy Prime Minister.
• The Cabinet will consist of the President, the Vice-President, the Prime Minister, the two Deputy Prime Ministers and the other Ministers. The removal of any Minister of the coalition will be subject to consultation and concurrence in writing by the leaders.
• The Prime Minister and Deputy Prime Ministers can only be removed if the National Assembly passes a motion of no confidence with a majority vote.
• The composition of the coalition government will at all times take into account the principle of portfolio balance and will reflect their relative parliamentary strength.
• The coalition will be dissolved if the Tenth Parliament is dissolved; or if the parties agree in writing; or if one coalition partner withdraws from the coalition.
• The National Accord and Reconciliation Act shall be entrenched in the Constitution.

Having agreed on the critical issues above, we will now take this process to Parliament. It will be convened at the earliest moment to enact these agreements. This will be in the form of an Act of Parliament and the necessary amendment to the Constitution.

We believe by these steps we can together in the spirit of partnership bring peace and prosperity back to the people of Kenya who so richly deserve it.

Agreed this date 28 February 2008

Signed by:

Hon. Raila Odinga, Orange Democratic Party

H.E. President Mwai Kibaki, Government/Party of National Unity

Witnessed by:

H.E. Kofi A. Annan, Chairman of the Panel of Eminent African Personalities

H.E. President Jakaya Kikwete, President of the United Republic of Tanzania and Chairman of the African Union.

The National Accord and Reconciliation Act 2008

Preamble:

There is a crisis in this country. The Parties have come together in recognition of this crisis, and agree that a political solution is required.

Given the disputed elections and the divisions in the Parliament and the country, neither side is able to govern without the other. There needs to be real power sharing to move the country forward.

A coalition must be a partnership with commitment on both sides to govern together and push through a reform agenda for the benefit of all Kenyans.

Description of the Act:

An Act of Parliament to provide for the settlement of the disputes arising from the presidential elections of 2007, formation of a Coalition Government and Establishment of the Offices of Prime Minister, Deputy Prime Ministers and Ministers of the Government of Kenya, their functions and various matters connected with and incidental to the foregoing.

1. This Act may be cited as the National Accord and Reconciliation Act 2008.

2. This Act shall come into force upon its publication in the Kenya Gazette which shall not be later than 14 days from the date of Assent.

3.   (1) There shall be a Prime Minister of the Government of Kenya and two Deputy Prime Ministers who shall be appointed by the President in accordance with this section.

(2) The person to be appointed as Prime Minister shall be an elected member of the National Assembly who is the parliamentary leader of -

(a) the political party that has the largest number of members in the National Assembly; or

(b) a coalition of political parties in the event that the leader of the political party that has the largest number of members of the National Assembly does not command the majority in the National Assembly.

(3) Each member of the coalition shall nominate one person from the elected members of the National Assembly to be appointed a Deputy Prime Minister.

4.   (1) The Prime Minister:

a) shall have authority to coordinate and supervise the execution of the functions and affairs of the Government of Kenya including those of Ministries;

b) may assign any of the coordination responsibilities of his office to the Deputy Prime Ministers, as well as one of them to deputise for him;

c) shall perform such other duties as may be assigned to him by the President or under any written law.

(2) In the formation of the coalition government, the persons to be appointed as Ministers and Assistant Ministers from the political parties that are partners in the coalition other than the President's party, shall be nominated by the parliamentary leader of the party in the coalition. Thereafter there shall be full consultation with the President on the appointment of all Ministers.

(3) The composition of the coalition government shall at all times reflect the relative parliamentary strengths of the respective parties and shall at all times take into account the principle of portfolio balance.

(4) The office of the Prime Minister and Deputy Prime Minister shall become vacant only if -

(a) the holder of the office dies, resigns or ceases to be a member of the National Assembly otherwise than by reason of the dissolution of Parliament; or

(b) the National Assembly passes a resolution which is supported by a majority of all the members of the National Assembly excluding the ex-officio members and of which not less than seven days notice has been given declaring that the National Assembly has no confidence in the Prime Minister or Deputy Prime Minister, as the case may be; or

(c) the coalition is dissolved.

(5) The removal of any Minister nominated by a parliamentary party of the coalition shall be made only after prior consultation and concurrence in writing with the leader of that party.

5. The Cabinet shall consist of the President, the Vice-President, the Prime Minister, the two Deputy Prime Ministers and the other Ministers.

6. The coalition shall stand dissolved if:

(a) the Tenth Parliament is dissolved; or

(b) the coalition parties agree in writing; or

(c) one coalition partner withdraws from the coalition by a resolution of the highest decision-making organ of that party in writing.

7. The prime minister and deputy prime ministers shall be entitled to such salaries, allowances, benefits, privileges and emoluments as may be approved by Parliament from time to time.

8. This Act shall cease to apply upon dissolution of the tenth Parliament, if the coalition is dissolved, or a new constitution is enacted, whichever is earlier.

Appendix 3   Constitutional Referendum Results 2010

Const. Code	Constituency	VOTES		Rejected Votes	Total no of Registered	Votes Cast	% Voter Turn Out	% of YES Votes	% of NO Votes
		YES	NO						
1	MAKADARA	62,636	22,397	1,802	125,492	86,835	69.20	72.1322	25.7926
2	KAMUKUNJI	64,211	20,508	2,938	132,162	87,657	66.33	73.2526	23.3957
3	STAREHE	68,815	25,529	4,612	136,630	98,956	72.43	69.5410	25.7983
4	LANGATA	89,280	22,653	6,251	161,408	118,184	73.22	75.5432	19.1676
5	DAGORETTI	63,855	21,119	2,257	122,496	87,231	71.21	73.2022	24.2104
6	WESTLANDS	76,398	18,540	3,345	138,105	98,283	71.17	77.7327	18.8639
7	KASARANI	104,214	28,245	2,596	181,783	135,055	74.29	77.1641	20.9137
8	EMBAKASI	149,212	49,204	5,497	294,153	203,913	69.32	73.1743	24.1299
9	CHANGAMWE	42,515	13,658	1,829	91,483	58,002	63.40	73.2992	23.5475
10	KISAUNI	54,494	15,989	2,206	115,360	72,689	63.01	74.9687	21.9965
11	LIKONI	22,710	4,322	1,242	50,378	28,274	56.12	80.3211	15.2861
12	MVITA	32,820	7,065	1,093	67,837	40,978	60.41	80.0918	17.2410
13	MSAMBWENI	29,862	5,882	1,243	68,949	36,987	53.64	80.7365	15.9029
14	MATUGA	17,623	2,522	169	41,719	20,314	48.69	86.7530	12.4151
15	KINANGO	17,122	4,965	797	51,206	22,884	44.69	74.8208	21.6964
16	BAHARI	30,750	8,751	1,415	83,811	40,916	48.82	75.1540	21.3877
17	KALOLENI	23,080	8,242	1,305	67,599	32,627	48.27	70.7390	25.2613
18	GANZE	11,407	5,455	469	34,405	17,331	50.37	65.8185	31.4754
19	MALINDI	31,561	8,808	821	70,478	41,190	58.44	76.6230	21.3838
20	MAGARINI	13,945	4,096	590	36,110	18,631	51.60	74.8484	21.9849
21	GARSEN	10,196	3,552	205	27,840	13,953	50.12	73.0739	25.4569
22	GALOLE	7,609	2,313	167	19,007	10,089	53.08	75.4188	22.9260
23	BURA	9,511	1,025	192	22,399	10,728	47.89	88.6559	9.5544
24	LAMU EAST	2,615	112	15	9,181	2,742	29.87	95.3683	4.0846
25	LAMU WEST	12,097	3,748	607	28,886	16,452	56.95	73.5291	22.7814
26	TAVETA	11,155	3,046	574	21,349	14,775	69.21	75.4992	20.6159
27	WUNDANYI	13,159	1,731	463	25,604	15,353	59.96	85.7096	11.2747
28	MWATATE	15,541	2,335	541	30,825	18,417	59.75	84.3840	12.6785
29	VOI	15,854	3,915	445	32,660	20,214	61.89	78.4308	19.3678
30	DUJIS	17,378	1,337	221	33,045	18,936	57.30	91.7723	7.0606
31	LAGDERA	7,751	177	73	21,477	8,001	37.25	96.8754	2.2122
32	FAFI	3,475	94	10	9,033	3,579	39.62	97.0942	2.6264
33	IJARA	6,066	292	28	12,465	6,386	51.23	94.9890	4.5725
34	WAJIR NORTH	3,840	472	0	10,133	4,312	42.55	89.0538	10.9462

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Const. Code	Constituency	VOTES		Rejected Votes	Total no of Registered	Votes Cast	% Voter Turn Out	% of YES Votes	% of NO Votes
		YES	NO						
35	WAJIR WEST	10,755	242	6	23,967	11,003	45.91	97.7461	2.1994
36	WAJIR EAST	12,675	541	46	23,835	13,262	55.64	95.5738	4.0793
37	WAJIR SOUTH	7,047	395	48	21,760	7,490	34.42	94.0854	5.2737
38	MANDERA WEST	11,738	77	14	18,283	11,829	64.70	99.2307	0.6509
39	MANDERA CENTRAL	17,145	303	87	29,356	17,535	59.73	97.7759	1.7280
40	MANDERA EAST	13,122	1,040	66	28,574	14,228	49.79	92.2266	7.3095
41	MOYALE	10,196	2,518	85	30,517	12,799	41.94	79.6625	19.6734
42	NORTH HORR	5,568	951	11	20,516	6,530	31.83	85.2680	14.5636
43	SAKU	7,723	1,823	46	16,231	9,592	59.10	80.5150	19.0054
44	LAISAMIS	6,800	2,465	30	19,838	9,295	46.85	73.1576	26.5196
45	ISIOLO NORTH	16,646	4,398	339	33,434	21,383	63.96	77.8469	20.5677
46	ISIOLO SOUTH	6,668	360	75	11,840	7,103	59.99	93.8758	5.0683
47	IGEMBE SOUTH	20,635	35,365	1,276	76,405	57,276	74.96	36.0273	61.7449
48	IGEMBE NORTH	15,603	29,477	875	61,256	45,955	75.02	33.9528	64.1432
49	TIGANIA WEST	20,464	9,665	1,018	44,301	31,147	70.31	65.7014	31.0303
50	TIGANIA EAST	24,667	12,444	806	50,829	37,917	74.60	65.0553	32.8191
51	NORTH IMENTI	51,598	18,076	1,121	104,414	70,795	67.80	72.8837	25.5329
52	CENTRAL IMENTI	35,406	11,497	1,528	64,372	48,431	75.24	73.1061	23.7389
53	SOUTH IMENTI	39,827	17,418	610	79,441	57,855	72.83	68.8393	30.1063
54	NITHI	49,515	21,957	2,408	104,139	73,880	70.94	67.0208	29.7198
55	THARAKA	14,627	15,655	680	45,392	30,962	68.21	47.2418	50.5620
56	MANYATTA	27,548	23,392	1,594	76,193	52,534	68.95	52.4384	44.5274
57	RUNYENJES	23,630	18,086	4,000	67,995	45,716	67.23	51.6887	39.5616
58	GACHOKA	17,231	14,341	1,140	47,226	32,712	69.27	52.6749	43.8402
59	SIAKAGO	9,330	13,344	862	34,298	23,536	68.62	39.6414	56.6961
60	MWINGI NORTH	24,489	14,780	854	63,594	40,123	63.09	61.0348	36.8367
61	MWINGI SOUTH	22,372	14,541	965	59,657	37,878	63.49	59.0633	38.3890
62	KITUI WEST	14,283	19,639	944	55,504	34,866	62.82	40.9654	56.3271
63	KITUI CENTRAL	19,416	16,201	1,069	58,734	36,686	62.46	52.9248	44.1613
64	MUTITO	14,201	9,654	606	37,025	24,461	66.07	58.0557	39.4669
65	KITUI SOUTH	13,488	14,177	620	47,286	28,285	59.82	47.6861	50.1220
66	MASINGA	15,197	13,356	309	43,402	28,862	66.50	52.6540	46.2754
67	YATTA	18,342	12,550	831	50,035	31,723	63.40	57.8192	39.5612
68	KANGUNDO	26,568	26,477	834	86,389	53,879	62.37	49.3105	49.1416

Const. Code	Constituency	VOTES		Rejected Votes	Total no of Registered	Votes Cast	% Voter Turn Out	% of YES Votes	% of NO Votes
		YES	NO						
69	KATHIANI	31,243	28,804	52	93,515	60,099	64.27	51.9859	47.9276
70	MACHAKOS TOWN	22,069	27,654	1,627	77,595	51,350	66.18	42.9776	53.8539
71	MWALA	19,489	20,453	694	64,057	40,636	63.44	47.9599	50.3322
72	MBOONI	20,554	23,737	941	65,165	45,232	69.41	45.4413	52.4783
73	KILOME	9,572	12,315	494	34,558	22,381	64.76	42.7684	55.0244
74	KAITI	13,506	15,465	384	43,385	29,355	67.66	46.0092	52.6827
75	MAKUENI	28,340	26,150	834	82,955	55,324	66.69	51.2255	47.2670
76	KIBWEZI	24,298	22,924	1,918	76,951	49,140	63.86	49.4465	46.6504
77	KINANGOP	55,072	7,767	1,047	80,254	63,886	79.60	86.2036	12.1576
78	KIPIPIRI	25,976	3,074	531	37,747	29,581	78.37	87.8131	10.3918
79	OL KALOU	60,036	4,238	1,127	82,453	65,401	79.32	91.7968	6.4800
80	NDARAGWA	30,432	1,780	241	39,516	32,453	82.13	93.7725	5.4849
81	TETU	30,183	2,232	382	40,478	32,797	81.02	92.0298	6.8055
82	KIENI	55,659	5,085	889	78,381	61,633	78.63	90.3071	8.2505
83	MATHIRA	53,736	7,158	595	75,978	61,489	80.93	87.3912	11.6411
84	OTHAYA	34,806	3,039	626	48,024	38,471	80.11	90.4733	7.8995
85	MUKURWEINI	30,507	3,148	443	42,405	34,098	80.41	89.4686	9.2322
86	NYERI TOWN	42,288	6,281	1,274	61,108	49,843	81.57	84.8424	12.6016
87	MWEA	45,385	10,765	1,334	76,228	57,484	75.41	78.9524	18.7270
88	GICHUGU	36,078	11,655	653	64,293	48,386	75.26	74.5629	24.0875
89	NDIA	32,183	5,554	248	49,004	37,985	77.51	84.7255	14.6216
90	KIRINYAGA CENTRAL	34,995	8,491	489	56,268	43,975	78.15	79.5793	19.3087
91	KANGEMA	26,924	2,589	429	37,559	29,942	79.72	89.9205	8.6467
92	MAYHIOYA	30,411	2,430	489	41,378	33,330	80.55	91.2421	7.2907
93	KIHARU	55,752	8,386	1,594	83,597	65,732	78.63	84.8171	12.7579
94	KIGUMO	38,060	5,765	923	56,420	44,748	79.31	85.0541	12.8833
95	MARAGWA	41,025	6,319	1,409	63,624	48,753	76.63	84.1487	12.9613
96	KANDARA	48,630	6,278	1,728	71,037	56,636	79.73	85.8641	11.0848
97	GATANGA	48,655	8,050	750	73,843	57,455	77.81	84.6837	14.0110
98	GATUNDU SOUTH	32,422	10,209	541	55,184	43,172	78.23	75.0996	23.6473
99	GATUNDU NORTH	30,290	7,014	1,211	49,100	38,515	78.44	78.6447	18.2111
100	JUJA	101,472	33,589	2,687	186,049	137,748	74.04	73.6650	24.3844
101	GITHUNGURI	45,542	11,243	1,244	70,489	58,029	82.32	78.4814	19.3748
102	KIAMBAA	63,799	18,848	2,031	105,521	84,678	80.25	75.3431	22.2584

Const. Code	Constituency	VOTES		Rejected Votes	Total no of Registered	Votes Cast	% Voter Turn Out	% of YES Votes	% of NO Votes
		YES	NO						
103	KIKUYU	71,490	18,537	1,884	116,827	91,911	78.67	77.7818	20.1684
104	LIMURU	39,127	8,392	1,392	62,002	48,911	78.89	79.9963	17.1577
105	LARI	34,032	7,672	1,501	54,131	43,205	79.82	78.7687	17.7572
106	TURKANA NORTH	9,310	5,459	90	41,720	14,859	35.62	62.6556	36.7387
107	TURKANA CENTRAL	19,022	7,097	106	48,886	26,225	53.65	72.5338	27.0620
108	TURKANA SOUTH	10,812	3,880	141	26,210	14,833	56.59	72.8915	26.1579
109	KACHELIBA	3,962	9,324	151	21,613	13,437	62.17	29.4857	69.3905
110	KAPENGURIA	7,891	31,970	687	50,051	40,548	81.01	19.4609	78.8448
111	SIGOR	5,824	28,363	624	43,054	34,811	80.85	16.7303	81.4771
112	SAMBURU WEST	18,142	11,307	418	41,677	29,867	71.66	60.7426	37.8578
113	SAMBURU EAST	7,747	1,685	77	15,127	9,509	62.86	81.4702	17.7201
114	KWANZA	28,190	14,520	1,171	60,261	43,881	72.82	64.2419	33.0895
115	SABOTI	53,915	21,251	1,731	105,719	76,897	72.74	70.1133	27.6357
116	CHERANGANY	23,266	16,577	4,519	55,883	44,362	79.38	52.4458	37.3676
117	ELDORET NORTH	43,317	65,007	2,951	135,065	111,275	82.39	38.9279	58.4201
118	ELDORET EAST	14,565	50,667	1,459	79,377	66,691	84.02	21.8395	75.9728
119	ELDORET SOUTH	22,889	41,161	4,610	83,816	68,660	81.92	33.3367	59.9490
120	MARAKWET EAST	1,817	20,008	177	24,001	22,002	91.67	8.2583	90.9372
121	MARAKWET WEST	1,580	28,484	596	34,507	30,660	88.85	5.1533	92.9028
122	KEIYO NORTH	1,528	23,643	349	29,510	25,520	86.48	5.9875	92.6450
123	KEIYO SOUTH	2,443	34,424	615	42,093	37,482	89.05	6.5178	91.8414
124	MOSOP	2,611	46,884	1,546	57,023	51,041	89.51	5.1155	91.8556
125	ALDAI	7,130	33,027	3,401	53,494	43,558	81.43	16.3690	75.8230
126	EMGWEN	12,240	48,869	2,006	73,785	63,115	85.54	19.3932	77.4285
127	TINDERET	9,624	45,398	2,711	69,952	57,733	82.53	16.6698	78.6344
128	BARINGO EAST	4,895	6,681	97	16,626	11,673	70.21	41.9344	57.2346
129	BARINGO NORTH	1,323	28,369	310	33,687	30,002	89.06	4.4097	94.5570
130	BARINGO CENTRAL	6,734	38,875	850	54,741	46,459	84.87	14.4945	83.6759
131	MOGOTIO	1,509	19,273	373	23,245	21,155	91.01	7.1331	91.1038
132	ELDAMA RAVINE	7,865	25,021	702	39,449	33,588	85.14	23.4161	74.4939
133	LAIKIPIA WEST	58,810	9,020	1,051	84,167	68,881	81.84	85.3791	13.0950
134	LAIKIPIA EAST	45,338	5,869	2,340	69,107	53,547	77.48	84.6695	10.9605
135	NAIVASHA	91,197	11,898	4,578	137,370	107,673	78.38	84.6981	11.0501
136	NAKURU TOWN	81,782	19,018	4,548	138,399	105,348	76.12	77.6303	18.0525

Const. Code	Constituency	VOTES		Rejected Votes	Total no of Registered	Votes Cast	% Voter Turn Out	% of YES Votes	% of NO Votes
		YES	NO						
137	KURESOI	14,377	54,832	554	78,392	69,763	88.99	20.6083	78.5975
138	MOLO	71,825	18,926	2,103	110,898	92,854	83.73	77.3526	20.3825
139	RONGAI	24,182	20,391	1,878	57,518	46,451	80.76	52.0592	43.8979
140	SUBUKIA	55,425	4,098	2,965	74,587	62,488	83.78	88.6970	6.5581
141	KILGORIS	15,231	41,885	855	70,601	57,971	82.11	26.2735	72.2516
142	NAROK NORTH	35,355	14,513	900	67,913	50,768	74.75	69.6403	28.5869
143	NAROK SOUTH	22,690	38,410	1,096	82,772	62,196	75.14	36.4814	61.7564
144	KAJIADO NORTH	61,926	27,500	2,018	120,760	91,444	75.72	67.7201	30.0731
145	KAJIADO CENTRAL	14,076	23,461	447	48,427	37,984	78.44	37.0577	61.7655
146	KAJIADO SOUTH	14,545	12,682	391	38,432	27,618	71.86	52.6649	45.9193
147	BOMET	2,622	65,870	962	77,383	69,454	89.75	3.7752	94.8398
148	CHEPALUNGU	2,979	42,169	615	51,519	45,763	88.83	6.5096	92.1465
149	SOTIK	2,398	54,045	681	63,478	57,124	89.99	4.1979	94.6100
150	KONOIN	2,549	42,368	522	50,981	45,439	89.13	5.6097	93.2415
151	BURET	1,774	52,807	594	60,765	55,175	90.80	3.2152	95.7082
152	BELGUT	4,760	59,061	1,048	72,874	64,869	89.02	7.3379	91.0466
153	AINAMOI	7,809	47,621	1,104	56,662	56,534	99.77	13.8129	84.2343
154	KIPKELION	9,530	52,434	1,729	72,717	63,693	87.59	14.9624	82.3230
155	MALAVA	33,232	5,120	859	61,841	39,211	63.41	84.7517	13.0576
156	LUGARI	52,835	8,810	2,017	93,853	63,662	67.83	82.9930	13.8387
157	MUMIAS	39,615	4,043	713	66,422	44,371	66.80	89.2813	9.1118
158	MATUNGU	25,622	2,472	608	41,668	28,702	68.88	89.2690	8.6126
159	LURAMBI	49,234	7,301	1,579	96,057	58,114	60.50	84.7197	12.5632
160	SHINYALU	24,984	2,636	733	57,420	28,353	49.38	88.1177	9.2971
161	IKOLOMANI	22,469	1,637	430	35,833	24,536	68.47	91.5756	6.6718
162	BUTERE	28,018	1,954	1,051	48,162	31,023	64.41	90.3136	6.2986
163	KHWISERO	20,783	1,415	453	35,192	22,651	64.36	91.7531	6.2470
164	EMUHAYA	35,922	3,052	1,092	66,482	40,066	60.27	89.6571	7.6174
165	SABATIA	28,809	1,900	1,013	47,949	31,722	66.16	90.8171	5.9895
166	VIHIGA	19,326	1,374	0	34,012	20,700	60.86	93.3623	6.6377
167	HAMISI	25,382	2,432	1,823	52,211	29,637	56.76	85.6429	8.2060
168	MT. ELGON	12,766	27,682	976	51,845	41,424	79.90	30.8179	66.8260
169	KIMILILI	43,695	8,281	2,773	81,562	54,749	67.13	79.8097	15.1254
170	WEBUYE	36,764	8,048	1,259	67,510	46,071	68.24	79.7986	17.4687

Const. Code	Constituency	VOTES		Rejected Votes	Total no of Registered	Votes Cast	% Voter Turn Out	% of YES Votes	% of NO Votes
		YES	NO						
171	SIRISIA	34,560	7,893	1,727	67,176	44,180	65.77	78.2254	17.8656
172	KANDUYI	30,376	11,683	964	68,148	43,023	63.13	70.6041	27.1552
173	BUMULA	23,255	5,826	1,550	51,600	30,631	59.36	75.9198	19.0199
174	AMAGORO	42,543	9,553	1,101	77,823	53,197	68.36	79.9726	17.9578
175	NAMBALE	33,859	5,734	728	61,096	40,321	66.00	83.9736	14.2209
176	BUTULA	22,774	1,739	597	37,435	25,110	67.08	90.6969	6.9255
177	FUNYULA	16,694	2,302	315	32,250	19,311	59.88	86.4481	11.9207
178	BUDALANGI	12,397	2,185	111	22,909	14,693	64.14	84.3735	14.8710
179	UGENYA	49,788	642	891	64,124	51,321	80.03	97.0129	1.2509
180	ALEGO	49,155	535	986	62,216	50,676	81.45	96.9986	1.0557
181	GEM	38,892	552	506	50,592	39,950	78.97	97.3517	1.3817
182	BONDO	40,580	375	349	49,722	41,304	83.07	98.2471	0.9079
183	RARIEDA	35,206	429	244	44,796	35,879	80.09	98.1243	1.1957
184	KISUMU TOWN EAST	45,294	1,189	1,293	59,042	47,776	80.92	94.8049	2.4887
185	KISUMU TOWN WEST	68,699	2,780	717	91,604	72,196	78.81	95.1562	3.8506
186	KISUMU RURAL	39,024	489	305	48,696	39,818	81.77	98.0059	1.2281
187	NYANDO	38,009	282	317	45,786	38,608	84.32	98.4485	0.7304
188	MUHORONI	37,434	1,203	209	46,899	38,846	82.83	96.3651	3.0968
189	NYAKACH	35,805	276	242	44,147	36,323	82.28	98.5739	0.7598
190	KASIPUL-KABONDO	54,015	330	770	61,867	55,115	89.09	98.0042	0.5987
191	KARACHUONYO	44,408	205	507	51,792	45,120	87.12	98.4220	0.4543
192	RANGWE	50,701	547	292	60,001	51,540	85.90	98.3721	1.0613
193	NDHIWA	42,478	240	277	48,765	42,995	88.17	98.7975	0.5582
194	RONGO	51,634	530	880	61,275	53,044	86.57	97.3418	0.9992
195	MIGORI	48,677	478	242	55,792	49,397	88.54	98.5424	0.9677
196	URIRI	28,977	294	228	34,911	29,499	84.50	98.2304	0.9966
197	NYATIKE	37,805	255	201	42,782	38,261	89.43	98.8082	0.6665
198	MBITA	26,230	310	156	31,643	26,696	84.37	98.2544	1.1612
199	GWASSI	23,673	254	164	29,143	24,091	82.66	98.2649	1.0543
200	KURIA	16,486	21,717	836	54,693	39,039	71.38	42.2296	55.6290
201	BONCHARI	17,039	6,761	648	33,583	24,448	72.80	69.6949	27.6546
202	SOUTH MUGIRANGO	15,658	4,928	237	41,327	20,823	50.39	75.1957	23.6661
203	BOMACHOGE	26,018	7,187	481	65,925	33,686	51.10	77.2368	21.3353
204	BOBASI	28,182	7,840	2,144	60,745	38,166	62.83	73.8406	20.5418

Const. Code	Constituency	VOTES		Rejected Votes	Total no of Registered	Votes Cast	% Voter Turn Out	% of YES Votes	% of NO Votes
		YES	NO						
205	NYARIBARI MASABA	22,076	3,718	684	42,663	26,478	62.06	83.3749	14.0418
206	NYARIBARI CHACHE	23,109	8,004	1,127	49,029	32,240	65.76	71.6780	24.8263
207	KITUTU CHACHE	30,891	13,253	1,200	71,620	45,344	63.31	68.1259	29.2277
208	KITUTU MASABA	37,301	6,202	1,068	69,229	44,571	64.38	83.6889	13.9149
209	WEST MUGIRANGO	29,815	4,195	689	54,925	34,699	63.18	85.9247	12.0897
210	NORTH MUGIRANGO BORABU	40,974	5,491	1,367	75,958	47,832	62.97	85.6623	11.4798
	TOTALS	6,092,593	2,795,059	218,633	12,616,627	9,106,285	72.1768584	66.9054	30.6937

Appendix 4: The Grand coalition Cabinet

(All appointments, announces on April 13, 2008)

Ministry	Minister	Asst. Minister	Asst. Minister
Provincial Administration and Internal Security	George Saitoti (PNU)	Simon Lesirma (ODM)	Joshua Orwa Ojode (ODM)
Defense	Yusuf Haji (PNU)	David Musila (ODM-K)	Joseph Nkaisserry (ODM)
Vice President and Minister of Home Affairs	Kalonzo Musyoka (ODM-K)	Lorna Laboso (ODM)	
Immigration and Registration of Persons	Gerald Otieno Kajwang' (ODM)	Francis Baya (KADU-A)	
National Heritage and Culture	William Ole Ntimama (ODM)	Joel Onyancha Omagwa (FORD-P)	
Office of the Prime Minister	Raila Odinga (ODM)	Alfred Khang'ati	
Planning, National Development, and Vision 2030	Wycliffe Ambetsa Oparanya (ODM)	Peter Kenneth (PNU)	
Public Service	Dalmas Anyango Otieno (ODM)	Aden Ahmed Sugow (KANU)	
Office of Deputy Prime Minister and Ministry of Trade	Uhuru Kenyatta (PNU)	James Omingo Magara (ODM)	
Office of Deputy Prime Minister and Ministry of Local Government	Musalia Mudavadi (ODM)	Robison Njeru Githae (PNU)	
East African Community	Amason Kingi Jeffah (ODM)	Peter Munya (ODM)	
Foreign Affairs	Moses Wetangula (PNU)	Richard Momoima Onyonka (PDP)	
Finance	Amos Kimunya (PNU)	Oburu Oginga (ODM)	
Justice, National Cohesion, and Constitutional Affairs	Martha Karua (PNU)	William Cheptumo Kipkorir (ODM)	
Nairobi Metropolitan Development	Mutula Kilonzo (ODM-K)	Elizabeth Ongoro Masha (ODM)	
Roads	Kipkalya Kones (ODM)	Wilfred Machage (DP)	Lee Kinyanjui (PNU)
Public Works	Chris Obure (ODM)	Dickson Wathika Mwangi (PNU)	
Transport	Chirau Ali Makwere (PNU)	John Harum Mwau (PICK)	
Water and Irrigation	Charity Ngilu (ODM)	Mwangi Kiunjuri (PNU)	
Regional Development Authorities	Frederick Gumo (ODM)	Judah Katoo Ole Metito (NARC-K)	
Information and Communication	Samuel Poghisio (ODM-K)	George Munyasa Khaniri (ODM)	Dhadho Godhana (ODM)
Energy	Kiraitu Murungi (PNU)	Charles Keter (ODM)	Maalim Mohamud Mohamed (ODM)
Lands	James Orengo (ODM)	Silvester Wakoli Bifwoli (PNU)	Samwel Gonzi Rai (FORD-P)
Environment and Mineral Resources	John Michuki (PNU)	Ramadhan Kajembe (ODM)	Jackson Kiptanui (ODM)
Forestry and Wildlife	Noah Wekesa (PNU)	Josphat Koli Nanok (ODM)	
Tourism	Najib Balala (ODM)	Cecily Mtito Mbarire (PNU)	
Agriculture	William Ruto (ODM)	Japhet Kareke Mbuiki (KANU)	Gideon Musyoka Ndambuki (ODM-K)
Livestock Development	Mohamed Abdi Kuti (NARC-K)	Bare Aden Duale (ODM)	
Fisheries Development	Paul Nyongesa Otuoma (ODM)	Mohamed Abuchiaba (PNU)	
Development of Northern Kenya and other Arid Lands	Ibrahim Elmi Mohamed (ODM)	Hussein Tarry Sasura (ODM-K)	
Cooperatives Development	Joseph Nyagah (ODM)	Linah Jebil Kilimo (KENDA)	
Industrialization	Henry Kosgey (ODM)	Ndiritu Murithi (PNU)	
Housing	Peter Soita Shitanda (NEW FORD-K)	Margaret Wanjiru Kariuki (ODM)	
Special Programmes	Naomi Namsi Shabaan (PNU)	Mohamed Muhamud Ali (ODM)	
Gender and Children Affairs	Esther Mathenge (PNU)	Atanas Manyala Keya (ODM)	
Public Health and Sanitation	Beth Mugo (PNU)	James Ondicho Gesami (ODM)	
Medical Services	Peter Anyang' Nyong'o (ODM)	Danson Buya Mungatana (NARC-K)	
Ministry of Labour	John Munyes (PNU)	Sospeter Ojamaa Ojamong' (ODM)	
Ministry of Youth and Sports	Helen Jepkemoi (UDM)	Wavinya Ndeti (CCU)	Kabando wa Kabando (SAFINA)
Higher Education, Science, and Technology	Sally Kosgei (ODM)	Kilemi Mweria (PNU)	Asman Abongotum Kamama (PNU)

Source :(Appointments listed in The East African Standard, April 14, 2008. Party affiliation accessed at http://www.bunge.go.ke on October 28, 2008) quoted in Horowitz (2008:22)