

Chapter One

Introduction

Imagine trying to cover Northern Ireland's troubles without using the words 'Protestant' or 'Catholic'. Or reporting Iraq without referring to 'Shias' and 'Sunnis'. The attempt would be absurd, the result unfathomable. And yet, in Kenya's post-electoral crisis, that is exactly what much of the local media doggedly tried to do. When we read an account in a British newspaper of shack-dwellers being evicted from a Nairobi slum, or see on the BBC gangs attacking inhabitants in the Rift Valley, we are usually told whether these are Kikuyus fleeing Luos, or Kalenjins attacking Kikuyus. But, in Kenya, this particular spade is almost never called a spade. No, it's "a certain metal implement". The "problem of tribalism" may be obsessively debated, the gibe of "tribalist" thrown with reckless abandon at politicians and community leaders, but it is just not done to identify a person's tribe in the media. The results, given a crisis in which the expression of long-running grievances has taken the most explicit ethnic form, can be opaque. When Mr Maina Kiai, chairman of the Kenya National Commission on Human Rights, addressed displaced people in Eldoret earlier this year, he was booed and heckled. Kenyan media reported the incident without explaining why. The answer was that the displaced he met were mostly Kikuyus, and Kiai, a vocal Kikuyu critic of a Kikuyu-led Government, is regarded by many as a traitor to his tribe. Sometimes, the outcome is simply bizarre. When one newspaper ran a vox pop in January, one entry was meant to capture vividly the predicament of a 15-year-old girl of mixed parentage.

"My mother is from [one of the tribes that had a Presidential candidate]", Faith was quoted as saying, "but my father is a [member of the other tribe that had a Presidential candidate]."

How's that for gritty realism? (*The Standard* April 3, 2008).

The excerpt shows how difficult it was for the Kenyan media to openly address the question of tribal identity in its coverage of the 2007 post-election violence. This thesis is not about how the Kenyan media covered that violence. What the excerpt seeks to do is to set the tone for a conundrum. The salience¹ of tribalism in Kenya's politics was an issue that both politicians and the citizenry were aware of but not willing to hold a candid dialogue about. Even the 2007 post-election conflagration could not encourage such a conversation. This thesis aims to explore why and how tribalism came to be the only ideology in Kenya's politics especially under multiparty politics as seen through the formation of political parties and instigation of ethnic violence.

¹ Le Vine defines 'salience' as 'the heuristic significance of ethnic identity in situations of interaction with others/other groups' (1997:52).

1.1 Ethnicity in Politics in Kenya

Ethnicity acquires enormous power to mobilise people when it becomes a predominant identity and means more than just a particular ethnic origin; it comes to define people as speakers of a certain language, belonging to a particular religion, being able to pursue some careers but not others, being able to preserve and express their cultural heritage, having access to positions of power and wealth or not. In short, when ethnicity becomes politically relevant and determines the life prospects of people belonging to distinct ethnic groups, it is possible to mobilise group members to change a situation of apparently perpetual discrimination and disadvantage or in defence of a valued status quo (Wolff 2006: 31).

The excerpt shows that once ethnicity becomes more than an expression of cultural identity and gets connected to social status, it determines people's fortunes in life and becomes politicised. It makes it possible for those who feel aggrieved as a result of discrimination and those in power who want to protect their privileges to invoke ethnicity. In Kenya's political context, ethnicity was a factor in political competition and in the allocation of national resources hence its salience. It was for this reason that the Constitution promulgated in 2010, sought to streamline political parties. It contained a framework for political parties that was principally meant to rid the country of ethnicity-driven political parties. The Constitution also spelled out the devolution of power and resources between the national and county governments and stipulated that the face of the civil service must reflect Kenya's ethnic diversity (Republic of Kenya 2010). Since independence in 1963, members of the President's tribe disproportionately dominated the civil service. First, it was the Kikuyu from 1963 until 1978, then the Kalenjin until 2002 (Ajulu 2002). The Kikuyu were resurgent after 2002 until the time of writing (Murunga and Nasong'o 2006). Significantly ethnicity was a determining factor in party loyalty during multiparty elections. Political leaders across the political divide formed political parties and campaigned on the strength of ethnicity. The upshot was ethnic bloc voting. However, Kenya's politics seemed to transcend ethnicity at some points. Chege shows that in 1961, the electorate in the then Nairobi East constituency overlooked ethnic differences and voted for Tom Mboya. Mboya, a Luo, defeated one Dr Munyua Waiyaki, a Kikuyu, despite the electorate being 64% Kikuyu (Chege 1981: 76). The electorate in this particular constituency evaluated the two candidates on the basis of leadership qualities. In the 1950s, Oginga Odinga had led a campaign calling for the release of Jomo Kenyatta and others from detention (Karimi and Ochieng' 1980: 16; Morton 1998: 88-9). However,

Morton linked this call to a power struggle within KANU in which the Odinga faction tried to use it to neutralise a rival one (Morton 1998: 102). This nationalist approach to politics had been replaced by ethnic solidarity in which politicians tended to stand by fellow tribesmen regardless of the circumstances. Under multiparty Kenya, a candidate almost stood no chance in a constituency in which his tribe was the minority.

Although referring to Africa generally, Meredith offered insight into the above question. He observed that in the first elections before independence, African politicians conducted politics around national identity thus, candidates were voted for regardless of ethnic belonging. However, the issue of access to state largesse in the form of scarce resources heightened the political stakes. The result was that some politicians abandoned policy-oriented politics and resorted to canvassing for electoral support along ethnic lines (Meredith 2006: 156). Meredith argued that politics took an ethnic form because of lack of class identity among African societies (Meredith 2006: 156). I argue that ethnicity was the most significant variable under Kenya's multiparty democracy because competition for state resources had made it hard for politicians to devise alternative bases for political organisation such as class. Hyden acknowledged this point when he argued that the influence of 'community-centred networks' in African politics was due to the inability of class-based identity to dislodge kinship ties (Hyden 2006: 55).

Ethnic divisions among the first generation of Kenyan politicians over the control of the state had two significant outcomes. It led to the assassination of Tom Mboya and the political marginalisation of Oginga Odinga, both politicians from the Luo community. Mboya, an astute politician, had been a key player in the political neutralisation of Odinga by Kenyatta's allies. The two politicians battled for political supremacy within the Luo community (Maloba 1995: 18). Kenyatta's allies perceived Odinga as a threat to their hold on power. He had the capacity to mobilise political support and create an alternative political powerbase, was opposed to the politics of wealth accumulation and remained among a tiny group of Kenyan politicians inclined towards ideological politics. Kenyatta's close allies led by Mboya frustrated Odinga out of the government. Odinga resigned in 1966 as both the country's and KANU Vice President and formed the Kenya People's Union (KPU) (Morton 1998: 125).

Mboya's ability to garner support among Kenyans of diverse ethnicities in the 1960s posed a political threat to Kenyatta and his close allies and he was a front-runner in the Kenyatta succession. In addition to being endowed with political acumen, Mboya had financial backing from America (Ochieng' 1995: 101). After the Kenyatta inner circle had used him to neutralise Oginga Odinga, they dispensed with him. He was assassinated in 1969, allegedly at the behest of some influential individuals in the Kenyatta government (Muigai 2004: 213). The Luo who had split their loyalty between Mboya and Odinga closed ranks and rallied behind Odinga (Karimi and Ochieng' 1980: 18). Mboya's assassination threw a wedge between the Kikuyu and Luo communities and contributed to the politics of resentment in Kenya thus the confrontation between Odinga's Luo supporters and Kenyatta when the latter visited Kisumu in 1969 (Owuor and Rutten 2009: 313). The sidelining of Odinga and his allies and the physical elimination of Mboya was meant to create room for the exclusive access to power and the attendant economic advantages for the Kikuyu elite. So polarised did the political landscape become that it was difficult for Kenyans to conduct policy-based politics. Ethnicity became the ideology² that informed political choices.

Kenyatta was considered as the founding father of Kenya yet I argue that he contributed to sowing the seeds of Kenya's postcolonial instability. The challenges bedeviling the country such as exclusionary politics based on tribalism, regional inequalities because of skewed allocation of national resources in favour of the President's region and lack of national identity required to harness Kenyans' energies and talent for the attainment of economic progress were reinforced under the Kenyatta régime. Disregard for the rule of law and manipulation of the Constitution to serve the interests of the ruling elite was part of Kenyatta's legacy. The Kenyatta régime arbitrarily amended the Constitution to achieve the political and economic ends of himself and his allies (Ochieng' 1996: 104). The legacy of colonialism in the form of a politics of regionalism remained intact. Under Kenyatta, the ethnic dominance of one group, the Kikuyu and their allies (GEMA) over others occurred and led to a kind of tribal exclusion that prevented an overall national vision from

² Ekeh referred to ideologies as 'conscious distortions or perversions of truth by intellectuals in advancing points of view that favour or benefit the interests of particular groups for which intellectuals act as spokesmen' (Ekeh 1975: 94).

developing to resolve the problems of development. Ethnic politics dominated the post colonial period and blocked the process of developing an equitable politics that might have produced a society that met the needs of Kenyans irrespective of tribal differences. The patronage politics that emerged was based on ethnic alliances that precluded some and thus benefited certain regions over others.

In the 1970s the 'Change the Constitution group' made up of Kikuyu and other GEMA politicians, tried to block Moi and any other politician from outside the GEMA constellation from ascending to the presidency. These politicians attempted to amend the Constitution to remove the provision that allowed the Vice President to automatically succeed the President (Karimi and Ochieng' 1980; Ochieng' 1996: 104-5). The motive was tribal politics and the intention was to safeguard the interests of this group in the absence of Kenyatta. This group had infused in the country's body politic a culture of impunity due to disregard for the Constitution. Therefore Kenya's postcolonial upheavals were compounded by the development of an exclusionary politics based on tribalism that were reinforced under the Kenyatta régime, despite his rhetoric to the contrary.

Through speech Kenyatta tried to portray himself as a nationalist who abhorred tribalism. He spoke in favour of ethnic diversity. However, the Kenyatta régime was biased towards the Kikuyu and the other closely related Meru and Embu tribes. This belied his nationalist rhetoric. Two years into independence, Kenyatta appeared to confront tribalism:

Tribalism is the ready-made weapon in the hands of the enemy of our Nation. This is why I will never be able to compromise with the tribalists. It is true that each of us belongs to a tribe and that we cannot change our tribes, but we must suspect the motives of those who masquerade as leaders; but yet appeal to tribal emotions. We must condemn those who seek to exploit such emotions for personal support and prestige. We must disown those who try to put one tribe against another, either by pretending to defend the interests of their own tribe or by generating hate and dislike of one tribe or group of tribes. These are the actions which the colonialists and their Agents used when they fought against African Nationalism. I am telling you today that no one can be both a true nationalist and a tribal politician at the same time (Speech by Mzee Jomo Kenyatta during Kenyatta Day celebrations in 1965: 361).

The speech portrays Kenyatta as a politician who strove for an ethnically cohesive Kenya in which ethnicity was subsumed under national identity. Kenyatta favourably contrasted himself with his opponents, whom he accused of spreading tribalism. However, Kenyatta's legacy built on colonial ethnic balkanisation and exposed a lacuna between political pronouncements and corresponding action. Muigai suggests that Kenyatta 'entrenched ethnicity as the most dominant basis of political mobilisation' (Muigai 2004: 215). Karimi and Ochieng' writing more than twenty years earlier, showed how the Kenyatta régime had exploited ethnicity to survive (Karimi and Ochieng' 1980: 15-23). Kenya in 2012 is yet to overcome this legacy.

Kikuyu politicians particularly from Kenyatta's Kiambu home district dominated during his period in power. Politicians belonging to this inner court earned the sobriquet, the 'Kiambu mafia' (Leys 1975: 246). The moniker connoted the ruthlessness with which they pursued their political and economic ends. It entailed physically eliminating perceived opponents and politically neutralising others through detention. Kenyatta's inner circle was composed of both political and economic allies and family members. His close political allies came from Kiambu district and other parts of Mt Kenya region whom Karimi and Ochieng' referred to as 'the Family' (with a capital 'F') because they were united by financial and political interests. This group was distinguished from 'the family', Kenyatta's immediate relations by blood and marriage (Karimi and Ochieng' 1980: 15). The exclusionary exercise of state power by these groups elicited resistance from excluded politicians some of whom were Kikuyu (Ajulu 2002: 261; Muigai 2004: 211). Karimi and Ochieng' argued that the Kikuyu community at the time was not homogeneous since there had been internal rivalry along regional lines between those from Kiambu and Kikuyu from other districts and between the colonial collaborators and 'freedom fighters' (Karimi and Ochieng' 1980: 41-3).

Omolo observed that the Kenyatta régime was biased towards Kikuyu in access to the state's largesse, capital for private business and public appointments (Omolo 2002: 221). He cited two appointments in the academy and one in the Provincial Administration to support his claim. He mentioned Kenyatta's appointment of Dr Josephat Karanja as the

Vice-Chancellor of the University of Nairobi at the expense of several senior academics from other tribes and the appointment of another Kikuyu, Koinange, who had a certificate in education, as the college principal of Kenyatta University, Kenya's second university which opened in 1972. Kenyatta appointed yet another Kikuyu, also a Koinange, who had no formal education as the Provincial Commissioner (Omolo 2002: 221). Thus critics of the régime derisively referred to Kenyatta's rule as the 'Kikuyunisation' of the Kenyan state (Omolo 2002: 221; Murunga 2004: 187-8). These appointments were indicative of a régime that seemed to have no regard for ethnic sensibilities. This discriminatory exercise of power validated Horowitz's cynical claim that 'ethnicity entailed not the collective will to exist but the existing will to collect' (Horowitz 1985: 104).

Under the Kenyatta régime, ethnicity waxed and waned depending on the opportunities and threats that the régime encountered. Although the 'the Family' and 'Kiambu mafia' benefited almost exclusively from the extractive politics, whenever the régime faced a backlash from other tribes, it whipped up ethnic sentiment among the Kikuyu. When the régime was suspected of involvement in the assassination of Tom Mboya, Kikuyu politicians responded to the near countrywide anger by organising oath-taking rituals to bind the community so that they could defend 'their presidency' (Nyong'o 1989: 245, 247). Atieno-Odhiambo argued that although the Kiambu politicians mobilised the Kikuyu to swear not to allow the presidency to leave the community, the oath was meant to ensure that the presidency remained within a certain clan from the Kiambu district (Atieno-Odhiambo 1996: 42-3). Those who were ferried to Gatundu, Kenyatta's home, took the oath and swore that 'the flag of Kenya shall not leave the house of Mumbi' i.e. Kikuyuland' (Ochieng' 1996: 102). These politicians exploited ethnic sentiment for economic and political capital. They were driven by self-interest so much that they defined ethnic belonging to the exclusion of not only other Kenyan tribes but also Kikuyu who did not belong to Kenyatta's clan.

1.2 Political Party Formation: The Background

The formation of political parties along tribal lines had been part of Kenya's political system since before independence. On the threshold of independence ethnicity became the

basis of political organisation as Kenyan politicians differed over whether the country should adopt a unitary or *majimbo* (federalist) Constitution (Morton 1998: 108). At issue was access to resources and particularly land and the question of ethnicity, twin challenges that have afflicted Kenya's politics since then. Ajulu, a decade ago, on the basis of his evidence, argued that at the threshold of independence Kenya's political parties were based upon ethno-regional politics as the departing colonialists pitted the big tribes against the small ones (Ajulu 2002: 257). The then small tribes such as the Kalenjin coalesced under the Kenya African Democratic Union (KADU) and insisted on a federalist (*majimbo*) Constitution for fear that under a unitary state the populous tribes would not only dominate them but also access their land.

However, Kenya African National Union (KANU) dominated by the Kikuyu and Luo favoured a unitary state and opposed the devolution of power through *majimbo*. KANU argued that regional governments were cumbersome and promoted tribalism (Morton 1998: 108). The Coastal and Rift Valley tribes particularly the Kalenjin that supported KADU preferred a *majimbo* system because they believed it would safeguard their land against encroachment by the big tribes, especially the Kikuyu (Morton 1998: 111-8). Kenya attained independence in 1963 under a federalist Constitution that recognised multiparty politics. But KANU and KADU merged a year later making the country a *de facto* one party state (Wanyande 2003: 137-8). Kenyatta capitalised on the KANU monopoly in parliament to abolish the post of Prime Minister and replace it with a powerful and autocratic President. It was thus Kenyatta who stifled nascent multiparty politics. Kenyatta was then able to wield immense Presidential powers unchallenged.

According to Barkan KADU members claimed that they had defected to KANU 'in the interest of national unity' (Barkan 1992: 171). However, Ajulu suggested that the KADU politicians crossed over to KANU in pursuit of patronage opportunities (Ajulu 2002: 259). Morton, however, suggested that KADU disintegrated because the government starved the Rift Valley and Coast regions of resources and directed them to government supportive regions (Morton 1998: 118). The two regions were homes to the so-called small tribes. They supported federalism and devolution. The dissolution of KADU bore testimony to the capacity of the powerful presidency to stifle multi-party politics a tactic that KANU

resorted to once again when Kenya returned to multiparty politics in 1991. KANU became *de facto* the only political party in the country until 1966 when Oginga Odinga resigned from KANU and formed the Kenya People's Union (KPU) owing to a power struggle in KANU.

Odinga and his supporters were compelled to seek re-election under KPU following a constitutional amendment to that effect (Karimi and Ochieng' 1980: 17). Kenyatta exploited the immense powers at his disposal to thwart attempts by KPU to find a foothold outside the Nyanza region predominantly inhabited by the Luo. Muigai pointed out that Kenyatta marshalled the state's resources and invoked ethnic animosity to ensure that KPU was reduced to a Luo party during 'the little general election'³ held in 1966 (Muigai 2004: 213). Kenya's experiment with multiparty politics was short-lived since Kenyatta proscribed KPU in 1969 following a confrontation between him and Odinga.

The showdown between the two happened in Kisumu, Odinga's stronghold, as the Luo protested against Mboya's assassination. In the ensuing violence, Kenyatta's security personnel shot people dead (Leys 1975: 237). Kenyatta then detained Odinga and some KPU activists (Morton 1998: 141). Kenya became once again a *de facto* one party state. Nyong'o argued that at this point the Kenyatta inner circle began to consolidate power in the presidency since Odinga and Mboya had been contained and alternative political parties proscribed (Nyong'o 1989: 245). The Kenyatta régime alienated the rest of the country from the state as the other communities accused it of exploiting state control for the benefit of the incumbent and the Kikuyu elite.

Moi succeeded Kenyatta in 1978 at a time when the world was defined by the Cold War politics that made it possible for single party rule and military dictatorships to thrive on the African continent. Moi did not reform the state, but instead further consolidated power in the presidency. Neither did Kibaki despite having assumed power in 2002 as an opposition

³ The elections were held specifically to neutralise Oginga Odinga after he fell out with Kenyatta and formed his own party, KPU. Kenyatta's allies amended the Constitution to require MPs sympathetic to KPU to seek re-election since they were considered as having defected. Most of Odinga's supporters were from the Luo community and so the elections were confined to the Nyanza region. Odinga's allies from the Kikuyu community such as Bildad Kaggia were virtually driven out of politics due to what Muigai called 'ethnic pressure' (Muigai 2004: 213).

politician who campaigned on a platform of reform. The two were *ancien régime*⁴ politicians not attuned to the dictates of competitive politics. Therefore one of the features of Kenya's multiparty politics after 1991 had been the high turnover of political parties, as politicians sought political office at all costs. In Kenya, politicians viewed political parties as avenues to power but not anchors of democracy. Consequently political parties emerged and collapsed regardless of their electoral performance. First, electoral victory, especially for the presidency, was sought at the expense of devoting energies and resources to popularising and strengthening political parties. Second, since tribalism had been the basis of the formation of these political parties, internal wrangles among politicians over power that often took an ethnic dimension led to the disintegration of these parties. These political parties lacked attributes such as discipline, membership, funding and a philosophy that could appeal to Kenyans across the board. They were fundamentally fiefs of Big Men.

Until the enactment of the Political Parties Act of 2007, revised in 2009, there was no law to regulate political parties in Kenya. As a result, politicians had had an opportunistic approach to political parties. Defections and internal party quarrels were common. The propensity among politicians to profess allegiance to multiple political parties was the norm. It gave rise to the situation that once in parliament, some politicians actively supported a different political party to the one that had sponsored them. The Political Parties Act created the office of the Registrar of Political Parties in order to regulate the formation of political parties, streamline funding, and provide a mechanism through which disputes could be resolved (Republic of Kenya 2009). The Act provided for government funding to political parties according to their parliamentary representation and outlawed multiple membership of political parties. Following the enactment of the new Constitution, the Act was revised once again to align it with the new law. The Act barred government officers such as cabinet members from holding offices in political parties in an attempt to curb partisan politics in the bureaucracy. It also outlawed multiple party membership and the formation of political parties on the basis of sectarian, gender, regional and ethnic interest (Republic of Kenya 2011).

⁴ The term *ancien régime* was 'coined by aspiring reformers in late eighteenth century France as a shorthand term for *those features* of the old social and political order which they hoped to be able to sweep away for their replacement by new more rational and enlightened arrangements' (Clark 1987: 197).

The 2011 Political Parties Act spelled out procedures for the formation of mergers and coalitions with the intention of curbing opportunistic actions aimed at either winning elections or retaining power. An attempt to outlaw pre-election coalitions was thwarted by the parliamentary majority. The formation of opportunistic and ephemeral winning alliances had been the easiest way to power in Kenya's polity in which issue-based politics had little chance to emerge. Politicians with the intention of forming such alliances in the run up to the 2012 elections mobilised MPs to pass the Act with a clause that recognised pre-election coalitions. The press reported that some politicians observed that the inclusion of this clause had drastically whittled down the Political Parties Act to the extent that its originally envisaged aim had been defeated (*The Standard* August 16, 2011). Kenya's politicians disregarded the Act without attracting sanction either from the parties that sponsored them to parliament or the Registrar of Political Parties.

Yet Kenya's politicians rebelled against the sponsoring parties and publicly campaigned and promoted different ones. Cabinet members doubled as party leaders and refused to relinquish either of the posts. The legacy of weak and partisan institutions made it difficult for the office of the Registrar of Political Parties to enforce the law. The holder acted at the behest of the PNU faction of the government. The post 2007 coalition government brought together previous political adversaries and so was characterised by divided loyalty whereby most politicians and government bureaucrats were either aligned to Odinga or Kibaki. The Political Parties Act covered the funding for political parties to address the influence of wealthy politicians upon political parties. Previously political parties relied on party leaders and individuals with vested interests for financial support. This compromised internal party democracy and the democratisation process in the country. Political parties had to be funded in proportion to their representation in parliament. Although this regulatory framework looked elaborate, the challenges to Kenya's political parties remained ethnic factionalism and a morally binding fidelity to the law among politicians.

1.3 Political Parties in the 2007 Elections

Generally, Kenya's political parties usually remained dormant in between elections only to be revived on the threshold of elections. Just before elections, buildings in shopping

centres across the country were painted in the colours of different political parties. After the elections, the paint faded and peeled off awaiting the colours of another political party on the threshold of the following elections. In fact the concept of political parties in Kenya's political milieu was a misnomer. Individual affiliation to a political party was influenced by how 'well positioned' a member of his or her ethnic group was within the political elite.⁵ Ethnic Big Men hopped from one political party to another with members of their tribe in tow. In effect, Kenya's weak political party system reduced the electorate to tribal subjects, a bit like wares to be hawked by the political elite. Presidential contestants either relied on the support of members of their ethnic group or formed broad ethnic coalitions such as the National Rainbow Coalition (NARC), KAMATUSA comprising the Rift Valley tribes of Kalenjin, Maasai, Turkana and Samburu and GEMA,⁶ that is, the Gikuyu, Embu and Meru Association. This meant that politicians tallied their support in terms of what the media referred to as tribal arithmetic in Kenya's political parlance (*The Weekly Review* May 8, 1992: 6).

There appeared to be no place for ideological contest in Kenya's politics. Theoretically Kenya's political parties professed some kind of ideology or another. However, ethnicity remained the unifying strand of these political parties (Kadima and Owuor 2006: 192). Furthermore, party manifestos, constitutions and policy documents were strikingly similar. Kadima and Owuor observed that even the constitutions of Kenya's political parties had centralised structures in which power was concentrated in a group of individuals (Kadima and Owuor 2006: 192). In the run up to the 2007 elections, the Orange Democratic Movement (ODM) drew up region-specific manifestos that spelled out issues specific to the different regions in which it circulated newsletters called *Mabadiliko Times* (Wanyama 2010: 87). However, ODM's manifesto was both too broad and too inclusive to be viable. It included pledges like the eradication of poverty, zero tolerance of corruption, the devolution of national resources, economic transformation, the enactment of a new

⁵ I use the term 'political elite' to refer to all Kenyan politicians not gatekeepers only. It underscores their privileged status sustained by the pursuit of their own political economic and social interests in disregard of the challenges besetting the *wananchi* (ordinary people) whom they support to represent. The gatekeepers in the government and opposition politicians exhibit this trait.

⁶ Ochieng' observed that GEMA was formed in 1971 and presented as a 'welfare association' meant to promote the economic, social and cultural interests of its members (Ochieng' 1996: 104). GEMA was often interpreted to mean the Kikuyu because the Meru and Embu politicians often went along with the political position taken by their Kikuyu counterparts.

Constitution, universal primary and secondary education, healthcare, and land reform among a plethora of promises (Wanyama 2010: 87). The ODM manifesto read like a litany of challenges facing the country and an indictment on the Kenyatta-Moi-Kibaki régimes. However, the ODM manifesto was inadequate in the sense that it lacked specificity. The party did not identify a set of issues that it might have addressed within a five-year mandate.

ODM-Kenya's manifesto differed from ODM's in the wording and emphasis of certain issues but not in substance, because the ODM-K was a splinter group that formed in a power struggle pitting Raila Odinga against Kalonzo Musyoka (Wanyama 2010: 88-9). Oucho observed that in the absence of a distinct policy agenda, Musyoka, a born-again Christian, promised Kenyans 'miracles' in the election results. Oucho was of the view that the miracle Musyoka referred to was a covert political alliance with Kibaki, the proof of which was his hasty acceptance of the vice presidential appointment even before the resolution of the dispute over the Presidential results (Oucho 2010: 509-20). PNU's manifesto was also devoid of ideology and instead placed emphasis on what they considered as the achievements of Kibaki during his first five years in office (Wanyama 2010: 89). Except for the fight against corruption and the enactment of a new constitution, the Party of National Unity's (PNU) constitution contained similar promises to those made by the ODM parties. These two pledges were the most significant that NARC made but failed to deliver on because of the blockages of Kibaki and his supporters. Wanyama argued that the PNU manifesto was centred on personality rather than on ideology (Wanyama 2010: 89). Kenya's politicians only invoked the issue of ideology during the electioneering period. In the earlier, 2002 elections, the NARC affiliate parties tried to identify with certain ideological positions. The Democratic Party of Kenya (DP) was considered conservative, while the Liberal Democratic Party (LDP) claimed liberalism for its ideology, and the Forum for the Restoration of Democracy – Kenya (FORD-K) purported to subscribe to social democracy (Kadima and Owuor 2006: 193). In spite of these seemingly ideological orientations, Kadima and Owuor observed that there was no manifestation of declared ideological positions in the operations of Kenyan political parties and usually not even party leaders or members preached the ideologies that their parties upheld (Kadima and Owuor 2006: 193).

1.4 Big Man Politics and Political Parties

While Kenya had a high turnover of political parties this occurred without a commensurate turnover among the ruling elite. What did this lack of change of leadership in Kenya's political parties imply for democracy? Was it an indication of a fundamental weakness in the emerging democracy in Kenya? I argue that one of the greatest hindrances to the nurturance of democracy in Kenya is a failure to recognise political parties as an indispensable component to multiparty democracy. This is exemplified in the somewhat cavalier manner in which political leaders treated their own parties. Instead of trying to build a solid party organisation based upon the support of voters for a manifesto presenting its fundamental principles and policies for the nation, political leadership since the advent of multiparty democracy was based upon individual and regional interest or ethnic appeal. Cheeseman suggests that Big Man politics continued to dominate despite the emergence of party politics (Cheeseman 2008: 172).

Extremely wealthy ethno-regional politicians exploited communal and patronage ties to mobilise support even in the absence of institutionalised political parties (Cheeseman 2008: 172). Before the promulgation of the 2010 Constitution, political parties were registered under the Society's Act, the same Act from which associations such as clubs, welfare groups and women's groups derived their legal existence (Kadima and Owuor 2006: 198). Unlike these organisations, political parties are distinct in the sense that they are formed with the sole aim of attaining power and forming a government (Wanyama 2010: 63). The location of political parties under the Act was a drawback to institutionalisation of the political party system because opposition political parties in particular were then at the mercy of government manipulation. For example, at the behest of Moi, the Registrar of Societies easily registered splinter opposition parties to exacerbate divisions among the opposition as was the case with the FORD before the 1992 elections. In other instances, there was delay in registering parties perceived to be a threat to the ruling elite. The founders of 'Safina' (Noah's Ark) were refused registration until just days before the 1997 elections. The party had no impact in that year's elections. The Kibaki régime was quick to register ODM under the names of individuals who had not been party to the successful campaign against the 2005 Constitutional referendum. The intention was to scuttle unity efforts among the opposition.

Although Kenya's political parties had constitutions that stipulated rules and regulations to guide their operations, these rules and regulations were often ignored. As a result these parties did not practise internal democracy. Kenya's political parties were known for the undemocratic manner in which they conducted nominations largely owing to the non-institutionalisation of these political parties. A particular issue was that Kenya's political parties had no registered party membership to identify supporters. Party leaders took it for granted that members of their ethnic groups would support the parties they led. The association between party support and ethnicity seemed to be axiomatic. Although in principle, the dispute following the 2007 general elections pitted ODM against PNU, militias targeted people on the basis of ethnicity (Republic of Kenya 2008b).

In most cases the election of national party officials and special delegates' conferences were choreographed events. Wanyama observed that in 2007 there was a dispute with regard to the KANU delegates' list used to organise the conference that endorsed the party's cooperation with PNU. Politicians in support of the cooperation allegedly hired delegates and locked out the 'bona fide delegates' and had a resolution endorsing the cooperation passed (Wanyama 2010: 73-4). In 2002 KANU held a delegates conference that rubber-stamped Moi's choice of a successor against the wishes of some party members as shown in chapter five. Evidence from elsewhere also shows, for instance, that primaries were consistently characterised by bribery, rigging and worse, violence (Wanyama 2010: 76-85; Republic of Kenya 2008a: 56-7; Republic of Kenya 2008b: 62; 74). Moreover, in 2007 the losers in primaries were given nomination certificates thanks to their connections with party leaders. These anomalies were preponderant in Luo Nyanza, the bastion of ODM, because victory in primaries almost guaranteed one of a victory in parliamentary elections due to ethnic bloc voting. James Orengo⁷, a prominent politician from the community, received a nomination certificate despite losing in primaries in Ugenya constituency (Wanyama 2010: 82). In most cases a national identity card and a

⁷ Orengo had a track record as one of a handful of MPs who opposed Moi's authoritarianism since the early 1980s until Kenya's return to multiparty politics. He was appointed to head the sensitive Ministry of Lands in the coalition government. He subsequently mellowed and could not disengage himself from the infractions and moral turpitude that afflicted the coalition government such as profligacy, self-aggrandisement and refusal to pay tax. Miguna portrayed Orengo as a politician compromised by the state largesse once appointed to the cabinet. He did not attempt to provide leadership in land reform (Miguna 2012).

voter's card were sufficient requirements for one to participate in these primaries. This made it possible for people to participate in as many primaries by different parties as they wished, either to influence outcomes or simply to gain hand-outs. This was possible given that parties deliberately held nominations on separate days with some hoping to cash in on last minute defectors.

Parties had no way of vetting parliamentary aspirants. This accounted for party hopping whereby losers during primaries turned to other political parties in search of sponsorship to participate in parliamentary elections. There was a record 42 candidates vying for the ODM ticket in Chepalungu constituency of the Rift Valley Province in 2007 (Wanyama 2010: 78-9). The European Union Election Observer Mission report suggested that high salaries for MPs motivated the high number of candidates during the 2007 elections (EU EOM 2008: 19). The International Crisis Group in its report showed that unpopular politicians, some of whom held national positions in their parties, were issued 'direct nomination' thus being exempted from the primaries (International Crisis Group 2008: 5-6). The three leading parties during the 2007 elections, ODM, PNU and ODM-K, conducted a disorganised, if not shambolic, process of nominations that was a precursor to the irregularities that the EU EOM revealed in its 2008 report. The EU EOM report showed that the elections were riddled with irregularities that in some respects explain the chaos of the general elections themselves and the subsequent post-election violence (EU EOM 2008: 2). As the Independent Review Commission suggests the void created by the absence of a regulated political party system encouraged the tribalism that propelled politics and that encouraged the preponderance of 'briefcase' political parties engaged in 'political mercantilism' (Republic of Kenya 2008a: 57-58). These were one-man fringe political parties⁸ that specialised in issuing nomination certificates to the losers in primaries who came from the dominant parties (Republic of Kenya 2008a: 57-58). They delayed nominations anticipating the political fallout between individual politicians within the big parties. Leadership in some of these parties was incestuous in the sense that it was composed of close relatives of the founder. The Liberal Democratic Party (LDP) a

⁸ Notable characteristics of fringe parties according to the press include: lack of physical address; non filing of returns with the register of societies; benefit from protest votes especially after a dominant party in a given area bases its nominations on affinity to party leaders as opposed to popularity of the candidate (*Daily Nation* November 8, 2002). These attributes were not unique to the so called fringe parties because even the so called big parties exhibited them too.

principal NARC partner, at one time had Dennis Kodhe as the Secretary General while his father-in-law served as the Chairman (Badejo 2006: 226). The pair surrendered the party to Raila Odinga's allies before negotiations for the formation of NARC in the lead up to the 2002 elections (Badejo 2006: 222). Fringe parties were also up for sale to prominent politicians as shown by the case of NDP and LDP (Badejo 2006: 178, 226). It was alleged that those who had initially registered ODM surrendered it to Odinga and his supporters in exchange for money (Wanyama 2010: 71).

It was an accepted political practice for those who lost in nominations, either fairly or otherwise, to immediately decamp to these parties that were willing to offer them sponsorship. Party hopping was common because political party formation remained fluid. Sometimes politicians in Kenya changed parties in a comical fashion.⁹ Parties lacked established branch structures, a membership core and did not hold elections for executive positions. Kenyan parties were Nairobi based without party branches. The only time such parties registered presence at the grass roots level was when party leaders organised political rallies in rural towns either during general elections or by-elections. Alternatively politicians turned funeral ceremonies into political rallies and forums for reaching out to the rural people. In theory, most political parties purported to have a network of structures spread across the country from the local to the national level. However, in reality the parties had no branches at the local level and where they existed they were moribund (Wanyama 2010: 72). Dormant branches only became active during elections because membership of them could easily then translate into sponsorship to contest elections. In between elections it was common to see derelict buildings painted in the peeling colours of a given political party in market places in remote parts of the country. These were sub-

⁹ For instance George Nyanja, the FORD-Asili MP for Limuru (1992-2002) set out in November 1997, a month away from the general elections, to find a safe haven for his political activities. He had poor relations with Martin Shikuku the party leader. Although he had been accepted by the DP, it quickly dawned on him that he might not be nominated by the party. Assuming that he could easily be embraced by Paul Muite and Richard Leakey of Safina party, he announced that he had shifted camp to the newly registered 'Safina'. However, the 'Safina' leadership did not admit him into the party because of his past utterances in reference to Europeans and Asians living in Kenya. 'Safina' was trying to carve an image for itself as a party of principled individuals with a vision of a united nation, free from ethnic and racial bigotry. Nyanja quickly sought to join SDP, but was not embraced by Charity Ngilu or Peter Anyang' Nyong'o. At this point he tried to rejoin the DP. When the DP shut the door in his face, Nyanja instantly and desperately turned to Raila Odinga and the NDP. As it turned out for the Limuru voters, it did not matter which party ticket Nyanja was going to run on so long as he did so on an opposition ticket. Nyanja's initial hesitation to seek NDP nomination had to do with ethnicity and the fear of rejection by his voters if he joined a Luo-led party (Njogu 2001: 389-90).

branch offices. Some tended to be overgrown with bushes with a forlorn look reflecting the fate of the parties that previously used them. Kenya's political parties had short life-spans being personality and ethnic based and so such buildings kept shifting in function alternately serving as charcoal stores, butcheries, eateries or simply had the image of condemned buildings.

1.5 Explaining the Salience of Ethnicity in Kenya's Multiparty Politics

Kenya's centralised state enhanced the salience of ethnicity in the polity. Since independence until the passage of the 2010 Constitution, the President and the ruling politicians related to the state instrumentally. It was a veritable gatekeeper state as Cooper would describe it that politicians took charge of and enriched themselves by exploiting its resources derived from the export-import trade and other local revenue generating activities (Cooper 2002: 156-9). Thus control of the state had to be exploited for the political and economic gain of the power holders. The President enjoyed overwhelming powers and had the prerogative to make virtually all the appointments within the bureaucracy, top administrators in public universities, diplomatic postings, military and security forces. He prorogued, summoned, dissolved parliament and even determined the date of elections (Amutabi 2011). Moi exploited the latter to enjoy the upper hand during the 1992 elections. He called for elections at a time when the opposition parties were in a state of disarray.

The core functions of the state were centralised in Nairobi with the provincial administration being the enforcer of the Presidential edicts. Cohen identified the Provincial administration as a cog in Kenya's centralised state (Cohen 1994: 8). At the top of this relic of the colonial system was the President while at bottom was the village headman. Patronage, and more crucially, corruption¹⁰ thrived in Kenya's centralised state because of the huge amount of revenue and other opportunities at the disposal of the President and his allies. The state remained the biggest employer even after the enforcement of the structural adjustment programmes in the early 1990s had called for a reduction in the government wage bill through redundancies and the privatisation of non-performing state corporations.

¹⁰ Chabal and Daloz (1999: 95-109) demonstrate that the concept of corruption in Africa is nuanced because of communal influences such as kinship ties.

Allocation of resources such as award of government contracts, procurement processes, sinecures and the ability to skew development projects such as asphalt roads, electricity, portable water, hospitals and educational institutions in favour of the President's region, encouraged competition for power along ethnic lines. John Cohen's analysis pointed to the influence of ethnicity in the allocation of development projects, corruption and economic mismanagement during the Kenyatta and Moi régimes (Cohen 1994). There was the widespread logic that a community could only benefit from state resources if a member was elected President. It stemmed from an ethnically influenced allocation of resources. Intelligence and security procurement processes were shielded from public scrutiny ostensibly for state security reasons. This created an atmosphere within which corruption prevailed for the financial benefit of top ranking military officers and the ruling political elite, as documented by a former military officer implicated in the attempted overthrow of the Moi régime in 1982 (Diang'a 2002). The press also exposed similar irregularities between high-ranking military officers and politicians under the Kibaki régime (*The Standard* October 31, 2010). Therefore winning the presidency came with economic gains for the incumbent and his supporters.

Kenya's politics had operated in a zero sum political framework in which elections produced winners and losers. Since there had not been checks and balances against presidential powers for most of Kenya's postcolonial period, it was almost impossible for the incumbent President to lose an election. Kenya's régimes had not experienced 'incumbency vulnerability' defined as 'the possibility for an incumbent government to be ousted and replaced...' Bogaards observed that the catchword is 'possibility' in that 'vulnerability' applied only in a case where a government operated with the realisation that its continued existence depended on how it conducted itself (Bogaards 2000: 176). In instances when the government felt threatened, it reacted through unorthodox means. When the Kenyatta régime appeared vulnerable following the assassination of Mboya, it appealed to Kikuyu ethnic solidarity and state violence. Likewise when Moi's hold on power was threatened by multiparty politics, his régime stoked ethnic violence. The Kibaki régime was implicated in sponsoring Mungiki, a Kikuyu tribal militia, against opposition supporters in the wake of the 'stolen' 2007 elections (ICC 2012-Muthaura et al case-

Decision on the confirmation of charges). These régimes resorted to these tactics for fear of losing power and relegation to what Bates describes as ‘political wilderness and economic disaster’ (Bates 1983: 90).

The other factor that enhanced appeal to ethnicity by politicians was that administrative and tribal boundaries coincided. This resulted in most administrative units being dominated by certain ethnic groups. The Luhya had been dominant in Western Province, the Luo in Nyanza and the Kikuyu in Central Province. The ‘County’ replaced the ‘Province’ as a unit of administration in the 2010 Constitution, but media and politicians continued to be obsessed with the ‘Province’. Most of the 47 counties continued to be dominated by the five most populous ethnic groups which constituted more than half of the total population (Kenya Census 2009). Since the advent of multiparty politics, politicians had regarded the Province as a reservoir of ethnic votes because of what Bates referred to as the ‘politics of apportionment and delimitation’ (Bates 1983: 161).

The centralised state under the one-party system suppressed alternative political views and so curbed the eruption of ethnic-based political organisations and mobilisation and the attendant violence. Once the country reverted to multiparty politics in 1991, it was possible for opposition and KANU politicians to canvass for support along ethnic lines. The Kenyatta-Moi one-party state had for all intents and purposes assumed the face of the tribe of the incumbent President. The emerging political parties in the 1990s continued to have to fit into this exiting political orientation that thrived on patronage, violence, and the exclusionary definition of leadership through a tribal lens. The opposition politicians were unable to devise an alternative form of politics because almost all of them had been part of KANU and occupied prominent positions in the Kenyatta and Moi régimes. Except for Oginga Odinga most of the other opposition leaders had either been purged or defected from KANU for reasons that had nothing to do with reform (Ndegwa 1998: 194).

Political competition in the multiparty period was ensnared by the ethnicity mould because Kenya’s politicians defined citizenship in terms of ethnic belonging at the expense of national citizenship (Ndegwa 1997). This exclusionary politics was a continuation of the ethnic balkanization of Kenyan communities that had pertained under the colonial divide-

and-rule strategy. Mamdani argues that the administrative and legal units of the state separated and discriminated between people in terms of the indigenous and non-indigenous. The outcome of this distinction was that those defined as the indigenous enjoyed customary rights, the foremost being the right to land, while those defined as foreigners were denied those rights, no matter how long they had occupied the land (Mamdani 2004: 7). Ethnic belonging became the qualification for running for political office and promoted the exclusion and discrimination against 'foreigners'. The Moi régime resorted to violence to displace the non-indigenous people in the Rift Valley in order to gain demographic advantage during the 1992 and 1997 elections.

1.6 Why the absence of Class-based Politics?

Kenya's democratisation process was also hampered by a lack of identification along class lines. Kenya's middle class could not act as a bedrock and catalyst for the democratic process because it was ethnically divided and depended on the state thus it was immersed in tribal politics since its economic survival depended on the fate of the government of the day (Cooper 2002: 176). Thus the cyclic tribal violence under multiparty system testified to the fragility of Kenya's democracy. Richard identified two characteristics among Africa's middle class that held true about Kenya too. He observed that Africa's middle class could not assist in entrenching democracy because it was precariously linked to the state bureaucracy and therefore lacked a self-sustaining entrepreneurial instinct (Richard 1997: 363). The country's middle class promoted ethnic politics in the media, universities and the bureaucracy because of competition for the opportunities of modernity.¹¹ Kenya's workers could not assert their influence to bear on the process of democracy in the country. To begin with sections of the media had problems with conceptualising the phrase 'working class' which they applied to mean 'people who have a job' to the exclusion of the unemployed. This resulted in a limited understanding of the concept. In this regard, a lawyer, a bank manager, a university teacher, a journalist and even a doctor were referred to as members of the 'working class' (*The Standard* September 25, 2011). I mention this aspect because the media influenced discourse in the country and any misrepresentation of issues had an impact on how issues were addressed. The economic meaning of the concept

¹¹ Kenyan university students organised, mobilised and voted along tribal lines during student elections thus induction into exclusionary ethnic politics among Kenya's middle class partly took place at university.

that referred to those without the means of production and who were in wage labour was not popularly understood. Kenya's working class had become depoliticised and was itself caught in the ethnicisation of identity and of politics. Trade unionism had not recovered from the legacy of the monolithic one party state. In the aftermath of the banning of Oginga Odinga's Kenya People's Union (KPU) party in 1969, Kenyatta consolidated power and even reserved for himself the power to appoint the boss for the umbrella workers' organisation the Central Organisation of Trade Unions (COTU) (Ochieng' 1996: 102). Since then the COTU leadership had tended to be closely associated with the government of the day. COTU seldom invoked industrial action in challenges facing the workers. Most strike action involved organisations whose membership included the middle class such as teachers and lecturers.

The lacuna created by the absence of independent oversight institutions, policy differences and ideology among politicians and political parties accounted for the influence of ethnicity in politics (Gyimah-Boadi 2007: 27). Kenya's electorate did not vote based on the manifestos of the competing political parties. Democracy in Kenya existed more in the rhetoric of what Wolff referred to as 'political entrepreneurs' (Wolff 2006: 73) than in the practical conduct of politics according to the dictates of democracy. A government report on the disputed 2007 elections observed that successive elections since 1992 were marred by politicisation of ethnicity, rigging, cultural stereotypes, hate speech, intimidation of opponents and ethnic violence (Republic of Kenya 2008a). Although democracy presupposed that people voted for candidates and parties after evaluating their manifestos and that today's winners would be tomorrow's losers and vice versa (*The Standard on Sunday* February 6, 2011) Kenya's politics was uncertain because politics were conducted in an atmosphere without discernible rules and norms and by politicians reluctant to subject their conduct to the rule of law.

1.7 Thesis Aims and Objectives

The aim of the thesis is to explain the salience of ethnicity in Kenya's transition from one party to multiparty democracy through the prism of electoral party politics between 1992 and 2007. It seeks to understand the persistence of ethnicity in politics and why electoral politics became so dominated by ethnic violence. The thesis thus explores how and why

ethnicity remained salient in Kenya's transition from one-party rule to political pluralism. What was the relationship between cyclic ethnic conflict and political liberalization in Kenya, particularly following Kenya's return to multiparty politics in 1991 after the repeal of Section 2A of the Constitution that had previously proscribed the formation of many political parties?

Principally the thesis seeks to explore how ethnicity manifested in the formation, management and running of political parties and how this politicisation of ethnic identity resulted in violence before, during and after elections since 1992. Moreover, it attempts to highlight how and why these political parties enhanced ethnic polarisation as opposed to serving as aggregates of policy oriented politics. The shift into multiparty politics was meant to infuse into Kenya's polity competitive politics based on policies. However, the transition enhanced tribal politics at great expense to the country's political stability. Why did opposition leaders who previously united against one party authoritarian system under Kenyatta and Moi dissolve into ethnic enclaves? Why was ethnicity the rallying point in political mobilisation in Kenya during elections? These questions are at the heart of Kenya's transition irony. The country accommodated multiparty politics in 1992 but had retained a single party political framework, mindset and political behaviour.

1.8 Rationale

The thesis contributes to our understanding of Kenya's protracted transition from authoritarianism to democratic forms of politics and its impact on multiparty politics in Kenya's multi-ethnic society. It explores the rationale behind the emergence of the logic of ethnicity in Kenya's politics to the exclusion of other forms of politics such as class politics and how it enhanced political disorganisation through violence. The thesis considers the significance of the concept of democratic transition in the context of Kenya, a country emerging from single party rule characterised by authoritarianism and patron-client type of politics. The thesis illuminates the trajectories that Kenya's politics has taken since the advent of multiparty politics in the early 1990s and shows that owing to the lack of policy oriented politics since independence in 1963, ethnicity became the ideology upon which political competition was conducted. It locates the legacy of tribalism to the inability of the country to forge a sense of national identity in the immediate post

independence period. At this point Kenyatta and his allies instrumentally exploited ethnicity for economic gain resulting in the fall out among the independence politicians. The thesis presents ethnicity as a lived experience about which almost all Kenyans I interviewed had a strong view. In Kenya the term 'tribe' and its politicised variant 'tribalism' were in common usage whenever people discussed challenges facing them as individuals and as a nation. Ethnicity is central in Kenyans' lives as testified to by the research findings that incorporate views from Kenyans from diverse ethnic, social economic and political strata. Kenya's political stability is predicated on the ability of the country to manage its ethnic diversity in resource allocation, political competition and establishment of rule-based leadership.

1.9 Methodology

Methodology refers to two interrelated elements as the theoretical approach to research and the methods used to answer the questions asked in the thesis. Method thus refers to a specific approach to data collection (Bangura, Karbo, King, Machakanja and McCandless and Zelizer 2007: 127).

1.10 Data Collection

I conducted research deploying through a combination of primary data collection and reference to a wide range of secondary sources. The primary and secondary research methods helped me access data that complemented one another. Although I did not conduct any survey, the respondents' opinions served to capture some of the anecdotal opinions that a cross-section of Kenyans hold pertaining to the question of ethnicity. They served to corroborate some of the arguments deduced from secondary sources.

1.10.1 Primary Sources

Through primary sources, I gathered data that had not been mediated through the analysis of others.

1.10.1.1 Presidential Speeches

At the Kenya National Archives Centre, I analysed Presidential speeches during the Kenyatta and Moi régimes covering national holidays and major national events such as opening of agricultural shows. As a result of a centralised political system, presidential speeches on such occasions contained pronouncements that had a direct impact on the manner in which the government operated and so what was said affected Kenyans' lives.

1.10.1.2 The Constitution

I referred to the 1963 Constitution and some of its amended versions, some of drafts of the proposed Constitution produced in the course of the constitutional review process. I also referred to relevant pieces of legislation as well as the 2010 Constitution popularly referred to as the new Constitution. The Constitution was at the centre of polarising politics.

Firstly, the lack of the doctrine of separation of powers in the 1963 Constitution ensured that the President and a cohort of ethnic allies exercised power to the exclusion of their opponents and the tribes to which they belonged. Secondly, Kenyan politicians did not willingly adhere to the rule of law, thus the pervasive culture of impunity even after the promulgation of the 2010 Constitution. Hence the narrative of Kenya's postcolonial history is inextricably intertwined with debates around attempts to reform the constitution.

Chapter eight contains analysis of the issue.

1.10.1.3 Interviews

Dane (1990: 128) defined an interview as a structured conversation used to complete a survey while Greenstein observed that 'an interview is a conversation that puts emphasis on the art of asking and listening' Greenstein (2003: 79). According to Greenstein interviews formed primary research because they enabled a researcher to collect and interpret data by themselves without relying on interpretations and conclusions arrived at by someone else (Greenstein 2003: 79).

Dane argued that sometimes speaking directly to people provided the best source of information especially in cases where a researcher conducted interviews with an expert because it ensured a sense of 'credibility, authenticity and immediacy' (Dane 1990: 80).

Greenstein argued that semi-structured interviews were significant because they were flexible and that gave more scope for respondents to expound on their responses (Greenstein 2003). Dane observed that semi-structured interviews helped the researcher to explore the opinions and behaviour of respondents (Dane 1990: 129). The flip side of semi-structured interviews that Dane noted is that it is difficult to interpret differences obtained when responses are compared because some interviewees responded to questions idiosyncratically (Dane 1990: 129). I conducted semi-structured interviews with civil society personnel, youth, teachers, religious leaders and a cross-section of the citizenry.

I undertook random sampling within specific categories of people in order to access their views. In order to establish the meanings and understandings of ordinary Kenyans to the violence that occurred in the aftermath of the 2007 elections, I undertook field research in Kenya during three visits. I was in Kenya in December 2007 until January 2008 the period within which I established contacts and observed the final stretch campaigns before the elections. I went back in December 2008 until February 2009 and undertook field research in six out of then Kenya's eight Provinces. I conducted my third field research from December 2010 until April 2011 during which I carried out archival research at the Kenya National Archives in addition to some interviews in the wake of the issuance of summonses by the ICC against six Kenyans accused of masterminding the post-election violence. The ICC cases became part of the political discourse in the run up to the 2012 elections because the cases arose as a result of refusal by the government to try the masterminds and perpetrators of the post-election violence. They were an extension of the disputed 2007 presidential elections. I was able to crosscheck my analyses with some of the interviewees I had met previously. In total, I interviewed 53 informants. Despite some of my research assistants being female, I was only able to interview six women. The respondents came from both rural and urban areas. In the Kenyan context whereby there was a constant link between the urban and the rural with people moving in and out of these locations regularly, it was not easy to draw a clear distinction between the two settings.

1.10.1.3.1 Politicians/Hansard

I conducted interviews with politicians at the local government level. I tried to meet some of the MPs but to no avail. I found out that obtaining an appointment with Kenyan MPs to

be one of the most challenging aspects of my research. Kenyan MPs were not generally accessible to the electorate. I was unable too to access Parliament which was closed to the public. This in itself provided insight into the lack of accountability of Parliament to the people. I used the internet to access some Hansard recordings covering parliamentary sessions in the aftermath of the post-election violence.

1.10.1.3.2 Teachers

I interviewed teachers. Most teachers are regarded as opinion shapers especially in the rural areas since they were often the only employed people in such places and played a crucial role in politics at this level. They were among government employees that the electoral body employed to manage elections in the constituencies.

1.10.1.3.3 Youth

I conducted interviews with youth employed by private and state corporations, self-employed ones and engaged in income generating ventures such as running business activities dealing in second hand clothes, electronic goods, barbers, technicians and high school students. Constituting more than half of the population, this constituency attracted the interests of politicians at all tiers and so I deemed it fit to seek opinions of some of them. Youth were among the marginalised constituencies in the country beset by unemployment hence easily lured into political violence. Kenyan politicians and bureaucrats tended to be elderly people.

1.10.1.3.4 Religious Leaders

I interviewed religious leaders from both the Christian and Islamic faiths. Religious leaders played a significant role in historic political events such as the 2005 and 2010 referenda and the 2007 elections and had been part of the struggle for reform. They commented on topical issues of the day and therefore their voice(s) mattered in shaping the country's destiny.

1.11 Sample size

Greenstein (2003) observed that precision about sample size is required in research. He further added that the number of cases selected depended on the level of theoretical

development in the field of study such that where a large body of theory is available a small number of cases may only be needed. However, a relatively new or unexplored theme requires a substantially larger sample size to ensure that the topic is adequately covered. Moreover he stated that the selection of sample size was dependent on time and money (Greenstein 2003). I selected my sample size based on ethnic diversity, occupation and geographical location.

1.12. Secondary Sources

Secondary sources provided data that complemented primary sources.

1.12.1 Internet Sources

I sourced my journals articles from the Wits library, from the internet through the University of the Witwatersrand Library search engines and through Google scholar. Ruszkiewicz, Walker and Permberton pointed out that for many subjects, traditional research sources such as books, articles and newspapers, did not form a big proportion because of the emergence of electronic sources such as email and websites (Ruszkiewicz, Walker and Permberton 2006: iii). However, the scholars argued that these technological innovations placed the role of evaluating the credibility of such sources on the shoulders of the researcher a role which publishers and librarians previously played (Ruszkiewicz, Walker and Pemberton 2006: iii).

1.12.2. Reports

I analysed both official government reports and reports by international organisations. These reports thus contained information that I could not easily obtain from government bureaucrats and national politicians. I studied reports by commissions of inquiry, the statutory Kenya National Commission on Human Rights (KNCHR) and the non-governmental body, Kenya Human Rights Commission (KHRC). Commissions of inquiry reports I referred to included Republic of Kenya (1992) 'Report of the Parliamentary Committee to Investigate Ethnic Clashes in Western and other Parts of Kenya,' Republic of Kenya (1999) 'Report of the Judicial Commission Appointed to Inquire into Tribal Clashes in Kenya,' and Republic of Kenya (2008a) Report by the Commission of Inquiry to inquire into all aspects of the General Elections held on 27 December 2007 in Kenya with particular emphasis on the Presidential elections and Republic of Kenya (2008b)

Commission of Inquiry into Post-Election Violence (CIPEV). I also referred to reports by international organisations such as the International Crisis Group and Human Rights Watch.

1.12.3 Newspapers, *The Weekly Review* and Video

I wish to state from the outset that Kenya's newspapers are not innocent sources of information especially concerning a polarising issue such as ethnicity in the context of Kenya. However, they remained crucial sources of information regardless. They covered Kenya's politicians on a daily basis on a scale that no single researcher could afford. I read and referred to Kenya's leading newspapers: *The Nation* and *The Standard*.

Ruszkiewicz, Walker and Pemberton (2006) observed that newspapers were helpful in research especially when the subject matter in question was topical and the researcher sought to build either an argumentative or persuasive case. Newspaper reportage provides not only graphic description of events, but also a sense of immediacy and analysis of events and politics that is often unavailable elsewhere. I also analysed *The Weekly Review* covering the Moi régime. *The Weekly Review* was once an influential newsmagazine on Kenya's politics that wound up in the 1990s. It was at some point considered pro establishment. I also referred to microfilm copies of *The East African Standard* and *The Nation* newspapers at the Kenya national Archives in analysing the coverage of multiparty politics in the 1990s and early 2000 years.

The relationship between ethnicity and Kenya's 2007 post-election violence remained a topical issue both locally and internationally for some time after the events. By the time I completed the thesis, the International Criminal Court (ICC) had indicted four Kenyans accused of masterminding the 2007 post-election violence. Therefore newspapers provided the most up-to-date information concerning such developments. However, Ruszkiewicz, Walker and Pemberton (2006: 59-60) caution that not all news sources are unbiased or credible. Kenya's newspapers were not immune from accusations of bias especially in the coverage of the country's politics. The Nation Media House which publishes *The Nation* newspaper and was critical of the Moi régime. There was a perception that the Kikuyu dominated the media house. Its editorial policy changed after Moi left power and had become supportive of the Kibaki régime. In the absence of reform in the core challenges

besetting the country such as the land question, resource distribution, meritocratic recruitment in the civil service and fidelity to the rule of law among the political elite, such a change in editorial policy might be seen within the prism of tribal politics. Daniel Moi, the former President had shares in the Standard Media Group that published the oldest newspaper in the country, *The Standard*. The newspaper had a soft spot for opposition politics under Kibaki and was perceived to be less adversarial towards the ODM faction of the coalition government. The significance of Kenya's newspapers as sources of information concerning the country's politics was highlighted during the confirmation of charges hearings at the ICC in which newspaper articles were admissible as evidence. The two newspapers were identified with each political faction and were therefore important in capturing Kenya's political disputes. I referred to a video by Hillary Ng'weno made in conjunction with the Nation Media Group entitled *The Making of a Nation A Political History of Kenya*. Ngwe'no is a veteran Kenyan journalist and a long time editor-in-chief of the now defunct *The Weekly Review*. The video read like the electronic version of editions of the *The Weekly Review* and even the aforementioned newspapers. I also referred to You Tube clips of the confirmation of hearings proceedings at the ICC.

1.13 Ethical Questions

Kenya's highly volatile political atmosphere in the aftermath of the 2007 post-election violence presented difficult ethical questions. People interviewed were apprised of the objectives of the research and chose whether to be interviewed anonymously or not. They were also free to decline having the interview on record. Most of them did not mind their identities being revealed. In the words of an interviewee in Kinoo, 'Even if Kibaki or Raila was here I would tell them what I am telling you'. However, the nature of this research required that I mask their identities because of the unstable political conditions in Kenya. I conducted the interviews as a supplement in order to explore some of the anecdotal opinions that most Kenyans have with regard to ethnic politics thus the opinions gathered are found in chapter seven that covers issues attendant to the 2007 post-election violence. Mine was not a survey and so what I gathered were nothing more than opinions that were by no means representative of the generality of Kenyans.

1.14 Chapter Synopses

1.14.1 Chapters One: Introduction

The chapter tries to set a background to the politicisation of ethnicity in postcolonial Kenya. In response to the question as to why ethnicity was so salient in Kenya's multiparty system, the chapter presents the thesis that tribalism in Kenya is a by-product of power politics and the attendant economic opportunities for which the political elite compete. Kenya's politicians have since independence in 1963 exploited ethnicity as ideology for political and economic gain. Regional inequalities and poverty, a lack of ideologically anchored political parties, weak state institutions and disregard for the rule of law have colluded to create an incendiary political milieu once the country reverted to multiparty politics. A combination of these factors contributed to the disputed 2007 presidential elections and the resultant violence. Kenya's challenge in its bid to democratise revolves around the need to address long term disputes particularly related to land and establishment of the rule of law. The chapter lays out the aim, rationale, and methodology.

1.14.2 Chapter Two: Literature review, Ethnicity, Tribalism and Electoral Politics

The review interrogates ethnic politics, as well as electoral and political party politics. It underscores some of the concepts in tribal politics and shows how the institutional one party framework impeded reform and even shaped the period of multi-party politics. An electoral process that only emphasised simple majority for the winner did not help in promoting competitive politics in Kenya's ethnically fractious society. The first-past-the-post (FPTP) electoral system contributed to ethnic mobilisation during elections since a simple majority win was sufficient for one to be declared President. Daniel arap Moi was re-elected in 1992 and 1997 despite lacking the support of majority of Kenyans who voted for the opposition. It was partly because of the foregoing that the previous elections including the 2007 presidential elections were disputed. Then the electoral system did not stipulate that a presidential candidate must attain fifty per cent plus one vote to be declared

the winner. I argue that the FPTP electoral system provided a loophole for politicians keen to subvert fair and free elections to engage in electoral fraud. This had created a zero sum political system. The simple majority electoral system combined with weak electoral laws and a compromised electoral body scuppered free, fair and competitive elections. Kibaki's controversial re-election lacked legitimacy partly because of these factors. Throughout the thesis the words ethnicity/tribalism, tribe/ethnic group are used interchangeably. Kenyans talk about 'tribalism' to explain the impediments they encounter in their lives. As such, 'tribalism' is a politically charged term in the country.

1.14.3 Chapter Three: *Nyayoism*: The Epitome of Big Man Politics

The chapter argues that ethnicity was a determinant in the choice of electoral candidates in both single party and multiparty Kenya. Personal rule impeded issue driven politics leaving tribe as the 'agenda' in the country's elections. The chapter focuses on the system of personal rule of Daniel arap Moi, Kenya's second president (1978-2002). Moi's tenure was popularly known as the *Nyayo* era. The *Nyayo* era was characterised by authoritarianism, deft manipulation of tribalism, personality cultism and economic mismanagement resulting in the weakening of the judiciary and parliament and construction of a one-party state. The chapter traces the loss of legitimate violence by the state under Kenyatta and Moi. This set in motion a genre of violence known as ethnic clashes that occurred during multiparty party elections. Competition for control of the state led to use of extrajudicial and other unorthodox means by rival political groupings.

1.14.4 Chapter Four: Kenya's Transition without Transformation

This chapter focuses on the period between 1992 and 1997 when the first and second multiparty elections were held. The chapter argues the 1992 elections did not result in the envisaged reform and that within this period Kenya's politics did not change substantively. This explains Kenya's inability to undergo transformation. The period exposed the salience of ethnicity in multiparty politics and its accompanying tribal violence. Neither Moi nor the opposition had a transcendental vision. They were both bogged down in ethnic mobilisation having in most cases worked together under the one party system. The politics of cooperation among political leaders was trumped by the personal basis of

politics. The chapter exposes similarities between KANU and opposition parties both of which lacked clearly differentiated ideologies and a commitment to reform. Political expediency held sway reducing Kenyans to mere pawns on the politicians' chessboard. Politicians were quick to mobilise along tribal lines and abandon their supporters once their interests were met.

1.14.5 Chapter Five: The *Jogoo-Tinga* Duel and Moi Succession

This chapter focuses on Moi's second and final term between 1997 and the 2002 transitional politics, a phase dominated by succession politics. The chapter argues that since Moi had depended on the manipulation of tribalism throughout his rule, it made it hard for any other variable to emerge and constitute the basis of succession politics. KANU's time-tested 'provincial strategy' of distributing KANU executive posts along ethno-regional lines unravelled as Moi tried to balance ethnic interests during his succession. A novel political alliance with the National Development Party (NDP), led by Raila Odinga, was borne out of Moi's obsession with tribalism. The alliance set the pulse of political events within this phase and a coalition government emerged. KANU, symbolised by *Jogoo* (cockerel) and NDP *Tinga* (tractor) merged to form 'New KANU' that was mere renaming without any substantive input in the manner in which the party was organised. Ethnic calculus informed Moi's attempt to impose Kenyatta's son on KANU as presidential nominee. The unintended consequence was that KANU disintegrated and was defeated in the 2002 elections. Although the merger jumpstarted the constitutional review process, its realisation remained elusive owing to competing ambitions between Moi and Raila Odinga. The fallout between Moi and Odinga threw the political matrix into a spin. Those opposed to Moi's machinations consolidated ethnic support behind Kibaki as a protest against Moi rather than on the basis of Kibaki's leadership qualities. This elongated and even constituted a set back to the reform process.

1.14.6 Chapter Six: 'Everything is Possible without Moi'

This chapter covers the period between the 2002 transitional election and the disputed one of 2007. The chapter argues that although the 2002 elections constituted a watershed in Kenya's political history, the leadership transition from Moi to Kibaki, did not inculcate

transformative politics into the country's politics. It was significant that 2002 was the first time Kenyans participated in presidential elections whose results were not contested. The elections spelled the end of KANU's uninterrupted hold on power since 1963. Significantly, the Kikuyu-Luo pre-independence alliance that eluded the opposition in 1992 and 1997 materialised, ensuring the defeat of KANU. However, NARC broke up owing to disagreements over a pre-election power-sharing pact and competition for power along ethnic lines. The NARC coalition accentuated ethnic balkanisation after Kibaki reneged on a pre-election ethnic power sharing arrangement. Ethnic barons pivotal to his election became embittered and mobilised their followers against him. The 2005 constitutional referendum was essentially a tribal census as Kenyans voted on the draft constitution largely on tribal grounds. Thus an attempt by Kibaki to ensure a resurgence of Kikuyu hegemony in Kenya's politics elicited resistance from some political leaders from other tribes who had been crucial to his election in 2002. Kibaki resorted to survivalist politics by replacing dissenting politics and their ethnic constituencies with others like Moi before him in order to maintain power. The elite fragmentation witnessed a resurgence of ethnic polarization in Kenya's body politic.

1.14.7 Chapter Seven: The 2007 Elections: A Moment of Democratic Reversal

This chapter argues that the 2007 post-election violence was a culmination of unresolved historical issues such as land disputes, inequitable resource distribution, weak institutions, impunity due to unaccountable political leadership and general predilection for undemocratic ethnic bigotry and malfeasance. Inability to consolidate democracy because of oligarchic interests couched in the ideology of tribalism tipped the country over the precipice. Impunity ensured that there was no accountability as politicians could easily hide behind the veneer of ethnicity. The chapter includes findings from the field research I carried out in Kenya between 2007 and 2011. The views of *wananchi*, (ordinary Kenyans) constitute opinions from a cross section of Kenyans that attempt to illuminate the issues at the centre of Kenya's multiparty politics. Whereas rigging, bribery, shambolic and violence riddled primaries, and party hopping were a constant under Kenya's multiparty elections, the 2007 post-election violence was different from previous election related violence because it engulfed almost the entire country. The chapter argues that the

violence was important as it horribly signalled the perilous trajectory the country had embarked on since independence and called for substantive reform to avert unmitigated war in the future.

1.14.8 Chapter Eight: Reform and Kenya's Post 2007 Political Stability

The chapter traces the reform process from the 1990s until 2012. It accents the period after the disputed 2007 elections defined by attempts to reform Kenya's body politic through institutional, constitutional and legal reforms, healing and reconciliation and the promulgation of a new constitution. The chapter argues that the narrative of Kenya's struggle for multiparty politics is one of a clamour for Constitutional reform. The infamous 2007 elections and violence was a result of an impeded reform process. The irregularities of the 2007 elections brought the idiom of reform into sharper focus by demonstrating that a centralised state under the command of a tribal elite was inimical to political stability. The Lancaster Constitution that ceased to apply on August 4, 2010 following a referendum had been arbitrarily amended to create a powerful presidential system rendering Kenya's politics a zero-sum affair thus acrimonious and violence-prone. The obsolete Constitution enabled the power wielders to exercise power without accountability. However, behind the call for reform were sectarian, personal and ethnic interests. In order to avoid ethnic mobilisation, killings and other crimes against humanity committed during the violence, implementation of the Constitution with a view to carrying out long-term reform was of utmost significance. In case the country chose not to learn from the lesson afforded it by the post-election violence, the future of Kenya as a cohesive and stable nation was in jeopardy.

1.14.9 Chapter Nine: Conclusion

Chapter nine concludes and synthesizes the argument of the thesis as a whole and some recommendations on how to ensure that reform found traction in Kenya and an area for further research.

Chapter Two

Literature Review, Ethnicity, Tribalism & Electoral Politics

2.1 Introduction

The chapter reviews literature on ethnicity and its link with electoral politics. It also conceptualises key concepts. The idea that an ethnic group is a social construct is reflected in the lack of a concrete definition. Although the word tribalism is no longer in common usage in social science, I use it in the thesis since it is the word that Kenyans apply in discussing ethnicity and related challenges. The chapter responds to the research questions by demonstrating that ethnic politics is of relevance to Kenya's politicians who, in cohort with the intelligentsia, instrumentalise ethnicity in contestation for resources such as political power and economic opportunities. As such, ethnic politics in Kenya has political and economic value in the sense that access to the benefits of modernity depends on ethnic affiliation as opposed to other considerations such as meritocracy, efficiency, probity and performance. The chapter repudiates the claim that tribal politics is a relic of a bygone era of relevance only to the masses largely alienated from the state because of their social-economic conditions. The winner-takes-all electoral system had promoted ethnic mobilisation in the sense that all that a presidential candidate needed to do was to cobble together an ethnic coalition. There was no incentive to appeal to a broad electorate. Moi retained power in 1992 and 1997 by forging a coalition of KANU supporting tribes from his Rift Valley backyard. He then secured swing votes from sections of the Luhya, Kamba and Coastal communities. In both cases Moi was elected by simple majority. The winner-takes-all electoral system contributed to the disputed 2007 presidential elections since it did not provide for a run off in the event that none of the presidential candidates garnered fifty per cent plus one vote. However, weak institutions that were susceptible to interference by the Kibaki government played a greater role. The chapter presents salient issues in each chapter based on the premise that political actors in Kenya instrumentalised tribalism for patronage purposes. The chapter argues that a combination of patronage politics and inability to consolidate democracy following Kenya's transition into multiparty politics made it possible for politicians to exploit tribal politics in party formation and mobilisation. This trumped the emergence of class based politics.

2.2 Definition of Concepts

2.2.1 Ethnic Group

The definition of the concept of ethnicity is controversial. I begin with a rather controversial definition to underscore the lack of consensus on what the precise definition of an ethnic group is. Brown defines an ethnic group as that community which claims common ancestry and sees the proof of this in the fact that its members display distinctive attributes relating to language, religion, physiognomy or homeland origin (Brown 2000: 6). Although his work is relatively recent, Brown's definition is problematic because it suggests that one can identify members of a given community by physical appearance. This attribute is dangerous especially in the context of ethnic cleansing. Le Vine observes that of all the markers of ethnicity, language is universally recognised as the most significant (Le Vine 1997: 51). Wolff argues that ethnic markers make it possible to draw differences not only between individuals but also between groups (Wolff 2006: 34). Young and Turner argued that ethnicity is a relational concept in the sense that 'we' and 'they' are dichotomous concepts. The two scholars further argued that, 'we' can only find relevance in 'they' and those who define themselves as 'we' ascribe to themselves positive attributes and reserve pejorative ones to the 'they' group (Young and Turner 1985: 139). In Kenya's context, some Kikuyu politicians exploited the circumcision ritual to mobilise against and dismiss their Luo counterparts as unfit to occupy the presidency since traditionally the Luo community did not practise male circumcision. Ndegwa observed that the ritual had a status value among the Kikuyu (Ndegwa 1997: 202).

Kasfir writing in the 1970s argued that some of the attributes of ethnicity such as language, territory, and cultural practices were objective because both insiders and outsiders of a given ethnic community saw them as bases for political mobilisation (Kasfir 1976: 77). However, Young contested this understanding. He argued that the defining attributes of ethnicity were not constant because communities were in a state of flux. He explained that in a given political situation, these defining attributes may include language, territory, political unit, cultural values or symbols while in another some of these attributes may be absent which meant that ethnic attributes were fluid (Young 1976: 48). Bates's view of ethnicity was in consonance with Young's in the sense that he upheld that ethnic groups

were not objective but dynamic and in some cases were invented (Bates 1983: 165). Yet other scholars like Naomi Chazan and her associates suggest that ethnicity was an issue of subjective perception with regard to common origins, historical memories, ties and aspirations (Chazan, Lewis and Mortimer 1999: 108). I have demonstrated that the concept of ethnicity is fluid if not political. In the modern Kenyan state, the competition for resources such as land and political power accounted for the emotionalism with which people related to ethnicity. It also accounted for the emergence of tribal alliances.

2.2.2 Tribalism

I begin by conceptualising the word ‘tribalism’. In the thesis I use the word ‘tribalism’ and ‘ethnicity’ interchangeably because Kenyans themselves talk about ‘tribe’ and ‘tribalism’ while discussing the country’s political and economic challenges. This is an aspect that Mafeje acknowledged in his article.¹² Mafeje suggested that the ‘ideology of tribalism’ was significant to some intellectuals foreign to Africa and Africa’s middle class for three reasons. First, he argued that the ideology of tribalism did not capture the dynamics of ‘economic and power relations among Africans and between Africa and the rest of the capitalist world. Second, it sought to draw ‘an invidious and highly suspect’ divide between Africans and the rest of the world. Third, Mafeje referred to the ideology of tribalism as ‘an anachronistic misnomer’ that hampered analysis of cross-cultural issues (Mafeje 1971: 261). Berman observed that there was a ring of stigma around the word ‘tribalism’ to such an extent that Western social scientists denounced it as ‘retrogressive and shameful, an unwelcome interruption of the pursuit of modernity’ but African politicians reinforced ethnic differences because ethnicity propped up patronage networks from which their power sprang (Berman 1998: 306).

John Lonsdale coined the term ‘political tribalism’ to refer to the salience of ethnicity in politics that differed from what he referred to as ‘ourselves-ing’, which refers in his view, to moral ethnicity (Lonsdale 2004: 76). Berman observed that moral ethnicity referred to

¹² Atieno-Odhiambo stated that members of various tribes in Kenya at their work places in their offices, in public forums and in whispers along the streets and in the privacy of their homes did not speak of ethnicity. Instead they talked and thought about tribalism as they experienced it daily, ‘in its many enabling capacities, incapacitating impact upon their hopes, and blocking of opportunities for whole communities. They use tribalism as a practical vocabulary of politics and social movements’ (Atieno-Odhiambo 2002: 230).

internal communal matters that involved negotiations between people and their authority over issues such as rights to land and property. This is the innocuous aspect of ethnicity that other scholars such as Mamdani mentioned as well. Political tribalism in contrast emerged from the different ways in which colonialism impacted on different African communities especially with regard to access to resources of modernity and economic advancement (Berman 1998: 324). It is a form of ethnicity that Kenyan politicians took exploited to incite people against one another during electioneering. Mamdani argued that tribalism played two divergent roles in colonial Africa. It provided the basis for indirect rule adopted by the British whereby local chiefs acted as agents of colonialism at the grassroots level and was also the form that resistance against this same form of rule took. Ethnicity had a dual role whereby it signified both ‘the form of rule and the form of revolt against it. Whereas the former is oppressive, the latter *may be* emancipatory’ (Mamdani 1996: 183). In Kenya, the British employed direct rule but still underscored the element of tribe through the creation of tribal reserves as mentioned earlier thus the proliferation of ethnic centred political parties on the threshold of independence.

2.2.3 Ethnicity

The foundations of modern tribalism were laid when the various tribal modes and relations of production began to be displaced by a capitalist one, giving rise to new forms of insecurity, and obliging people to compete with each on a national plane for work, land and ultimately for education and other services...(Leys 1975: 199).

Ethnicity is a phenomenon that postcolonial Kenyan politicians instrumentalised because of the fears and opportunities they encountered as they interacted with those whom they defined as the ‘other’. From the excerpt, Leys attributed the emergence of ethnic consciousness in Kenya at the point when people had to compete against one another due to a change in the mode of production from a system based on barter to one based on profit. Like Leys slightly over two decades earlier, Berman illuminates the link between ethnicity and change in the mode of production and the resultant impact on postcolonial politics (Berman 1998: 311). Kenya’s successive governments from colonial times had politicised and accented ethnic diversity because this form of politics sustained the political and economic ends of the country’s politicians. Ethnic identity was a consequence of colonialism. Mafeje, writing four decades ago, argued that before the advent of colonialism, Africans identified themselves in terms of territory (Mafeje 1971: 254).

Ethnicity in Kenya's politics heightened with the advent of political pluralism. Berman and other scholars suggest a link between ethnicity and the democratisation process in Africa but that the influence of ethnicity in Africa's politics began with the divide and rule strategy during the colonial period (Berman, Eyoh, and Kymlicka 2004; Posner 2005: 23). Horowitz argued that Africa's ethnic groups are historical constructs and the claim to ethnic distinctiveness began during the colonial period when most of them came into contact with one another for the first time (Horowitz 1985: 98). Why did colonialists accent ethnic identity? Mafeje contends that colonialists as well as anthropologists had an essentialist view of Africa in the sense that they regarded African communities as basically tribal. The emerging African elite socialised through the colonial education system reified tribal identity too (Mafeje 1971: 253). For Mafeje, then, the 'ideology of tribalism' explained the seemingly immutable view of Africa as tribally organised (Mafeje 1971: 253).

In Kenya, the reification of ethnicity led to ethnic profiling. Badejo¹³, Raila Odinga's biographer, traced tribal innuendoes and stereotyping prevalent in Kenya's politics to colonialism (Badejo 2006: 45-6). Corola Lentz contended that 'cultural specialists' reified ethnic groups through the creation of the 'we' groups with the attendant attributes that distinguished them from the 'others' before the advent of colonialism. The author however observed that there is scant literature to prove this (Lentz 1995: 319-20).

Kenya's independence in 1963 eliminated colonialism as the adhesive that held various ethnic groups together. Yet Kenyatta and his close allies perpetuated the divide-and-rule tactic by defining the contestation for state power between rivals through the ethnic logic. Cooper explained that rents accrued from control of the gatekeeper state heightened stakes owing to the centralisation of power. The zero sum politics that characterised gate-keeping politics precipitated accusations of tribalism among the competing groups of politicians (Cooper 2002: 159). This set in motion the ethnic factionalism among politicians who invoked ethnicity in their struggle for power. Thus the Kenyatta régime

¹³ Babafemi Adesina Badejo is a Nigerian scholar and as such the book benefitted from an outsider's view of Kenya's politics that would not easily have been the case had it been written by a Kenyan.

tried to convince the rest of the Kikuyu community to regard his régime as a Kikuyu entity.

Mafeje argued ethnicity was false consciousness, because in fact the poor did not stand to benefit materially from tribalism and to that extent their acquiescence to this type of politics predisposed them to exploitation by the ethnic apologists who purported to represent their interests (Mafeje 1971: 258-9). Thus the Kenyatta régime tapped into the ideology of tribalism to entrench itself in power and dismiss critics, politically ostracise and assassinate opponents. Mafeje distinguished the cynical exploitation of the ideology of tribalism to maintain power from the people's noble intention to maintain 'the traditional integrity and autonomy' of their community in relation to other communities (Mafeje 1971: 258). Thus for Mafeje, it was the politicisation of ethnicity that had had a disorganising affect on politics in Kenya and elsewhere on the continent. In this way too, violence was seen as an option in vanquishing opponents and their supporters. Even after the advent of multiparty politics, Kenya had had to contend with this obstacle as it struggled to transition to a new political ethos characterised by accountability, national identity, the rule of law¹⁴ and responsive governance.¹⁵

The colonial penetration of Kenya and its uneven impact on different ethnic groups set the stage for the politicisation of ethnicity after independence. The Luhya, Luo and Kikuyu accessed education earlier than the nomadic and pastoral communities owing to contact with the missionaries (Ajulu 2002). It was therefore not coincidental that members of these communities featured prominently in Kenya's postcolonial politics and dominated the bureaucracy. The fact that these tribes were among the most populous in the country was significant too. Thus Oyugi observed,

A combination of colonial attitudes and strategies and the responses to them by the various ethnic groups were later to provide the setting for future competition and conflict...the "development" strategies devised tended inevitably to benefit some groups at the expense of others. "Open" areas with more missionary stations received early and relatively better education...Education was to prove crucial as a

¹⁴ The rule of law refers to a situation whereby individuals and especially rulers in a self-binding way submit to 'the logic of abstract rules that regulate social interaction' (Hyden 2006: 11).

¹⁵ In this thesis I use the word 'governance' to refer to 'responsible, accountable, transparent, legitimate, effective democratic government' (Cheru 2002: 35).

criterion of access to gainful employment and other economic activities...some groups adapted much earlier than the others...(Oyugi 1997: 43).

Colin Leys observed that the Kikuyu adapted to the capitalist mode of production earlier than the other ethnic groups in Kenya (Leys 1975: 200). Traditionally, the Kikuyu prized individual as opposed to communal ownership of property such as land (Morton 1998: 132). The Kenyatta and Kibaki régimes built on the dominance of members of the community in Kenya's economy in comparison to other tribes. The economic impact of colonialism on other communities was varied. The Luo experienced a process of underdevelopment after an initial positive response to colonial markets in the 1930s (Hay 1976). Ajulu observed that the Luo were therefore reduced to providers of wage labour in the urban areas and on plantations while competition over fertile land in some parts inhabited by the Luhya resulted in land fragmentation which forced members of this community to search for wage labour too (Ajulu 2002: 254). Tea and horticultural plantations were established in the Rift Valley. The Luo and Luhya had provided wage labour in these plantations for years. This had rendered them vulnerable to cyclic ethnic violence during the multiparty period and particularly the 2007 post-election violence that afflicted workers in horticultural farming in the Rift Valley district of Naivasha.

The advent of colonialism in Kenya resulted in the 'invention' of certain ethnic groups (Lynch 2006: 237). Several culturally and linguistically related communities in the Rift Valley attained the name 'Kalenjin' during colonialism (Lynch 2006: 237). Ndegwa observed that other Kenyan communities such as the Luhya, Kikuyu, Giriama and Mijikenda were creations of colonialism as well (Ndegwa 1997: 601). The Luo had culturally and linguistically assimilated the Abasuba, a Bantu speaking tribe with close linguistic and cultural ties with the Baganda of Uganda to the extent that the Abasuba had almost completely lost their identity as a distinct tribe (*Daily Nation*, October 27, 2011). The invention of tribes was a continental phenomenon. Berman suggested that pre-colonially, ethnic groups such as the Shona of Zimbabwe and Yoruba in Nigeria existed as cultural and linguistic entities, not necessarily as ethnically conscious groups (Berman 1998: 310). As such, Berman observed that ethnic boundaries are fluid and people move back and forth in a contested and negotiated fashion (Berman 1998: 328). Le Vine

observed that ethnic identity was so elastic that ‘the contents, expressions and boundaries of ethnicity change’ make it difficult to define ethnicity (Le Vine 1997: 53).

The argument I am advancing is that there was nothing inevitable about Kenya’s colonial legacy of ethnic divisions. Ethnicity is not fixed, immutable and primordial (Le Vine 1997: 53). Most other African countries are just as ethnically diverse and inherited a similar colonial legacy. The post colonial African politicians had agency despite the colonial legacy of divide-and-rule. The evocation of ethnicity in political mobilisation was a rational choice that successive governments in Kenya engaged in pursuit of economic and political interests. Moreover, ethnicity became a means for advancing the politics of individual self-interests masked as patrimonialism and patronage. In contrast, Tanzania’s Julius Nyerere while promoting a different collectivist ideology known as *Ujamaa* (Hyden 2006: 117) was among a rare breed of African leaders who avoided exploiting the state for personal enrichment (Hyden 2006: 102-3; Meredith 2006: 249). Perhaps his greatest legacy was a sense of national identity among Tanzanians drawn from over 120 ethnic groups (Meredith 2006: 157).

Cowen and Laakso suggested that the politicisation of religious, ethnic and regional identities in Africa enabled Africa’s political elite to realise their political and economic interests (Cowen and Laakso 2002: 2). Smith similarly held this position and attributed ethnic politics to the advent of multiparty politics in Africa (Smith 2002: 25). The end of the Cold War brought forth the rubric of economic assistance from the IMF and World Bank based conditionally on the implementation of economic and political policies that reduced public spending on education, health and general public services, but was also tied to the promotion of democratic practice and governance. Consequently Africa’s Big Men including Daniel arap Moi came under pressure to conform to these conditionalities. In 1991 the opposition challenged Moi’s uninterrupted hold on power since 1978 and as a countermeasure the régime whipped up ethnic animosity.

Although Mamdani argued that ethnicity existed in pre-colonial Africa, he distinguished ‘ethnicity as a political entity from ethnicity as a cultural entity’ (Mamdani 2004: 7). According to Mamdani, the latter entails a mutually agreed upon set of values and customs

while the former depended on the legal and administrative functions of the state (Mamdani 2004: 7). The modern state, a creation of colonialism, exploited and reinforced ethnic differences through processes like the issuance of identity cards denoting one's ethnic background as happened in Rwanda under the Belgians or confining people in 'homogenous tribal reserves' (Ndegwa 1997: 607). In Kenya, administrative demarcations that separated people into areas inhabited almost exclusively by members of a given ethnic community had provided the conditions background for the politicisation of ethnicity in the post colonial period.

Berman advanced four reasons to argue that 'political tribalism' in Africa stemmed from imbalances in relations among different ethnic groups within the colonial establishment. First, the obvious power imbalance between European and African communities due to British rule and European claims to racial and cultural superiority. At independence, the template remained and the tribe that 'ascended' to power such as the Kikuyu under Kenyatta in Kenya sought to occupy the status previously reserved for the colonialists. This elicited resentment from the other tribes excluded from the state. Secondly the colonial régime fragmented indigenous people into separate ethnic enclaves and different economic divisions such as 'martial groups, trading and administrative groups, cash crop farmers and migrant labourers'. Berman observed that this process was steeped in stereotypes and therefore created a recipe for ethnic tension and conflict in the post colonial period. Thirdly, he observed that the uneven development of the market economy and access to markets within and between regions and communities resulted in competition and differential benefits. Fourthly, rural-urban movement led to the formation of ethnic enclaves and differentiated communities as such (Berman 1998: 328-9). People who moved from rural areas gravitated towards fellow tribesmen and women for cultural reasons as well as for a soft landing in the anonymity of the urban setting.

Young argued that the politicisation of ethnicity in Africa began on the eve of independence with the introduction of political parties and electoral competition. At this point the question 'Who am I?' which was increasingly posed both bluntly and threateningly gained currency (Young 1976: 166). Elite fragmentation in Kenya happened immediately after independence in 1963, which straddled the continued existence of

‘tribal’ structures within the new state. But it was after the reintroduction of political pluralism in 1991 that Kenya plunged into destabilising multiparty politics. Kenya had not transcended this form of political mobilisation even after gaining independence.

Young linked ethnicity with the intellectuals and argued that the politicisation of ethnicity was preceded by a process of reification of ethnic groups by the intelligentsia (Young 1976: 182). Despite linguistic, gender, class, regional and religious differences within an ethnic group, politicians and even some scholars promoted narratives that made members of a given tribe believe that they belonged to a concrete community bound by, among others, linguistic and cultural attributes that distinguished them from other communities. Young identified intellectuals as responsible for constructing ethnicity out of a sense of shared identity among people through art and literary works and language standardisation (Young 1976: 181-2). Berman argued that standardisation of languages and dialects by missionaries, as well as the work of anthropologists contributed to the invention of tribes in Africa (Berman 1998: 322). Prominent post colonial leaders such as Kenyatta, Moi and Kibaki were beneficiaries of missionary education and perpetuated the belief in the notion of concrete ethnic groups. Analyses by scholars such as Young, Ekeh, Mamdani and Berman illuminated the ways in which the ideology of ethnicity was perpetuated in Kenya’s modern institutions such as universities, civil society, religious groupings, and the media.

Writing in the early 1980s, Bates observed that ethnicity tended to collapse people into the same mould irrespective of social status, religion, gender, lifestyle and even language (1983: 161). Since the 1992 elections ethnic politics had displaced any other form of political organisation, such as class or political ideology. Even the 2002 elections that appeared exceptional still had ethnic undertones as my analysis in chapters four and five show. It was possible in Kenya for Luo in upmarket neighbourhoods and their fellow tribesmen and women in either an informal settlement or rural setting to vote for the same Presidential candidate and party as if they had the same economic concerns. This ethnic bloc voting applied to almost all ethnic groups in the country too.¹⁶ Hence ethnic loyalty

¹⁶ Tribes such as the Luhya had not exhibited predilection to ethnic bloc voting since the advent of multiparty politics partly because of the absence of an ethnic chief to command the loyalty of the entire community. The Luhya was one of the tribes that provided swing votes in presidential elections since 1992.

had more influence than national identity and class interest. Writing at a time when most African countries had adopted multiparty politics, Geertz suggested that people related to their ethnic groups from an emotional perspective and that explained why it was easier for someone in what he called a 'traditional and modernising' society to owe loyalty to one's ethnic group as opposed to the nation state (Geertz 1996: 41-2). The conflict in the Balkans in the early 1990s demonstrated that the process of building a sense of national identity was continuous. Scholars such as Daley observed that in Kenya most people placed the tribe above the nation state as seen through recruitment in the civil service, ethnic divisions in civil society and religious fraternity and ethnic bloc voting patterns. It played a role in determining who ascended the socio-economic ladder and who did not (Daley 2006).

2.3 Electoral Politics: The Electoral System

Indeed, the electoral system design determines the competitiveness of elections and hence the possibilities of either alternation of power between different parties or the entrenchment of one particular party in power. Electoral outcomes of transitional multiparty elections in a cross-section of African countries largely vindicate this contention. In most of these elections, defeat of the incumbent régime occurred largely in cases in which the elections were held following a negotiated redesigning of the rules of the political game intended to enhance fair competition (Nasong'o 2007: 87).

One of the reasons why it had been difficult for the opposition to dislodge the incumbent in Kenya was the first-past-the-post (FPTP) electoral system. It was a result of this realisation that previous attempts to review the Constitution took cognisance of the need for electoral reform (Government of Kenya 2008a: 145-6). The FPTP enabled Moi to win both the 1992 and 1997 elections with a simple majority. KANU lost power in 2002 partly because the electoral system did not advantage it after the opposition presented a single Presidential candidate. It was extremely difficult for KANU to rig the 2002 elections because the opposition had consolidated its support. Moreover, there was no incumbency advantage as Moi was constitutionally barred from running again which rendered the elections freer than previously.

By definition 'electoral systems are procedural rules which govern the transformation of votes to seats in the National Assembly (or any other elected body)' and are a prerequisite

to the holding of elections (Republic of Kenya 2008a: 18). The two main electoral systems are Plurality-Majority system or the FPTP and Proportional Representation (PR). Norris observed that the aim of the FPTP electoral system was to ‘produce an effective working parliamentary majority for the group while simultaneously punishing minor parties especially those whose support is spatially dispersed’ (Norris 1997: 301). The group in this context refers to the governing party. Norris pointed out that PR focuses on the inclusion of minority voices and is based on the principle that the seats in a constituency should be divided in accordance with the number of votes cast for the party lists, although there were variations in how this was applied in different political systems (Norris 1997: 303). Nasong’o observed that the PR sought to reduce disproportionality, that is, the disparity between a party’s share of national votes and its share of parliamentary seats. Simply put, 40 per cent of votes should translate into 40 per cent of seats (Nasong’o 2007: 86). Since independence Kenya applied the simple majority type of the FPTP electoral system during civic, parliamentary and Presidential elections, at least before the 2010 Constitution came into being. This Constitution provides for a fifty per cent plus one vote threshold for one to be declared the Presidential winner and 25 per cent of votes in at least 24 of the 47 counties. If none of the contestants attains this threshold, there must be a run-off between the first and run-up within thirty days after which the winner becomes the president. The FPTP system also called the winner-takes-all is usually based on single-member districts (SMD) or constituencies (Nasong’o 2007: 86).

The FPTP has two components, the simple and overall majority system with the simple majority stipulating that a victorious candidate is one who wins the majority votes in a constituency (Mosomo 2010: 53). Although all the types of electoral systems have advantages and disadvantages, and none could comprehensively address the question of representation, the FPTP facilitated the election of Moi in 1992 and he was re-elected five years later without majority support overall in the country. However, the electoral system was not the sole problem that the new multiparty democratic dispensation faced in Kenya. Electoral reform alone would not overcome the legacy of ‘one party rule’ under the authoritarian control of one man. Kenya’s challenges under the multiparty democracy can by no means be attributed to the winner-takes-all electoral system alone. A government report detailing the factors that contributed to the 2007 Presidential dispute argued it would

require reform of Kenya's political framework to overcome the legacy of 'one man rule' and the more than 47 years of post colonial misrule to realise credible elections in Kenya (Republic of Kenya 2008a: 21-4). We need to understand more fully the significance of the electoral system on politics in Kenya.

The overall majority system demanded that a candidate must win an absolute majority of fifty per cent plus one of the votes to be declared a winner (Molomo 2010: 53-4). In the event that none of the candidates meets this threshold, a run-off is held between the first and second candidates. The FPTP electoral system is a British inheritance and is widely practised in former British colonies (Molomo 2010: 53-4). Molomo pointed out some inadequacies of the FPTP system. First, only votes for the winner count and irrespective of the margin of loss, the FPTP had no place for the losing candidate. Second, it contravened the principle of one-person-one-vote since only the votes cast for the winning party are considered when a government is formed. Thus the FPTP did not enhance competitive democracy but encouraged the dominance of a political system by a single party (Molomo 2010: 54). Bogaards argued that since the reintroduction of multi-party politics in Africa in the 1990s, the challenge to democracy was the system of 'one party dominance' whereby the ruling party had so much influence making it difficult for change of government through elections since alternative parties were rendered insignificant (Bogaards 2000). This could be interpreted as an impediment for dispensations where there is a single dominant party and a plethora of smaller parties, as in the case of Kenya during the 1992 and 1997 elections. In this context, the dominant party can in effect smother the small ones. This is particularly the case when the governing party has access not simply to its numerical strength in parliament, but also to use of state resources. Indeed, Baregu goes so far as to suggest that the winner-takes-all electoral system is not simply unfair, but its main disadvantage is to encourage corruption in the form of bribes and rigging of votes, especially in a closely contested election (Baregu 2010: 35). The choice however is not a simple one between PR and FPTP. The complexities of conducting elections require a combination of attributes of several electoral systems, constituency delimitation and the strengthening of the electoral law to ensure a free and fair election (Republic of Kenya 2008a: 21-2).

Raila Odinga narrowly lost to Kibaki in the 2007 Presidential elections in controversial circumstances. This might have been avoided had the elections been conducted under a reformed electoral system. Since none of the presidential candidates managed to secure an overall majority, there would have been a run off between Odinga and Kibaki with supporters of Kalonzo Musyoka ensuring a decisive winner. Before the 2007 elections, Kibaki and his supporters had rejected the fifty per cent plus one vote threshold as part of the minimum reforms recommended by a parliamentary committee in the absence of comprehensive Constitution reform (Marsgroup 2007). Since the advent of multiparty politics in 1991, it had been easy for the ruling party to engage in electoral irregularities in a Presidential election because the institutional framework within which the elections were conducted was susceptible to interference by the incumbent. There was no likelihood of the losing candidates presenting a united front in contesting the results owing to ethnic divisions that impeded opposition unity in the first place. Even after winning controversially the incumbent capitalised on opposition disunity by co-opting some opposition politicians into the government. Moi lured some opposition leaders notably Kijana Wamalwa and Raila Odinga into recognising his victory in 1997 and thwarted a combined opposition challenge against perceived electoral irregularities. In 2007 Kibaki co-opted Musyoka into the government amidst a raging controversy over the legitimacy of his re-election thus reducing the protest to Odinga's ODM. Had Musyoka joined Odinga in protesting the results, the conflict might not have ethnically polarised the country the way it did.

In the 1992 elections the FPTP electoral system made it hard for the splintered opposition parties to unseat Moi. Brown showed that in that year's elections, Moi was able to retain the presidency with a mere 37 per cent of the popular vote beating seven other Presidential candidates (Brown 2001: 726). KANU won 100 parliamentary seats out of the possible 188 despite garnering only 30 per cent of the parliamentary votes cast (Brown 2001: 726). In 1997, Moi won with 41 per cent of the votes and KANU had a four-seat majority in parliament showing that the institutional framework hindered fair competition and so advantaged the incumbent (Nasong'o 2007: 90; Brown 2001: 726). On aggregate the opposition had more votes but lost to Moi because of the FPTP system and a splintered

opposition.¹⁷ The FPTP electoral system coupled with variations in constituency sizes¹⁸ ensured that KANU retained power although with a far lower percentage of the total votes cast compared to the combined opposition of 63 per cent (Mutunga 2002: 72).

2.4 Influence of Ethnicity, Tribe & Party Politics

This section explores ethnic/tribal politics to understand its influence on Kenya's politics since the advent of multiparty politics in 1991. This section argues that the Kenyatta-Moi-Kibaki régimes instrumentalised ethnicity for the consolidation of power and accumulation of wealth for the President and their supporters. Instrumentalism conceptualises African politics as characterised by manipulation of ethnic identities and loyalties for political and economic ends (Wolff 2006: 33). Ethnicity in Kenya is not an anachronism. Neither is it a relic of the past but 'part and parcel of the very process of becoming modern' (Horowitz 1985: 101). The modernisation approach to ethnicity accents the link between the role of elite ambitions and the differential impact of modernisation on ethnic groups (Horowitz 1985: 101). Horowitz observes that the modern middle class earlier thought to be detribalised were the ones who advanced their interests through the invocation of ethnic support. Kenya's elites competed for what Horowitz referred to as 'good jobs, urban amenities, access to schools, travel, prestige' (Horowitz 1985: 101). Kenya's rural dwellers participated in ethnic politics through political mobilisation and dissemination of this kind of politics through the media. Kenya's rural areas tended to be inhabited by members of the same tribe. The question of competition for resources that pitted members of different tribes against one another, did not arise, yet in 2007 and early 2008 the post-election violence occurred in both rural and urban areas.

Horowitz's argument in 1985 that there was need to understand the logic behind the intense passion that accompanies ethnic conflict thus becomes critical in explaining the violence following the 2007 elections. For instance, the mass hysteria that led to the

¹⁷ In both 1992 and 1997 elections the combined vote of the opposition was over 63 per cent, almost double the percentage Moi secured on both occasions (Mutunga 2002: 72).

¹⁸ For example Embakasi constituency in Nairobi had 114 000 registered voters while Ijara in Garissa district had only 7 500 registered voters. Rift Valley Province, (a KANU zone) had 2 156 000 registered voters with 29 constituencies, while Nairobi had 726 000 with 8 constituencies. These anomalies resulted in obvious over representation in parliament and local government councils of certain provinces and created an imbalance in the weight of the vote (Mitullah 2002: 132). The IEBC sought to rectify these delimitation irregularities as part of electoral reform.

destruction to property belonging to members of the rival tribe, hacking people to death or setting a building ablaze because members of the ‘enemy’ tribe were sheltering inside, could not be attributed to grievances related to extractive politics *per se*. Young, writing a decade later, observed that in this case primordialism illuminated instrumentalism in that it helps us make sense of ‘the emotionality latent in ethnic conflict, its disposition to arouse deep-seated anxieties, fears, and insecurities, or to trigger a degree of aggressiveness not explicable in purely material interest terms’ (Young 1993: 23). As Horowitz presciently noted, the ethnic group is not synonymous with a trade union whose solidarity depended on the tangible benefits that members pursued and sometimes achieved as a collective (Horowitz 1985: 104). Thus for Horowitz, the participation of the peasantry and lumpenproletariat in ethnic politics appeared more nuanced than simply being labelled as a case of ‘false consciousness’ (Horowitz 1985: 105). The masses are not simply victims of herd mentality as some of the *wananchi* (ordinary people) I interviewed in Kenya showed. Their views indicated that they were politically conscious and not just pawns in political struggles. Thus it is clear that ethnicity was constantly in a state of flux. No single community whether in Kenya or elsewhere was homogeneous and ethnic groups tended to contract and expand depending on the threats and opportunities that they confronted (Brown 2000: 13).

The thesis shows that there is nothing anachronistic about the exploitation of tribalism for political and economic advantage. Chapters one and two show that although ethnic groups are colonial constructs, both Kenyatta and Moi, in conjunction with cohorts of allies from their ethnic groups, underscored and exploited ethnicity in order to rule. At this embryonic stage of Kenya’s independence, ethnicity became the ideology that guided Kenya’s politics. Ethnic mobilisation became the means of access to and retention of political power. Political power translated into economic gain for the President and his network of clients that in turn necessitated the instrumentalisation of ethnicity to guarantee continued and uninterrupted dominance of the state. The oath-taking campaigns by Kenyatta and his inner circle in the aftermath of the assassination of Tom Mboya fell under what Chabal and Daloz (1999: 46) guardedly referred to as the realm of the ‘irrational’. Ancient as these rituals were, they were meant to mobilise the masses of the Kikuyu into safeguarding the privileges of Kenyatta and the cabal surrounding him in a modernising economy. The

resort to the ancient Kalenjin warrior tradition to neutralise opposition against KANU and Moi in the Rift Valley under Kenya's multiparty system was a case of the exploitation of tradition by Moi and his allies in the Province in a struggle for power, privilege and other economic benefits. The alleged oath taking ceremonies by Kalenjin leaders in the lead up to the disputed 2007 elections and mobilisation of youth from the community to commit atrocities against 'enemy' tribes during the subsequent post-election violence was yet another case in point (ICC 2012: 44/139; 60/139 Ruto et al case-Decision on the confirmation of charges). These two illustrations bring to the fore the question of 're-traditionalising' that Chabal and Daloz grapple with as they strive to square the paradox of the resurgence of ethnicity, tribal politics and the resultant inter-tribal violence in modernising Africa (Chabal and Daloz 1999: 45-7). Ekeh, a Nigerian social scientist, in his seminal work written in 1975, talked about Africa's two publics and their influence on politics. One was the primordial public that included 'primordial groupings, sentiments, and activities' and the civic public identified with the colonial state and its appurtenances such as 'the military, the police, the civil service etc'. Unlike the former, Ekeh argued, the civic public has no moral connection with the private realm. Ekeh observed that African politicians were able to concurrently operate within the two publics with ease, a distinguishing characteristic of African politics (Ekeh 1975: 92-3).

Chapter three shows that the *Nyayo* era was quintessentially a personal rule system. I use the lens of personal rule/Big Man politics/neopatrimonialism to explore the nexus between tribalism and patronage and the challenges that have impeded the institutionalisation of politics in Kenya. It is this nexus that torpedoed democratic reform in the early 1990s and poses the greatest threat to the country's transition into a predictable, rule based politics and for lack of identity with the nation state among Kenyans. Moi, the Big Man, was in charge of a system composed of clients beholden to him. He exploited state largesse owing to the centralisation of power to ensure control over almost the entire bureaucracy as well as the three arms of the government. Jackson and Rosberg (1984) and Bratton and de Walle (1997) explained that in a Big Man rule, the rule of law did not matter. It was characterised by arbitrariness since the Big Man in conjunction with members of his inner court make whimsical and capricious decisions. Among the hallmarks of the *Nyayo* era were roadside declarations that in effect became government policy. Moi related to the

state as if it was his fiefdom. Throughout the one party state he was above electoral contests and demanded unflinching loyalty from all and sundry thus the cognomen, *Baba wa Taifa* (Father of the Nation). The chapter brings out the intricate connection between personal rule, corruption, patron-client politics, ethnicity and violence. Moi deftly deployed the system of personal rule to maintain a firm grip on power throughout the one party state.

In chapter four the question of transition and transformation takes centre stage. The inability to undergo a paradigm shift in the change from the one party state to multi-party politics, resulted from a number of issues. Principally, the entrenched KANU patronage system undergirded by the one party institutional framework continued to impede transformation. Conceptually, 'political transition refers to the passage from one type of political system to another. Often it refers to the passage from an essentially authoritarian régime to a basically democratic one, which ends with the introduction of the new democratic régime' (Ogot 1996: 245). However, Ogot observes that transitions do not necessarily address the challenges that democratisation poses to the transformation of society. Indeed, Ogot suggests that the resolution of such societal problems such as ethnic fragmentation in the context of Kenya depends on consolidation of democracy (Ogot 1996: 246). Ogot argued that democratic consolidation in a country such as Kenya ought to achieve four objectives. First, it has to promote a democratic development model as opposed to a neo-liberal model one that tended to promote dependency and neo-colonialism. Second, it has to redefine the relationship between the state and civil society through strengthening the latter. Third, democratic consolidation needs to strengthen the political party system independent of the state in addition to promoting social movements that reflect the 'real divisions in the society'. The trade union movement falls into this category. Fourth, Ogot argued that there was need for a new political culture to define the direction of the collective and harmony among people (Ogot 1996: 246). In consonance with Ogot, Murunga and Nasong'o averred that the concept of democratic transition as used by scholars, policy makers and democracy advocates to interpret the patterns of democratic change taking place in Africa, Asia, Eastern Europe and Latin America in the late 1980s and early 1990s, was characterised by the shift from authoritarianism to more open systems of governance (Murunga and Nasong'o 2007: 6-7). Democratic transition

was a multivalent concept. The thesis demonstrates that democratic consolidation was yet to happen in Kenya. The propensity among the executive and the legislature to disregard the constitution and exploit tribal identity underscored the point.

The shift from one party state to the multiparty system in 1991 and the re-election of Moi the following year did not usher in a new régime. However, this in itself did not mean transition did not take place. Osaghae argues that a democratic transition did not necessarily require the ouster of a sitting head of government because it envisaged the possibility of an incumbent being freely re-elected (Osaghae 1995). Moi's re-election was controversial as shown elsewhere in the thesis. The institutional one party framework remained intact. It favoured political actors both in KANU and in the opposition who either openly opposed reform or were not inclined to it at all. These three factors significantly hampered the possibilities of a transition to competitive politics and democracy, transformation and the consolidation of democracy would have to wait. No effort was made towards promoting a democratic culture. Opposition leaders depended on Western countries and donors in their efforts to dislodge Moi from power. Civil society was also beholden to the donor community and like the political actors did not agitate for a reform of the patronage system. Moi exploited the one party framework that accorded the incumbent overwhelming constitutional powers to muzzle opposition parties by use of state largesse to induce defections. Political parties remained mired in tribal based politics. Even civil society tended to be affected by not dissimilar challenges. The consequence was the deepening of ethnic divisions rather than an opening of democratic contestation around political and constitutional reform in the national interest.

Chapters five and six demonstrate the instrumentalisation of ethnicity by Moi and opposition leaders in the lead up to and after the 2002 elections. The KANU-NDP coalition was both ethnic and personality based since there was no structured framework to underpin this arrangement. It was guided by an office-oriented approach to coalition politics in which rewards such as power and prestige were the motivating factors (Budge and Laver 1986: 485; Kadima 2006: 5). Moi exploited the personal rule system to appoint Odinga and other three NDP politicians into the cabinet to cement this coalition. There was no structured discussion within KANU before the party formed a coalition with NDP.

Similarly, Raila Odinga engaged with Moi against the wishes of most NDP loyalists. Although NDP talked the language of reform, the succession politics took precedence. The notion of a politics in which it was assumed political actors advanced certain policy objectives linked to underlying ideological objectives seemed not to be a factor in this coalition (Budge and Laver 1986: 485). Oyugi might have had this coalition in mind when he argued that coalition politics in Kenya and many other African countries since the early 1990s was motivated not by the promotion of a particular policy trajectory but rather the quest for the benefits that power and authority brought (Oyugi 2006: 63). The inclusion of Odinga and allies in the cabinet remained the only 'tangible' result of the KANU-NDP coalition by the time the coalition collapsed. Both Odinga and Moi tried to take advantage of the coalition to influence the direction of succession politics. For a moment, Odinga, as the leader of a solid ethnic constituency, seemed significant to Moi's broad ethnic coalition under Moi's succession plans. The aim was to retain power within Kenya's oligarchy led by the Kenyatta and Moi families thus the effort to foist Kenyatta's son upon KANU as the presidential contestant. At the same time, Odinga tried to exploit his newfound camaraderie with Moi, his erstwhile nemesis, to strategise on how to succeed him using the countrywide KANU and state machinery.

In the same fashion, the NARC ethnic alliance that removed KANU from power was office-oriented. It was not motivated by synergy in ideology and policy among its constituent parties. The allocation of seats along ethnic lines within the coalition as illustrated through the NARC Summit bore testament to the objective of the coalition to attain power for the privileges that came with it. Bar Raila Odinga, Kijana Wamalwa and Charity Ngilu, the other Summit members including, Moody Awori (Chair), Kalonzo Musyoka and George Saitoti, had not participated in the reform process. Mwai Kibaki had opportunistically jumped onto the multiparty bandwagon after years defending the one party behemoth. These individuals sought to extract more benefits from the state and protect what they already had. The first three sought to join the rapacious political elite. Some of the portfolios that members of this group allocated to one another were not even recognised under the Constitution, such as the post of Prime Minister that Odinga was expected to assume after the 2002 elections. Therefore the NARC alliance was illustrative

of the understanding that in coalition politics the government formation is a win-lose scenario in which cabinet portfolios are the pay-offs (Kadima 2006: 5).

In chapter seven, the effects of the failure to consolidate democracy are covered. The 2007 elections precipitated tribal violence on a scale not witnessed before in the multiparty period in Kenya. Unresolved issues pertaining to land disputes, inequitable resource distribution and institutional weaknesses as a result of the legacy of the system of personal rule lingered. The weak political party system in which politicians formed political parties bereft of ideologies hamstrung the evolution of a democratic ethos. The absence of political parties that articulated and pursued ethnically and regionally cross-cutting issues robbed Kenya of an integral component of democracy. Civil society, religious formations and the media played a partisan role in the creation of an incendiary atmosphere not only in the run-up to, the 2007 elections, but also in the course of and after they had taken place. This showed that sections of civil society were not strong enough to operate above the partisan and often tribal politics attendant to the 2007 elections. Previous tribal violence as a result of exclusionary politics by Kenya's successive governments had made it difficult for the realisation of a sense of national identity among Kenyans. The 2007 elections were conducted in an atmosphere devoid of harmony and impartial state institutions but characterised by the politics of resentment, ethnic innuendoes, hate speech and disregard for a fundamental aspect of democracy, as free and fair elections.

Chapter eight discusses the reform process. In this chapter I argue that the clamour for reform in Kenya was in essence the clamour for constitutional reform. The lack of a legitimate Constitution to define the exercise of power by Kenya's successive rulers since independence had been at the core of Kenya's post colonial upheavals. Ng'ethe and Katumanga spell out the fundamentals of a constitution in any rule-based society. One, it is supposed to set out the principles upon which the government is founded and organised. Secondly, a constitution is supposed to spell out the modus operandi of relations between the state and society. Third, the Constitution regulates the exercise of sovereign power by assigning defined bodies or persons particular powers and functions as well as defining the manner in which the same should be exercised (Ng'ethe and Katumanga 2003: 304). The 2010 Constitution, through horizontal and vertical checks and balances, attempts to provide this conceptual and legal framework. The amended 1963 Constitution stymied the

evolution and entrenchment of democratic ethos since it vested immense powers in the President. The numerous amendments that both Kenyatta and Moi effected were meant to serve the interests of the ruling elite that entailed illicit extraction of rents from the state and deployment of violence against perceived and real opponents. Baregu argued that under personal rule 'constitutions did not express the popular will, defining boundaries of public power, but were instruments of coercive rule' (Baregu 2010: 27). There were no oversight bodies to act as a countermeasure against abuse of power. The absence of the doctrine of separation of powers ensured the intervention by the executive and particularly the President in the management of the judiciary and parliament. Presidential powers thus promoted the use of patronage and an exclusionary and acrimonious politics.

The disputed 2007 presidential elections and the consequent violence pointed to the lack of institutions independent of state interference capable of arbitrating and resolving political and other disputes. The conclusion is that the Constitution itself institutionalised impunity since there was no accountability. Politicians who incited Kenyans on the basis of tribalism, looted public coffers, and even implicated in crimes against humanity were never prosecuted. Because of the lack of accountability mechanisms, it was difficult for citizens to complain about impunity and inequities by the political elite. Moreover, a kind of ethnic cocooning was the consequence. Politicians and their supporters interpreted these inequities through the ideology of ethnicity.

Ng'ethe and Katumanga pointed to a number of crises in countries that lacked a constitutionally defined system of rule. First, a crisis of identity arose in the sense that ethnic loyalty superseded loyalty to the nation state. Big Man rule under Kenyatta and Moi was essentially an arbitrary one that tended to be biased towards the President's tribe. Kibaki attempted to perpetrate this trend but came under opposition. Politicians and tribes excluded from the state mobilised for ethnic support to articulate their grievances. This type of politics could not nurture a sense of nationhood among Kenyans. Second, a crisis of legitimacy resulted from the exclusionary politics pursued by Kenyatta, Moi and Kibaki that raises questions about the moral right to rule. Baregu observes that the Kibaki government entered the 2007 elections when confronted by a crisis of legitimacy that arose from its blocking the realisation of a new Constitution that would have addressed issues to do with the exercise of power and socio-economic inequities (Baregu 2010: 32). Third, a

crisis of penetration referred to ‘the diminishing ability of the state to exert authority throughout the country’ (Nge’the and Katumanga 2002: 305). The proliferation of militia groups such as *Mungiki* challenged the ability of the Moi and Kibaki régimes to impose their authority throughout the country. The emergence of terror attacks in many parts of the country in the wake of Kenya deploying soldiers into war torn Somalia in 2011 challenged the ability of the government to protect the citizenry.

A fourth, crisis that emerged was that of participation that came about as a result of the inability of the state to provide channels through which citizens could influence state decisions. Throughout Kenya’s post colonial period approach to the operation of the government was top-down with the ruling elite arrogating to themselves the right to decide for the people. Moi typified this approach through roadside pronouncements. Kenyans’ views during hearings by commissions of inquiry counted for nothing since the produced reports were never acted upon. Policy formulation did not factor in the views of the people. A fifth crisis was that of the crisis of resource distribution and allocation ‘manifested by the inability of the state to provide legitimate means through which resources could be accessed by all social sectors in the society’ (Ng’ethe and Katumanga 2003: 305). This challenge is related to the second crisis. In Kenya, successive régimes had exclusively allocated land to the ruling elite where there was both a problem of squatting and ethnic animosity in the Rift Valley and Coast regions. Nepotism, tribalism and cronyism informed recruitment of personnel in the bureaucracy which also denied citizens access to resources. Then there was the aspect of inequalities between the rich and poor a situation exacerbated by a predatory political elite. The issue of resources distribution remained a thorny one in the country’s efforts at renewal through a new constitutional dispensation.

2.5 The Politics of Patronage

In Kenya ethnicity intersected with patronage politics to stifle political competition based on programmes of action. The overarching influence of personal rule that spanned the entire period of the one party state provided the basis for a politics devoid of ideology and programmes of action. The influence of personal rule remained in place under multipartyism and was exhibited through impunity by Kenyatta, Moi and Kibaki. Jackson

and Rosberg defined personal rule as ‘a distinctive type of political system in which the rivalries and struggles of powerful and wilful men, rather than impersonal institutions, ideologies, personal policies, or class interests, are fundamental in shaping political life’ (Jackson and Rosberg 1984: 421). The enactment of the 2010 Constitution¹⁹ was expected to put in place a rule-based framework to rid Kenya of a personality centred approach to politics. However, the Kenyatta-Moi-Kibaki oligarchy tried to water down the Constitution even before its implementation began as shown in chapter eight. It was for this reason that since independence the Presidency had been a preserve of the incumbent and a tiny clique of supporters largely drawn from his tribe. The one party autocratic state ensured clientelist networks beginning from the office of the President cascading downwards to the village level through the provincial administration. Under the multiparty system, some opposition leaders established parallel patronage networks although access to the state provided unrivalled amounts of resources. Patronage stifled the emergence of internal party democracy since primaries elections and party elections defied democratic procedures as some candidates sought the endorsement of the party leader as this gave them an edge over their rivals as the case was with Raila Odinga in the Luo dominated Nyanza region.

Patronage politics had informalised the operations of Kenya’s post colonial governments. It rendered decision making a preserve of the President and few trusted allies. It was almost impossible for Kenyans to predict government policy.²⁰ In addition to the governance structures recognised by the Constitution, there was an informal clique surrounding the President. This group of individuals wielded immense power that they either arrogated to themselves or were allowed to exercise by the President. They exclusively directed government programmes towards their political interests and to the benefit of their supporters alone, which had far-reaching consequences for citizens. The Kenyatta régime was dominated by the ‘Kiambu Mafia’, Moi’s by what Ajulu called the

¹⁹ Kenya’s Constitution promulgated in 2010 is a Presidential but with checks: it has horizontal checks in terms of constitutional organs like the parliament, the Judiciary, and constitutionally recognised oversight commissions; vertically there are devolved systems of government and lastly there is the normative check, in the form of constitutionalism principles and values. It was hoped that these reforms would reform the executive (*Standard on Sunday* March 27, 2011: 29).

²⁰ ‘Policy’ in this context refers to the ubiquitous usage of the word in any system of government but does not refer to a programme of action oriented approach to governance.

‘Kabarnet Syndicate’ (Ajulu 1995: 6) and Kibaki’s by the ‘Mt Kenya Mafia’.²¹ These were groupings in charge of what Cooper referred to as the spigot economy in which ‘whoever controls the tap collects the rent’ (Cooper 2002: 172). Berman and other scholars have shown that endemic corruption thrived in such a political system because decision-making was predicated on the whims of the President and his close allies but not the rule of law (Berman, Eyoh and Kymlicka 2004: 2-3). One of the greatest forms of corruption under Kenyatta was the illegal exploitation of public land for Kenyatta’s and his clients’ benefit. Besides land, Moi exploited cabinet appointments, bank loans, luxury cars and cash to sustain patron-client politics (*Daily Nation* December 24, 2002).

The exploitation of patronage politics by the President did not work out successfully all of the time. There were elements of resistance and so there was need for a carrot and stick approach to ensure political loyalty by frustrating dissent and ensure that the opposition do not organise and mobilise (Gyimah-Boadi 2007: 29). In instances where the use of state largesse failed to lure dissenting voices, Moi resorted to violence. On the threshold of multiparty politics in the early 1990s after Kenya legalised the formation of more political parties, some of the KANU defectors and those with wavering loyalty were intimidated back into the fold lest they suffer economically and even face bankruptcy. Moi sacked defiant cabinet ministers to deny them opportunities for rents and forestall the formation of alternative centres of power. I argue that the centralised Constitution propped up personal rule, stymied issue-based politics, promoted authoritarianism and fundamentally frustrated reform. Personal rule and the interests of *ancien régime* politicians were at odds with institutionalised politics.

2.6 Conclusion

The chapter proceeded from the premise that the ‘ethnic group’ is a fluid concept. The emergence of ethnic groups or tribes lay in the shift from the barter trade to the capitalist mode of production that brought about competition for resources between and among tribes. Politicians and members of the middle class defined the concept of citizenship in an

²¹ The media coined the term to refer to Kibaki’s inner circle comprising Kikuyu and to some extent Meru politicians from ethnic communities inhabiting the region where Mt Kenya is located.

insular, exclusionary and tribal manner ensuring that ethnicity was embedded in Kenya's body politic. These were mostly the beneficiaries of patronage, corruption and personal rule that made it impossible for successive governments to deliver public goods. This created a situation whereby the citizenry competed for resources on the basis of tribal origin. Political competition during elections necessitated the use of violence to neutralise and even eliminate those perceived to hold an alternative position. Kenya could address these challenges through establishment of a rule-based system of government. The realisation of a new constitution was a step towards this direction. If implemented, the constitution would check the tendency among the politicians to mobilise for support on the basis of ethnicity. A reformed electoral system would eliminate zero sum politics that rendered political competition acrimonious. The one party institution atrophied Kenya's institutions and impeded the democratisation process and holding of credible elections. These institutions were yet to emerge from the legacy of personal rule under the one party state. The irony is that politicians, civil society practitioners, the media, and academics had the responsibility of devising alternative mechanisms for addressing ethnic politics yet these were the same people who benefitted from it. Kenya's politics remained beholden to the interests of the political class because this same group of people had hindered transformation of the country's politics and strengthening of oversight institutions. This had made it difficult for politics to transcend ethnic identity and be anchored in social economic and political challenges that Kenyans encountered.

Chapter Three

Nyayoism: The Epitome of Big Man Politics

...Moi called me at my house in the evening and asked whether there was something particularly troubling me. I told him I had not much to worry about except some arrears I owed the Agricultural Finance Corporation after I took a loan to purchase a ranch in Konza. He asked me to tell him what was the total owed—that is the arrears plus the pending balance. ‘Fine come to State House first thing in the morning,’ he said. My wife and I were seated the following morning in Moi’s State House office sipping tea. Moi himself poured tea in our cups. The real shock came when the President reached for a briefcase from under his desk and gave my wife a couple of bundles. He gave us not only the total sum owed AFC, but some extra for, to use his own words, ‘*mboga za watoto*’ (children’s vegetables). -Prof Philip Mbithi worked under Moi as Vice Chancellor of the University of Nairobi and later as the Head of the Civil Service and Secretary to the cabinet (*Daily Nation* December 24, 2002).

3.1 Introduction

The chapter focuses on the personal rule of Daniel arap Moi, the second President of Kenya, during the period of one-party rule in the 1980s. As the excerpt above suggests, Moi used personal patronage in a particular way to marshal support. It is a tactic that rendered almost everyone in his régime beholden to him because of being drawn into his networks of patronage and clientelism. I argue that the Moi régime, particularly within this period, typified personal rule. It was characterised by patron-client politics, corruption and authoritarianism. The contracted political space forced most politicians to pledge loyalty to Moi and the only political party in Kenya at the time, Kenya African National Union (KANU). Moi exploited ethnicity and incumbency to prevent the emergence of alternative power bases. He used the notion of ‘the tribe’ as an element of governance and created tribal spokespersons in various parts of the country as well as distributing cabinet portfolios and posts within the KANU executive committee along ethno-regional lines (*The Weekly Review* December 2, 1988: 4; *Weekly Review* July 22, 1988: 20). The beneficiaries, in effect, became Moi’s clients.

This chapter analyses the *Nyayo* régime as an example of Big Man rule and its contribution to ethnicisation of politics under Moi. Jomo Kenyatta, Moi’s predecessor had ruled in a similar fashion except that Kenyatta had more legitimacy and gravitas. He was seen as the face of the struggle for independence. *The Weekly Review* posited that Kenyatta used the

might of the state to suppress resentment that other ethnic groups had against his Kikuyu dominated government (*The Weekly Review* December, 9 1988: 26).

Under Moi, this trajectory of ethnic exclusion continued. The chapter uses the lens of personal rule to explore how Moi adroitly manipulated tribalism coupled with autocracy in order for him to remain in power for 24 years, ten of which under multiparty politics. This chapter forms the basis for understanding party politics in Kenya, first under one-party rule and then in the multi-party period. This encompasses the first fourteen years of Moi's dominance under one-party rule and the subsequent ten years of multi-party politics. It explores Moi's involvement in the controversial land redistribution programme in the Rift Valley Province, the construction of the one party state with its corollary, the weakening of the judiciary and parliament. It also shows how he influenced the structure of the education system with mixed results. The mix-up between ethnicity and education reinforced a process that created ethnically conscious Kenyans in the bureaucracy, academy, media other spheres of the society. He tried to afford education opportunities to previously marginalised parts of the country but at the same time exploited the education system to entrench ethnic politics. Finally it exposes the duplicity and opportunism of domestic and international actors who played a role in the demise of the one party state.

3.2 Manifestation of Ethnicity

Ethnicity was an integral part of Kenya's politics both during the one party state and remained so after the country returned to multiparty democracy. Kenya's successive governments promoted tribalism and decried it at the same time - a factor that one might term the duplicitous nature of Kenyan political elites. The question I would like to ask at this juncture is: What was the distinction between the manifestation of ethnicity during the one party state and multiparty system? Posner suggested that the salience of a given dimension of ethnicity distinguished the one party state from a multiparty state in some African countries. Posner argued that within a one party state, people tended to identify themselves as 'members of small, localized groups based on tribe, sub-tribe or clan' (Posner 2007: 1303-4). It was on the basis of this identity that parliamentary elections were contested in Kenya during the period of the one party state. Posner observed that in a multiparty setting, political competition created incentives that forced people to identify

themselves as large groups along religious, linguistic, or regional bases (Posner 2007: 1304). The point Posner is making is that the transition from a one party state to multiparty politics shifted the locus of competition from the local constituency level to the national or Presidential one as voters identified themselves in terms of various dimensions of ethnicity as reflected by politicians (Posner 2007: 1307). In Kenya's multiparty political setting, ethnicity was a factor both in parliamentary and Presidential elections. At the parliamentary level, elections and party primaries, clan and intra-ethnic differences prevailed for instance in parts of Western and Nyanza Provinces. The sub tribal differences played themselves out among the Luhya in Western Province while clan differences emerged during primaries among the Luo in Nyanza. In Presidential elections, a community such as the Luo tended to vote for a single candidate as big 'homogeneous' communities.

3.3 Personal Rule

Unlike Kenyatta, the benign patriarch who sometimes appeared content to watch events unfold with a detached interest, President Moi has brought his own energy to the presidency not only travelling widely around the country and beyond but also and especially by his capacity to remain acutely aware of whatever is going on around him and to take remedial action where necessary often catching his own ministers and administrators flat footed on many an issue of state affairs...The President has also pointed out frequently that power springs from the people hence his populist actions which often bypass the bureaucrats to provide immediate solutions to problems much to the delight of the people concerned (*The Weekly Review* October 14, 1988).

Although both the Kenyatta and Moi régimes were examples of personal rule, Moi's frenetic tours across the country and his penchant for giving 'instant' solutions to society's pressing challenges distinguish him not only as a neopatrimonial ruler but also as a demagogue. The distinction between the two régimes lay in the fact that Kenyatta was associated with the attainment of independence thus he did not have to contend with legitimacy issues, save in incidents of political assassinations, in which the state was implicated. Apart from Mboya other political murders in which the Kenyatta régime was implicated included Pio Gama Pinto (1965) and J M Kariuki (1975) (Morton 1998: 22). Pinto, a Kenyan of Goan ancestry, was a close ally of Odinga's and the theoretician behind Odinga's socialist leanings. His assassination was a precursor to Odinga's political woes

(Morton 1998: 122-3). Moi had struggled against legitimacy issues not least because he was not among the potential successors to Kenyatta (Ogot 1996: 187). His ethnic affiliation was to the Kalenjin community, less in number than the Kikuyu, but also less established in either the economy or the bureaucracy (Morton 1998). Moi tried to make up for these setbacks through patronage and coercion.

Moi began curving his presidency around 'a people's President' image. As the above excerpt showed, he preferred engaging people directly as opposed to going through his appointees. He had an interest in the details of government affairs not so much because of efficiency as paranoia and to facilitate the Kalenjin foothold in the economy. Bratton and van de Walle (1997: 61- 62) suggested that in cases of personal rule, the ruler tries to ensure the stability of his system through distributing either material or financial favours to his followers who in effect are his clients (Bratton and van de Walle 1997: 61- 62). They used the term 'neopatrimonialism' to refer to 'personal rule'. They described the neopatrimonial régime as one in which ruling is a right 'ascribed to a person rather than to an office, despite the official existence of a written constitution. One individual (the strongman, 'Big Man,' or 'supremo') often President for life, dominates the state apparatus and stands above its laws' (Bratton and van de Walle 1997: 62). The two scholars indicated that such a system is characterised by uncertainty both for the ruler and his followers thus the preoccupation with the efforts to gain financially and materially through 'access to various forms of illicit rents, prebends, and petty corruption' (Bratton and van de Walle 1997: 61- 62). Hyden used the term 'prebendalism' to refer to the relationship between the political decision-makers and their communities, where the benefits of office were shared. This is how he put it':

Prebendalism refers to a practice, once prevalent in Europe, whereby public offices are competed for and then utilised for the personal benefit of office holders as well as their support group. This practice was pursued across Africa, but became particularly pronounced in countries such as Nigeria – the public revenue from oil provided an especially generous basis for dispensation of patronage (Hyden 2006: 64-5).

A régime in which personal rule prevails is not obliged to be responsive to the needs and wishes of the people as a whole, but rather to specific groups or constituencies. As shown before and will be demonstrated subsequently in the thesis, it was the political interests of

the President and his close allies that mattered in Kenya rather than the welfare of the people. Despite the shift to multiparty politics, traces of personal rule persisted.

Manifestations of personal rule under multiparty rule entailed appointments made on the basis of ethnic and personal loyalty to the President, failure to sanction those implicated in corruption and other egregious crimes because the President regarded them as dependable allies. Thus Jackson and Rosberg pointed out that where personal rule prevailed rulers had no regard for concepts such as 'the people', 'the public', 'the nation', 'the national interest' and 'public opinions', (Jackson and Rosberg 1984: 425).

Analysts hailed Kenya's competitive one party elections that registered a high turnover of sitting MPs including members of the cabinet (Jackson and Rosberg 1984: 440). However, this political competition ought to be read within the framework of personal rule. The President, in essence the patron, was beyond electoral challenge. The elections provided him with an opportunity to purge the system of disloyal clients and rehabilitate some of those he had previously jettisoned. I argue that the import of these elections had little to do with policy or programmes of action. Jackson and Rosberg argued that there were no ideological differences among politicians within this system other than contestations for supremacy among the big men themselves (Jackson and Rosberg 1984: 436). In Kenya's one party state, the President was not subjected to an electoral contest but elections were the occasion for him to ensure that he had leverage over the jockeying and jostling among his supporters and members of the inner court. Why would almost all politicians within a system of personal rule strive for the attention of the President? It was a matter of political and economic survival for a politician either to gain or lose the President's trust. The excerpt from Jackson and Rosberg below shows how critical it was in Africa to win the President's loyalty,

In most African countries the political monopoly is a monopoly not only of power but also of wealth and status. Therefore to be deprived of membership in the ruling monopoly of African of an African country or to be restored to membership is to have one's life and fortune dramatically altered. For politicians everywhere the political wilderness is a lonely place; for African politicians it is also a misfortune (Jackson and Rosberg 1984: 435).

Clientelism, then, was a significant aspect of personal rule. The political patron wielded authority through rewards he gave to his clients, this could be in terms of office or in

prebends, or as van de Walle calls it, rent-seeking (van de Walle, 1994, 133-134: see also Hyden 2006: 102). Odhiambo-Mbai pointed out that corruption thrived in a personal rule because it was a form through which resources were illicitly mobilised to reward clients (Mbai-Odhiambo 2003: 65). van der Walle and other scholars understood rent seeking to be a system in which the ruler in concert with a group of allies run a political system from which they draw benefits referred to as prebends (van de Walle 1994: 133-134; Widner 1994: 53; Gyimah-Boadi 2007: 29). Under Kenya's one party state the country witnessed a quintessentially personal rule primarily because of lack of checks and balances on the executive. Moi appointed individuals to the cabinet and to head corporate bodies based on ethnicity and patronage just like his predecessor. Since these appointees were solely accountable to the President, Moi seldom sacked them despite cases of incompetence or corruption (Cohen 1994). Instead he shuffled them from one post to another in the wake of which they left a string of collapsed state corporations (Kanyinga 1998: 55).

3.4 The *Nyayo* Era

In his Presidential progress he would regularly swap his official Mercedes limousine for an old Volkswagen Kombi so that he could reach the more inhospitable regions of Kenya. He travelled from sunrise to sunset, spending nights under canvas, washing from a small basin and eating under the shade of a tree. In the first year of his presidency he visited more places and received more people than Kenyatta during his fifteen years as President. This peripatetic President sought to bring government back to the people, opening up administrative structures so that the public felt more comfortable in bringing their grievances to the state. On occasions when individuals spoke to him about their problems it was the President, rather than local administrators, who relayed them back to Nairobi. Moi was proving himself to be a man of the people... (Morton 1998: 170).

Moi brought a lot of energy to the presidency and wasted no time in making himself popular as soon as he assumed power. His efforts to connect with people from all walks of life, especially the peasantry and lumpenproletariat, was reminiscent of a politician out to stamp his imprimatur on Kenya's politics. He had existed under Kenyatta's shadow since appointed Vice President in 1967. Moi's régime was popularly known as the *Nyayo* era, Kiswahili for 'footsteps'. Upon being sworn into office in 1978, Moi pledged continuity with the Kenyatta régime.²² Katz stated that *Nyayoism*, the ideological variant of *Nyayo*,

²² Moi's *nyayo* philosophy was based on 'peace, love and unity'. It was however dismissed by critics as a mere slogan used to propagate Moi's populism. Had Moi implemented his interpretation of *Nyayo* as

contained elements such as Christian morality, developmentalism, nationalism, anti-tribalism, and African Socialism. However, he identified the oppressive side of *Nyayoism* that equated opposition to the régime as anti-*Nyayoism* (Katz 1985: 158). Throup and Hornsby pointed out that *Nyayoism* ‘changed from Moi following Kenyatta to Kenyans following Moi’ (Throup and Hornsby 1998: 38).

Throup and Hornsby observed that Moi ascended to power when economic times were difficult in Kenya. This context denied him the abundant state largesse that had been available to Kenyatta. They mentioned that at the time, international prices for coffee and tea, Kenya’s main exports, had plummeted and the population had increased substantially (Throup and Hornsby 1998: 26). Ajulu averred that the régime resorted to plundering state coffers and dismantling the Kikuyu economic power base to be replaced by Moi’s own (Ajulu 2002: 262-3). The *Nyayo* régime defied the rational-legal authority. Bratton and van de Walle defined the rational-legal authority as one in which ‘the public sphere is carefully distinguished from the private sphere; written laws and bureaucratic institutions routinise the exercise of authority and protect individuals and their property from the whims of capricious leaders’ (Bratton and van de Walle 1997: 62). In such a system, people’s existence was precarious owing to lack of certainty vis-à-vis the decisions of the government. Personal rule was inherently an unequal system and some clients wielded disproportionate power compared to the positions they held within the patron-client network (Throup and Hornsby 1998: 45). These tended to be the most loyal clients of the patron. For instance, some cabinet ministers, KANU leaders from Moi’s Baringo district, regional spokesmen and other party apparatchiks wielded more power disproportionately to the positions they occupied.

Moi promoted *Nyayoism* as an embodiment of triple elements of ‘peace, love and unity’ through which he attempted to create a distinct régime. What was Moi’s understanding of *Nyayoism*? Moi considered *Nyayoism* as the centrepiece of stability, nationhood and development.

captured in his speech to the nation in 1981, he would have guided Kenya to social economic and political progress. On paper, *Nyayo* was meant to guide the country in forging a sense of nationhood (President Moi Speech on Madaraka Day 1981: 83).

Peace, love and unity are not slogans or vague philosophies; they are the practical foundations of countrywide development. Where there is peace, then there is stability and only in the arena of stability will you find investment, enterprise and progress. Where there is love, then there is trust and readiness to work with others, learn from others, and contribute to others in the cause of nationhood. Where there is unity there is strength, rooted in understanding of our common purposes. Where there is unity there is strength rooted in understanding of our common purposes, common strength loyalties and mutual dependence (President Moi Speech on Madaraka Day 1981: 83).

Nyayoism succeeded *Harambee*. Kenyatta's rallying call was popularly known as the *Harambee* (pull together) régime. Nyong'o stated that the ideology of *Harambee* was a laissez-faire one that called on all the people, their social differences and positions in society notwithstanding, to join forces and contribute to the country's development (Nyong'o 1989: 224). Kenyans had no connection with *Nyayoism* and as Throup and Hornsby observed, the citizenry identified with it because of the single party authoritarianism and abandoned it once the country returned to multiparty politics (Throup and Hornsby 1998: 38). In most of his speeches after assuming power, Moi spoke about *Nyayo* in almost every speech, using it, as Khapoya and Morton suggest, to forge an image of the patriarch. He portrayed himself as a forgiving patriarch and statesman by pardoning and releasing political detainees whom Kenyatta had incarcerated (Khapoya 1988: 56; Morton 1998: 171).

In his early years in office, Moi portrayed himself as a benevolent leader. He introduced free milk for primary school children,²³ abolished fees in primary schools, expressed his government's intention to fight against corruption and literally became the face of the government (Moi's speech on Jamhuri Day on 12th December 1978; *Daily Nation*, December 24, 2002). Morton, Moi's biographer, shows that there were distinct changes that came with the Moi régime like tackling inefficiency and corruption (Morton 1998: 168). However, these were nothing but statements of intent. Corruption became one of the distinguishing features of the Moi régime because the régime hardly operated according to

²³ Although this author was a beneficiary of the primary school milk programme, he could see that the scheme was an opportunity for some teachers and school officials to steal the milk. They would openly steal the milk without any qualms about this dishonest conduct. At high school, this author witnessed Moi giving out money to the school authorities for the benefit of the 'students' kitchen' but which would disappear. The teachers' behaviour was not untoward. They behaved in accordance with the logic on which the Moi rule was based whereby those in authority often engaged in moral infractions without fear of sanction.

the rule of law. As Morton observed, Moi may have given directives, but the government lacked the capacity to implement them (Morton 1998: 169).

Moi was given to making arbitrary roadside decisions since he was averse to record keeping.²⁴ He communicated his directives orally either face to face or telephonically. This political behaviour showed how unaccountable the régime was. The logic was to deflect responsibility for excesses such as corruption to junior officers and make it difficult to be implicated in any malpractices under his régime once he left office. While in office, the President was immune from civil and criminal prosecution. Moi's long-serving former private secretary, Watson Murigo, recalled his days with him. 'When he was Vice president, I somehow managed to have him put in writing matters that I suspected might raise questions in future. I was not so lucky when he became President' (*Daily Nation* December 24, 2002). Moi was known for making decisions on the spur of the moment during his numerous tours around the country. He would announce 'the building of a road here and a health centre there, all out of the blue' (*Daily Nation* December 24, 2002: 10) and ordered the bureaucrats who accompanied him to implement the directives immediately. The financial and logistical implications of these directives did not matter.

Most of the roadside directives Moi made had economic implications. In 1979 without what a newspaper pullout called 'any research or professional advice' Moi ordered the introduction of primary school milk. In 1985, he phased out the 7-4-2-3 education system and replaced it with the 8-4-4 one (*Daily Nation* December 24, 2002: 8; Moi's Speech on 15th Anniversary of the Kenya Independence Celebrations, on Tuesday 12th December 1978: 178). The 8-4-4 education system was bedevilled by numerous challenges such as inadequate facilities, teachers and work load for students. The opposition had cited the education system as part of reform required to jump-start the country's progressive transformation but had reneged on it after coming into power in 2002. Moreover in 1986 Moi instructed government departments through the University of Nairobi to produce what

²⁴ It was not common practice among Kenyan politicians and bureaucrats to write memoirs. Most politicians and other public figures even those who had served in successive postcolonial governments died before documenting their experiences. This contributed to collective amnesia and fostered impunity. This was consistent with the apathy and lack of accountability that characterised Kenya's postcolonial politics. Miguna deserved acclaim for breaking with tradition. Notably the relatively youthful author had only served a short stint of about three years in the coalition government as Raila Odinga's Advisor on Coalition Affairs.

he called a 'Nyayo car' ostensibly to showcase Kenya's scientific and technological advances (Jamhuri Day Speech 12th December 1988). Morton mentioned other ad hoc white elephants ventures all bearing the *Nyayo* imprint such as *Nyayo* buses, *Nyayo* tea zones, and *Nyayo* hospital wards (Morton 1998: 206-9). All these ventures collapsed after costing enormous amounts of money that no one could account for. Morton cited the *Nyayo* car launched in 1990 that foundered after the production of only three cars depleting the public coffers of millions of Kenya shillings (Morton 1998: 207).

Moi involved himself in populist gestures described above because he lacked a transformational agenda. What often passed for government policy was not arrived at through a consultative and evidence based process. Moi was driven by the urge to attract crowds, sustain patronage networks and maintain the patriarchal image of *Baba wa Taifa* who traversed the country doling out goodies to impoverished communities. He directly engaged his followers by bypassing regional politicians. By so doing he portrayed these politicians and bureaucrats as inefficient and prebendary misers whom his followers had to hold responsible for their plight. Disregard for consultation, the intrusion of the régime leader in all aspects of Kenyans' lives and the gifts he gave out to clients and followers were attributes reminiscent of a régime in which citizens were more like subjects at the beck and call of the patriarch. However behind these avuncular gestures lay an iron-fisted régime that did not brook dissent. Moi was a Janus-faced politician who even some of his trusted allies did not understand.

I found President Moi to be the best case study in dual-personality. He could be so friendly yet so ruthless...On my last day in the Civil Service, President Moi called me very early in the morning to tell me that I should go to State House so that we could finalise on some changes he wanted to make in the Government. As we parted, the President gave no hint that he had any problem with my work. Then the shock. I heard of my sacking over the 1 pm news. After a moment of reflection, I decided not to take up the job in Arusha- Prof Philip Mbithi (*Daily Nation* December 24, 2002).

This was vintage Moi who liberally gave out wads of notes to indebted politicians and civil servants (*Daily Nation* December 24, 2002). Hence almost the entire state apparatus owed him loyalty. He also extended this generosity to crowds that often awaited him and his entourage by the roadside and airstrips in far-flung parts of the country as he took 'the

presidency to the people of the country' (*The Weekly Review* December 9, 1988: 26-7). This used to trigger stampedes as people scrambled for the money flung at them. As an undergraduate student, this author witnessed Moi dishing out money to university students during the burial of Francis Lotodo, a controversial Kalenjin politician from West Pokot district, in Rift Valley Province. By the time students completed university, some of them had already been inducted into the patronage networks of the régime. Moi was known to buy bananas, roast or boiled maize, and vegetables from roadside traders and distribute these among the gathered crowd. It was one way of trying to show that the Presidency was 'accessible'. Moi's 'generosity' was legendary during *Harambee* (fund raising for community projects) gatherings that became highly politicised in the multiparty period. He gave supporters money to donate on his behalf during *Harambee* meetings that he could not attend. Some analysts argued that *Harambee*²⁵ was a conduit through which the Moi régime bribed voters with money illicitly obtained from the public coffers (Lynch 2006: 243; Mwangi 2008: 271-3). *Harambee* meetings were not meant to alleviate poverty and promote construction of projects such as schools and health centres, Moi's ostensible reasons for promoting them. They pandered to what Chabal and Daloz referred to as 'wonderment', in which, in a particular clientelistic network, it was politically logical '...to flaunt one's substance, to spend abundantly and instantly, without worrying about the future' (Chabal, and Daloz 1999: 107). Patronage networks under Moi gave Kenya's political parlance the word 'hand-outs' that referred to the act of a patron giving out money to allies and supporters to either buy or sustain their loyalty.

Moi's propensity to give out money either by the roadside or during *Harambee* meetings was in tandem with his notion that the public could only be guaranteed public goods if they supported KANU. This use of the state largesse to placate renegades and maintain loyal clients and followers and punish dissent was not only indicative of the abuse of state resources for partisan politics but also exposed the personal character of the Presidential rule under Moi. Moi politicised and personalised the concept of 'development'. He read Kenya's politics through a Manichean lens that implied that support and loyalty for

²⁵ Kenyatta downplayed the influence of tribalism in Kenya's body politic and cited *Harambee* as the antidote to tribalism. In his words: 'The people have destroyed tribalism through the unity and hard work which give living expression to the *Harambee* spirit of one united and progressive country.' (President Kenyatta's speech on Jamhuri Day, December 12, 1969: 150).

himself and KANU that would translate into improved economic and political fortunes of politicians deemed to be loyal while disloyalty spelt economic and political woes. The régime's interpretation of 'development' meant loyal politicians being appointed to the cabinet and government bureaucracy to become part of 'the redistributive system' (Diang'a 2002: 74). Khapoya observed that Moi's visibility particularly in far-flung rural areas largely demystified the institution of the presidency since he presented himself as an accessible leader, unlike his predecessor who was almost a recluse. Khapoya attributed Kenyatta's aversion to travel not simply to old age but also to the animosity from certain communities, particularly the Luo (Khapoya 1980). Through his constant travels to rural areas Moi intended to make the masses feel closer to the presidency. This author remembers how one of his colleagues at primary school was overwhelmed with excitement when he touched Moi's limousine during one of Moi's tours in his village.

3.5 Deft Manipulation of Ethnicity

We can think back to illustrations at least of threat in Kenya, and there are living examples today in certain states proving that tribalism may quickly undermine - or be used to undermine - political stability or be used to undermine the critical foundation of national unity. And you all know without unity and stability, there can only be insecurity and human suffering while all development plans and efforts are thrown in total disarray. It is therefore important that this popular movement must continue quite relentlessly until tribalism as a force in Kenya - is something that can barely be recalled (Daniel arap Moi's Speech on Jamhuri Day December 12, 1980).

Moi railed against ethnicity and repeatedly preached coexistence among Kenya's ethnic groups under his slogan of 'peace, love and unity'. He went further and tried to 'abolish' tribalism through 'closing down institutions which in the past have had some tribal origin or flavour' (Moi's Speech on Kenyatta Day, October 20, 1980; Moi's Jamhuri Day Speech December 12, 1980). Ironically he astutely exploited ethnic diversity to stay in power. Upon coming into power in 1978 Moi introduced into Kenya's political matrix what the media referred to as the 'provincial strategy' or 'regional representation formula for the executive' (*The Weekly Review* December 2, 1988: 4). The strategy entailed distributing KANU national positions on an ethno-regional basis. The approach defined his 24 year rule and even major political parties that emerged during the multiparty era were guided by this strategy in electing national office bearers. Moi would sack a cabinet minister and

replace him with a fellow tribesman to maintain the support of the community. Moi did not have a broad ethnic base like Kenyatta.²⁶ He comes from the Tugen community, one of the smallest sub tribes within the wider Kalenjin ethnic group. The Kalenjin had had internal divisions. Morton mentioned that in the 1960s there were fears among the Kalenjin sub-tribes, such as Moi's Tugen, that the bigger ones such as the Nandi and Kipsigis would dominate and subordinate them politically (Morton 1998: 120). These suspicions ceased when Moi became President because almost the entire Kalenjin community supported him and regarded his régime as a communal entity just as the Kikuyu had done under Kenyatta.

3.6 Personality Cult

The strongman, usually the President, occupies the centre of political life. Front and centre stage, he is the centrifugal force around which all else revolves. Not only the ceremonial head of state, the President is also the chief political, military and cultural figure: head of government, commander-in-chief of the armed forces, head of governing party (if there is one) and even chancellor of the local university. His aim is typically to identify his person with the 'nation'. His physical self is omnipresent: ...picture plastered on public walls, billboards and even private homes. His portrait also adorns stamps, coins, paper money and even T-shirts and buttons often distributed to party 'faithful'. Schools, hospitals and stadiums are named after him. The mass media herald his every word and action, no matter how insignificant (Sandbrook 1985: 90).

Kenyatta and Moi both tried to develop a strong cult of personality, linking their image to that of the nation's destiny. Their images and names loomed large in both public and private facets of the lives of Kenyans. Most Kenyans went through schools and universities named after them, got treated in hospitals named after them, used money bearing their images, had their portraits hung in public offices and even in private homes. While they cultivated strong personality cults, where their lives were inextricably intertwined with the destiny of Kenya, there were however differences between their styles of rule. Initially the Kenyatta régime relied on the alliance between the Luo and Kikuyu, but after the fall-out between them, Kenyatta's support was restricted to the Kikuyu (*The Weekly Review* April 8, 1988: 5). Moi on the other hand, reached out to a broader based

²⁶ Kenyatta himself had downplayed the influence of tribalism in Kenya's body politic and cited *Harambee* as the antidote to tribalism. In his words: 'The people have destroyed tribalism through the unity and hard work which give living expression to the *Harambee* spirit of one united and progressive country.' (President Kenyatta's speech on Jamhuri Day December 12, 1969: 150).

ethnic alliance for demographic reasons (*The Weekly Review* December 9, 1988: 26-7). He began to solidify his rule by receiving ethnic delegations either at the State House or at his Kabarak home in Nakuru, Rift Valley Province. Led by ethno-regional Big Men, these delegations deluged Moi with pledges of loyalty in much the same vein as occurred in Kenyatta's time (Mutua 2009: 23; Holmquist and Ford 1994: 11). These pledges took ritualistic form, in that they portrayed Moi as ordained to rule Kenya (Haugeraud 1995). It amounted to political heresy and a deficit of loyalty for politicians to appear unenthusiastic with regard to these exhibitions of showmanship and sycophancy. Indeed it could easily imperil one's political career. Morton pointed out that Moi received delegations from different parts of the country during the interregnum following Kenyatta's death that affirmed their loyalty to him (Morton 1998: 167). He swiftly exploited the practice to stamp his authority on the presidency at a time when some Kikuyu politicians opposed his succeeding Kenyatta. Moi was able to neutralise this challenge. The cult of personality essentially remained the pillar of his régime particularly in the 1980s and helped to entrench him in power. By the 1980s, so entrenched in power was Moi that KANU supporters would police one another which meant that Moi had little reason to worry about the possibility of disgruntled politicians plotting against him. In the event that a regional Big Man dissented, Moi would sponsor a rival from the same region. The aim was to check the emergence of alternative power bases. Despite Moi's strong control over KANU, however, there were voices of dissent that later snowballed into opposition politics. Moses Mudavadi, a powerful Luhya Big Man, was the only other politician to receive delegations at his Mululu rural home in Western Province. Morton showed that as a school inspector in the Rift Valley, Mudavadi had influenced Moi's promotion to headmaster. As a Luhya, he declined nomination and urged Moi to enter the Legislative Council (Legco) as the Rift Valley representative and so Moi was indebted to him (Morton 1998: 73-4).

Moi set up the Presidential Music Commission whose brief was to coordinate the composition of praise songs. In later years the media likened the role of music under Moi to a situation in communist régimes in which music was used to advance sycophancy (*Daily Nation* December 24, 2002: 12). In the 1980s, the state-owned radio station, Kenya Broadcasting Corporation (KBC) that was the only one in the country, and it continuously

played songs in praise of Moi. The intention was to indoctrinate the listenership to ensure that Moi was constantly in the imagination of Kenyans. In this case, the régime conflated patriotism with loyalty for Moi. The author recalls that while in primary school pupils had to pledge loyalty to Moi by singing 'The Loyalty Pledge' during assembly. Khapoya showed that the régime did not hesitate to punish anyone who did not respect these songs. He cited a case of a Kikuyu politician, Kimani wa Nyoike, who was suspended from KANU for a year for condoning the singing of a song 'Tawala, Kenya, Tawala' (Swahili for rule) in his own name while it had been composed to exclusively praise the 'able leadership of the President' (Khapoya 1988: 61).

Moi exercised all power to the exclusion of everyone else in his government. Moi, as the President, had the prerogative to appoint the Vice President. Thus the appointee served entirely at his pleasure and remained at the beck and call of Moi. He could casually appoint and dismiss the holder as he wished (*Daily Nation* December 24, 2002). The entire government revolved around him. Moi did not delegate. The 2010 Constitution replaced the title 'Vice President' with the 'Deputy President'. This was significant. The Constitution spelled out the functions of the Deputy President reserved for a running mate of the candidate who won the presidency. The Deputy President is the principal assistant of the President. He/she performs functions of the President in the absence of the latter. Significantly, he/she draws authority from the Constitution unlike previously. In the event the incumbent President either died in office or could not continue holding office for reasons stipulated in the Constitution, the Deputy President assumed office until the end of the term (Republic of Kenya 2010: 92). The 2010 Constitution does not envisage the Deputy President as one who serves at the pleasure of President. In the multiparty period, Moi exploited the prerogative to appoint the Vice President to consolidate support along ethnic lines. He dangled the post to different tribes in exchange for political support. He appointed the holders and dismissed them at will. The irony was that the Vice President occupied an office deemed to be the second most powerful in the land yet the occupant had no political clout at all. Moi did not expect the Vice President to be politically influential lest he extend his authority beyond his region of origin. One who contravened this understanding would be sacked. *The Weekly Review* observed that the Vice President had some balancing act to perform in that Moi expected him not to betray any ambition by

cultivating support countrywide neither did he expect him to act narrowly by confining himself to his region alone (*The Weekly Review* July 22, 1988: 4-7). Morton showed that Kenyatta and his close allies treated Moi with disdain (Morton 1998: 129). At the time of writing this thesis, Oginga Odinga remained the only influential Vice President in Kenya's political history. The 2010 Constitution sought to dignify the office of the Deputy President in the sense that the occupier would no longer be a mere lackey of the President. The President could not sack the Deputy President as had been the case previously. In essence, the Deputy President was the quintessential second in command.

It was one thing to play destructive politics with political offices but a totally different one to politicise the education system. The tribal politics preponderant in Kenya's bureaucracy and other sectors of the society traced its origin in the interference in educational affairs by Moi and his allies. The next section shows the influence of Moi on Kenya's education system.

3.7 Moi and the Education System

In the 1980s Moi expanded education opportunities by building schools by means of the *Harambee* system and granted charters to more universities. Ironically, the régime encouraged the formation of ethnic associations among students to fragment them. The intention was to prevent the emergence of inter-ethnic organisations among university students. Klopp and Orina showed how these student associations were incorporated into the KANU patronage system on Moi's orders. They also showed that politicians, academics, and civil servants served as patrons of these associations to underscore their political significance (Klopp and Orina 2002: 53). This author belonged to such an organisation as an undergraduate student and unprecedentedly witnessed the capacity of tribalism to evoke animosity and even violence during student elections as a first year student. The elections deadlocked amid accusations of electoral irregularities resulted in the students being divided into Western Alliance (Luhya, Luo, Kalenjin) and GEMA tribal camps much in the same way as Kenya's disputed 2007 elections.

The flipside of expansion of education opportunities especially to areas and communities that had lagged behind in access to education was that it encouraged ethnic balkanisation because of a quota rule. In principle, the quota rule was meant to ensure that all communities accessed quality education. The quota rule or '85 per cent policy' stipulated that this percentage of students attending the best schools in a province must come from the local community (Morton 1998: 209). The positive aspect of this policy was that national schools, some of the best but just a handful and concentrated in Nairobi and Central Provinces, had to enrol students from all parts of the country, although still students from the most populous tribes dominated. This was a form of affirmative action or 'positive discrimination' according to Morton. It gave a chance to students from marginalised areas to gain admission in the best schools in the country. Thus it attempted 'to create a greater equality of opportunity so that every tribe, every community might have the chance to play a role in society by improving its position' (Morton 1998: 208).

The upshot of the '85 per cent rule' was that most students grew up without having interacted with fellow young people from other tribes and by the time they met, either at the university or at the work place, certain perceptions and stereotypes would have already calcified (*Daily Nation* October 25, 2010). Although Moi attempted to spread education to most parts of the country on the premise of reducing ethno-regional inequalities, critics faulted him for perpetrating inequalities, since most of the schools he helped build were concentrated in his native Rift Valley Province (*Daily Nation* December 24, 2002: 8). Moi was also criticised for ignoring quality because he did not ensure that quality and standards were maintained. There was a shortage of qualified teachers, educational facilities across the board both at high school and university levels and the recruitment of head teachers and vice chancellors was compromised since it was based on political connections, tribalism and cronyism. There was also an element of personality cult, because most of the schools were named after him (*Daily Nation* December 24, 2002: 8).

This section shows that the effects of Moi's system of personal rule were likely to be felt for generations to come as they reproduce themselves through the education sector. It was partly for this reason that ethnicity was a factor in Kenya's bureaucracy and politics. Instead of Kenya's educational institutions aiding in the promotion of a sense of

nationhood and the designing of a development vision, they were instrumental in the incubation and propagation of ethnic politics. How Kenyans were socialised both at home and in such institutions accounted for ethnic loyalty that had militated against social, economic and political transformation in the multiparty politics. The argument here is that Kenya's education sector stood in need of comprehensive reform to rectify the effects of the one party legacy. This legacy had ensured that the education sector remained politicised. Kenyan politicians ardently pursued ethnic politics but were lackadaisical in attending to educational issues directly related to the country's posterity and development agenda. The Kibaki régime had not accorded the education sector the attention it deserved. Like Moi's it responded knee jerk style, proffered piece meal and ephemeral solutions. The Kibaki régime responded to the problem of unavailability of sufficient places in national schools for qualified students from primary schools by simply according more high schools the national school status. Some of the 'upgraded' schools were built through the efforts and resources of local communities while others were established by the missionaries. With the new status most parents from the local communities could not afford the prohibitive fees. This was consistent with and illustrative of the ad hoc manner in which the government operated. The introduction of universal primary education in 2003 meant that there would be an exponential increase in pupils graduating from primary school at least eight years later. This necessitated adequate preparations to ensure promotion rates into high school. The government failed to anticipate and address this challenge hence the crisis.

3.8 Land Politics in the Rift Valley

Land became a cause of political instability in the multiparty Kenya because the Kenyatta, Moi and Kibaki régimes had exploited it for the benefit of these individuals and their supporters. As a result, there was no political will to reform the land question yet land reform was key to Kenya's political stability. In the 1970s the Kenyatta régime resettled the Kikuyu in the Rift Valley from Central Province. Moi who at the time was the Vice President, did not oppose this resettlement. Jean Marie Seroney was among Rift Valley politicians who interpreted Moi's elevation to the Vice Presidency in 1966 as a calculated move by Kenyatta to placate the Kalenjin community as the Kikuyu occupied the land previously occupied by British settlers (Morton 1998: 131-3). Central Province, home of

the Kikuyu community, had faced the problem of land scarcity ever since the colonial period. The expropriation of land from the Kikuyu peasantry by Kenyatta and Kikuyu elite exacerbated the challenge. Morton observed that owing to their economic, traditional, political and numerical advantage, the Kikuyu were able to access land from the departing British settlers in the Rift Valley. Unlike the other tribes such as the Maasai and Kalenjin, traditionally the Kikuyu valued land but not animals and recognised individual land ownership (Morton 1998: 132). Ethnic resentment elicited by the land issue in the Rift Valley Province lingered almost 50 years after independence as attested to in the observation by one of my respondents:

Kenyatta used Moi to acquire land for Kikuyu so that the Kenyatta family could acquire land in Kiambu. The Kalenjin were not consulted and so regard the Kikuyu as foreigners. The matter has not been addressed as it should be. Kalenjins should accept that they cannot live together with foreigners who should think about going back to their ancestral Province if there is space. There are large chunks of land in Central Province owned by Kenyatta (Interview, Onyango, January 25, 2009).

The ethnic manner in which land transactions in the Rift Valley Province were conducted immediately after independence bolstered the grievances of the Kalenjin who were opposed to what Morton called the ‘take over’ of their land. Morton showed that the land transactions were conducted almost exclusively by the Kikuyu who specifically exploited the Kenyatta incumbency to transfer land from the British settlers into their companies. The people crucial to the conclusion of these transactions, which included bank managers who signed loans, lawyers who negotiated the deals and owners of the land-buying companies were Kikuyu (Morton 1998: 132-3). These factors convinced the Kalenjin to view the whole process as ethnically skewed in favour of the Kikuyu.

I try to trace the reasons that led to influx of the Kikuyu into the Rift Valley. Kagwanja, Southall and research by the Humanitarian Policy Group, showed that the Kikuyu elite had grabbed land in Central Province and decided to resettle the dispossessed peasant Kikuyu in other regions as a way of solving the landlessness problem in the community (Kagwanja 2009: 374, Kagwanja and Southall 2009: 269, Humanitarian Policy Group 2008: 3-4). The host communities such as the Kalenjin resented this action and thus the seeds of cyclic ethnic strife that Kenya subsequently faced under multiparty politics were sown not long after independence. Oucho pointed out that Kenyatta allocated land to the Kikuyu in the

Coast Province as well (Oucho 2010: 511). An expose in *The Standard* newspaper suggested that Kenya's three successive Presidents had aggravated the land question across the country through greed, avarice, and impunity. The exposé showed that the Kenyatta, Moi and Kibaki families in, that order, owned the largest chunks of land in Kenya, closely followed by multinational companies. According to the expose the Kenyatta family owned 500 000 acres of land. This was equivalent to the size of Nyanza Province (*The Standard* October 1, 2004). This disproportionate concentration of land among these political families in effect denied many Kenyans access to land and condemned them to being squatters. *The Standard* newspaper article revealed that of Kenya's 17.3 per cent arable land, 20 per cent of Kenya's 40 million people owned more than half of it. The article further showed that 13 per cent of the population were absolutely landless while 67 per cent owned less than an acre per person (*The Standard* October 1, 2004). According to Oucho Kenyatta's frequent 'working holidays' in Nakuru and Mombasa, major towns in the Rift Valley and Coast Provinces respectively, were meant to ensure allocation of land 'to his kinsmen who were supposedly landless and had fought for Kenya's independence under the banner of Mau Mau and, therefore, deserved free land' (Oucho 2010: 511).

The land question and the pervasive sense of rapacity under Kenyatta contributed to the fallout-out between Kenyatta and his supporters on one hand and Oginga Odinga and his on the other. Odinga and his allies opposed this acquisitive behaviour that they felt was at variance with the spirit of the struggle for independence (Morton 1998: 121). At the time when a split among Kenya's politicians occurred over the land and other issues, Kenyatta publicly upbraided Bildad Kaggia, Odinga's close ally, through an infamous speech dubbed 'What Have You Done for Yourself Kaggia?' in which Kenyatta tacitly supported the accumulation of wealth by the political class and wondered why Kaggia was concerned with inequitable redistribution of national resources while fellow politicians were amassing property such as land.

We were together with Paul Ngei in jail. If you go to Ngei's home, he has planted a lot of coffee and other crops. What have you done for yourself? If you go to Kubai's home, he has a big house and has a nice shamba (*land*).²⁷ Kaggia, what have you done for yourself? We were together with Kungu Karumba in jail now he is running his own buses. What have you done for yourself? (Mazrui 1967: 234).

²⁷ My clarification.

Ochieng' pointed out that Kaggia argued for a land policy that would be in the best interest of the economy, the landless and the poor but he faced opposition from Kenyatta and his allies. He also advocated a social welfare state in which there was provision of free medical care and free education (Ochieng' 1995: 94-5). Kaggia was among the few Kikuyu and Kenyan politicians whose political thinking and ethos went against the politics of accumulation and ethnicity. He was unpopular among his fellow Kikuyu politicians who taunted him not only because of he refused to exploit his ethnicity to enrich himself but also for associating with Odinga whom the Kikuyu detractors disparaged for being uncircumcised. Kaggia was eventually forced into resigning from the government (Ochieng' 1995: 95). Unlike most of the first generation Kikuyu politicians, he died a poor man. In comparison to most of Kenya's avaricious politicians, Kaggia's modest lifestyle was an aberration. The link between politics and wealth that Kaggia and his ilk decried had embedded itself in Kenya's body politic. It had become difficult to address corruption in the country because of a perverted notion among Kenya's politicians and government bureaucrats that there was nothing improper in misappropriating *mali ya umma* (public property). It was for this reason since independence in 1963 to date no senior government official had ever been convicted for corruption. Low ranking officials got arraigned in court as a way of calming the public ire and shielding their seniors from prosecution. These were the fall guys, as it were. Neither had proceeds of corruption and assets acquired corruptly been confiscated from the corrupt and forfeited to the state.

3.9 The Making of the Big Man

As Kenyatta's Vice President, Moi was the epitome of absolute loyalty even in the face of provocation. Morton relates how Moi endured numerous humiliations from junior Kikuyu politicians in the Kenyatta government who casually code switched into Kikuyu language to lock him out of their conversation, from junior officials at various State Houses who did not accord him respect whenever he wanted to see Kenyatta and from cabinet ministers who often disregarded protocol and occupied his seat at state functions (Morton 1998: 128-9; *Daily Nation* December 24, 2002). Moi's emphasis on loyalty to Kenyatta played a great role in his ascendancy to the presidency. The experiences he underwent also contributed to the paranoia that characterised his rule. Moi succeeded Kenyatta despite

spirited efforts to block him by Kikuyu politicians driven by ethnic chauvinism. Friedman-Sabar averred that Moi still demanded total loyalty from cabinet ministers, KANU MPs, bureaucrats and the rank and file of KANU membership (Friedman-Sabar 1997: 27).

Interestingly, Mutua argues that Moi was the unlikeliest of politicians to succeed Kenyatta because of personal and political handicaps. Mutua was of the view that Moi was not an orator who had shown any previous political ambition. Furthermore, Mutua observed that gatekeepers within the Kenyatta inner circle considered themselves intellectually superior to Moi (Mutua 2009: 66). Russell characterised Moi's speeches in English as ponderous (Russell 1999: 91-2). Yet this masked his skills as a ruthless, scheming and astute political operator. Once he ascended to power, Moi identified himself as a Machiavellian politician, besides embodying what Morton calls the stereotypical 'Tugen characteristics - sober, quiet, and serious...' (Morton 1998: 128). So politically shrewd was he that within a couple of years in office, he had eased most of those he perceived as a potential threat into political oblivion (Morton 1998: 166). This contrasted with the view that he was a 'Kalenjin yokel' that the hubristic Kikuyu politicians under Kenyatta thought he was (Russell 1999: 69, 71). Characteristic of a Big Man, Moi recycled some of the cabinet ministers he had sacked back into the political limelight to remind them that their political careers were in his hands. Such changes were announced over the state radio often during the 1 pm news bulletin while some of the affected were in the middle of functions they would be presiding over. Kanyinga stated that Moi constantly shuffled cabinet ministers to create instability among his own clients and forestall any one of them building a rival network of loyal clients and followers (Kanyinga 1998). Other politicians who fell afoul the system irredeemably faded into political obscurity (Kanyinga 1998).

Khapoya suggested that Moi was as unpredictable a politician as he was inclined to chessboard politics with little or no concern for the economic wellbeing of the country. His decisions were entirely geared towards self-preservation. Khapoya observed that Moi would appoint almost half of the MPs into the cabinet in order to have a pliable parliament (Khapoya 1988). He strengthened KANU but weakened Parliament to try and keep all MPs within his control. In order to contest parliamentary elections, candidates had first to be cleared by KANU, the only political party in the country. If a politician was expelled

from KANU, he automatically ceased being an MP. For those keen to serve as MPs, loyalty to the party was non negotiable (*The Weekly Review* August 12, 1988: 14-5). The party became much stronger by incorporating the largest women's organisation in Kenya, *Maendeleo ya Wanawake* (Development for Women) and the umbrella workers' union, COTU (*The Weekly Review* October 10, 1988: 15-6). KANU became a monolith eclipsing other organisations that would have posed a threat.

3.10 The Abortive 1982 Coup

In August 1982 there was a failed attempt to topple the Moi régime by the disgruntled junior officers in the Air Force. The abortive coup was a watershed moment in Moi's tenure and in the aftermath, Moi began consolidating power in a more authoritative manner. Loyalty as shown above became the major criterion in making appointments. The régime dealt ruthlessly with some of the arrested soldiers. James Diang'a, one of the masterminds of the coup, revealed that most of his colleagues were hanged (Diang'a 2002). According to Diang'a, the coup was precipitated by the nepotism, corruption, embezzlement of resources and mismanagement in the military (Diang'a 2002: 76-81). Patronage networks connected politicians and senior military officers. Diang'a portrayed cases of conflict of interest where senior military officers were awarded tenders to build houses and supply uniforms for the junior officers and supply perishables but did not. Instead they ran businesses with stolen goods from the barracks. According to Diang'a both Kenyatta and Moi allocated land to these officers as well (Diang'a 2002: 76-81). In the wake of the coup some of those arrested were charged for a hitherto unheard of crime, that of 'coup revelry' in other words, they were charged with celebrating the success of the coup (Kihoro 2005: 182).

Some scholars contest that the Moi régime became authoritarian after the attempted coup. Atieno-Odhiambo argued that the Moi régime was authoritarian right from 1978. He cited the barring of Oginga Odinga and other opposition leaders from participating in the 1979 elections as a case of suppression of freedom of expression (Atieno-Odhiambo 2002: 227). Badejo also traced Moi's autocratic tendencies to the period before the coup (Badejo 2006: 102-106).

At the height of the one party authoritarianism in the 1980s and early 1990s, the Moi régime detained dissidents without trial. Most of them were confined in the dungeons of Nyayo House in the centre of Nairobi, arguably the symbol of Moi's autocratic rule. The dissidents were subjected to harrowing experiences including physical assault, water torture and mental abuse of which some died (Atieno-Odhiambo 2002: 229). Atieno-Odhiambo, an academic, was himself detained. Others included lawyers, journalists, the urban poor and anyone else suspected of belonging to an underground movement. The underground opposition was called *Mwakenya*. This was a clandestine organisation that sought to overthrow the KANU government (Mutua 2009: 67; Kihoro 2005: 187). Wanyiri Kihoro, a lawyer and one of the detainees at the time, revealed in his autobiography that detainees were often subjected to sham trials some of which took place after hours (Kihoro 2005: 187). Although these trials contravened the constitution, Hyden observed that the Moi régime treated the constitution cavalierly and frequently amended it to justify its actions as had occurred under Kenyatta (Hyden 2006: 105-6).

Diang'a identified ethnicity as one of the contributory factors to the abortive coup. The officer observed that owing to their rural homes being located away from most of the barracks and not being represented in the top echelons of the military, Luo and Luhya officers were overlooked by the patronage and the concomitant corruption within the military. (Diang'a 2002: 75-6). During the trial of the coup plotters, Hezekiah Ochuka, one of the ringleaders, accused the Moi régime of discrimination against the Luo community, complained about the lack of credible Presidential elections since independence and the lack of decent housing for junior Air Force officers who had to stay in leaking tents (Badejo 2006: 95). Ochuka gave these as some of the reasons that inspired the coup.

In the wake of the abortive coup, Moi became hypersensitive almost to a point of paranoia. His attributes as a highly distrustful, calculating, scheming and sly politician became more pronounced. Most of those who worked with him told of a fickle and untrustworthy politician. Philip Ochieng', a former KANU propagandist journalist with *Kenya Times* newspaper, had this to say of Moi, 'For with the President, there was never any long-term policy. Decisions were always taken from moment to moment' (*Daily Nation* December 24, 2002: 20). Badejo indicated that in 1981, Moi had promised to rehabilitate Oginga

Odinga into mainstream politics but Odinga went public about his impending comeback. He praised Moi but at the same time took a swipe against Kenyatta whom he accused of land grabbing. Moi and KANU felt Odinga had besmirched Kenyatta's memory upon which he was barred from contesting a by-election and forced to step down as chairman of a state corporation. Moi denied having promised Odinga re-entry into elective politics through the induced by-election in Odinga's Bondo constituency (Badejo 2006: 88).

The result of the abortive coup was the 'politics of musical chairs' at the expense not only of the country's economy but also of any kind of national cohesion. Ajulu observed that the autocracy of the 1980s provided both a conduit and a bulwark for accumulation of wealth and the maintenance of a kleptocracy. Kenya became a one-party state devoid of opposition parties and the democratic oversight bodies. Moreover Ajulu pointed out that Moi ensured his free rein by purging the army and Air Force of dissenting minds and replaced them with loyalists who in most cases were Kalenjin (Ajulu 2002: 262-3).

3.11 The *De Jure* one Party State

Whereas Kenyatta allowed a few loyal allies and the civil service to execute some government decisions (Ochieng' 1995: 93), Moi personally took charge of the running of the government and relied on KANU, the provincial administration and parliament to rule (*The Weekly Review* December 9, 1988: 27). In 1982 the government enacted the Constitution of Kenya (Amendment) Act 1982 that contained the notorious Section 2A of the Constitution that stated that, 'There shall be in Kenya only one political party, the Kenya African National Union' (Kihoro 2005: 180; Badejo 2006: 91). Raila Odinga, Kenya's longest serving detainee, observed that the amendment constrained the political space by criminalising competitive politics. The corollary, according to Odinga, was that those opposed to Moi rule were forced to organise underground (Badejo 2006: 92). Odinga, summed up the turning of Kenya into a *de jure* one party state thus, 'The political competition had outsmarted us' (Badejo 2006: 92; Morton 1998: 186). However, Moi defended Section 2A of the Constitution arguing that it would curb tribalism that he associated with the formation of more political parties (Morton 1998: 186).

Moi began consolidating power among the Kalenjin after Section 2A of the Constitution came into force. Ajulu was of the view that the aim was to create a propertied Kalenjin clique to buttress his régime. However, among the Kalenjin sub-tribes, the Tugen and Keiyo political elite dominated Moi's inner court (Ajulu 2002: 263). Thus Ajulu drew parallels between the Moi and Kenyatta régimes with regard to the allocation of public goods such as roads, education, agricultural investments and employment in state corporations on the basis of political affiliation and ethnicity (Ajulu 2002: 263). The speed with which Section 2A of the Constitution was enacted was a harbinger of the tough and turbulent political times awaiting dissidents. Sycophancy emerged as some politicians and even academics tried to ingratiate themselves with Moi. Klopp and Orina showed that although some academics denounced and opposed the Moi régime, others acted obsequiously and even hired themselves out for propaganda purposes (Klopp and Orina 2002: 55). For defending the system, such academics disparagingly referred to as 'KANU Professors', were rewarded. Khapoya pointed out that an academic supportive of the régime enhanced his chances of being co-opted into the system as the head of a parastatal or as a top bureaucrat (Khapoya 1988: 56).

The criminalization of competitive politics was significant in two ways. First it was the clearest indication that the régime was opposed to reform. Second it showed that the Moi régime was not substantially different from Kenyatta's. This intolerance was consistent with Moi's mantra of *fuata Nyayo* literally 'follow the footsteps' which meant absolute loyalty to himself and to KANU. Between 1982 and 1990, the Moi régime became notorious for its repression. A Human Rights Watch study observed that the régime criminally applied the word 'Rumourmonger' to critics in such a nebulous fashion that it was almost impossible for them to defend themselves (Human Rights Watch 1991: 38). KANU youth who donned red shirts and black trousers also served as instruments of terror during this period (*Daily Nation* October 14, 2002: 5). They confiscated the meagre belongings of villagers who failed to contribute to *Harambee* projects, arrested those who fell foul of the system.

The beginning of 1986 witnessed some of the harshest measures against dissidents, including torture and killings targeting *Mwakenya* members. Two years later, in 1988,

constitutional amendments further consolidated power in the executive. The régime extended the period during which suspects were detained without trial from 24 hours to 14 days and abolished the tenure of judges, further eroding judicial independence (Throup and Hornsby 1998: 40). Although Moi restored judicial tenure in the early 1990s, Mutua suggested that this did not redeem the image of the judiciary. Judges remained subservient to the executive and invariably ruled against opponents of the régime in politically sensitive cases (Mutua 2009: 67). Thus 1988 was the year when Moi launched sustained assault on democracy. He abolished the secret ballot and replaced it with queue voting, asserting that this would stem vote buying and dishonesty (Khapoya 1988: 60). It was during this period when the trend that relatives replace fallen politicians during by-elections was established in the system. For instance, in 1989 Musalia Mudavadi succeeded his father, Moses, in parliament. Kanyinga argued that such inheritance of power consolidated Moi's grip on KANU (Kanyinga 1998: 54).

3.12 A Travesty of Democracy

I find it necessary to make a few remarks on this subject today. In arriving at this decision the Ruling party, KANU took into consideration the need to make the elections reflect the wishes of the people. The Ruling party is convinced that it is a waste of public time and resources for the party to allow everyone to contest in the General Election, even for those who for practical reasons, cannot claim to command sufficient support from the electorate...when the General Elections are declared the ruling party will in conjunction with the Provincial Administration conduct preliminary Elections in which the electorate will line up behind their candidates, or two accredited agents of such candidates one of whom will carry an appropriately enlarged photograph of the candidate. Candidates who will be nominated to proceed in the General Elections must have obtained 30 per cent or more of the total votes in the preliminary Elections within their areas of representation. In the event of any one candidate obtaining 70 per cent or more of the total votes at the preliminary elections such a candidate will be the only one to be nominated by the party for the general Elections in a particular constituency or ward. In effect this would mean that the candidate will be deemed to have been elected unopposed for the purposes of the General Elections. In the event where no candidate obtains the minimum 30 per cent of the total votes cast, the first two candidates with the highest count shall be nominated for the General Elections (President Moi's Speech on Jamhuri Day December 12, 1986).

KANU applied the queuing voting system popularly called '*mlolongo*' during the 1988 general elections. Mutua argued that the process was faulty for two reasons. First, it was dangerous because it exposed the voters to possible reprisals from supporters of opposing

candidates. Secondly, most voters shied away from lining up behind government critics due to intimidation (Mutua 2009: 67). Throup and Hornsby observed that the irony was that in certain constituencies it turned out that candidates whose queues were the longest lost to those with the shortest ones (Throup and Hornsby 1998: 42-4). The régime took advantage of the queuing voting system to weed out dissidents given that the office of the President through the provincial administration supervised the elections (Throup and Hornsby 1998: 42-4). The 1988 elections, the last under the one party state, resulted in many critics of the régime losing through open rigging. The excluded politicians joined those that KANU had previously stripped of membership and were instrumental in returning the country to multiparty politics (Throup and Hornsby 1998: 44-5). I quoted Moi at length to foreground the travesty of democracy that the Moi régime invented.

Parliamentary elections during the one party state were free within the rules that Moi set. Berg-Schlosser observed that in this period KANU was not run as an effective political party except that the gate-keepers cleared the civic and parliamentary candidates contesting the party's top leadership (Berg-Schlosser 1989: 125). The party became exceptionally active during elections to screen only loyal candidates for election. Analysts observed that the party did not mobilise membership towards the realisation of any objectives as was the case for a policy-oriented political party (Khapoya 1980: 19; Nyong'o 1989: 231-2). There were regular elections during the one party state such that Kenya was identified as a 'one party democracy'. The elections recorded a high turnover of nearly 60 per cent of members of parliament, resulting in cabinet ministers often losing their parliamentary seats (Khapoya 1988: 55). In a sense, the electorate simply endorsed candidates whom Moi and the KANU politburo cleared. By the time Moi left office, he had not internalised the democratic right of people to freely elect leaders. In 2002, Moi imposed leadership on KANU as shown in chapter five. Therefore, anyone who disagreed with him during the one party state stood absolutely no chance of either being elected or re-elected into parliament unless he apologised. Thus parliamentary elections at the time were choreographed despite the veneer of competition. Moi and his loyal supporters were repeatedly re-elected 'unopposed' as President and MPs respectively (Khapoya 1988: 58). Moi reactivated KANU, used it to rule unlike under Kenyatta during whose tenure the party had become moribund to the extent that a tribal grouping, GEMA gained in

significance and wielded great influence in Kenya's political and economic affairs (Omolo 2002: 214). Moi mobilised support for KANU and accorded Kenyans some semblance of choice although it was circumscribed.

KANU became the social economic and political centre of gravity of Kenya's politics. Throup and Hornsby observed that in material sense, the fortunes of Kenyans depended on the KANU membership card because it was a prerequisite before access to bank loans, state services and even promotion in the civil service would occur (Throup and Hornsby 1998: 38). KANU and the government morphed into one indistinguishable entity. Moi gave KANU the latitude to discharge functions that would in a rational legal régime fall within the ambit of the government. Moi's views are captured in a 1982 speech:

There is no doubt in my mind that KANU has a critical role which it must perform diligently in all national affairs, endeavours and aspirations. As the political party forming the Government, and the popular nationwide movement sustaining the Government, KANU is required through all its elected leaders to safeguard constitutional rights and uphold the rule of law, to establish standards of conduct and impose discipline in the cause of national integrity. And in the arena of practical efforts for nation building, there are a number of other purposes and responsibilities directly confronting the party. I am particularly anxious that at whatever level, KANU should not just leave everything to the Government. The party must not shirk every issue or just sit on the sidelines waiting to see what might happen. There must be an active intent in all questions of public concern, and creative involvement with the implementation of programmes under such headings as food policy and rural development, family planning, industrial expansion, conserving the environment, adult education and in curbing dishonesty and crime (Moi's speech on Jamhuri Day December 12, 1982).

The formation of the KANU Disciplinary Committee in 1985 was yet another indication that Kenya had become a party state. The committee was a kangaroo court since its decisions were fait accompli as there was no appeals mechanism. It ensured deference to the President and was accountable only to Moi himself (*Daily Nation* December 24, 2002). The Committee had the authority to strip MPs of parliamentary immunity and punish any party member who questioned the government and party policy (Khapoya 1988: 60-1). The Committee arbitrarily handed out suspensions and expulsions on the flimsiest of charges. A former cabinet minister, Peter Okondo, was summoned before the Committee for denouncing its high handedness from the floor of parliament. He literally cried and profusely apologised to save his political career (*Daily Nation* December 24, 2002). The

committee was no respecter of the doctrine of parliamentary immunity. Another victim former Nyeri Town MP, Isaiah Mathenge, was accused of appearing at a Presidential function without a tie and having the effrontery to greet Moi. He was summarily expelled from KANU (*Daily Nation* December 24, 2002). Kimani wa Nyoike, whom I have referred to earlier, earned the wrath of the committee for the offence regarding the 'Tawala, Kenya' song (Khapoya 1988: 61). After three years of wielding its authority and cowing KANU membership, Moi dramatically disbanded the committee. He said thus, 'This thing called Kanu disciplinary committee has overreached itself and given itself more powers than I have' (*Daily Nation* December 24, 2002). In this way, Moi shifted the blame for excesses under his rule to clients and minions.

3.13 Fractious Opposition Politics

The ethnic groups Moi marginalised were the ones from which opposition politicians sprang. Pointedly, they were opposed to the régime for different reasons not necessarily because of authoritarianism or other deficiencies such as corruption. According to Khapoya, the Kikuyu political elite opposed the Moi régime because of nostalgia for the Kenyatta era in which they had had exclusive rights to the country's resources (Khapoya 1988: 63). Kanyinga observed that the Luo and sections of the Luhya felt excluded from the Moi régime because under this régime, they lost out to the Kalenjin and some Asian businessmen. He also suggested that the poor both in rural and urban areas felt excluded because Moi's populist promises did not translate into corresponding benefits hence these excluded constituencies became disillusioned (Kanyinga 1998: 56).

Although Kenya's opposition was united in their quest to remove Moi from power, they were divided on the reasons. Civil society, religious organisations and former Moi loyalists turned critics denounced the Moi régime but for different reasons as Khapoya and Kanyinga showed. These groupings could not appeal to ethnic sentiment because the political space was too constricted for ethnic mobilisation. The Moi factor neutralised ethnic, regional and religious differences among the opposition. Prior to the 1992 elections, there were no competitive Presidential elections in which ethnic Big Men could participate. However, the end of the one party dictatorship in 1991 made it possible for politicians to openly canvass for support along ethnic lines. The legalisation of multiparty

politics threw control of the state into open competition through multiparty elections. Those previously marginalised from patronage opportunities could appeal to tribalism in an attempt to wrestle power from the incumbent. Moi and his supporters likewise tapped into tribalism to retain power by portraying multiparty advocates as tribalists out to dislodge the Kalenjin and by extension other Moi-supporting tribes in the Rift Valley. There emerged a pan ethnic community, KAMATUSA, comprising the Kalenjin, Maasai, Turkana and Samburu. The linking together of these communities coupled with efforts by the régime to disorganise opposition supporters through violence, triggered the first ethnic clashes in parts of Western, Nyanza and Rift Valley Provinces in the early 1990s. The Moi régime whipped up ethnic sentiment in the Rift Valley under the guise that the régime was under siege from opposition leaders. According to a Human Rights Watch report Moi accused opposition politicians especially the Kikuyu of tribalism (Human Rights Watch 1991: 38, 40; Haugeraud 1995: 39).

3.14 Nyayoism & Multiparty Politics

The *Nyayo* era existed for a decade after Kenya returned to multiparty politics in 1991. However, the political scene had changed in that Moi's word was no longer law and politicians could speak freely since there were alternative political parties. From 1991 until 2002, when he left office, Moi had to contend with a political environment that was unfamiliar to him. However, despite the legalisation of other political parties, in effect, the entire one party political arrangement remained intact. Opposition party leaders proclaimed certain ideological positions but the effect was to balkanise the country through the formation of ethnically based political parties or ethnic alliances. But the salience of the ethnic factor was not an innovation of the opposition. KANU under Moi had used ethnicity to establish the hegemony of certain tribes over others, as the evidence has shown. The distinguishing factor was the overt style in which tribalism influenced Kenya's multiparty politics.

Moi's political thinking was at variance with the changed political atmosphere. He stuck to the one party style of managing politics. He asserted that Kenya was too ethnically fragile to withstand political competition. Moi and his ardent supporters defended one party rule on the grounds that it promoted unity among different ethnic groups and they portrayed

political pluralism in apocalyptic terms by associating it with ethnic clashes (Human Rights Watch 1991: 46-47). Furthermore Moi asserted that the one party system fostered consensus and was not conflictual (Haugeraud 1995: 39, 51). Julius Nyerere had also argued that the one party system was suited to Africa because it was consistent with Africa's traditional forms of rule but this position did not pass the muster (Nabudere 1989: 1). Makau Mutua, legal scholar and columnist with his fellow compatriot, the political scientist and politician, Peter Anyang' Nyong'o, (Nyong'o 1992: 2-3) repudiated the claim that the one party state was a model form of governance. Except in Botswana and Mauritius, Mutua dismissed the one party state as, '...a demented bandit, looter and terrorist' (Mutua 2009: 40).

Moi's resistance to multipartyism and his attempt to link competitive political parties with tribal violence was fundamentally resistant to reform. Haugeraud was among those analysts who argued that political liberalization in itself could not cause political instability in Kenya unless KANU instigated violence (Haugeraud 1995: 39). Haugeraud argued that the rhetoric that attempted to draw a connection between a democratic contestation for power and internecine violence was aimed at discrediting proponents of multiparty politics particularly the Kikuyu politicians whom Moi accused of pursuing a tribal agenda as opposed to reform (Haugeraud 1995: 39). Ajulu averred that Moi resisted political competition because he feared it would open up state institutions to scrutiny thus exposing endemic corruption and other excesses of single party rule (Ajulu 2002). The eruption of ethnic clashes was not just a self-fulfilling prophecy but the outcome of KANU instigating tribal violence. The violence enabled the KANU régime to vindicate its view that multiparty politics spelled instability for Kenya (Atieno-Odhiambo 2002: 230).

3.15 Repeal of Section 2A of the Constitution

Moi appointed the KANU Review Committee to collect and collate Kenyans' views with regard to multiparty politics. The majority of those who made submissions before the committee argued in favour of multiparty politics (Barkan 1992: 183). However, George Saitoti, the Vice President and head of the Committee attempted to produce a report that misrepresented what most Kenyans had told the Committee and denied that Kenyans supported multiparty politics (Kibwana 2002: 274). However, Moi read the country's

political mood and acquiesced to multiparty politics on December 8, 1991 during a KANU delegate's conference to the consternation of the delegates (Badejo 2006: 161; *The Weekly Review* July 3, 1992). Moi rejected the position of KANU hawks that were opposed to any kind of change and Ogot observed that this prevented the country from plunging into violence (Ogot 1996: 243).

Locally, forces in the academy, the religious fraternity, opposition politicians, the mothers of political detainees, the urban poor,²⁸ university students and journalists all piled pressure upon the régime (Amutabi 2002; Atieno-Odhiambo 2002: 226; Klopp and Orina 2002; Tibbetts 1994). Internationally, pressure came also from the United States through its ambassador Smith Hempstone. The envoy openly campaigned for multiparty politics, criticised the Moi régime, offered sanctuary to dissidents at the US embassy and helped some to flee the country (Badejo 2006: 149-50; Morton 1998: 230-31). Moi was forced to accede to reform. Democratic reform was accompanied by calls for economic reform and accountability. The International Monetary Fund (IMF), demanded accountability as a condition for continued financial support. Moi's room for political manoeuvre was thus drastically constrained. Some analysts were, however, sceptical about the commitment to reform by the bilateral and multilateral partners. The US and the international community interest in events in Kenya was also determined by their own interests (Atieno-Odhiambo 2002: 226; Murunga 2004: 195). For ideological and strategic interests these partners and the US had previously supported the Moi dictatorship without raising concerns about either human rights violations or corruption (Odhiambo-Mbai 2003: 55).

3.16 Conclusion

The chapter showed that the *Nyayo* era was basically a system of personal rule in which Moi adroitly exploited tribalism to maintain power. The Moi régime was quintessentially a neopatrimonial 'Big Man' one that had no regard for written laws. In this régime loyalty counted more than meritocracy and professionalism. Moi's authoritarian style was both his strength and his weakness. It enabled him to suppress dissent but swelled the ranks of embittered opponents who in tandem with foreign actors pushed for multiparty politics.

²⁸ The urban poor comprised 'the unemployed, hawkers, *chupa* and *debe* collectors, pickpockets, thieves, prostitutes and beer-sellers' (Atieno-Odhiambo 1996: 35). The italicised words refer to bottles and aluminium containers respectively.

His deft manipulation of ethnic loyalties through regional Big Men accorded the régime some semblance of stability but fomented tribal animosity that boiled over once the country returned to political pluralism. The violence that engulfed the country under multiparty democracy could be attributed to a sense of uncertainty that enveloped Moi and his cohorts used to operating in a political atmosphere with little or no challenge at all. Having been confined to the political wilderness for years through suppression, excluded tribes staked claim on the state but met violent resistance. The chapter showed that personal rule had deleterious effects on Kenya's social fabric and body politic. It entrenched tribalism, set forth the practice of sham competitive politics through the form that elections took, hobbled independent institutions crucial in a democracy, such as the judiciary and parliament, institutionalised corruption and violence and disregarded merit in employment and appointment of state officials. The inability to professionalise the bureaucracy under Kenyatta, Moi and Kibaki ensured that the president and not the state received loyalty. Tribalism became the bulwark for these officials because it was the basis on which they were appointed and kept their positions. Although Moi left office in 2002, the characteristics of one party rule such as corruption, tribal based politics, impunity and arbitrary rule remained a powerful legacy in the years that followed. A shift to rational-legal approach to politics as opposed to spoils politics was the only one that guaranteed Kenya political stability.

Chapter Four

Kenya's Transition without Transformation

It is axiomatic that, had the opposition been able to unite behind a single Presidential candidate or more realistically, if Kikuyu-Luo blocs had been able to forge a united front, Moi would have lost the recent election. The real conundrum of Kenyan politics, therefore, is quite why, having lost control of KANU under Moi and having been thumped in 1992, the politicians from these communities, who are scarcely divided by anything resembling a political principle, found it impossible to coalesce. The answer must clearly lie in the minutiae of ethnic politics: the lack of trust of politicians and voters of even (especially?) their near neighbours, the web of patronage-client relations, and the realization of individual politicians that membership of the political class brings access to the spoils system (Southall 1998: 109-10).

4.1 Introduction

The chapter focuses on the period between 1992 and 1997, the first multiparty elections since Kenya's return to political pluralism to the second. 1992 was a defining election in the sense that it was the first since the 'democratic turn' that led to multiparty elections. As Southall's quotation suggests, these elections saw new opposition parties line up to compete and possibly win power. Did ethnicity and personality differences derail chances of the opposition leaders unseating Moi? The chapter will explore this question. The chapter argues that notwithstanding the change to multiparty politics within this period Kenya's politics remained locked within the logic of ethnicity and thus did not change substantively which accounted for Kenya's inability to undergo both transition and transformation. Moi continued to have leverage upon Kenyan politics, although within a contestable political atmosphere. First, there was the persistence of the legal, constitutional and institutional framework of the one party state. KANU and Moi adroitly talked the opposition into acquiescing to multipartyism but retained a one party structure. Wanjala contends that the one party parliament was galvanised into making half-hearted and sometimes fallacious amendments to the constitution ostensibly to prepare for a transition to multiparty democracy (Wanjala 1996: 92-3). Some of the amendments were deliberately crafted to suit KANU in the multiparty general elections that would follow. For instance, there was an amendment on Section 5(3) of the constitution that required that a Presidential candidate garner majority votes besides twenty five per cent of the votes in at least five of Kenya's eight Provinces. Other amendments were drafted in such a manner as

to create the possibility of a constitutional crisis in the event that KANU lost. For example the Constitution was silent on what would happen if there was no winner in the run-off elections (Wanjala 1996: 92-3).

Second, most of the leading politicians opposed to Moi were his former clients who had either defected or been purged from KANU (Ndegwa 1998; Ngunyi 1996: 274). Save for Oginga Odinga, the rest of the other opposition leaders were similar to Moi in political socialisation hence their inability to devise an alternative political trajectory. One of the features of transitions of the late 1980s and early 1990s in Africa was the persistence of rulers drawn from the same social and political classes as their predecessors but which included an aging generation of old guard politicians who had served in previous régimes (Bratton and van de Walle 1997: 8). Third, structural challenges such as widespread poverty and economic difficulties made the realisation of reform difficult (Kibwana & Maina 1996: 463). But fourth, and perhaps most significant, was the disunity among opposition parties. Owing to reasons related to but not confined to what Kenyans themselves term 'tribalism', Kenya's transition without transformation occurred (Nasong'o 2007: 101-2).

The chapter attempts to explain the reasons behind opposition disunity prior to and after the 1992 elections that made it possible for KANU and Moi to retain power first in 1992 and subsequently in 1997 against the expectations of reform-minded Kenyans. Of critical significance in this chapter is that tribalism interfaced with economic challenges, opportunism, and the lack of a regulated political party system to make it difficult for multiparty politics to find traction in Kenya. To both Moi and the Opposition, tribalism carried political and economic value so much that even attempts at policy informed politics by a section of the opposition floundered. In spite of these setbacks, the 1992 elections were significant in Kenya's political history as they introduced a modicum of political competition until then unknown at the Presidential level. The chapter begins with a brief analysis of the theory of democracy²⁹ in order to locate Kenya within the global transition politics. It brings out the logic of tribal politics and its destabilising effect through

²⁹ The thesis does not explore issues concerning democracy. The concept is only used to highlight the absence of values such as accountability, transparency, probity and the rule of law that make it possible for tribalism to infiltrate the country's politics.

violence. Of importance is the role of the winner-takes-all electoral system on the survival of the KANU régime. This is followed by a discussion on KANU's political overtures to opposition parties that were couched in the language of development and cooperation. The last part of the chapter demonstrates the influence of tribalism on political parties and the lack of commitment to reform that made it difficult to distinguish between KANU and opposition parties.

4.2 The Forum for the Restoration of Democracy (FORD)

According to some observers, the attitudes of both the Kikuyus and non Kikuyus on the matter is not a question of ignorance about the implications of their actions on the party's image. Rather it is a statement about the fact that when it comes to the crunch, tribalism becomes the single-most important factor in Kenyan politics (*The Weekly Review* May 8, 1992: 4).

Infighting and squabbles among opposition parties characterised the period before the 1992 elections until 1997 (*The Weekly Review* July 3, 1992: 4-5). The slide of the opposition party, the FORD into ethnic factions resulted in a plethora of political parties based on ethnic identity but where politics was interpreted through what Bayart has termed 'the politics of the belly'. The new parties reflected the views of excluded groups that believed that it was 'our turn to eat', that is, the turn of 'our tribe' to rule prism. The manifestoes of these parties reflected the lack of substantive theoretical difference between them. There was no grand discussion of issues that were class-based, although regional exclusion based on tribe were certainly issues that raised their head. Neither were they different from KANU's (*The Weekly Review* July 3, 1992: 21). Throup and Hornsby observed that FORD-Kenya, Democratic Party of Kenya (DP), Social Democratic Party (SDP) and Kenya National Democratic Alliance (KENDA) jointly released the most comprehensive manifesto called the *Post-Election Plan* sponsored by the Friedrich Neumann foundation of Germany (Throup and Hornsby 1998: 343). Although the document was 'too unfocused and not prioritised' it presented the most compelling economic statement among the opposition parties. FORD-K released its, *Charter for the Second Liberation* which promised to restore constitutionalism,³⁰ guarantee human rights and, more radically, abolish the Provincial Administration, scale-down the civil service,

³⁰ Baregu defines constitutionalism as 'a political culture that nurtures and sustains adherence to a constitution as a social contract between the rulers and the ruled' (Baregu 2010: 28).

end the 8-4-4 system of education, and privatise parastatals (Throup and Hornsby 1998: 343: 343-4). FORD-Asili led by Ken Matiba, a former bureaucrat and cabinet minister, did not even prepare a manifesto and made no attempt to prepare a national programme of action. Neither did it have any printed copies of its Constitution. Unlike FORD-K, the party had few intellectuals in it. Throup and Hornsby pointed out that this accounted for its failure to spell out its programme of action. FORD-Asili's booklet, *Ken Matiba, Man of the People* comprised nothing but 'eulogies of Matiba as a natural leader' (Throup & Hornsby 1998: 344). DP's manifesto was not any different from the others since it contained liberal economic policies too. It 'promised to end corruption and detention and reform the 8-4-4 education system' (Throup & Hornsby 1998: 344). Throup and Hornsby argued that all these manifestoes were incoherent in offering an alternative programme of action because they were aimed at appeasing Western donors and the Kenyan elite (Throup & Hornsby 1998: 344).

Divisions emerged within FORD before the 1992 elections pertaining to the fielding of a single Presidential candidate. Oginga Odinga, the Luo leader who at independence had split from KANU to form his own party, declared his interest in the FORD nomination, followed by Kenneth Matiba, a Kikuyu, then a veteran Luhya politician, Martin Shikuku. Moi and KANU looked at these declarations with some equanimity since they were signs that FORD was headed for a three way ethnic split (*The Weekly Review* July 3, 1992: 5). These divisions not only rendered FORD rudderless but they also gave Moi a political lifeline. As a result, the threat that FORD initially posed to Moi's hold on power dissipated as the 1992 elections drew close. The disarray enabled Moi to outsmart a disjointed opposition and to reclaim the political initiative that he seemed to have lost as the groundswell in support of multiparty politics gained momentum. Following the splintering of FORD and formation of DP, the chances of the opposition dislodging Moi dimmed drastically (*The Weekly Review* July 3, 1992: 5). It was curious that the Registrar of Societies acted in haste in registering the FORD parties lending credence to the claim that the government had a hand in the squabbles and eventual break up of FORD (Kadima and Owuor 2006: 183).

The leading contenders for the FORD Presidential nomination, Matiba and Kikuyu and Odinga, a Luo, had personal handicaps that in effect fuelled tribalism within the party. The Kikuyu could not support a Luo while the Luo were convinced it was their turn to rule and expected the Kikuyu to reciprocate the support they had accorded them since before independence. A resurgence of the rivalry between politicians from the two communities ensued. Both politicians' supporters exploited the other's personal inadequacies to dismiss the Presidential ambition of the rival that exacerbated ethnic rivalry between the two factions. Matiba's critics, and supporters of Odinga, considered him unfit to lead the country due to a stroke that he had suffered while in detention while Odinga's critics, and supporters of Matiba, disqualified him for being too old and with failing eyesight not really capable of leading the country into democracy. Matiba's supporters observed that at 80, Odinga was an octogenarian unfit to rule (*The Weekly Review* July 3, 1992: 7).. The Odinga faction pressed the point that the Kikuyu had had their share of the presidency under Kenyatta. Odinga emphasised this issue: 'During independence I left the seat to Kenyatta; this time do you expect me to leave it to anybody?' (*The Weekly Review* May 8, 1992: 4) Odinga's supporters dismissed Matiba as a Johnny-come-lately who joined opposition politics two years before the 1992 elections while Odinga had been a veteran of opposition politics for over 30 years. Matiba's supporters claimed that Matiba had better organisational and managerial capacity and the requisite personal financial resources and wealthy backers to withstand the rigours of a Presidential campaign (Throup & Hornsby 1998: 55). I argue that this was a handicap in itself. It disqualified him because he had been a long time beneficiary of the KANU patronage system that FORD claimed they wanted to reform. Matiba joined the bureaucracy in his 30s after independence until 1989 when he resigned from the cabinet after being excluded through the controversial 1988 *mlolongo* or queue voting elections. He was subsequently expelled from KANU (Throup & Hornsby 1998: 55). Although not poor, Odinga could not match Matiba's resource base (*The Weekly Review* May 8, 1992: 5-6). Indeed the press opined that:

Both Odinga and Matiba want the country's presidency so badly, say sceptics that, whoever loses the bid for the FORD presidency will inevitably form a breakaway party as a means of realizing the Presidential dream (*The Weekly Review* May 8, 1992: 5).

The FORD internal differences proved irreconcilable in due course. The fragmentation of FORD into FORD-Kenya and FORD-Asili (original) led to the electoral competition between Odinga and Matiba, the respective leaders of the two factions. These twin FORD parties bifurcated again into small entities of even less consequence. In the aftermath of the 1992 elections a second split in the 'FORD family' gave rise to FORD-People and Saba Saba Asili. FORD-People was associated with the Kikuyu politician Kimani wa Nyoike, whom I referred to in chapter three. Matiba defected from FORD-Asili and formed Saba Saba Asili after losing control of FORD-Asili to Shikuku. Kadima and Owuor opine that the Registrar of Societies exercised enormous discretion in registering more parties when it was advantageous to Moi and KANU (Kadima and Owuor 2006: 191). I analyse in detail FORD-Asili challenges below. These parties purported to be guided by national ideals while in essence they were ethnic enclaves for their 'ethnic barons' and their supporters (Mutunga 2002: 66). The break-up of FORD and emergence of these parties had nothing to do with differences in ideology but a battle for political supremacy based on ethnicity. Matiba, Kibaki and Odinga the leading opposition candidates in the 1992 elections in that order, drew support largely from their ethnic groups. Owing to the lack of resources and clout, Shikuku and wa Wanyoike could not command the support of their tribes. Hence FORD-Asili and FORD-People became fringe political parties in the period leading up to the 1997 elections. The FORD was a disparate entity comprising veterans of opposition politics and formerly KANU politicians inclined to reactionary politics and elderly and younger politicians. Young political activists were referred to as Young Turks (Ogot 1996: 248). A combination of these factors in addition to the ethnic rivalry pitting the Kikuyu against the Luo led to the disintegration of FORD (Mutua 2008: 90).

Some *wananchi* (ordinary people) attributed the loss of opposition parties to KANU in 1992 and 1997 to Moi's political adroitness, rigging, and tribal divisions. I gathered this during a field research in Kenya. Ondari observed that Moi was too savvy for his competitors and so he disorganised them by encouraging formation of as many political parties as possible (Interview, Ondari, January 16, 2009). Opposition leaders' inability to form an electoral alliance after they formed a myriad of parties meant in effect that they blew away the chances of régime change in Kenya. It was the fragmentation of the opposition that enabled Moi to rig the elections in his favour (Throup and Hornsby 1998:

454-5). In Nyanza Province, some of Odinga's supporters such as Modi believed that Moi owed retention to astute divide-and-rule tactics. Modi, a 65 year old asserted to me that 'Moi was not for multipartyism but Jaramogi (Odinga) succeeded in having Kenya return to multiparty politics. FORD was defeated because Moi divided the opposition, got votes from the Kalenjins and Luhyas and then isolated the Luo hence ruined Jaramogi's chances (Interview, Modi, January 16, 2009).

Moi survived the 'wave of democratisation' (Huntington 1991) because of a Constitution that disproportionately vested too much power in the presidency. The amended 1963 Constitution was presidential. For instance, it stated that in Section 23 (1) that 'The executive authority of the Government shall vest in the President and, subject to this Constitution, may be exercised by him either directly or through officers subordinate to him' (Republic of Kenya 1963). The judiciary and parliament were subservient to the executive. For instance, the judiciary could not impartially arbitrate accusations of electoral malpractices against Moi and KANU. Moi deployed patronage to placate some opposition members of parliament. Hence Moi continued to dictate the pace and direction of the country's politics in much the same way as he did under one party rule although he could be challenged openly through the media, civil society, sections of the clergy and sections of the opposition. After the legalisation of multiparty politics, the opposition leaders were in a hurry to replace Moi and overlooked the question of reform that would clip the heavily centralised executive powers that tilted the political playing field in favour of the incumbent (Kibwana & Maina 1996: 431; Wanjala 1996: 218). Most of the opposition leaders had been part of KANU for years and were aware of the benefits of such a constitutional structure.

In the run up to the 1992 elections, the plethora of most opposition divided along ethnic lines meant that there was no strong campaign against the KANU monolith. In the aftermath of the elections, moreover, Moi exploited the patronage networks to entice some opposition MPs into defecting to KANU. Parliamentary losers in the 1992 elections were the most susceptible because 'they had no jobs, no prestige and no posts to compensate them for the risks they had carried out' (Throup & Hornsby 1998: 546). Consequently some opposition MPs in Central, Nyanza and Western Provinces gave in to financial and

material inducements and defected. These included Protas Momanyi in Kisii, Apili Wawire in Western and Tom Obondo in Nyanza to name but three. Kenya's winner-takes-all electoral system left the opposition leaders without any opportunities to extract prebends from the state. Demanding campaigns left most opposition leaders in a precarious financial situation. Therefore they were faced with a stark choice: either co-operate with the government or budgetary allocations to their areas would be stopped (Throup & Hornsby 1998: 546: 464).

KANU thus retained its hold on power in 1992 mainly due to ethnic factionalism among the opposition parties (Southall 1998: 102). However the credibility of the elections was called to question (Klopp 2001). Although the opposition was divided, Moi exploited incumbency to aggravate the divisions by luring some of the opposition leaders with bribes and sinecures (Khadiagala 2010: 70; Steeves 2006: 199). Had FORD fielded one Presidential candidate KANU would not have won the elections given that FORD had massive support all over the country except Rift Valley. The Kikuyu and Luo politicians could not agree to support a single Presidential candidate not because of ideological but ethnic differences. However ethnicity *per se* could not comprehensively explain the dismal performance by the opposition parties in the 1992 elections. A number of electoral irregularities contributed to the KANU victory as well. For instance, the voter registration process was riddled with irregularities in many parts of the country. Musambayi showed that the process of nominating candidates was flawed especially in the Rift Valley Province leading to KANU getting parliamentary seats without elections being held. In this Province, intimidation, violence and government-induced administrative bottlenecks made it difficult for the opposition to submit names of their candidates to returning officers. Consequently, KANU candidates were 'elected' without any electoral contest since many opposition candidates were disqualified at the nomination stage (Musambayi 2002: 185-6). Forty one per cent (18 out of 44) of the KANU candidates in the Rift Valley Province were returned to parliament unopposed (Nasong'o 2007: 96).

In spite of not having brought about the desired reform in Kenya's body politic, the 1992 elections were significant. It was the first time a political contest for the presidency since independence in 1963 had occurred, notwithstanding the allegations of irregularities by the

opposition. Previously it was considered almost political sacrilege for any politician to contemplate challenging the incumbent. Before then, only parliamentary (to some extent) and civic seats were open to electoral contest. Even at this stage, loyalty to KANU and Moi counted a lot. Since the May 1963 General Elections that ushered in independence, Kenya held subsequent elections in 1969, 1974, 1979, 1983, and 1988 in which the incumbent was not challenged (KHRC 1998: 6).

The 1992 elections marked the beginning of the dismantling of institutionalised authoritarianism. With the scrapping of section 2A of the Constitution there was euphoria reminiscent of independence (*The Weekly Review* July 3, 1992: 4). The elections signified the liberation of Kenyans from the shackles of 'political somnambulism into which they had been whipped by the many years of one party dictatorship' (Wanjala 2002: 107). However, the opening up of political space was accompanied by political practices that considerably stymied the democratisation process.

4.3 The Logic of Tribal politics

The anti-Kikuyu sentiments subject was put across more forcefully by a Nairobi politician, Clement Gachanja. A Kikuyu himself, Gachanja said that 'The Luhya, Luo and other Kenyans have regrouped themselves against the Kikuyu and it would be impossible for a Kikuyu to become the next President.' Kibaki was quick to refute Gachanja's claims arguing that it was an individual's track record not his tribe that would influence the electorate. Kibaki's theory does not however explain why he has no following in Western and Nyanza Provinces or why Odinga has no support in Central Province (*The Weekly Review* July 3, 1992: 8).

More than any other factor, the 1992 elections demonstrated what had long seemed to characterise Kenya's politics, the salience and influence of ethnicity. Cowen and Kanyinga put it differently when they argued that the elections brought to the surface 'the logic of communal politics' (Cowen & Kanyinga 2002: 130). Kenyans voted for Presidential candidates who originated from among their ethnic communities or those who formed pacts with politicians from their communities. For instance, FORD-Asili's Kenneth Matiba, a Kikuyu, paired with Martin Shikuku, a Luhya. This Kikuyu-Luhya alliance accounted for FORD-A scooping most seats in Central Province, Matiba's ancestral home. The party had the most number of parliamentary seats in Western Province, Shikuku's native Province (Ngunyi 1996: 273).

However, the Matiba-Shikuku pairing was an exception to attempts at cross ethno-regional alliances. Similar pairings in other parties did not produce similar results. Voting in 21 constituencies did not produce the same result at constituency level and for the Presidency. It seems that people split their vote. Thus, in Kikuyu constituency (later changed to Kabete) in Central Province, the FORD-K candidate and party's national deputy, Paul Muite received 38 416 votes which translated into 71.97 per cent of the total votes cast but the voters cast their Presidential votes overwhelmingly in favour of Matiba, another Kikuyu. Matiba garnered 46, 277 of the total 53,137 votes while Oginga Odinga, FORD-K's Luo Presidential candidate, fared dismally emerging with a paltry 3, 246 (Badejo 2006: 169).³¹ See table 1 below.

Table 1

Kikuyu Constituency Election Results in 1992

Constituency	KANU		FORD-Asili		DP		FORD-Kenya		Others	
	Parl.	Pres.	Parl.	Pres.	Parl.	Pres.	Parl.	Pres.	Parl.	Pres.
Kikuyu	1%	2%	23%	87%	4%	5%	72%	6%	0%	0%

Source: Throup & Hornsby 1998: 494.

³¹ This voting pattern haunted Muite after the elections when some FORD-K members questioned the wisdom of retaining him as first vice chairman in line to take over from Odinga in the event of the latter's departure in a party with 'almost no Kikuyu support' (Throup & Hornsby 1998: 547).

Table 2

The 1992 parliamentary Election Results

Political party	Number of seats
KANU	100
FORD-KENYA	31
FORD-ASILI	31
DPK	23
Others	3
Total	188

Source: KHRC 1998: 18

4.4 Analysis of the 1992 Results

Moi tended to exploit the tensions within the opposition parties by denouncing their differences as ‘tribalism’. During his tenure in office, he had constantly argued against tribal difference. KANU secured votes from ethnic communities in the Rift Valley, his home Province, Coast and North Eastern Provinces (the other KANU bastions) plus swing votes from Kamba and sections of Luhya (*The Weekly Review* July 3, 1992: 5). Hence KANU had support from all over Kenya. The party had been in power uninterruptedly since independence and so it was entrenched through a combination of patronage politics and use of sheer violence. Kenyans did not sentimentally relate to KANU as a party that liberated them from colonialism as might have been the case elsewhere on the continent. At independence, KANU was rivalled by KADU which meant that some politicians and Kenyans did not agree with the KANU agenda for the country. KANU lost legitimacy immediately after independence, when it resorted to divisive and exclusionary politics. KANU was a metaphor for all that had gone wrong in postcolonial Kenya. More voters consistently voted against it since 1992 until they eventually voted it out of power in 2002. In 1992, Moi could then turn to that legacy of patronage and state sponsored violence to retain KANU’s hold on power. Moi had little difficulty in being able to meet the requirement that demanded that a Presidential winner should have majority votes in addition to securing 25 per cent of votes in at least five out of Kenya’s then eight Provinces (*The Weekly Review* July 3, 1992: 9). There was also an amendment to the Constitution that prohibited the formation of a coalition government thus making it

impossible for the sparsely supported opposition parties to consolidate their support and upstage KANU (Brown 2001: 727). The most plausible explanation is provided by Kadima and Owuor who argue that given that all Kenya's Provinces were ethnically heterogeneous, Moi was able to gain the mandatory 25 per cent courtesy of small ethnic groups in opposition dominated Provinces while maintaining his hold on KANU strongholds (Kadima and Owuor 2006: 192).

Misuse of state resources gave Moi an edge over the opposition. During the Cold War period, Moi repressed dissent using conventional instruments of violence, that is, the security forces. The global geopolitics of the time was more about ideological allies for the US and USSR at the expense of human rights and political and economic accountability. However, following the end of the bipolar world, the donor community invoked accountability and human rights in aid disbursement (Berman, Cottrell and Ghai 2010: 479-0). Unable to fulfil these conditionalities, the Moi régime resorted to abuse of state resources such as money, relief food in famine stricken areas, public land, cars and promises of cabinet and civil service appointments to win loyalty and curb defections from KANU (Mwangi 2008: 273-4).

Patron-client networks developed and nurtured under KANU's also gave Moi an edge over the opposition parties. In 1992, the Moi régime shifted the electoral period as a boom-time for voters to a new height altogether whereby 'a substantial part of the Kenya's foreign exchange was converted into an election fund' (Cowen and Laakso 2002: 20-1). Throup and Hornsby provide evidence that the patronage of KANU went as far as to print fake money with which voters and politicians were bought through the infamous Youth for KANU '92 (YK '92). YK '92 was launched as a campaign organ for KANU (Throup & Hornsby 1998: 353-7) and responsible for distributing the fake money. Despite this largesse, KANU was completely locked out of Luo and Kikuyu heartlands in 1992 and 1997 elections. These communities formed the bulk of the opposition against the Moi régime due to exclusion. Moi's fellow Presidential contenders performed abysmally outside of their 'ethnic homelands'³² (Throup and Hornsby 1998: 463). The 1992 election

³² In 1992 and 1997 the Kikuyu were divided along regional lines. In 1992, the Southern Kikuyu voted for Matiba while those from the northern part of Central Province voted for Kibaki. In 1997, with Matiba out of

results exposed how either policy or ideology seemed not to matter in the country's turn to multiparty politics. Kenneth Matiba, whose party did not even have a manifesto, emerged the second most popular Presidential candidate as shown by table 4 below.

Although ethnicity influenced Kenyans' voting patterns in the 1992 elections, ethnicity alone could not account for the pattern of the 1992 election results. As I have argued in chapter two, the FPTP electoral system gave Moi an edge over a divided opposition. Following the legalisation of multiparty system, the opposition generated a lot of support and euphoria across the country to the extent that opposition victory appeared a real possibility. Indeed, the pressure against KANU was so great that the possibility of an early election was not farfetched either (*The Weekly Review* July 3, 1992: 4). However, a combination of state resources owing to an unreformed political institution and ethnically and regionally fragmented opposition parties enabled Moi and KANU to prevail.

Table 3
Presidential Results in 1992 General Elections by Province

	Kibaki DP	Matiba FORD-A	Moi KANU	Odinga FORD-K	Others
Nairobi	69,715 18%	165,553 44%	62,410 16%	75,888 20%	2%
Coast	32,201 10%	33,399 11%	188,296 62%	42,796 14%	3%
N. Eastern	3,259 5%	7,188 11%	46,420 72%	5,084 8%	4%
Eastern	392,481 50%	79,436 10%	290,372 37%	13,673 2%	1%
Central	373,147 35%	630,194 60%	21,918 2%	10,668 1%	2%
Rift Valley	98,302 7%	214,727 16%	981,488 71%	75,465 5%	1%
Western	14,404 2%	214,060 38%	219,187 39%	98,822 17%	4%
Nyanza	51,988 6%	10,299 1%	117,554 15%	581,490 75%	3%
Total	1,035,507	1,354,856	1,927,640	903,886	

Source: Ajulu: 1993:99.

the Presidential race, the southern Kikuyu hesitantly supported Kibaki which accounted for Charity Ngilu's SDP winning some parliamentary seats in the region (Kariuki 2005: 104).

Table 4**Summary of the Parliamentary and Presidential Voting in 1992**

Candidate & Party	Number of Votes	Per centage
KANU	1, 419,515	26.6
D.T. Arap Moi- KANU	1 964 867	36.8
FORD ASILI	1,170,874	22.0
K. Matiba- FORD-Asili	1 430 627	26.8
FORD KENYA	981,753	18.4
O. Odinga- FORD-Kenya	944 564	17.7
DP	1,064,700	20.0
M. Kibaki-DP	1 029 163	19.3
OTHERPARLIAMENTARY	43 037	0.8
OTHER PRESIDENTIAL	43,037	0.8
REGISTERED VOTERS	7,897,973	47.8 9 (of total voting pop'n)
TOTAL VOTES	5,334,438	67.5 (of registered voters)
TOTALVOTINGPOPULATION	11,157,515	

Source: Ajulu 1995: 29

4.5 State Sponsored Tribal Violence

If there is one thing that the select committee set up by parliament last May to probe ethnic clashes confirmed, it was the widely held public view that the clashes were politically motivated. It also legitimized charges that government administrators and law enforcement forces either abetted the clashes or were hesitant in dealing with perpetrators of the crime (*The Weekly Review* September, 25, 1992: 5)

As the above newspaper report shows, the 1992 elections marked the beginning of a sombre chapter of tribal violence during elections. Subsequent government reports covering the period before and after the elections showed that there had been state sponsored violence in the Rift Valley and parts of Nyanza and Western Provinces (Republic of Kenya 1999; Republic of Kenya 1992). The government however, blamed FORD of causing the tribal violence although one could not understand the reasons for why FORD would instigate it (*The Weekly Review* March 20, 1992: 8). There was no evidence to support this claim. Between 1990-91 the state directed violence against the urban poor. KANU Youth vigilantes and City Commission *askaris* harassed the urban poor. The urban poor, including slum dwellers, *matatu* (taxi) owners, touts and hawkers engaged in demonstrations as political space seemed to open up with political pluralism (KHRC 1998: 8-10). It was the urban poor who bore the brunt of KANU's patronage

driven politics that precipitated poverty. The transition to multiparty politics triggered the cyclical electoral related violence that Kenya experienced since the reintroduction of political pluralism.

The electoral violence thus took on a tribal form and in effect, the elections became a tribal affair. This in turn made it difficult for the evolution of an effective pluralistic system in which tribal and other sectarian interests were subordinated to more ideologically based differences upon which national policy would be based (*The Weekly Review* March 13, 1992: 18-9). The Kalenjin 'warriors' attacked members of the Kikuyu, Luo and Luhya tribes on accusation that they supported opposition parties. Kalenjin politicians identified these tribes as threatening to the 'Kalenjin' hold on power (Republic of Kenya 1992). They joined forces with other tribes in the Rift Valley under the aegis of KAMATUSA and incited their tribal members to act against 'foreign' tribes whom they accused of trying to dispossess the Kalenjin, and by extension the KAMATUSA, of power. It became a dichotomous fight between pro-opposition tribes branded as 'alien' and 'foreign' oppressors of the pro establishment 'natives' or 'indigenous' owners of the Rift Valley, the KAMATUSA (KHRC 1998: 12-3). The KAMATUSA politicians reignited *Majimboism* or regional federalism which the Kalenjin, Mijikenda and Maasai had embraced in the late 1950s and early 1960s as a way of defending their economic and political rights against encroachment by the larger tribes (KHRC 1998: 10-1). Then *Majimboism* was also meant to protect the economic and political interests of the white settlers against the KANU radicals. The KANU rival, KADU articulated the *Majimbo* policy (KHRC 1998: 10-1). However in the 1990s under multipartyism a renewed *Majimboism* ceased to be a policy of regionalism and became a virulent ideology of ethnic cleansing (KHRC 1998: 11).

In 1991, KAMATUSA politicians organised a series of meetings through which they condemned multiparty advocates and urged members of KAMATUSA tribes to arm themselves and fight against the opposition. The quote below encapsulates the culture of impunity among the political elite in Kenya. Despite evidence for incitement by politicians, inaction and complicity by government officials under the Moi régime, no one was held accountable for the heinous crimes that followed in which members of the Luo, Luhya, and Kikuyu were killed, their homes set ablaze while others were displaced. The

greatest blot to the 1992 elections was the massacre of 1500 people and the displacement of another 500 000 potential voters in the Rift Valley and Western Provinces due to KANU sanctioned ethnic clashes (Musambayi 2002: 186). Moi was adversely mentioned in connection with the 1992 ethnic violence but his name was expunged from the report by a judicial commission he appointed to inquire into tribal clashes (KHRC 2011). Hon. Nicholas Biwott reportedly said,

FORD members would be ‘crushed’ and added that KANU youthwingers and *wananchi* were ready to fight to the last person to protect the Government of President Moi. He said that Kalenjins were not cowards and that they were ready to counter attempts to relegate them from leadership. Hon. Mibei instructed *wananchi* in the Province to visit beer-halls and ‘crush’ any government critic and later make reports to the police that they had finished them, while Hon. Kamuren said that the Kalenjins were ready to protect the government using any weapons at their disposal. Another Member said that FORD members would be ‘crushed’ to serve as a lesson to other would-be dissenters. Hon. Chepkok urged *wananchi* to arm themselves with pangas, rungas, bows and arrows to destroy any FORD member on sight (Republic of Kenya 1992: 9-10).

The National Assembly set up a parliamentary select committee in 1992 to investigate ethnic clashes in Western and other parts of Kenya popularly known as the Kiliku Commission. However, despite the commission naming individuals responsible for the clashes within the main text, it did not recommend that they be investigated further for possible prosecution. Moreover some names appearing in the main text did not appear under ‘perpetrators and abettors’ of the clashes (KHRC 2011: 14). The Kenya Human Rights Commission identified this as the greatest failure of this commission. Moi appointed a judicial commission of inquiry on July 1, 1998 headed by a court of Appeal Judge Akilano Akiwumi to inquire into tribal clashes in Kenya. The commission submitted its report on July 31, 1999 but Moi shelved the report and released it three years later on October 18, 2002 following a court order. KHRC report pointed out that even then the executive exerted pressure on the Commission to have certain names deleted from the report before it was published. In addition, the Attorney General, Amos Wako, attempted to water down the report when he published it together with a parallel one in which he accused the commission of relying on ‘extraneous evidence’, failure to conduct evidence in open proceedings and being biased against the Maasai and Kalenjins communities (KHRC 2011: 26). Against a backdrop of impunity after the 1992 ethnic clashes, the

ground had been set for a repeat of similar violence during the 1997 elections and subsequent ones.

In the run up to the 1997 elections violence erupted this time in the Coast region. Similar to the earlier violence in the Rift Valley, the targets were members of communities from elsewhere, termed *Wabara* (upcountry people) or *Wakirienge* (those who speak alien languages) (KHRC 1998: 56). In effect, the call was to attack fellow citizens from other tribes, legitimising this by appealing to a local belonging threatened by the invasion of 'others' from outside. These epithets referred mainly to the Luhya, Luo and Kikuyu whom the 'natives' within the Province suspected of being sympathetic to opposition parties. As in the Rift Valley violence, the intention was to change the political demography of the cosmopolitan Coast Province to ensure a KANU and Moi victory. The Coast region suffered from economic neglect in spite of being a tourist area. The region had been subject to extreme cases of 'land grabbing' that began during the Kenyatta régime and was perpetrated by both the political and the business elite under successive governments. Most of these land grabbers came from inland communities especially high ranking officials from the Kikuyu and Kalenjin owing to their dominance of state organs during the Kenyatta and Moi régimes respectively. Thus the resentment by the local communities against their inland counterparts. KANU politicians ironically exploited genuine grievances to incite locals against the poor upcountry people whom the locals accused of taking their jobs (KHRC 1998: 64).

In multiparty Kenya, ethnicity thus became a shield from harm or a marker for harm even for death. The definition of the 'enemy' was in a constant state of flux. Since 1992 Kenya's politicians couched the competition for the presidency in the idiom of the tribe as 'our power', the notion around which tribes are mobilized either to defend the presidency or wrestle it from the incumbent. Louis Moreno Ocampo, the ICC chief prosecutor, described the masterminds of the 2007 post-election in Kenya as individuals 'guided by political objectives either to retain or gain power' (*The Standard* March 30, 2010).

4.6 Odds stacked against the opposition parties

On the one hand, the failure by the opposition to unite and support a single Presidential candidate because of a 'schizophrenic obsession with the presidency' (Wanjala 1996: 95) considerably compromised their chances of removing Moi from power. On the other hand opposition unity *per se* would not have been sufficient to dislodge KANU and Moi. First, as shown in chapter two, while the locus of political competition during the 1992 elections was for the national legislature, the reality of constituency boundaries in different regions meant that politicians and Kenyans continued to identify themselves along tribal lines. The region was in effect a short hand for 'tribe' since administrative boundaries coincided with tribal boundaries. Second, with an elaborate party structure developed during its long period of monopoly of power, KANU won votes in more regions (*The Weekly Review* July 3, 1992: 9). KANU strongholds in the Rift Valley and North Eastern Provinces were among the less populated but were overrepresented in parliament. In these regions, there was a disproportionate number of constituencies to the population density and weighted them in favour of KANU (Nasong'o 2007: 97). Thus the idea of proportionality that is captured in the principle of 'one man one vote' did not exist. Third, Throup and Hornsby argued that KANU used state resources and government officials especially in the office of the President, controlled the provincial administration for campaigning. Ultimately the power of incumbency was particularly decisive in KANU victories in closely contested areas (Throup and Hornsby 1998: 453). Moi took advantage of the time-factor as well. For instance, he called for the voter registration at the very moment that FORD had begun experiencing internal schisms and subsequently set the election date when he knew that he had a strategic advantage over his competitors (*The Weekly Review* July 3, 1992: 9). He used the prerogative to set the election date as his 'secret weapon'.

A coalition or electoral pact among the opposition could have expedited the removal of KANU from power if the transferability had dictated the system (Throup and Hornsby 1998: 453-4). By transferability I mean a presidential candidate stepping down in favour of another and then guiding his supporters into voting for the beneficiary. Opposition votes in Kenya are not easily transferrable from one opposition candidate to another. Throup and Hornsby show that even if Matiba, Odinga or Kibaki had stepped down from the presidential race it would not have guaranteed the opposition victory in the presidential

elections. The point the scholars make is that nothing short of a single opposition presidential candidate might have defeated Moi (Throup and Hornsby: 454). The 2002 elections were an exception because the context of that year's elections markedly differed from both 1992 and 1997. Moi was not eligible to run again and therefore the advantages of incumbency did not necessarily lie with KANU, and made President Moi himself something of a lame duck. KANU lost the edge that incumbency provided and in fact imploded after disagreements emerged over the mode of nominating its Presidential candidate. Moi's insistence on an unpopular successor triggered a stampede out of the party. Politicians hitherto loyal to Moi rebelled and defected to the opposition, taking their ethnic constituencies with them. This development disorganised the ethnic equation that had ensured KANU's victories in 1992 and 1997. This point is discussed at length in chapters four and five.

Had the opposition parties presented a single candidate in 1992, some ethnic communities might have preferred to vote for Moi and KANU rather than support either a Luo or a Kikuyu Presidential candidate (*The Weekly Review* July 3, 1992: 8). A joint Kikuyu presidential candidate might have been unattractive to most of the other tribes who would have resented the possibility of being dominated once again by the Kikuyu under 'anti-Kikuyu backlash' (*The Weekly Review* July 3, 1992: 8). If Odinga had been picked as the joint FORD Presidential candidate, Kikuyu voters would not have voted for a Luo candidate and instead might have rallied behind Kibaki, a Kikuyu, running on the Democratic Party of Kenya (DP) ticket (*The Weekly Review* July 3, 1992: 7).³³ These arguments appeared counterfactual. However, the Kikuyu constituency results in which the electorate voted for Matiba but not Odinga, the Presidential candidate of FORD-K, the party to which the parliamentary winner belonged, corroborated the analysis as shown by table 1. Likewise had Matiba been chosen as the FORD Presidential candidate, it would still have split the Kikuyu vote between him and Kibaki (Brown 2001; Ngunyi 1996: 276; Throup & Hornsby 1998: 453-4). Smarting from the 1992 defeat, opposition leaders Odinga, Kibaki and Matiba jointly protested against electoral malpractices but this unity in defeat was short-lived. The façade of unity crumbled when they could not agree on who should chair their meetings (Badejo 2006: 184). Odinga argued later that it was pointless

³³ See Throup and Hornsby 1998: 453-4 in which he makes a similar analysis.

for them to put up a show of unity in defeat when they had failed to unite before the elections (Mitullah 2002: 130).

In the 1980s, the clamour for a multi-party system appeared to transcend ethnic boundaries because of the ethnic diversity of the dissidents. The clamour also appeared issue-based as a fight against authoritarianism and its concomitant inequities. However, once the possibility of unseating Moi appeared real, appeals to tribal sentiment started. Among FORD's Young Turks were politicians such as James Orengo, Paul Muite, Gitobu Imanyara, Raila Odinga Mukhisa Kituyi and Anyang' Nyong'o (Ogot 1996: 248). These formed the intellectual component of FORD. Most of the old guard except Oginga Odinga, Martin Shikuku and another Luhya veteran politician, Masinde Muliro, did not have a track record of standing up against the one party tyranny under both Moi and Kenyatta. Muliro suddenly collapsed and died in August 1992 at the airport in Nairobi upon return from London.

Odinga's chances of becoming President went up in smoke once some Kikuyu politicians fronted Matiba despite the latter being in bad health and hospitalised in London (Throup and Hornsby 1998:116, 125). The two scholars identified Matiba as the greatest impediment to opposition unity (Throup and Hornsby 1998: 454). Kikuyu politicians claimed that there was no way the Kikuyu could support Oginga Odinga for President because he 'never circumcised and as such remained a boy' (Badejo 2006: 165). Shikuku surprised some opposition supporters when he had dinner with Moi in the State House in Nairobi in May 1992. His commitment to FORD became doubtful since he was perceived as a mole (Throup and Hornsby 1998: 129). None of the Young Turks had money for a formidable Presidential campaign and so they dispersed joining either of the FORD factions. Since these politicians were not separated by ideology and policy, opposition party politics was reduced to a veritable ethnic slanging match before the 1992 elections (Throup & Hornsby 1998: 589). In 1997, the opposition parties faced the elections from an even weaker position as they were not able to surmount tribal divisions that had scuppered their chances in 1992. The opposition parties remained disjointed and splintered. It appeared that the 1992 electoral loss had afforded no lessons at all (Brown 2001).

Tribalism remained the overarching consideration in choice of a Presidential candidate during the 1997 elections (Throup and Hornsby 1998: 414).

In 1997 Moi was determined to retain power by means either fair or foul means (Brown 2001; Mitullah 2002: 133-4). It seemed that no amount of opposition unity could ensure victory against an incumbent who a priori decided not to relinquish power regardless of the results of the elections. Mitullah observed that the 1997 elections were characterised by some shortfalls such as some polling stations opening late, bribery and lack of transparency. In 48 per cent of the polling stations voting materials such as ballot papers, ballot boxes and voters registers did not arrive at 6 am as required by the law (Mitullah 2002: 134). The ECK created confusion when it extended voting by a day but expediently avoided stating unequivocally that it would apply only to those constituencies that were affected by late opening of polling stations (Mitullah 2002: 134; Brown 2001). Ajulu pointed out that in other areas voting was extended by as many as two and even three days such that counting was still in progress in some parts of the country long after Moi had been declared the winner and inaugurated (Ajulu 1998: 275).

Table 5
Result of the Kenya General Election, 1997

Presidential vote %	Parliamentary seats	Civic seats
Daniel Arap Moi (KANU) 40.40	KANU 107	756
Mwai Kibaki (DP) 39	DP 39	427
Raila Odinga (NDP) 10.79	NDPK 21	295
Michael Wamalwa FORD-K 8.17	FORD-K 17	187
Charity Ngilu SDP 7.89	SDP 14	138
10 Others 1.86	SAFINA 5	37
	FORD-P 3	33
	FORD-A 1	19
	KSC 1	7
	SPK 1	4
	Others 0	15

Source: Southall 1998: 107

Table 6**Presidential Vote Distribution in Kenya's 1992 and 1997 Elections**

Name of party	Votes in 1992	% of Total vote	Votes in 1997	% of Total Vote
Moi/KANU	1,927,640	36.91%	2,500,320	41.21%
Matiba/Ford-A	1,354,856	25.95%	–	–
Kibaki/DP	1,035,507	19.83%	1,905,640	31.41%
Odinga/Ford-K	903,886	17.31%	–	–
Raila/NDP	–	–	667,825	11.00%
Wamalwa/Ford-K	–	–	505,713	8.34%
Ngilu/SDP	–	–	487,538	8.04%
Total	5,221,889	100%	6,067,036	100%

Source: Electoral Commission of Kenya in Nasong'o 2007: 99

4.7 Politics of Cooperation for Development

Moi had deftly deployed a well developed patron-client system which took the form of 'development' during both periods of single party rule and that of the multiparty system. 'Development' was a by-word for state largesse which the KANU régime distributed to clients and followers mostly through the *Harambee* system (Haugeraud 1997: 45-50). Once the political terrain was opened to multi-party competition, the nature of previous regional exclusion saw the emergence of ethnically-based opposition parties. This meant that in effect, the ethnic identity of a Presidential candidate outweighed any other credentials that a candidate might have. Voters from a Presidential candidate's ethnic community would more likely vote for one of their own regardless of the leadership qualities of those parliamentary candidates. Oloo suggests that during the one party state, the factors that were influential in the election of a candidate were; individual leadership, skills, rhetoric, clan lineage, development record, campaign funds and state patronization. The factors operated either singularly or in combination (Oloo 2005: 159). Tables 3 and 7 show that Presidential candidates were overwhelmingly voted for by their ethnic homelands.

4.8. Moi-Oginga Odinga entente

Sometime in 1993 Moi reached out to opposition political parties. This was politically prudent since it shored up the KANU tally in parliament during crucial motions. The 1992 elections did not mark the opening up to democratic competition. A discourse entailing accountability, transparency, fairness, justice, freedom equality, the things that democracy means did not arise. Kenyan politicians simply turned to their old discourses of exclusion and fought about who should be allowed to get to the spoils of state. Following the failure of the 1992 election for the opposition, in 1993, Odinga, Kenya's doyen of opposition politics and Moi's erstwhile nemesis, surprised many when he led FORD-K into what was referred to as 'a co-operation' with KANU. The ostensible reason for this volte-face was for the sake of development among the Luo community (Badejo 2006: 184). The Luo had felt politically and economically marginalised by both the Moi and Kenyatta régimes. This co-operation was unpopular among fellow opposition leaders. Although Odinga had accused Moi of rigging the 1992 elections, he argued that any attempt to get him out of power would have plunged the country into bloodshed. He said that he avoided the confrontational approach on the grounds that it was 'impossible to keep people on the streets in civil disobedience for five years' (Badejo 2006: 184).

Odinga argued that his political relationship with Moi would help in further prising open the political landscape through reform necessary for credible elections in 1997. He believed that the co-operation would make the KANU government allow the opposition to freely campaign even in exclusive KANU safe zones (Badejo 2006: 184-5). After Kenya's return to multiparty politics, politicians from the Rift Valley warned of dire consequences for anyone who attempted to establish opposition party units in the region (*The Weekly Review* March 20, 1992: 7). Moreover Odinga defended his association with Moi asserting that it was meant to open up patronage opportunities for opposition leaders by doing business with the government in preparation for the 1997 elections (Badejo 2006: 184-5). The co-operation showed how Odinga had mellowed, as he had previously been notorious for his knack at confrontational politics. Why did Odinga decide to work with Moi? Odinga realised that Kikuyu politicians would not support him. This convinced him to embrace Moi. Kikuyu politicians considered Odinga unfit to rule because of Luo cultural practices of not circumcising males (Wamwere 2008: 118-9). Atieno Odhiambo put it

succinctly when he quoted Freud ‘The narcissism of small differences’ he said of Kenya’s politics, ‘the tendency to think of ourselves as superior to others because of some laughably superficial and non-essential feature’ (Atieno-Odhiambo 2002: 243). Thus the cultural aspects of an individual’s identity came to be used in the political discourse to attack and counter-attack the capability of politicians. Thus the onetime MP for Limuru, George Nyanja, dismissed Odinga in 1992 by saying ‘Odinga cannot lead anybody because he is not circumcised’ (Oyugi 1997: 51).

Odinga’s decision to work with Moi cannot be casually dismissed as opportunistic. Hitherto the Luo community had spent years pursuing opposition politics. In Kenya’s zero sum winner-takes-all political set-up, opposition politics amounted to economic and political ostracism from what Ogude referred to as the ‘site of eating’ (Ogude 2009). Thus in 1993, Odinga decided to work in close partnership with the government to help his community get out of the political and economic wilderness (Throup & Hornsby 1998: 548). However, Moi’s development mantra could be seen as a ruse and bait. Moi’s game plan entailed isolating the Kikuyu as the only community solidly in the opposition. Moi was astute enough to know that as long as the Luo and Kikuyu politicians were at loggerheads, his régime was safe. Moi dreaded a resurgence of the independence union between the two communities because it would probably spell the end of his régime. Indeed when the two communities and the Luhya united in 2002, KANU was removed from power. The three are among Kenya’s most populous tribes. It was therefore in Moi’s best political interest to disorganise the opposition.

The realities of ethnic politics in Kenya were that as long as FORD commanded overwhelming support in Central and Nyanza Provinces-the dreaded revival of the Kikuyu-Luo alliance-it only needed to work for significant support among the Luhya and other major communities such as the Kamba and Kisii to be sure of capturing victory at the general elections (*The Weekly Review* May 8, 1992: 6).

The cooperation between KANU and FORD-K pointed to Moi’s mastery of a politics of cooptation. Through the co-operation Moi brought into the fold the Luo, arguably a community that personified opposition politics in Kenya. In as much as both Moi and Odinga portrayed the alliance as meant to bring development to the Luo community they did not get into the details of what ‘development’ meant. It was not a structured political arrangement and did not enjoy the support of most FORD-K membership. The Luo were

taxpayers like all Kenyans and were therefore entitled to development projects. However, a centralized state, patronage politics and the selective allocation of national resources based on tribal considerations ensured that the state was used in promoting partisan politics.

Obligations and responsibilities governing the relationship between the governed and their leaders did not hold under Moi's rule. 'Development' became a carrot and a stick that the government invariably dangled before and wielded against the opposition to extract acquiescence. For instance, at a rally in July 6, 1994, Moi reportedly derided a FORD-K Kisii politician, Henry Obwocha's parliamentary contributions and warned him that there would be no 'development' in his constituency unless he defected to KANU (Badejo 2006: 183). Since Moi was opposed to multiparty politics, he spared no opportunity to frustrate opposition politicians.

Financially unstable political parties and politicians were particularly vulnerable to the ruse of the politics of development. Incidentally, FORD-K was among the poorest of political parties and few of its leaders were established businessmen able to fund areas of development (Throup & Hornsby 1998: 548). This precarious financial situation rendered FORD-K and specifically Odinga prey not only to Moi's manoeuvres but also to the disguised magnanimity of unscrupulous individuals with connections within the Moi régime. For instance, Odinga confessed that he received a donation of two million Kenya shillings for the 1992 campaigns from one Kamlesh Pattni, a Kenyan of Asian ancestry and the architect of one of Kenya's largest corruption scandals dubbed the 'Goldenberg scandal' that cost the tax payer 61 billion Kenya shillings (Badejo 2006: 170). The 'Goldenberg scandal' involved the export of fictitious gold and diamonds by corrupt individuals for which they received money from the Central bank through the export compensation scheme (Mwangi 2008: 273). Kenya does not have gold deposits of any large-scale commercial value neither does it have any diamond deposits.

In the wake of the scandalous confession, FORD-K's First Vice-Chairman, Paul Muite, resigned ostensibly in protest against Odinga's receipt of a bribe from Pattni. However, party officials from the GEMA community to which Muite belonged, explained that they

left FORD-K accusing Odinga of tribalism and unilateral cooperation with KANU without endorsement from the party's governing organs (Badejo 2006: 170-1). Odinga was also accused of nepotism for having his daughter-in-law as his personal assistant, a position she held until he died. His son, Raila, wielded influence at the FORD headquarters where he did not hold any position before the party elections and this caused friction (Oyugi 1997: 52). Years later Pattni sensationally revealed that he 'gave' money to Muite as well, a claim the latter denied (*Saturday Nation* March 28, 2009).

4.9. GEMA/KAMATUSA alliance

These were tribal talks held in the 1990s between the so called elders from the two pan ethnic communities. Through these talks Moi sought to broaden his ethnic alliance beyond the Rift Valley tribes. It was for this reason that he simultaneously reached out to the Luo through FORD-K and the Kikuyu through the talks. Between 1992/3 Moi attempted to create cooperation between pastoral communities in the Rift Valley Province and their counterparts from Mt Kenya region. Although the cooperation was billed as trans-ethnic, the major players in the attempted alliance were oligarchs from the Kikuyu and Kalenjin tribes (Mubuu 2005: 133). Immediately after the 1992 general elections, a section of the Kalenjin politicians decided to forge a political relationship between the KAMATUSA and GEMA ethnic groupings. This initiative culminated in the birth of unity talks between them that began in 1994 but ended in 1995. These talks were presented as aimed at addressing the causes of the violence that pitted the Kalenjin and Maasai on one hand against the Kikuyu on the other before and immediately after the 1992 elections. Jonyo claims that KANU politicians instigated the violence to prove that there was a causal link between multipartyism and ethnic conflict (Jonyo 2002: 95). Moi abandoned the talks in 1995 following a by election in Kipipiri constituency of Central Province which was seen as a test of the talks. In spite of heavy financial roll out by KANU during the by-election, the Kikuyu voted for an opposition candidate. After the by-election the government took back electricity poles it had spread throughout the constituency during the campaigns to entice the electorate into voting for a KANU candidate. The poles were meant to symbolise the government intention to roll out development programmes in the area (*The Weekly Review* July 10, 1998).

Moi disengaged from the Kikuyu briefly before an elitist Central Province Development Support Group (CPDSG) emerged. The grouping comprised KANU leaning wealthy Kikuyu individuals some of whom had lost as parliamentary candidates during the 1992 elections (*The Weekly Review* April 11, 1997: 6). Its mission was to woo the community back into KANU. CPDSG drew a lot of publicity by organising numerous *Harambees* in which lots of money was raised ostensibly for development projects in the Kikuyu inhabited Central Province. Moi's relentless political overtures to Central Province elicited resentment from politicians from tribes such as the Luhya, Kamba, Somali and Kisii that complained that KANU was spending disproportionate amounts of money in a wild goose chase while the Kikuyu had completely rejected KANU (*The Weekly Review* January 23, 1998: 5; *The Weekly Review* January 17, 1997). These politicians felt that the party was paying more attention to the Kikuyu at their expense. CPDSG used the development discourse to try and lure the Kikuyu back into KANU. Moi's message was that as long as the Kikuyu supported opposition parties they would be confronted with economic deprivation as his government would not initiate development projects in the region (Njogu 2001: 381).

However the Kikuyu community in the main resisted Moi's overtures. Some opposition Kikuyu MPs gave in to his machinations and defected to KANU but lost in the subsequent by-elections. A defection to KANU occasioned the Kipipiri by-election. The Kikuyu appeared so antagonistically opposed to the KANU government that they could not easily be lured back into KANU. The Kikuyu held the Moi government responsible for the economic woes bedevilling them having done exceptionally well under Kenyatta. They particularly accused Moi of running down the community's economic mainstay in the coffee, dairy and tea sectors (Njogu 2001: 383). Most Kikuyu believed that only change of régime to one led by a fellow Kikuyu would improve their fortunes (Njogu 2001: 382). Moi indefatigably toured Central Province repeatedly and even invoked the spirit of Kenyatta. He reminded the Kikuyu that KANU was originally their party and so it was in their best interests to ensure that the party remained in power. However, no amount of cajoling could make the community change their stance (Njogu 2001: 382).

4.10 The National Development Party of Kenya (NDP)

What is clear is that whichever way things go, Raila's defection from Ford Kenya will affect the strength of the party in the Luo Nyanza. Although he does not have the support of the community all wrapped up, he has emerged as a major political force in the area. In the period immediately after the death of Jaramogi Oginga Odinga he did not appear to have much political weight, and was just among many of the Luo politicians who were perceived to be fighting to inherit the mantle of leadership of the community from the late Odinga. But Raila's battle with Wamalwa for the leadership of FORD-K caused him to emerge as the pre-eminent Luo politician. It also caused him to be perceived as the personification of Luo ambitions to the presidency allowing him to eclipse others in the fight for political pre-eminence in Luo Nyanza (*The Weekly Review* January 3, 1997: 4).

In 1994 an era in Kenya's politics came to end. Jaramogi Oginga Odinga the FORD-K national chairman and the pillar of opposition politics, died. So did the FORD-K /KANU cooperation and thus any hope-for benefits to the Luo community. Moi severed ties with FORD-K on his way from Odinga's burial and asked residents in the neighbouring Kalenjin districts to ostracise the Luo (Badejo 2006: 185-6). This death catapulted Oginga Odinga's son, Raila Odinga, into the centre of Kenya's politics. Hitherto, the latter was a well known politician nationally but less influential. A power struggle ensued for Oginga Odinga's successor among the Luo that pitted Raila Odinga against James Orengo who had served as Oginga's legal advisor and close ally. The two contested the post of first Vice Chairman given that it was believed that whoever won would end up as the indisputable Luo leader (Oloo 2005: 165). Orengo prevailed but Raila Odinga relentlessly pursued his ambition to become the Luo supremo (Oloo 2005:165: 165). With time the tussle metamorphosed into a Raila Odinga-Kijana Wamalwa duel. Raila Odinga was then the party's Director of Elections while Wamalwa, a Luhya, was the national chairman having succeeded Oginga as the immediate first national chairman. Wamalwa and his supporters dismissed the younger Odinga's bid for FORD-K's chairmanship arguing that not only was the party not meant for dynastic leadership but also that Raila Odinga was unsuitable to lead it owing to his proclivity for violence and radicalism (Cowen & Kanyinga 2002: 144). The power contest degenerated into a no-holds-barred violent confrontation between their supporters during party elections for national leadership. These elections were abandoned as a result. Odinga and Wamalwa then organized two separate party conferences and both laid claim to the party chairmanship. However, Raila

Odinga lost the contest after the court ruled that Wamalwa was the bona fide chairman of FORD-K.

Odinga's death and the ensuing factional fighting diminished FORD-K extensively. After the 1992 elections, FORD-K prided itself as the only political party with parliamentary representation in almost all the eight Provinces bar three (Southall 1998: 106). During FORD-K infighting more MPs decamped to other parties such as the Kikuyu dominated DP and the Kamba dominated SDP largely in consonance with the ethnic profiles of those parties (Southall 1998: 106). SDP's leader then was Charity Ngilu, a Kamba woman and first female Presidential candidate in Kenya. FORD was eventually reduced to an ethnic party restricted to the Bukusu sub-tribe of the Luhya community to which Wamalwa belonged. Throup and Hornsby suggested that FORD-K disintegrated because of problems revolving around the dominance of the Luo, Odinga's towering personal authority and stature and his age and infirmity (Throup & Hornsby 1998: 547).

Raila Odinga resigned from FORD-K and parliament in 1995 after his quest for the party leadership hit a legal snag. He sought re-election under a little known political party, the National Development Party of Kenya (NDP). Omondi Oludhe, the NDP founder and fellow Luo, handed Odinga the party in exchange for one million Kenya shillings and a used Mercedes Benz (Badejo 2006: 178). Raila Odinga could not afford the rigmarole of registering a new party since there was a risk of the government thwarting his efforts. Before Odinga took over the NDP, the party exemplified a briefcase mercantilism, where a party had been registered and existed in the founder's file only. NDP was moribund and neither had membership nor branches. Kadima and Owuor suggested that this was not anomalous in Kenya's political set up since parties were registered first then looked for members later (Kadima and Owuor 2006: 193). Most Kenyan politicians' determination to enter parliament knew no manifesto or ideology. Raila Odinga's defection from an opposition party to another and retention of the Lang'ata parliamentary seat in the subsequent by election was unprecedented in Kenya's politics. The FORD-K leadership battle and subsequent defection to NDP showed that Raila Odinga had inherited his father's Luo constituency as a springboard from which to extend his influence in Kenya's politics (Badejo 2006: 173). Raila Odinga rose to the prominence of Kenya's politics

owing to his chutzpah and astuteness (*Sunday Nation* March 3, 2002). Being Odinga's son gave him an edge over rivals for Luo supremacy. As had been predicted as testified to by the excerpt at the start of this section, Raila Odinga's influence in both Luo and Kenyan politics began after his father's demise. He inherited a solid ethnic constituency from his father that he used as a springboard into national politics.

Raila Odinga's defection left FORD-K in a shell-like state since almost all the Luo MPs sponsored by the party during the 1992 elections shifted allegiance to NDP except few. Anyang' Nyong'o for instance, took over the moribund SDP. All these defiant politicians except Ugenya's James Orengo lost their parliamentary seats in the 1997 elections for refusing to align themselves with the political thinking within the community. Orengo tried to create an alternative power base among the Luo but Odinga's influence overwhelmed him. He lost Ugenya parliamentary seat in 2002 and performed abysmally as a Presidential candidate. Odinga used the NDP to make an imprint in Kenya's politics. He transformed NDP from a nondescript party into a political home for the Luo representation in the 1997 general elections. Badejo shows that the NDP manifesto contained an array of issues. It was too ambitious if not idealistic. NDP pledged to address virtually all that had gone wrong in post colonial Kenya ranging from a promise to restructure education, tackle corruption, reform the judiciary, provide healthcare, create jobs, address gender issues among many other pledges. However, unlike Odinga's KPU, NDP avoided radical positions which suggested that Raila Odinga was no longer the firebrand of years gone by (Badejo 2006: 180). However, despite a manifesto NDP thrived on a politics of resentment and grievance borne out of the systemic politics of exclusion and marginalization by both Kenyatta and Moi governments against the Luo community.

The belief in tribal emancipation through rallying behind a fellow tribesman was pervasive in Kenya's politics. Other than the Kikuyu, there was a strong conviction among NDP supporters that only a cohesive Luo political force would help them make up for their previous marginalization through the 'redistribution of arrears' (Cowen & Kanyinga 2002: 144). Raila Odinga assumed the responsibility for charting a political path for the Luo just as his father had done before him. He was the archetypal opposition politician perhaps only second in conviction to the elder Odinga. In the absence of the elder Odinga, arguably

the younger Odinga remained the sole personification of a radical, aggressive and confrontational politics in Kenya at this point in the political history of Kenya. Before he emerged from the political shadow of his father Raila Odinga did not have support from the entire Luo community. Instead he commanded the loyalty of a section of the tribe described as ‘followers excited by aggressive and nonconformist images’ (*The Weekly Review* January 3, 1997: 4). Commentators have observed that his aggressiveness was tempered with ‘native cunning’ (Mutunga 2002: 78). Moi meanwhile spared no opportunity to portray him as a violent, underground operative with socialist propensities so as to demonise him as the villain of Kenya’s politics (Njogu 2001: 400).

4.11 The FORD-Asili Woes

The spiral of disintegration also afflicted FORD-Asili. FORD-Asili virtually collapsed in spite of its impressive performance in the 1992 elections because of a narrow national base and overdependence on Matiba’s financial support and charisma (Throup & Hornsby 1998: 546). Matiba heavily invested in the 1992 Presidential elections financially and was convinced that he was the candidate to beat. Failure to capture the presidency somewhat unbalanced his personality.³⁴ Matiba adamantly maintained that Moi had rigged the elections. Consequently he refused to participate in parliamentary proceedings and resorted to making ‘technical appearances’ in parliament to protect his seat from being declared vacant for non-attendance at parliamentary sessions (Mutunga 2002: 61). Matiba called for the burning of the voters cards ahead of the 1997 elections even though it transpired that he had no card to burn since he was not registered as a voter (Njogu 2001: 382). He boycotted the 1997 elections which gave Kibaki an opportunity to consolidate support among the GEMA community (Southall 1998: 106). Matiba’s refusal to participate in the elections caught his supporters off balance. It led to massive defections into other opposition parties. Njogu was of the view that George Nyanja’s frantic search for a political party to sponsor him ahead of the 1997 elections (as shown in chapter one) bore testimony to the lack of ideology among Kenya’s politicians and the ‘disorientation and disarray’ caused by Matiba’s decision (Njogu 2001: 389).

³⁴ Matiba became increasingly ill and unbalanced to the extent that in 1993, it was revealed that he had granted power of attorney to sign documents for him as he was unable to read and write (Throup & Hornsby 1998: 546).

The Luhya-Kikuyu alliance in FORD-A did not last. Matiba's point man among the Luhya, Shikuku lost ground within his community since the anticipated vice-presidency that he was to assume under a Matiba government did not materialize after Matiba's Presidential bid flopped (Ngunyi 1996: 273). KANU successfully lured some of the party MPs from the Luhya community and beyond into its fold and this depleted FORD-A's parliamentary representation from 31 seats in 1992 to 22 in 1997. The defecting MPs cited Matiba's overbearing attitude coupled with a hegemonic Kikuyu dominance in the party as the reasons why they left (Cowen & Kanyinga 2002: 145). There were parallels between the woes facing the twin FORD parties. FORD-K experienced an exodus of MPs allegedly because of the Luo monopoly. Unlike the Kikuyu and Luo politicians who defected to KANU, their Luhya counterparts retained their seats after by-elections. Resentment against KANU was less among the Luhya as the community support straddled both the opposition and KANU. A battle for the control of FORD-A ensued between Matiba and Shikuku. Matiba lost and formed another party, Saba Saba Asili, ahead of the 1997 elections but it had no impact in Kenya's politics. Since political parties in Kenya stay in existence as long as the leader and financier, Matiba's supporters began scouting for political parties through which to contest the 1997 parliamentary elections. Their patron having been locked out of the 1997 elections, they could not count on his clout to get elected. Some of them formed yet another faction called FORD-People (Njogu 2001: 389). FORD-P was yet another example of a briefcase party whose founder Kimani wa Nyoike, rented out to one of Kenya's prominent oligarchs, Simeon Nyachae, a Kisii who contested the presidency in the 2002 general elections.

4.12 Beyond Tribal politics?

In the run up to the 1997 elections two parties tried to distinguish themselves on factors other than tribal interest. These were Safina and SDP. Safina (the Swahili for the biblical Noah's Ark) was formed in 1995. Among its founders was Paul Muite formerly of FORD-K and Richard Leakey, a Kenyan of British extraction from the world renowned Leakey family of palaeontologists. The inclusion of Leakey among its interim officials was meant to highlight the quest of Safina to transcend tribal and racial politics in Kenya. The government delayed the registration of Safina until close to the 1997 elections which

contributed to a poor showing by the party since they had no time to set up party structures, recruit members and campaign. Moi however exploited what was supposed to be the party's strength and launched a scathing attack against it by playing the ethnic and racial cards. Moi publicly referred to Safina as an imperialist organization led by 'unpatriotic Kenyans and former colonialists' (Cowen & Kanyinga 2002: 150). This was a somewhat ironic attack and perhaps pointed to Moi's rather schizophrenic approach not only to white Kenyans but also to politics generally.

Moi's actions spoke louder than words, and whilst condemning Richard Leakey in opposition, until the 1992 elections, Leakey's brother, Philip served as the MP for Lang'ata and was assistant minister for Environment and Natural Resources in Moi's government. Richard Leakey entered parliament as a nominated MP representing the disabled being a double amputee having lost both feet following a near fatal air crash in the 1990s. Moi lured him out of opposition politics that occasioned his resignation from Parliament. Moi then appointed him as the head of the civil service and secretary of the cabinet as a member of the World Bank recommended 'Dream Team'. Moi's political move perhaps above all shows how he co-opted political opponents and diluted any democratic transformation. The 'Dream Team' was a group of Kenyan technocrats Moi appointed to various positions in the 1990s to jumpstart Kenya's economy (*Saturday Nation* November 20, 2010). The 'Dream Team' was also seen as an attempt at detribalising appointments to strategic positions in the bureaucracy since competence seemed to have overridden tribal background. Technocrats were sourced to head key ministries dealing with the economy such as the Ministry of Finance (*Daily Nation* April 12, 2011).

On paper, the SDP attempted to present itself as an ideologically anchored party. Since Oginga Odinga's Kenya People's Union (KPU) that Kenyatta banned in 1969, SDP was the only other party in Kenya's history to have attempted to pursue ideological as opposed to tribal politics. SDP condemned free enterprise, argued for the provision of basic needs for all and called for a new land policy (Mutunga 2002: 82). SDP's ideologues were Peter Anyang' Nyong'o and Apollo Njonjo both academics and seasoned critics of single party rule. However, realising that the social democratic crusade on its own would not attract

many votes, SDP recruited a woman, Charity Ngilu as its Presidential candidate during the 1997 elections. The party largely capitalized on the 'Ngilu wave', the euphoria that descended especially among the Kamba community since Charity Ngilu was the first woman to run for President (Grignon 2001: 338). SDP's campaign slogan was *Masaa ya Mama* (It is time for a Woman). Neither of the ideologues, had a solid ethnic base. They later fell out with Ngilu for coming up with stringent criteria for nomination of the party's Presidential candidate the foremost being that he or she must have a university degree. Nyong'o lost his parliamentary seat in 1997 for defying the Raila Odinga influence in his Nyanza backyard. Ultimately even Safina and SDP could not cushion themselves against tribal politics.

4.13 No Reforms, No Elections

Between 1992 and 1997 the opposition parties tried to press for constitutional, legal, political and economic reforms to even the political playing field but KANU foiled these attempts.³⁵ Hardly any political progress was made within this period since the KANU government continually impeded the democratization process. The Moi régime maintained its highhandedness against critics. For instance, there was continued harassment of opposition party activists, dozens of opposition MPs were arrested, new legislation was passed to silence the press, opposition magazines were closed, while journalists were charged with sedition for reporting anti-government stories and critical NGOs came under increasing pressure (Brown 2001; Ajulu 1998: 283). Furthermore there was a resurgence of political violence against government critics, the economy took a downward trend, and there was an upsurge in official corruption (Mutua 2009: 190).

In spite of KANU and Moi being opposed to comprehensive reforms, the push for reforms heightened in the run up to the 1997 elections. A group calling itself the National Convention Executive Council (NCEC) was founded. NCEC was a coalition of civic organizations, church groups and reformist opposition politicians. NCEC argued for

³⁵ Wanjala wonder if democratization activists were mistaken in their quest for a politically liberalized Kenya. Moi was a creature of a 'Presidentialist' constitutional arrangement and it was therefore credulous that he was expected to preside over free, fair and democratic elections that would ensure his removal from power. He argues that Moi was an autocrat and could not suddenly be expected to become a benevolent advocate and practitioner of democracy (Wanjala 1996: 93).

comprehensive constitutional, legal and administrative reforms as a prerequisite for free and fair general elections in 1997 (Southall 1998: 103). Faced with an unyielding government, NCEC mobilized people for mass action under the banner, 'No reforms, No elections', to apply pressure on the Moi government to concede reforms (Mutua 2009: 109). However the NCEC was deflated when some opposition MPs left the pressure group and teamed up with fellow 'moderate' politicians from KANU to form the Inter-Parties Parliamentary Group (IPPG). The IPPG came up with minimal reforms with the acquiescence of Moi and most of the KANU hardliners (Brown 2001). This paved the way for elections. Ajulu argued that Moi was able to achieve two objectives through the IPPG. He was able to recapture the political initiative from the NCEC and satisfy the donor community which had demanded unspecified basic reforms (Ajulu 1998: 277). The issue of reforms with regard to Kenya's attempt at transition is extensively covered in chapter eight.

4.14 The Opposition as 'Replicas of KANU'

DP continued to be seen as composed of wealthy individuals who waited while others struggled and sacrificed for the establishment of a multiparty system, only to jump in when the coast was clear to try and reap where they had never sown...Dismissed from the beginning as an elitist party top-heavy with the 'golf set' from Central Province, the DP has had to struggle to make inroads outside its traditional areas of support (*The Weekly Review* June 5, 1992: 5).

Kenya's return to political pluralism exposed the opposition parties as replicas of KANU. Opposition leaders emulated KANU in the manner in which they ran their parties. These parties lacked internal democracy, thrived on tribalism, and opportunism. For instance, Mwai Kibaki's Democratic Party of Kenya was a misnomer. The party did not practise internal democracy and preferred a self-perpetuating Kikuyu oligarchy to holding party elections. There was little dissension in the DP because it presented itself as a party for the rich Kikuyu (Jonyo 2002: 101). Matiba's FORD-Asili was generally a one man show. FORD-K was seen as a reincarnation of KPU that Odinga had led in the 1960s (Throup & Hornsby 1998: 587). Throup & Hornsby observed that Moi, appeared in a better light than his opponents since he was younger than the octogenarian Odinga, in robust health compared to the ailing megalomaniac Matiba, or even the indecisive and lackadaisical

Kibaki. Moi towered above all the leading opposition candidates since he was ‘decisive, of sound mind and in good health’ (Throup & Hornsby 1998: 587).

The opposition did not provide an alternative form of leadership between 1992 and 1997. It was doubtful that they would have performed better had they replaced Moi and KANU. According to Southall, ‘if the Outs of Kenyan politics were In, and the Ins were Out in Kenya’s present zero-sum polity, the benefits of the system would simply be redistributed in a different direction’ (Southall 1998: 110)

4.15 Conclusion

The period between 1992 and 1997 exposed the salience of ethnicity in Kenya’s multiparty politics. Ethnicity thwarted any effort at devising an alternative form of politics. Apart from the Big Man form of politics that Moi deployed, opportunism among the country’s politics impeded establishment of competitive politics. The chapter shows that Kenya underwent neither transition nor transformation after both the 1992 and 1997 elections. Two reasons accounted for this. First, the KANU régime used tribal violence to displace opposition supporters in order to distort ethnic demographics especially in the Rift Valley Province and remain in power. Five years later, the régime instigated violence again whose severest repercussions were felt at the coastal region. Second, the institutional framework of the one party state and politicians from the single party era impeded Kenya’s political, economic and constitutional reform. The chapter showed that ethnicity, opposition disunity and an electoral system worked in Moi’s favour. Significantly the ECK lacked impartiality and deliberately disenfranchised voters in opposition bases. This highlights the weakness of one of the institutions tasked with organising and conducting above-board elections. What I deduce from the politics of co-operation is that Kenya needed to rid itself of zero-sum politics that not only provided an incentive for the use of unorthodox means such as violence but also rendered losers in elections susceptible to financial and material inducements by the ruling party. Power contests for the sake of it exposed KANU and opposition parties as entities devoid of principles. To both the opposition parties and KANU, manifestos were a mere formality. They sought to either attain power or retain it on the strength of ethnic demographics. Most politicians had been socialised within the

one party mould and were drawn to politics that safeguarded the interests of the *ancien régime*. This preponderance of opportunistic politicians and self-styled tribal spokespersons on the country's political landscape was the single most hindrance to reform in Kenya.

Chapter Five

The Jogoo-Tinga Duel and Moi succession

There comes a time when, if there is no clear way forward, the intelligent politician must broaden his thoughts to include other alternatives. There is no benefit to anyone in continuing month after month, year after year in confrontation, never finding any satisfactory result or making any progress- (Raila Odinga, National Development Party of Kenya (NDP) leader during the NDP convention in 1998 (*The Weekly Review* July 3, 1998: 6).

5.1 Introduction

The chapter focuses on the period between the 1997 and 2002 elections, that should be conceived as years of transition given that Moi was serving his second and last term. The chapter argues that ethnicity remained the most significant variable in Moi's succession because it had been the centrepiece of his rule since he assumed power in 1978. Yet Moi found it difficult to manage his succession because of his inability to juggle competing ethnic interests and their and his preoccupation with self-preservation. The chapter begins by locating the Moi succession within the gamut of transitions in other African countries. The opposition had lost to Moi for a second time running in 1997 partly because they could not collectively think out a strategy to counter his wide support beyond protesting against his re-election. The fact that opposition leaders were unable to unite before the elections showed how disjointed and rudderless they were. Their efforts bore no fruit because of personality clashes, ethnic stereotyping and opportunism. This chapter analyses the intricacies of the KANU-NDP alliance and its bearing on the Moi succession. It shows that despite the two parties merging, mistrust and political rivalry between Raila Odinga and Moi resulted in a breakup. Ironically the merger marked KANU's weakest moment in decades and accelerated its implosion. The merger was meant to ensure a KANU victory in the 2002 elections. The NDP attempted to put the accent on constitutional reform. KANU however remained impervious to reform and accountability and only acceded to cosmetic changes by reorganising the party hierarchy. This reorganisation turned out to be little more than a cynical ruse to make it appear as if reform was on its agenda but in reality was an attempt to limit the influence of the new political partners.

This chapter, like the previous ones, aims to build on the argument that the nature of Kenyan politics, despite its adoption of multiparty competition, remained trapped within the ideological hegemony of ethnicity and tribe to the exclusion of a politics that addressed a national vision for democratic accountability, transparency and justice for society. Interests were framed in regional terms, translated in reality into ethnic interests that did not lead to broader issue-based politics. The real nature of politics in the country was to open up the political terrain to elites from previously excluded ethnic groups in the one-party state. Thus it was not surprising KANU, its splinter group, the Rainbow Alliance and the opposition sought power through ethnic manipulation. But how this occurred is the subject of this chapter.

The Rainbow Alliance broke away from KANU in the run up to the 2002 elections after Moi bypassed some of its members in the succession race. The opposition leaders reacted to the KANU-NDP merger by initiating unity talks. These talks accelerated following the splintering of KANU. A disparate super alliance between the opposition and KANU rebels was formed for the purpose of defeating Moi's preferred successor. Although cross-ethnic, the super alliance was inherently fragile due to self-centred, personality and ethnic differences. This chapter revolves around the role of Raila Odinga who set the pace of political events during this phase of Kenya's history. Odinga's decision to cooperate with KANU influenced not only the Moi succession but also the post Moi political dispensation. Significant during this period was that there was markedly less violence during the 2002 elections than previously. On the surface, the politics seemed less polarising as a result of the broad NARC ethnic alliance. However, the chapter does not make a case for such alliances as a means of addressing the salience of ethnicity in Kenya's polity. These alliances were inherently fragile and solely power driven. This makes them volatile and inimical to national stability as happened once the NARC collapsed.

5.2 Overview of the 1997 Elections

The 1997 elections were significant in the sense that they were the last Presidential elections for which Moi was eligible to run. Moi won a second and final term amid some

controversy over the credibility of the election results. Based on previous cases of democratic reversals in other African countries, it could not be taken for granted that Moi would relinquish power in 2002. African leaders such as Frederick Chiluba of Zambia and Bakili Muluzi of Malawi unsuccessfully tried to secure third terms in contravention of the constitutional two-term limit. However Namibia's Sam Nujoma secured a third term after a successful constitutional amendment. Hyden cautions us against attributing the failure by Chiluba and Muluzi to extend their stay in power on commitment to reform among the opposition. He attributes it to the opposition being in a hurry to replace the incumbents (Hyden 2006: 111). This insight came to the fore in Kenya's context after Moi left power.

Fourteen months after being sworn in, Moi had not yet appointed a Vice president. One can interpret this in two possible ways. First, that Moi wanted to show that he was fully in charge of the government and did not need a deputy. A second and perhaps more compelling argument is that Moi was finding it difficult to balance competing political and tribal interests in KANU having promised the vice presidency to several senior politicians from specific tribes in order to secure their votes during the 1997 elections (*Sunday Nation* November 10, 2002). The difficulty that Moi faced was whoever he appointed as his deputy would be seen by his party and by his supporters as his anointed successor. In this respect, a Vice President would have a head start in the succession race. As a quintessential Big Man, however, Moi did not appear to have a succession plan open to scrutiny by Kenyans either by his party or by the broader KANU support base. This may have been a strategy to enable him to play off competing interests in his own party. Thus he would not make any choice until closer to the election date. Moreover Moi intended to wrong-foot the opposition leaders whom he did not expect once again to present a single Presidential candidate. He therefore did not anticipate any change in government after the 2002 elections. Moi continued to issue directives that had an impact on the government policy framework even as elections neared (*Sunday Nation* November 24, 2002). Hawkish KANU politicians tried to urge him to extend his tenure but the rhetoric fizzled out because it was extremely difficult to effect a constitutional amendment to allow Moi to run for a third term since KANU did not command majority MPs in the House. The likely backlash had KANU attempted such a move dissuaded the hawks since there was overwhelming public pressure for Moi to retire in 2002 (Kagwanja 2005: 52).

5.3 The Norfolk Hotel and (Dis) unity in Defeat

The opposition leaders tried once again to unite and collectively protest against Moi's re-election after the 1997 elections but the 'unity in defeat' (Badejo 2006: 188) crumbled because of mistrust and opportunism. Initially Mwai Kibaki, Raila Odinga and Kijana Wamalwa the second, third and fourth Presidential contestants respectively, denounced the election results (*The Weekly Review* July 10, 1998: 5). Kibaki went a step further and filed a petition. The effect of this public denouncement was that ethnic violence broke out between Kikuyu 'settlers' in the Rift Valley districts of Nakuru and Laikipia and Kalenjin 'indigenes'. It was at this time that the alliance between KANU, FORD-K and NDP was mooted (*The Weekly Review* July 10, 1998: 5). Moi continued to engage the opposition at the level of negotiations between parties as opposed to luring individual opposition MPs into KANU. The negotiations that Moi undertook with the opposition parties was an attempt to stabilise the government, but also provided him with time to work out a succession plan. Moi believed he could rely on the NDP and some members of FORD-K to counter the constitutional reform pressure by the opposition and take control of the process (Ngw'eno: undated film). The strategy of picking off parties seemed to work when Wamalwa and FORD-K broke away from fellow opposition leaders endorsed the election results and congratulated Moi. Moi was able to lure Wamalwa to do this because FORD-K was cash strapped. The party itself thus hoped to gain financially through its alliance with KANU (Badejo 2006: 193-4). Wamalwa's endorsement of and association with KANU, however, was not supported by grassroots party membership. Badejo shows how party members did not endorse the alliance and constantly insulted him for associating with Moi forcing him to abandon the alliance (Badejo 2006: 193-4).

Raila Odinga, Kibaki and Ngilu agreed to mobilise their supporters to disrupt Moi's swearing in ceremony at Uhuru Park, Nairobi. Odinga mobilised his NDP followers who assembled in the city centre early in the morning on the day of the ceremony. Most of the assembled supporters were Luo youths from Nairobi's Kibera informal settlement who resided in Odinga's Lang'ata constituency. Odinga proceeded to wait for the other two

opposition leaders at the Norfolk Hotel as mutually agreed but they failed to turn up (Badejo 2006: 187-8; *The Weekly Review* February 13, 1998: 6). The press concluded that Kibaki and Ngilu had tried to exploit a stereotype associated with Odinga as a politician who was adept at mobilising crowds (*The Weekly Review* February 13, 1998: 4). Badejo suggests that Odinga was not blind to the situation and realised that the two wanted to exploit his confrontation with Moi (Badejo 2006: 188-9). By keeping away from the Norfolk meeting, Kibaki and Ngilu underscored and attempted to capitalise on the depiction of Odinga and his supporters as the personification of the most radical and confrontational brand of political actors among the opposition parties (*The Weekly Review* July 3, 1998: 4).

At this point, Odinga decided to disengage from opposition politics in order to rebrand himself by shedding the confrontational image and focus on the 2002 elections (*The Weekly Review* July 3, 1998: 7-8). There was no better way of doing this than working with Moi. Moi had previously detained Odinga for a total of eight years for his opposition to Moi's dictatorial single party (Oloo 2005: 167). Odinga often cited the KANU-NDP alliance to denounce accusations that he was a hardliner. Opportunism, lack of a coordinated reaction to Moi's victory and preoccupation with merely contesting Moi's re-election among fellow Presidential candidates prompted Odinga to review his association with them (Badejo 2006: 188-9). Since the whole political architecture favoured Moi, Odinga decided to devise strategies for the post Moi political dispensation rather than concentrate on a futile and short-term exercise of contesting the credibility of the 1997 elections. Thus Odinga unexpectedly accepted the election results 'under protest' and congratulated Moi too. He decided to prioritise the constitutional review (Badejo 2006: 188) while the opposition continued to wallow in disunity.

Whereas the 1992 elections primarily marked Kenya's return to competitive politics, the 1997 elections set in motion bare-knuckled succession politics and redoubled the quest for comprehensive reform. Odinga was the first opposition leader not only to identify a link between a defective Constitution, disorganised opposition parties and the Moi victories in 1992 and 1997 but also to design a new political strategy based on that awareness. As he adroitly moved from opposition politics, Odinga's supporters dismissed the opposition as a

monolith 'no more than an arbitrary group of individuals representing temporary alliances of groups with conflicting interests and whose only common denominator is opposition against President Moi' (*The Weekly Review* February 13, 1998: 5). But Odinga's strategy depended upon somehow mending the fences between the fragmented opposition and moulding a firmer united front. He was to struggle to find the glue to do this (Badejo 2006: 18-9). In the meantime, he turned to develop a reform agenda that would at least improve the lot of the poor in Kenya.

5.4 Who betrayed whom?

Kibaki's failure to turn up at the Norfolk Hotel was significant. NDP perceived it as another act of betrayal in the chequered political relationship between the Luo and Kikuyu. It appeared to be a throwback to the Kenyatta-Odinga Odinga camaraderie and fall-out. Odinga had stood by Kenyatta while the latter was in detention and had demanded his release before independence negotiations with the British could begin (Leys 1975: 199, 203; Ogot 1995: 60, 66). However, once Kenyatta ascended to the presidency he blocked Odinga politically and forced him into opposition.

Did Raila Odinga betray fellow opposition leaders when he formed an alliance with KANU? According to the Kikuyu dominated DP, the answer was in the affirmative. DP accused Raila Odinga of betraying the so-called opposition cause by associating with Moi and KANU. However NDP dismissed this accusation arguing that it had better radical credentials than the rest of the opposition parties (*The Weekly Review* July 3, 1998: 7). Yet there was a contradiction, masked in the NDP's rhetoric. NDP's core constituency, the Luo, saw themselves as Kenya's bastion of opposition politics for standing up against the excesses of Kenyatta and Moi régimes. NDP regarded both KANU and DP as conservative political entities with which it was in competition. So when the NDP dismissed the DP asserting that the latter had neither human rights nor democratic credentials and was in no position to cast aspersions against the NDP-KANU co-operation, it was merely attempting a rather lame justification. It argued that the DP was a Johnny-come-lately since Kibaki, its leader and founder member, had joined the opposition after the struggle for multiparty politics had been won (*The Weekly Review* July 3, 1998: 7). There was no ideological

difference between KANU and DP therefore NDP could not be accused of betraying DP by cooperating with KANU (*The Weekly Review* February 13, 1998: 6). DP was part of the ruling elite under Kenyatta. It was composed of conservative wealthy Kikuyu politicians who had established themselves economically during the Kenyatta tenure and bided their time in KANU under Moi as others fought for multiparty politics only to 'jump in when the coast was clear to try and reap where they had never sown' (*The Weekly Review* June 5, 1992: 5). Njogu described DP as a party of 'rich fence sitters, whose only interest was to protect their wealth and social status' (Njogu 2001: 384).

5.5 Raila Odinga's Newfound Bipartisanship

Raila Odinga summoned all the NDP party officials and candidates to review the 1997 elections. Although most of those in attendance 'gave overwhelming proof of rigging in many parts of the country', (Badejo 2006: 189) the party decided not to call for a rerun. Odinga argued that there was no guarantee that fresh elections would not be rigged again given that they would have been based on a defective voter register, supervised by a compromised electoral body and backed by the provincial administration and intelligence officials just as before. Moreover NDP did not have funding for repeat elections that would have produced either the same or even worse results (Badejo 2006: 189). Consequently, NDP released a five-year strategy paper inviting all political parties including, KANU for reform consultation on a reform programme. As the ruling party, KANU was indispensable to the reform process. Moi was impressed by Odinga's decision not to contest the election results and reciprocated NDP's newfound bipartisan approach and reached out to NDP (Badejo 2006: 189-192). NDP and KANU started a political relationship that progressed 'co-operation' to a 'partnership' and finally to a 'merger'. This relationship began after Odinga accepted the 1997 results and lasted until a couple of months to the 2002 elections. Whereas Odinga would have preferred a coalition government between the two parties, Moi was for a merger (Ngwe'no: undated film). Throughout most of the eighth parliament (1997-2002), NDP supported KANU in passing bills without which it might have been difficult to do so owing to KANU's slim majority in the House. KANU had 107 seats while the combined opposition had 103 (Badejo 2006: 193). KANU was vulnerable owing to the fact that rebel MPs within the party such as Cyrus Jirongo, William Ruto and John Sambu could not be counted upon to support the

government.³⁶ KANU needed NDP and FORD-K to boost its numbers in order to carry out the legislative process. The greatest test to the KANU-NDP alliance was a vote of no confidence in the government by the FORD-K MP, James Orengo, which the alliance defeated (Badejo 2006: 195).

5.6 KANU-NDP Co-operation

A question that needs to be addressed is why did Raila Odinga decide to work with Moi, who politically anyway, was his nemesis? According to Badejo, initially the KANU-NDP alliance was not popular among most of Odinga's Luo supporters including his own family (Badejo 2006: 182). They wondered how he could afford to associate with a party that had tormented his family for over two decades (Badejo 2006: 182). Odinga and his aides explained that it was strategic for NDP to work with KANU towards the transitional 2002 elections. They argued that no Luo would ever be elected President of Kenya without the support of a wider ethnic grouping than just the Luo (Ngwe'no: undated film). Once the NDP merged with KANU, Odinga studied the party from within. He used every opportunity to make himself known and popular in remote parts of the country using established KANU networks. He was able to reach out to tribes that supported KANU in the Rift Valley Province, the bedrock of its support and previously hostile to him (Badejo 2006: 213).

Moi appointed Raila Odinga and three fellow NDP MPs to the cabinet to try and cement the alliance. This was an historic development for it was the first time since independence that Kenya had a coalition government. The appointments were meant to assuage sceptics and anxious NDP supporters who might have wondered what the Luo had to gain from the alliance (*The Weekly Review* July 3, 1998: 6-7). The three cabinet plots were therefore meant to serve as a harbinger of the patronage benefits that the Luo might receive as the alliance between the two parties matured. As Minister of Energy, Odinga took advantage of the opportunity to crisscross the country opening new branches for KANU and

³⁶ These MPs were associated with another party, United Democratic Party (UDM). Moi had these politicians back into the fold and appointed Jirongo and Ruto to the cabinet. The two were among Uhuru Kenyatta's strongest supporters during the 2002 elections. Jirongo and Ruto were some of the architects and senior officials of the infamous Youth for KANU '92 lobby group.

spreading the idea of a 'New KANU'³⁷ (Badejo 2006: 204). At the same time, Odinga initiated his own political links with the KANU leadership at the grass roots level. He was a charismatic personality and was becoming widely known in his own right.

The opposition appeared keen to push for constitutional reform as a prerequisite to evening the political playing field. Moi was serving his final term in office. It would be highly unlikely that another President would have as firm a grip on Kenya's politics nor would another leader be able to rule as long. Moreover it would be difficult for any other politician from the Rift Valley Province to rally the constellation of the KANU tribes in the region behind him unless that leader rose to the presidency. Moi appeared to be the indisputable leader of the region owing to fact that he was the head of state.³⁸ He was not the most popular politician from the region during the colonial period although he represented it in the Legislative Council. He had no gravitas as Kenyatta's deputy (Morton 1998: 148). Although the KAMATUSA community had consistently supported Moi since he ascended to power, there was no guarantee that it would not transfer their loyalty to a politician from elsewhere. NDP also took advantage of a weakened KANU to try and talk it into participating in a constitutional review (Badejo 2006: 194). NDP envisaged constitutional, legal and institutional reform that would remove the authoritarian presidency and curtail the influence of an incumbent President in any future elections (Badejo 2006: 213). In 1998, *The Weekly Review*, predicted the splintering of KANU into ethnic factions once Moi's stabilising hand was removed (*The Weekly Review* June 5, 1998: 4-5). Moi was so dominant in KANU that he himself was concerned about the ability of the party to withstand the possible centrifugal forces that would be unleashed once he stepped down (*The Weekly Review* July 3, 1998: 4). This explains his renewed attempt at uniting behind KANU tribes that had previously been excluded. However, in the absence of a tradition of internal party democracy, accountability and a unifying ideology, it was difficult for KANU to manage the competing personal and tribal interests that spilled out into the open and threatened the survival of the party. KANU had no internal processes to effect party discipline, no ethos or norms of behaviour that could be relied

³⁷ NDP insisted that the merged party be referred to as 'New KANU' as an indication that the new-look party would be democratic in its decision making but the KANU side resisted on the grounds that that would amount to change of name (Badejo 2006: 199, 213).

³⁸ William Ruto, a Moi protégé, challenged Moi to regional supremacy in the Rift Valley province in the run up to the 2007 elections and prevailed.

upon to sustain the party in the absence of the Big Man. Thus from the time of the merger, there was uncertainty within the party. Moi tried to assert his authority but Raila Odinga was a countervailing force since he had a loyal group of MPs. KANU politicians spoke at cross purposes on the succession question and it was clear that there were two centres of power in the 'New KANU' despite Moi providing the new political forces with some semblance of shared power in the party. He drew in new blood through Odinga but sought to contain Odinga and his supporters.

The KANU elections that saw Raila Odinga dissolve his NDP party to join KANU were strategic. Moi tried to exploit them to craft a succession formula. It was instructive that KANU had last held elections in 1988 despite its constitution stating that the party had to hold elections after every five years (Kadima and Owuor 2006: 199). Thus KANU internal party elections in 2002 were choreographed. However, the press was sceptical, and argued that the 2002 party elections would not bring any new thinking in the party:

KANU is not going to change. It may want to but the way the party is structured and the people whose thinking informs and guides it, makes it impossible for the party to transform itself into a modern, open democratic institution. This is demonstrated by the fact that the party today regards winning elections as its *raison d'être*. Being in government is a means to an end, that end being to win elections and keep power. As a result the party has no intention of presenting to the electorate a report card of its tenure in government at election time. What it intends to do is to build an ethnic alliance that will be elected on the basis of ethnic sentiment (*Sunday Nation* March 24, 2002: 12)

The press were right. The merger collapsed before the 2002 elections because Raila Odinga realised that a cabal of individuals, in effect the gatekeepers, wielded immense influence in KANU. NDP had been courted to join the party to improve KANU's chances of winning the elections. Although the merger was not between equal political partners, Moi and his allies were not astute in the manner in which they related to this reality. For instance, Moi had tried to block Raila Odinga from making a speech during the merger insisting that he would be the only one to do so. William Ruto, who became the Director of Elections after the merger, had carelessly told a KANU official at the party headquarters that he and Uhuru Kenyatta would wield power at the headquarters an information which the official revealed to Odinga (Badejo 2006: 212-3). Therefore Odinga remained alert from the word go lest Moi outfox him.

The KANU-NDP alliance can be seen as part of Moi's ingeniously crafted succession scheme that he had embarked on as early as the period following the 1992 elections. He did not give up on the Kikuyu despite twice failing to woo them back into KANU through the GEMA-KAMATUSA talks and the CPDSG initiatives. Moi's succession strategy entailed bringing both the Luo and Kikuyu back into the KANU fold before the 2002 elections. By reaching out to the two tribes, Moi tried to create an ethnic coalition beyond the traditional KANU groupings (*The Weekly Review* 1998: 4). He was guided by a self-preservation instinct in his choice of Uhuru Kenyatta as his preferred successor. Uhuru was expected to safeguard Moi's vast economic interests the same way Moi did Kenyatta's (*Sunday Nation* February 24, 2002: 4). Both Kenyatta and Moi dubiously acquired vast wealth in many sectors of the economy (Badejo 2006: 198). Moi's image loomed large behind 'Project Uhuru'³⁹ as evidenced by the press's depiction of the 'hapless' figure Uhuru cut throughout the period preceding his election as the KANU Presidential candidate and towards the 2002 elections.

Throughout the campaign period leading up to Kasarani II Mr. Kenyatta has been President Moi's candidate. The image embossed in the eye of voters is of the hapless candidate who stands up on command, fastening the middle button of the coat as he steps forward to greet the crowd with Kanu's appraised index finger salute, then resuming his seat without uttering a word (*Sunday Nation* October 14, 2002: 3).

The KANU constitution was amended before the 2002 elections to give sweeping powers to the party Chairman, a post reserved for Moi that he intended to hold beyond 2002. Moi thus schemed to remain actively involved in Kenya's politics. As KANU chairman, he would seek to continue to influence national politics. Moi took it for granted that KANU would win the 2002 elections because of the continuing disunity of the opposition. The press showed that the amended KANU constitution gave the Chairman immense powers such as to assign duties to every KANU official including the four Vice-Chairmen, chair meetings of the KANU parliamentary group and be KANU's sole spokesperson locally and internationally. In addition the chairman had powers to appoint members of the

³⁹ The media christened Uhuru's Presidential campaign as a 'project' to underscore Moi's attempt to impose him on Kenyans as his successor and that Uhuru's candidature embodied the hopes and fears of Kenya's oligarchy.

KANU Disciplinary Committee and the national elections committee responsible for fundraising, call or postpone party elections, dissolve branches and suspend officials and errant members (*Daily Nation* March 19, 2002). In this way Moi as Chairman would continue to wield power over parliament itself and not just within the party.

Moi relentlessly campaigned for 'Project Uhuru' in spite of strong opposition from a section of KANU and a near countrywide backlash except in the Rift Valley and Central Provinces. To understand why Moi handpicked an unpopular candidate that saw KANU defeated during the 2002 elections, we have to understand the way in which Moi had constructed his power and authority during the previous 24 years. He, like his predecessor Kenyatta, had based his power not on trying to carve an overarching national imaginary of a united Kenya, but rather to draw upon what Mamdani and others have shown to be colonially constructed divisions based on tribe (Mamdani 1996). This tied regionally based political elites into a deeply rooted patronage system dominated by Moi's own political oligarchy with access to state resources. In the new turn to multiparty politics, Moi was on a new and less certain political terrain and he had to find new ways to deploy his power and authority. Through Uhuru Kenyatta, Moi tried to exploit nostalgic memories of the Kikuyu community whose leaders had unfettered exercise of power under Kenyatta. Therefore Moi's strategy to lure the Kikuyu back into KANU was based on the assumption that 'having ruled' before, the Kikuyu would offer him the most reliable alliance upon his official retirement (*Daily Nation* November 18, 2002). While the Luo had for long been excluded from Kenya's mainstream politics, sections of the Luhya and Kamba and Mijikenda had been part of the Kenyatta and Moi régimes if only to provide a semblance of national appeal. Moi preferred Kenyatta's son to any other Kikuyu as his successor. Moi's machinations underscored the fact that a specific cohort of political elite across certain ethnic divides had hijacked the postcolonial Kenyan state for their own benefit. Raila Odinga however, was cut from a different political fabric. He was a seasoned opposition politician who had recently joined KANU. Moi could not entrust him with the presidency. He could not trust that Odinga would safeguard his economic interests and those of his political oligarchy. Moi could not be certain that Odinga would not institute judicial inquiries into the past use of resources and other actions of the past.

Although Moi considered Odinga significant to his succession scheme, he had no illusions about the fragility of the alliance with the Odinga political camp. Moi was ready to part ways with him if the KANU-NDP merger hit a snag. He could afford to dispense with Odinga even though the latter commanded a solid ethnic constituency. The Kikuyu were the most populous tribe and the smaller but culturally related Embu and Meru consistently politically associated with the Kikuyu. Being sister tribes, the two often followed the political thinking among their 'senior cousins'. On the basis of ethnic demographics, the Kikuyu were more important to Moi's succession scheme than the Luo (Badejo 2006: 198). On the basis of an ethnic audit, Odinga had burnt bridges with the Kikuyu and sections of the Luhya through his association with KANU. Moi assumed that it would be difficult for Odinga to rejoin the opposition where he had earned the tag of a traitor. With Odinga isolated from fellow opposition leaders and the opposition with a history of disunity, it appears that Moi reasoned that it would be easy to have Uhuru elected President. I cannot imagine of any other plausible explanation. Why would Moi form the merger then almost immediately contribute to its collapse by backing an unpopular Presidential candidate? Apart from Moi, while enjoying incumbency, Odinga was the only politician who could marshal almost entire votes from his community either for himself or in support of another Presidential candidate. However, NDP supporters downplayed the risks involved in associating with KANU arguing that at worst Odinga merely stood to lose the support of the Kikuyu who, in any case, had never supported him in the first place (*The Weekly Review* July 3, 1998: 7). Moi seems to have calculated that with the merger, the Luo would not defect yet again even if Odinga left the party, as he banked on 'party-change fatigue' since 1997 among the NDP supporters (Oloo 2005: 169). He miscalculated massively as the succession evolved a life of its own and unfolded in a way that no one could have contemplated.

Moi tended to act in a Machiavellian way and Kenya's political landscape was littered with politicians and at some point government officials whom he had talked into helping him achieve his political ends and then dramatically dumped thereafter. The academic-turned-bureaucrat-turned-prophet Philip Mbithi and conservationist-turned-politician-turned-bureaucrat Richard Leakey met this fate. The KANU-NDP merger reinforced Moi's image as Kenya's invincible politician. Bar Raila Odinga's countermanding political

astuteness, Moi believed that he had pulled a fast one on the opposition. But Odinga, aware of Moi's wily ways, remained alert as the two pursued mutually antagonistic political ends albeit under the same political umbrella. Asked by a journalist whether he had worked out an alternative strategy in the event that the KANU-NDP merger collapsed, Odinga replied:

Only a fool will go into this kind of arrangement without plan B aimed at preventing being 'used and dumped.' To allow oneself to be uprooted from one's roots and popular support as well as compromise on one's principles is to be hanging in the air. Anyone hanging in the air could be easily used and dumped (Badejo 2006: 211; *Sunday Nation* February 17, 2002).

5.7 The Merger

The KANU-NDP merger named Kasarani I⁴⁰ took place on March 18, 2002. The NDP flag was lowered and the party officially dissolved and joined KANU. The press amusingly posed the question after the merger: 'Does that mean the mighty cockerel has successfully swallowed the *Tinga tinga*?' (*Daily Nation* March 19, 2002). This was in reference to the symbols of the two parties. The merged party remained 'KANU' but henceforth was popularised as 'New KANU' (Badejo 2006: 204; *Daily Nation* February 15, 2002). The merger however, did not lead to reform within the party at all due to two reasons. First, Kadima and Owuor point out that Kenya's political parties were seen as properties of the leaders. For instance, Moi was seen as the owner of KANU, the DP as Kibaki's property. Second, these parties are centralised whereby decisions are made at the top with little or *no*⁴¹ consultation with the membership meaning they had no internal democracy (Kadima and Owuor 2002: 193). It was inconceivable that Moi would allow Odinga to inject new blood in KANU. The manner in which KANU carried out the internal elections was reminiscent of previous ones and portrayed KANU as a party averse to an accountable, open and transparent electoral process:

The method of decision making is comical. Resolutions are written in advance and read out by the master of ceremonies then he invites those who are opposed to them to stand up. Chances are that he won't recognise those who do stand up or they will be torn apart and shouted down by fellow delegates. This is more of mob

⁴⁰ The ceremony was dubbed Kasarani I, named after a Nairobi sports stadium from where it was held.

⁴¹ My emphasis.

psychology than democracy. When people are in a mass, they are loath to be seen to be spoiling the party (*Sunday Nation* March 24, 2002).

The party elections marked the official launch of 'Project Uhuru'. A hitherto obscure son of Kenyatta's was thrust into the centre of Kenya's politics. Uhuru Kenyatta was elected to one of the four posts of KANU vice-chairman. It was a meteoric rise for a political rookie. Within a space of slightly more than five years, Kenyatta rose through the ranks from being the KANU chairman of his local sub branch, to the head of a state corporation, a nominated MP, a cabinet minister then KANU vice chairman. The merger itself was a political event of significant proportions in Kenya. Raila Odinga became the first opposition politician to try and work out a political strategy based on the understanding that Kenya's tribes, of more than 40, are minorities and none could either produce or provide sufficient support for a President all by itself (*The Weekly Review* October 31, 1997: 3). Odinga was guided by what he referred to as 'the civilising influence of memory' (*Daily Nation* October 19, 2002) that is, the failure by the opposition to unite during the 1992 and 1997 elections. Odinga thus pioneered a new way of doing politics in Kenya despite criticism from a cross-section of his supporters and other citizens for dissolving NDP and joining KANU (*Sunday Nation* February 17, 2002: 13). As the *Sunday Nation* reported, he was the first local politician to negotiate with Moi on an equal footing although the two politicians belonged to diametrically opposed sides of Kenya's political spectrum (*Sunday Nation* February 17, 2002: 13). One could argue that by promoting the merger, he performed a political masterstroke. Oloo makes the point that whereas the power that Moi brought to bear on the merger was drawn from state machinery, Odinga's power came from his mobilisation and politicking genius (Oloo 2005: 167). The merger was a pragmatic political arrangement. Unlike his uneasy relationship with Raila Odinga, Moi had an avuncular relationship with the other KANU 'princes-in-waiting' as the *Sunday Nation* hailed them, having been their mentor (*Sunday Nation* March 3, 2002). Moi and Odinga were so suspicious of each other's intentions that their relationship was quite incongruous. They both tried to take advantage of the merger to advance their respective political agendas since both had parallel succession plans (Ngwe'no: undated film). For this reason the alliance crumbled once Moi declared his preference for Uhuru Kenyatta as his successor.

However, the disintegration of the KANU-NDP did not diminish Raila Odinga's rising star. He had joined KANU with mostly Luo MPs supporting him but he left a much stronger politician having won the support of even seasoned KANU loyalists. He thus fulfilled part of his aim in joining KANU, which was either to reform or to weaken the party from within (Badejo 2006: 213). Odinga had not joined KANU to reform the party. His had been a cynical political move informed by a self-serving political interest (Shilaho 2007; Miguna 2012: 551-2). The unravelling of the merger constituted a turning point in Odinga's political career. He had managed to extend his support base beyond the Luo constituency in a way that trumped the efforts of Moi to limit his influence to that constituency. In the next section I explore in more detail the modalities of the merger, and suggest that although it changed the political landscape, in some respects it was not more than a cosmetic change in that it did not bring any new debates about transparency and democracy into the discussion.

5.8 Succession Manoeuvres

The KANU-NDP merger had echoed the 1966 KANU conference held in Limuru that Kenyatta and his cohorts had called to curtail Odinga's influence. At that time, eight Vice presidential posts reflecting Kenya's eight Provinces were created to dilute the vice presidency and hence to politically neutralise Odinga. Odinga was reduced to one of eight KANU deputies (Karimi and Ochieng' 1980: 16). Unable to absorb the humiliation, he resigned from the government. In similar vein, during the KANU-NDP merger, Moi had created four non-hierarchical posts of vice chairmen. The aim was twofold: First to get the Vice President, Prof George Saitoti and his allies, out of the succession equation. The second was to bring in a new cohort of younger politicians who would do his bidding. In particular, Moi wanted to create room for Uhuru Kenyatta, Raila Odinga and the latter's allies. The four posts of vice-chairmen were allocated to Uhuru Kenyatta (Kikuyu), Musalia Mudavadi (Luhya), Kalonzo Musyoka (Kamba) and Katana Ngala (Mijikenda) while Joseph Kamotho, a Kikuyu diehard KANU loyalist and Saitoti ally, was edged out. Odinga occupied the important post of Secretary General. Odinga ranked second to Moi in the 'New KANU' hierarchy (*Daily Nation* March 19, 2002).

In an attempt to obfuscate ethnic and personal interests, Moi popularised his succession in terms of a generational shift (Kagwanja 2005: 57). He consistently mentioned in his speeches that he would hand over power to a group of young generation politicians. The four vice-chairmen, Raila Odinga and William Ruto, a Kalenjin, formed the core of the so called KANU Young Turks. Moi intended to bequeath leadership although the 'New KANU' leadership was a mixed bag including the old guard (Ngwe'no: undated film). Yet Moi's strategy was Janus-faced, because he still wished to ensure that his choice would lead the party, while he tried to convince the Luhya, Kamba, Mijikenda and Luo that their sons were heirs apparent too. He had promised the vice presidency to each of these communities at different times towards his retirement in order to maintain an ethnic balance within KANU as he grappled with the succession question (*Daily Nation* November 27, 2002).

5.9 KANU's Waterloo

The merger momentarily produced as formidable a political alliance as FORD had done in the early 1990s. It looked inconceivable that there would emerge a broader tribal alliance before the 2002 elections. The alliance appeared invincible because it had the backing of the well-oiled state machinery. However like FORD, it was easier to form the alliance than to ensure that it remained intact until election time. Moi so astutely crafted the succession scheme that he ended up being the victim of his own success. The merger disintegrated once the other Presidential hopefuls realised that Moi was biased towards Uhuru Kenyatta. Moi obdurately refused to let the party elect its Presidential candidate without his influence, thus smashing the very succession plan he had painstakingly devised. Inherently the merger bore potential seeds of both renewal and implosion. Had they been given free rein Odinga and his NDP brigade would probably have infused some new thinking into the party. The press observed that by attempting to swallow an opposition party, KANU legitimised opposition and dissent within its own ranks. Raila Odinga did not hesitate to capitalise on that development (*Sunday Nation* February 17, 2002: 13; *Daily Nation* March 15, 2002: 8). It was ironic that KANU's loss of power began on the day it appeared stronger after incorporating the Luo through NDP and an attempt to reach out to the Kikuyu through Uhuru Kenyatta. The merger expanded the ethnic alliance that Moi depended on since assuming power. However, the flipside was that the merger exacerbated

disgruntlement within KANU. The press averred that in spite of having unchallenged access to the state largesse and being specialised in bribing members with positions and money, it was not possible for KANU to satisfy all the members who were disappointed during the merger (*Daily Nation* March 15, 2002).

KANU factions widened further. Principally, there was rivalry between Odinga and his loyalists on the one side and Moi and his supporters on the other because of the discordant political orientations of the two camps. Odinga and his supporters were seasoned oppositionists while Moi and his were *ancien régime* members. Then there was a faction comprising disgruntled KANU loyalists that Moi jettisoned in spite of having stood by him for a long time. Notable members of the group were the academic turned politician, Saitoti and the loquacious Kamotho. Moi dispensed with this group because it was of little or no political capital since they did not command ethnic constituencies. Kamotho, a Kikuyu, lost parliamentary elections in 1992 and 1997 for backing KANU. On both occasions, Moi nominated him as an MP and appointed him to the cabinet. Saitoti's ethnic belonging was ambiguous. Although a Kikuyu, he passed for a Maasai and had been an MP in Maasailand since the 1980s. Tribes supportive of KANU were opposed to Kamotho and asked for his replacement as KANU Secretary General because the Kikuyu had virtually left KANU (*The Weekly Review* January 17, 1997). Secondly, these previous KANU loyalists were not part of Kenya's mainstream oligarchy and so Moi was doubtful that they could protect the economic and political interests of the KANU political elite.

Raila Odinga was the first KANU politician to publicly oppose Moi on the succession issue. Although Moi found it difficult to brook what would have been an unprecedented impudence from his acolytes, he could not sack Odinga. Not only was Odinga entrenched among the Luo but he had also had the conviction to publicly voice widespread discontent within KANU and countrywide. This endeared him to a larger constituency beyond the Luo community. Raila Odinga had become the rallying point for the disgruntled dyed-in-the-wool KANU loyalists and former NDP politicians opposed to Moi's machinations (*Daily Nation* October 19, 2002). For the first time since 1966 when his father, Oginga Odinga had left KANU, Raila Odinga had become an alternative centre of power in the party (*Sunday Nation* February 17, 2002). Uhuru Kenyatta, on the other hand was an

unknown quantity and so those opposed to his candidature were in a direct collision with Moi. Opposition against the imposition of Uhuru Kenyatta upon KANU and Kenya itself snowballed into a KANU splinter group, the Rainbow Alliance.

The Rainbow Alliance demanded a more impartial process during Kasarani II,⁴² the KANU delegates conference to elect the party's Presidential candidate. The grouping tried to depersonalise succession politics by demanding a delegates list agreeable to both factions. As the Secretary-General, Raila Odinga insisted that the Kasarani I list apply during Kasarani II as well. Moreover Odinga and his supporters demanded that the process be conducted through a secret ballot despite the fact that they had had no issue against voting by acclamation during Kasarani I. They accused Moi of bias and sounded the alarm that his supporters at the party headquarters led by the Director of Elections, William Ruto, were tampering with the delegates list to ensure that only pliable delegates attended the conference (Badejo 2006: 227). The Rainbow Alliance pulled out of Kasarani II maintaining that the elections had been pre-rigged in favour of Uhuru Kenyatta. They began holding separate rallies across the country and denounced what they regarded as lack of democracy in KANU. Moi reacted by sacking some of the junior cabinet ministers allied to the rebel group who then became instant heroes among supporters sympathetic to the Rainbow rebels. The *Sunday Nation* newspaper captured the awkward position Moi found himself in at that point:

President Moi is no longer the redoubtable Kanu quintessential he was at the last General Election. The virus of defiance is eating away at the loyalty and trust that has glued Kanu together for decades. In fact, his critics claim his red letter day is past. The minnows who shivered when he sneezed are now challenging his decisions and somewhat charting the future course of the party (*Sunday Nation* October 13, 2002: 15).

Raila Odinga corralled the Rainbow Alliance out of KANU when the two factions could no longer compromise with one another. It was an illustration that both literally and, in this case, metaphorically it was impossible for *jogoo* to swallow *tinga tinga*. The Kasarani II coronation went ahead and Moi had Uhuru Kenyatta installed as the KANU Presidential candidate. It was a pyrrhic victory however. The day the Kasarani II conference was held, the Rainbow Alliance held a parallel rally at Uhuru Park that officially marked the

⁴² Kasarani II referred to a conference in which the KANU Presidential candidate was elected.

severance of ties with KANU. The KANU juggernaut that had dominated Kenya's politics since independence had split at last. The exodus of almost all KANU's 'local big men' (Lynch 2006: 246) left it in a state of disarray and groping for a winning formula. For the first time in its history, KANU's time honoured 'provincial strategy' of deftly maintaining a grip on power through ethno-regional distribution of executive party posts came a cropper. The defection of former NDP allied politicians and some of the KANU loyalists irreparably damaged KANU's re-election prospects. Even when Ngala and Mudavadi rejoined the party, they could not salvage the party's fortunes. It was not surprising that the two rejoined KANU. Mudavadi had been thrust into politics through Moi's influence. The two had succeeded their late fathers as MPs. Their fathers were Moi's contemporaries and close political allies. Like Kenyatta, Mudavadi and Ngala were thrust into politics entirely on the basis of what the press referred to as 'officially sanctioned political inheritance' (*Sunday Nation* March 3, 2002). Moi tried to placate the Luhya using the enticement of the vice presidency, to no avail. The *Daily Nation* saw this as an indication that the Kenyan voter was no longer gullible and that they now demanded that the politicians be accountable for their actions. The newspaper suggested that the electorate would no longer tolerate the 'lies, manipulation of ethnicity and poverty, as well as pursuit of narrow material interests by a tribal elite packaged as people's representatives' (*Daily Nation* November 20, 2002). Mudavadi and Ngala misread the political mood within their respective ethnic communities and consequently lost in parliamentary elections in 2002. The *Daily Nation* predicted the disintegration of KANU:

When all is said and done the opposition can be grateful to Raila Odinga for infiltrating Kanu and causing so much confusion and uncertainty in one year flat. It will be waiting to implode. The tasks ahead will be heavy and harsh: to hold the party together and create a façade of unity while at the same time concentrating on the election and staying in government (*Daily Nation* March 15, 2002).

The question that faced Kenya was whether, amid the implosion of KANU, Moi, the self-styled 'professor of politics', would prevail come the general elections.

5.10 A Rainbow of Tribes

The Rainbow Alliance did not chart a new way of conducting politics despite leaving KANU ostensibly for the undemocratic manner in which Uhuru Kenyatta had been

elected. Indeed The Rainbow Alliance's approach to the 'tribal question' simply reproduced and exhibited KANU's 'provincial strategy'. It popularised itself by appealing to the tribes whose Presidential hopefuls Moi spurned. Contrary to Moi's assumption, the Luo left KANU almost to a man and stood by Raila Odinga (Oloo 2005: 169). Mudavadi briefly represented the Luhya Presidential hopes within the alliance. However, the new terrain of opposition politics proved an unfamiliar territory for him. He rejoined KANU under immense pressure and was rewarded with the Vice Presidency following the sacking of Saitoti. The Rainbow Alliance in turn, replaced him with Moody Awori, a fellow Luhya, in order to retain the Luhya support for the alliance. Ngala associated with the rebels half-heartedly and was the first to leave the Alliance to pledge support for Uhuru Kenyatta. Musyoka, hitherto one of the most hawkish of KANU supporters, carried the Kamba Presidential hopes aloft. He surprised many by not capitulating to Moi's pressure. Saitoti, a Kikuyu who 'masqueraded as a Maasai' (Mutua 2009: 182) was perceived as a representative of these two communities. Therefore the ethnic genie haunted the Rainbow Alliance as well and it was difficult for them to agree on a leader and possible Presidential candidate (Badejo 2006: 220).

Odinga, Saitoti, Musyoka and even Awori wanted to be President of Kenya. Raila Odinga's chutzpah emboldened some of the KANU loyalists until then condemned to sycophancy and political sterility by Moi's suffocating grip on KANU and the state (*Daily Nation* March 15, 2002: 8). Thus his supporters naturally expected him to run for President. Saitoti felt that having been the Vice President since 1988 and sacked for associating with the Rainbow Alliance, he was the most qualified to succeed Moi and anything else would be a demotion. Musyoka maintained that he had to be rewarded with the presidency for defying Moi. The Rainbow Alliance sidestepped this challenge and chose to popularise themselves through joint rallies all over the country and portray the image of collegial leadership (Badejo 2009: 229). This challenge had to be dealt with deftly otherwise the alliance risked disintegrating.

5.11 Elusive Opposition Unity: Third Time Lucky?

The KANU-NDP merger had an unintended consequence among opposition parties. The opposition leaders were jolted and realised that separately it would be almost impossible

for them to defeat the then formidable KANU. Opposition leaders and reform groups began unity talks with the aim of forming a counter alliance. Kibaki's DP, Wamalwa's FORD-K and Ngilu's National Party of Kenya (NPK) came together and formed the National Alliance for Change (NAC) that was later registered as the National Alliance Party of Kenya (NAK). Initially they were reluctant to choose a Presidential candidate for fear that KANU would derail their unity efforts (*Daily Nation* February 13, 2002). However in a boardroom-like style, the NAK leaders chose Kibaki as the joint Presidential candidate without the participation of the membership of their parties. This was not surprising in Kenya's polity in which political parties operated in a laissez-faire fashion. However, even with a joint Presidential candidate the opposition would have found it hard to beat the KANU-NDP alliance. The fallout between Moi and Raila Odinga was of immense political capital to NAK and Kibaki in particular. In the interest of opposition unity, the Rainbow Alliance had to work with either the Kibaki led NAK, the Simon Nyachae led FORD-People or form grand opposition of all the three (Badejo 2006: 221-2). They decided to form an alliance first with Nyachae then immediately thereafter with NAK (Badejo 2006: 222). Here speed and political savvy were imperative since a strategy to neutralise Moi's succession plan had to be devised. Badejo pointed out that although NAK welcomed the Rainbow Alliance, NAK insisted that the choice of Kibaki as its Presidential candidate was a *fait accompli* (Badejo 2006: 225). Opportunistically some NAK members were willing to accommodate Raila Odinga as an individual but not the Rainbow Alliance as a group. The real target was the Luo voting bloc that they were sure Raila Odinga would effortlessly deliver. However, Odinga declined to sacrifice his expanded following for a position in NAK (Badejo 2006: 225). The other Rainbow Alliance leaders were not solidly anchored within their tribes having been dwarfed by Moi's domineering political image while in KANU.

To have a bargaining position with their NAK counterparts, the Rainbow Alliance group took over an existing but dormant party, the Liberal Democratic Party (LDP). The Rainbow Alliance bought LDP for an undisclosed sum of money. LDP was a fringe party before this acquisition. The Chairman was the father-in-law to the Secretary-General (Badejo 2006: 226). LDP and NAK formed a super alliance called the National Rainbow Coalition (NARC). NARC was composed of 13 political parties, 12 within NAK plus the

LDP (*Daily Nation* October 22, 2002). Mutua argues that due to Raila Odinga's influence and massive Luo support, LDP was perceived as the reincarnation of NDP while NAK was seen as the embodiment of Kikuyu and GEMA interests because Kibaki was its leader (Mutua 2009: 182). The perennial Luo-Kikuyu rivalry undercurrents existed within the super alliance and later contributed to the disintegration of NARC.

5.12 Raila Odinga, the King-maker

A couple of months before the elections, Raila Odinga sensationally declared Kibaki as the Presidential candidate of the super alliance during a mammoth rally in Nairobi. He presented Kibaki to an ecstatic crowd through the (in)famous words *Kibaki tosha* (Swahili for qualified to be President). He thus sealed KANU's fate and catapulted Kibaki into State House. Raila Odinga in this way pulled the rug from under the feet of fellow Presidential hopefuls in the nascent opposition alliance. For instance, Nyachae preferred that the joint opposition Presidential candidate be elected either through primaries or a boardroom-like consensus. Odinga knew that based on past failures by opposition parties to agree on a single Presidential candidate, there was no better opportunity for him to act. He ambushed the other Presidential hopefuls and presented to opposition supporters a single Presidential candidate. It was in some respects a 'magic bullet' in the context of the competition for leadership through the presidency that had haunted the opposition since Kenya's return to multiparty politics. Opposition leaders opposed to the Kibaki candidature such as Nyachae and James Orengo earned the wrath of opposition supporters and performed dismally in the elections. They were seen as spoilers and KANU stooges. Odinga knew that the Kikuyu vote would split between the 'puppet' Kenyatta and Kibaki but the latter would have an upper hand owing to the backing of the other populous tribes, the Luhya, Luo, Kamba and smaller tribes (Badejo 2006: 230-3). He reasoned that Nyachae, a Kisii, would effectively have no impact since his tribe was small. Orengo had no ethnic base being a Luo, an ethnic constituency solidly under Raila Odinga's grip (Oloo 2005: 170-2).

Raila Odinga became the face of NARC following Kibaki's hospitalisation after a road accident while on the campaign trail. Kijana Wamalwa, his running mate, was also taken ill and hospitalised abroad. Odinga indefatigably campaigned for Kibaki and couched the NARC leadership in collegial terms. He urged Kenyans to vote three-piece style, that is,

for a NARC councillor, MP and President. The landscape of political rivalry was turned upside down as a Luo, an Odinga at that, campaigned indefatigably for a Kikuyu, Kibaki, a politician who had seemed wedded to the *ancien régime*. For Kenya this was unprecedented and phenomenal. Did this mean Kenya had crossed the Rubicon? Subsequent chapters will shed light on this question. NARC trounced KANU but that was the easier part since the odds were immensely stacked against KANU. However, due to divergent political socialisations pitting seasoned opposition politicians and their reactionary counterparts, opportunism, ethnic bigotry and collective animus against Moi, NARC's process of disintegration began almost immediately after its victory. Raila Odinga might have been forced to re-examine his remarks in the wake of what he thought was opposition unity at last:

We shall prove that we can unite Kenyans against the ghost of ethnicity. Kenyans do not care whether the next President will be an El Molo-the smallest community-or from the Kikuyu, the biggest community-Raila Odinga (*Daily Nation* October 23, 2002).

5.13 Conclusion

The chapter focused on the period between the elections of 1997 and those of 2002. This was a period of transition in which the shift from one party politics to multiparty competition changed the political landscape. It was clear that unless the smaller opposition parties did not engage in some form of coalition politics, which required substantive compromise, they would have not chance in the political game for power. This was as a result of an electoral system that only placed weight on votes cast for the winning candidate as well as the complete dominance of the country's politics by ethnic barons. In this context, the chapter explored issues revolving around the Moi succession. The succession was hinged on the politicians' selfish interests as opposed to the need to maintain a legacy in the best interests of the citizenry. In 1997, the opposition leaders failed to cohere principally because of narrow, selfish and ethnic differences much like in 1992. Their divergent and incoherent reactions after the elections were consistent with their disjointedness prior to the elections. Wamalwa and Odinga chose to recognise Moi's re-election with the hope of advancing their individual economic and political interests. The politics of succession proved difficult to manage for Moi himself since it was anchored in ethnically driven redistributive politics as opposed to a programme of action.

KANU's obsession with tribal manipulation through its age old 'provincial strategy' came unstuck leading to the defeat of the party in the 2002 elections. KANU split because of Moi's domineering image as well as personality and tribal differences. Moi had wielded influence over KANU less for leadership acumen than being in charge of the coercive state apparatus. The Rainbow Alliance was not immune from a cynical, fleeting and purely power centred politics. The Rainbow Alliance teamed up with opposition elements not on the basis of common ideological positions, but on the basis of a common antipathy to Moi. The super alliance defeated KANU on the basis of this desire. But this proved to be the easy part. Although the NDP had tried to talk KANU into focusing on the constitutional reform process, political intrigues embedded in old tribal politics were hard to overcome. The entire period between 1997 and 2002 elections witnessed Moi's relentless efforts to manipulate the succession. At the centre were Moi's political and economic interests and those of the oligarchic class. This meant that within this period state resources were channelled towards attempts at securing the future of Kenya's oligarchs. It was not uncommon for Kenya's politicians to perpetually whip up campaign frenzy from one general election to the next. Against this background Moi's personality driven alliances hinged on ethnicity and eventually collapsed. A sound and visionary economic growth path to reduce poverty, meritocracy in the civil service, sanction for unsavoury and base political behaviour such as use of violence in political contests and constitutionalism would go a long way into infusing discipline into the country's politics. It would, for instance, liberate Kenyans from the shackles of tribal chiefs who act with impunity. The next chapter highlights the politics of attrition that afflicted NARC due to the absence of a transformative agenda.

Chapter Six

'Everything is Possible without Moi'

Never in the history of this country have its leaders come together and worked so hard together as one indivisible entity with one vision. It is the love of Kenya that has brought us together. We chose to let go our individual differences and personal ambitions in order to save this nation (Kibaki's Inauguration speech Daily Nation December 31, 2002).

6.1 Introduction

The transition from Moi to Kibaki following the 2002 elections was hailed locally and internationally. This was largely because peaceful transitions in Africa were rare then. The chapter argues that both NARC and KANU were indistinguishable entities because of similarities in composition and political orientation and thus the 2002 elections marked the mere exchange of power between sets of political elite based on personal rather than political difference. The transition was supposed to place Kenya along a sound path towards socio-economic and political renewal. However, the fallout within NARC accentuated ethnic consciousness in the country. The transition was an opportunity for the reform of Kenya's politics. Instead the baton of power merely passed over from Moi to Kibaki, without ridding the polity of tribalism, political intolerance, corruption and patronage perfected under the one party state. Kibaki's political history cast doubts upon his ability to provide substantial leadership in the reorganisation of Kenya's politics. He had served in the governments of his predecessors in various prominent portfolios, including as Moi's deputy for 10 years from 1978. He was thus a creature of the system and would with difficulty bring a 'new' ethos into the management of politics in Kenya. The state remained a site for predatory⁴³ politics as it had been under both Kenyatta and Moi. In spite of the reformist agenda that contributed to NARC's victory, the Kenya's politicians especially close allies of Kibaki continued to exploit the state for personal benefit and that of their allies. The tribe remained the fulcrum of political mobilisation, the basis on which distribution of resources and government appointments was made and the

⁴³ Gatekeepers under Kibaki popularly referred to as Mt Kenya mafia attempted to monopolise power and resisted setting up strong institutions. Diamond argued that this cabal sought to restrict access to political power and exploited their consolidated power to stifle economic competition so as to appropriate profits thus maintaining a predatory state (Diamond 2008: 24).

avenue through which grievances were nursed and articulated. The 'tribe' served the interests of the politicians. NARC exploited it as a camouflage for opportunism, tardiness, corruption and inability to reform the state. Against this background, the chapter analyses the Janus effect of tribalism under NARC by which I mean tribalism was the glue that united NARC and the basis of its disintegration. It further exposes the volatility latent in Kenya's status hitherto as the most stable country in a strife-torn region. The chapter prides open NARC and exposes its internal contradictions which, in large measure, explains why the NARC government constantly spoke at cross-purposes. NARC campaigned on an agenda of reform that went too far for most of its reactionary leaders. Its campaign message might thus be construed as a ruse to rally support from Kenyans desperate for change. However, most of NARC members could not and had no intention of implementing it since they had opposed reform while under KANU and only opportunistically joined opposition politics. This was the case despite Kibaki's acknowledgement of the opposition unity and patriotism in his inauguration speech. Incessant wrangles in NARC showed that prebendalism in the sense of the desire for the financial resources that office provided, a fixation with ethnic arithmetic in political calculations and personality rather than issue-based politics characterised, and would remain the bane of Kenya's multiparty politics.

6.2 Mt Kenya Mafia

The 2002 dream was betrayed by Kibaki and the Kikuyu elite not the masses of the Kikuyu. 2002 was a turning point in Kenya's politics when Kikuyu history failed to turn. Kenyans voted against Moi and Uhuru but Kibaki reversed that history once he came into power. Anyway Michuki stated that they were interested in power not reforms 'since one of our own is in power' (Interview Muluka, January 23, 2009).

Kibaki would not have won the 2002 elections had it not been for the ethnically cross-cutting NARC. However as the respondent quoted pointed out the Kibaki presidency was hijacked by Kikuyu and other politicians from GEMA community whom the media referred to as Mt Kenya mafia. Kibaki had twice previously unsuccessfully run for President in 1992 and 1997 based on the GEMA support base. Despite its inherent weakness its supporters essentially expected NARC to observe ethnic inclusivity in governance. The main NARC weaknesses were that it was led by Kibaki, a non-reformer, and crafted on ethnicity. Paradoxically, given its supposedly multi-ethnic appeal, NARC

fanned the embers of ethnic exclusion and exacerbated ethnic rifts that pre-existed Kenya's return to multiparty politics. NARC was a conglomeration of ethnic 'big men' despite some of the planks in its reform agenda that included economic improvement and constitutional review. Thus, as Barkan has shown, NARC's reform agenda partly accounted for the support it garnered across ethnic divides (Barkan 2004: 89-9). Unlike ethnically stand-alone opposition parties in 1992 and 1997, NARC represented Kenya's populous ethnic communities and had a semblance of national diversity. Yet reform pledges during the campaign masked the ethnic undertones within the coalition. After being sworn in, Kibaki reneged on all of NARC's campaign pledges apart from the introduction of the controversial plan for universal primary education.

Kibaki had a road accident and was severely injured weeks before the 2002 elections which meant a period of convalescence, during which there was a lag in establishing new government appointments. This created the impression that Kibaki was not in charge. The GEMA politicians exploited the public sympathy for Kibaki who had been sworn in while in a wheel chair and a neck brace. This gave room for Kibaki and the Mt Kenya cabal of GEMA politicians to consolidate power by making cabinet appointments and ambassadorial postings in strategic capitals in the West as well as other government appointments skewed in favour of the GEMA community. Oucho suggested that some of the appointees had long attained retirement age (Oucho 2010: 515). The ethnicisation of state appointments was reminiscent of the Kenyatta and Moi régimes. Kibaki set up a commission ostensibly to root out corruption within the judiciary. The then Minister of Justice and Constitutional Affairs, Kiraitu Murungi, summed up its work as 'judicial surgery'. The head of the commission, Justice Aaron Ringera was Murungi's partner in a law firm. In addition he had not himself been vetted having been part of the discredited judiciary. In 2002 an Advisory Panel of Commonwealth Judges found Kenya's judiciary to be corruption riddled and recommended that it be reformed (The Advisory Panel 2002). However, Moi criticised the judges and discarded their report. Ringera did not therefore have the moral authority to assess the suitability of colleagues to serve on the bench. On the strength of the Ringera Commission recommendations, Kibaki purged the judiciary of some judges under the guise of cleaning it up of corrupt and incompetent elements (Oucho 2010: 515). However none of the sacked judges was ever prosecuted. This created the

impression that Kibaki had wanted to replace the weeded out judges with those pliable and sympathetic to his régime and propagate the subservience of the judiciary to the executive. Justice Philip Waki⁴⁴ was among judges who successfully challenged their sacking before a tribunal and were reinstated (Oucho 2010: 515).

Kibaki scuttled the reform process that had picked up pace during Moi's final years in office (Wanyande, Omosa and Ludeki 2007: 10). The quest to consolidate power became the single most important preoccupation of Kibaki and his allies. In the run up to the elections NARC's ethnic big men formed the coalition's top decision making organ called The Summit. The Summit was instrumental in consolidating votes for Kibaki from diverse communities. However, once Mt Kenya Mafia had appropriated the presidency they effectively blocked any new political luminaries within The Summit from reaching Kibaki. Consequently The Summit collapsed. The Summit was NARC's idea of collegial leadership and an attempt to shift from the Kenyatta and Moi régimes whose hallmarks were arbitrary and unpredictable personal rule. Indeed Kibaki stressed the idea of consultative governance in his inauguration speech:

We want to bring back the culture of due process, accountability and transparency in public office. The era of "anything goes" is gone forever. Government will no longer be run on the whims of individuals. The era of roadside policy declarations is gone. My government's decisions will be guided by teamwork and consultations (President Kibaki's Inauguration speech 30-12-2002).

6.3 NARC: Was it a Replica of KANU?

The NARC victory became yet another false start in Kenya's attempt at a break with the one-party legacy. The Kibaki-led National Alliance Party of Kenya (NAK) faction of NARC obstructed reform in the same way that KANU had done throughout its hold on power since independence. Raila Odinga's Liberal Democratic Party (LDP) faction was not entirely reform-oriented either. The veneer of ethnic diversity within NARC crumbled as it became mired in an ethnically-based exclusionary politics. Kibaki lost legitimacy due

⁴⁴ Justice Waki chaired the Commission of Inquiry into the Post-Election Violence following the disputed 2007 Presidential elections. The Waki commission was revolutionary and set in motion the process of slaying the dragon of impunity in Kenya's body politic. It recommended that the masterminds of the 2007 post-election violence be held accountable which resulted in four Kenyans being indicted by the International Criminal Court in January 2012 for crimes against humanity.

to the erosion of the support across the country. LDP accused NAK of betrayal over the distribution of posts in the cabinet and government at large. Notably of NARC's 125 MPs, 69 MPs drawn from all the eight Provinces were affiliated to LDP which made LDP the senior partner in the coalition (Kadima and Owuor 2006: 212). Cabinet and parastatal appointments in 2003 were skewed in favour of Kibaki's DP. Of the 24 cabinet portfolios, the DP was allocated 12, the LDP 6, FORD-K 3 and NPK 1, a pattern that was reflected in other appointments in the bureaucracy (Kadima and Owuor 2006: 215). After Kibaki lost the 2005 constitutional referendum, the government assumed a distinctly Mt Kenya hue. All the strategic appointments in the financial, security and defence sectors went to the Kikuyu and other GEMA affiliates (Oucho 2010: 515). The fallout between Odinga and Kibaki spread to their supporters and polarised the country in ways similar to the previous era when KANU had been in power. At issue was the pre-election Memorandum of Understanding (MoU) that had spelled out power sharing on a 50-50 basis.

A further and critical impediment to and consequence of the stalled transformation after NARC came into power was the continued conduct of multiparty politics under a one-party constitutional framework and mindset. In the absence of constitutional, institutional and legal reforms, the crux of governance upheavals stemming from systemic corruption, political assassinations, historical land grievance, interethnic fights and impunity that threatened Kenya's social fabric remained intact. NARC lacked the will to change Kenya's political trajectory and follow the path of reform. Commenting on the revolution that never was in 2002, Ambunya, a youth in Nairobi, summed it thus, 'The electorate voted for change but to date no new Constitution since the politicians we have been there for many years. The forest may be different but the monkeys are the same,' and he translated the figure of speech into Kiswahili as '*Tumebadilisha msitu tu na nyani ni wale wale*' (Interview, Ambunya January 26, 2009). One of the distinguishing aspects of the Kibaki régime was the appointment and retention of civil servants aged at least 60 years to top level positions effectively locking out 'younger, better qualified and energetic Kenyans' from power. Oucho suggested that the régime was unsure of what would become of the ill-gotten wealth of this group once they got out of power (Oucho 2010: 515).

There were two political groupings that were intent on defending the status quo. The first group comprised elderly Kikuyu and Meru politicians whom Kibaki had recycled back into mainstream politics. These politicians were nostalgic for the Kenyatta era, or as Badejo puts it, for ‘the good old days of unbridled bleeding of the Kenyan State’ (Badejo 2006: 197). This group blamed Moi for interfering with their predatory inclinations when he came into power (Barkan 2004: 92-3). The second group comprised a new generation, or ‘Johnny-come-latelies’ who fervently defended and benefitted from the one-party monolith, but who had defected to the opposition after the legalisation of multiparty politics in 1991. Kibaki was the most prominent politician within this category. These were essentially political opportunists and vacillators. This group of politicians ensured that Kenya remained hamstrung by the incongruence of ‘effecting political liberalisation without democratising the political systems and the rules of the game’ (Nasong’o 2007: 84). Nasong’o compellingly argued that Kenya’s political liberalisation⁴⁵ merely brought forth the act of legalising opposition parties and accorded them freedom to contest political office (Nasong’o 2007: 84). However, democratisation and the restructuring of governance institutions that would entail redesigning the political architecture especially the electoral system to accommodate multiparty politics and to make it more responsive and accountable to the electorate did not take place (Nasong’o 2007: 84; Diamond 2008: 20).

In the second group were individuals who did not contribute to the so-called second liberation in reference to the struggle for multiparty democracy and human rights at all since they were not only long serving KANU members but also high ranking too. These included, among others, Kalonzo Musyoka, Joseph Kamotho, George Saitoti and Moody Awori. Most of these politicians were affiliated to LDP. They were neither reformers nor had they been guided by the national interest in their opposition against Moi’s preferred successor. I hasten to add that in Kenya’s politics characterised by vacillation, opportunism and self-centredness, it was not possible to dichotomise politicians as either reformers or antireformers. There were no ideological positions to necessitate such a separation and so I use the word ‘reformer’ guardedly. These formerly KANU politicians felt betrayed by Moi as most of them considered themselves politically senior to Uhuru Kenyatta. Raila Odinga’s political career as a seasoned opposition politician distinguished

⁴⁵ Political liberalisation in this context means the ‘opening up of the public political space for a multiplicity of social actors to participate freely’ (Nzomo 2003: 189).

him from this coterie and that is why he was able to convince them to defect into the opposition. Bar Raila Odinga and previously NDP leaning politicians, LDP was composed of Moi clients known for being timorous while in KANU.

NARC was an unwieldy political organisation. Significantly most of its prominent politicians had a dubious political history. Many NARC politicians had been implicated in corruption and human rights violations including igniting tribal clashes in the early 1990s. Examples included Emmanuel Karisa Maitha, William ole Ntimama, George Saitoti, and Joseph Kamotho (KHRC 2011). As long-time KANU members, a disproportionate section of the NARC identified with the one party state and opposed reform. In the run-up to the 2002 elections anyone who opposed Moi could style himself as a reformer. Ideology did not matter in the assembling partners within the NARC coalition. One could not tell any ideological differences among NARC affiliate parties. All professed free market economy since as Kadima and Owuor observed most party representatives in Kenya conflated good governance principles such as transparency, accountability and national unity with ideology (Kadima and Owuor 2006: 205). In a nutshell, NARC's opposition against Moi was as self-serving as Moi's rule that it pledged to reform. Rhetorical pronouncements about reform were hot air.⁴⁶ It was therefore not possible for NARC, crowded by politicians devoid of ideological and moral conviction, to bring about reform in the post Moi political dispensation. NARC projected a quest for power without the commitment to engineer the country socially, economically and politically. This had been an enduring inadequacy among the opposition parties in Kenya since the early 1990s (Nasong'o 2007: 95-6). The FORD pressure group turned political party had set this precedent in the early 1990s following the advent of multiparty politics (*The Weekly Review* July 3 1992: 5; Ng'weno: undated film). NARC was therefore virtually entirely composed of members of the *ancien régime* to whom reform was anathema. These politicians had been beneficiaries of the highly centralised political system which had allowed for attendant gatekeeping

⁴⁶Jomo Kenyatta himself denounced tribalism and urged Kenyans to embrace nationalism (Mzee Jomo Kenyatta; Kenyatta Day Speech 20th October 1965: 361). But under Kenyatta there was a gap between speech and practice. Early into his rule, Moi not only railed against ethnicity but also 'banned' tribal institutions in 1980 (President Moi's Speech on Kenyatta Day 20th October 1980: 424-25). Moi cautioned that ethnicity posed a serious threat to Kenya's political stability. Yet Moi too had no qualms about exploiting tribalism for his political advantage throughout his 24 years at the helm (Moi's Jamhuri Day Speech 12th December 1980: 184-5). It was this duplicitous and near schizophrenic approach to issues that survived his rule as evidenced through NARC's climb down on the reformist agenda.

excesses. Thus early into Kibaki's tenure he emerged as quintessentially Moi-like and appeared to lack the will to take an audit of the country's post-independence politics. Even before getting elected he had hinted at being unable to change the country's political trajectory. While accepting nomination as NARC Presidential candidate he counselled against acting upon the report on tribal clashes known as the Akiwumi report. He was reported to have said, 'Do not waste time reading through every page of the report. Read it and leave the rest to historians because it is the nation's history and forgive. The truth is well known' (*Sunday Nation* November 24, 2002). Once in power he had resisted the formation of a Truth and Reconciliation Commission. It took the post-election violence in 2007 for the TJRC to be set up. Kibaki commissioned an international firm, Kroll, to track public money purportedly looted by Moi and his allies and possibly held in offshore accounts. However, he shelved its report (*Daily Nation* December 11, 2010). He abetted institutionalisation of impunity in the country.

6.4 The Persistence of Old Habits

...Kenya's mostly election-linked quest for democratic transition has not produced a democratic public sphere, inclusive political systems, an accountable leadership and democratic institutions, and civilian controlled coercive arms of the state, but mostly an exclusionary and ethno conscious public sphere, predatory elite, militia rule and Praetorian coercive arms of the state (Kanyinga, Okello and Akech 2010: 15).

Although out of power, most leadership deficiencies associated with KANU such as patron-client politics survived it. Multiparty elections had not resulted in responsive and accountable leadership. The *ancien régime* was so entrenched that the legacy of Kenyatta and Moi one party rule reproduced itself under Kibaki. Elections *per se* could not neutralise vestiges of this legacy. The Kenyatta-Moi-Kibaki axis had vast economic interests and continued to frustrate efforts to reform Kenya's polity. For this reason, the Kenyan political elite, irrespective of party affiliation, regarded national politics as an opportunity to plunder the state. This entailed looting of public coffers, land grabbing, nepotistic and tribally-based informed government appointments, questionable procurement and tendering processes and skewed national resource distribution in favour of the President's home region. MPs perennially awarded themselves hefty salaries and perks yet Kenya's parliament was inefficient, tribally divided and corrupt making Kenyan MPs among the highest paid in Africa and even in the world (*Daily Nation* April 25, 2011). This remuneration was in stark contrast to the pay that politicians in Europe and

America received yet these economies were far bigger than Kenya's. This prebendalism picked up in pace soon after NARC came into power. Joe Khamis, a former NARC MP, detailed acts of corruption in the administration of parliament. Excerpts from his memoirs serialised by one of Kenya's dailies showed the extent to which MPs turned parliament into a cash cow through dubious tendering processes, receipt of perks, overseas junkets among other untoward acts aimed at self-aggrandisement (*Daily Nation* 25, 2011).

Kenya's parliament is sometimes referred to as the august House and MPs go by the honorific 'Mheshimiwa' Swahili for Honourable. In actual sense, most Kenyan MPs were a despicable lot bereft of an iota of honour.

The composition of NARC leadership appeared to be a reincarnation of KANU, although not as institutionally entrenched. Ajulu described NARC as a new clan of 'kleptocrats' similar to the old KANU predators (Ajulu 2003: 8). It was however difficult to distinguish KANU from NARC under the 'old' and 'new' binaries of predatory politics. A high school teacher I interviewed, was of the view that almost the entire NARC political clan had been so '*Kanunised* that they could not shed the KANU slough and therefore could not bring change' (Interview, Machanja, January 15, 2009). The neologism in this context refers to corruption, malfeasance, impunity, ethnicised politics and anti-reform tendencies that were the hallmarks of KANU rule. Ultimately the political histories of most of the NARC politicians belied the optimism of supporters in the party's capacity to transform the country.

It was hardly credulous that its supporters could expect NARC to devise a better political path primarily NARC was composed entirely of political turncoats formerly ensconced in KANU. Compounding matters was the fact that most of those who participated in the struggle for multiparty politics lacked economic resources and hence vulnerable to the privileges associated with power. They had been excluded from opportunities to extract rents. GEMA politicians who agitated for reform previously while Moi was at the helm, somersaulted after they were appointed into ministerial positions. They realised that a reformed state would be at odds with politics of wealth accumulation that they embarked on. In Mutua's words, these individuals were lured by the politics of 'power, ethnicity and self-interest' and the language of reform was a subterfuge (Mutua 2009: 184). Moreover

civil society was depleted when some of its members were appointed to the judiciary and other government bodies (Mutua 2009: 208-209). This however, did not affect its 'high institutional capacity' since it continued being critical and exposed the excesses of the Kibaki government (EU EOM 2008: 29-30). However, the act of joining the government by some members of civil society pointed at pervasive opportunism and unprincipled politics. Murunga and Nasong'o argued that the notion that civil society is the antithesis of the authoritarian state and an agent for change and transformation was flawed because there were elements of corruption and authoritarianism within civil society too (Murunga and Nasong'o 2006: 15). The religious fraternity appeared no better. During the Kibaki régime, religious groups had become embroiled in partisan politics (Ghai 2008: 213; Lynch 2006: 250). Some of them declared preference for various presidential candidates during the 2007 elections. I discuss the lack of principled leadership among some clerics in chapter eight.

The 24 year Moi rule whose pivot was the exploitation of the link between tribalism and patron-client politics required NARC to make bold social, economic and political decisions to overcome the destructive legacy of the *Nyayo* rule. The challenges facing the country had resulted from and been exacerbated by bad and unresponsive leadership. It was imperative that attitudinal shifts should take place at the leadership level in order for the country to break loose of the manacles of corruption, impunity, ethnicity and life negating politics. However, Kenya's politicians proved unable to attain attitudinal renaissance because of the insularity of individual interest nestled in ethnic cocoons.

Completion of the constitutional review process was supposed to be the point of departure for the NARC administration in its attempt to transform the country. Moi had pledged a review of the Constitution during his New Year speech in 1995 but repeatedly reneged on this pledge (Ndegwa 1997: 612). Once the constitutional review process started, Moi scuttled and torpedoed it. During the 2010 referendum campaigns on a draft Constitution, Kenya's second in as many years, in an ironic twist, Kibaki lambasted Moi who campaigned against it, for trying to mislead Kenyans on the contents of the draft, while he blocked reform throughout his tenure of office. Moi in turn lambasted Kibaki asking whence he got the moral authority to falter his legacy while he, Kibaki had failed to deliver

on NARC's pledge of a new constitution within 100 days of assuming power (*Daily Nation* July 29, 2010). The spat served to expose the depth of leadership crisis in the country since each exposed the mendacity of the other.

Both the opposition politicians and KANU expediently exploited the Constitution issue to their advantage. Neither side was committed to ensuring that there was a new set of laws in Kenya. In the 1990s both Moi and the opposition had accorded the reform debate rhetorical support and had prioritised individual interests above national well-being (Lynch 2006: 239). A case in point was when Moi in cahoots with sections of the opposition had scuppered efforts at constitutional review in the run up to the 1997 elections. Despite the expectant atmosphere that greeted Kibaki's election, he in turn 'stonewalled and torpedoed' the review process altogether (Mutua 2009: 14). It would take the 2007 post-election violence for Kibaki to face up to his own complicity in and the gravity of the divisive politics under the kind of weak institutions that he had elected to pursue.

6.4 Kenya: The Bastion of Stability?

The 2002 transfer of power pointed to an attempt to consolidate democracy in Kenya. Kenya passed muster in terms of the 'power transfer test' (Beetham 1994: 160) in which the opposition peacefully replaced an independence political party. Peaceful transfer of power is one of the tests of a consolidated democracy because in a representative democracy 'political authority must be based on a limited mandate, with citizens reserving the right to renew it periodically in free and fair elections' (Nasong'o 2007: 85). Since the embrace of multiparty politics in the wake of the end of the bipolar world, Africa had witnessed elections marred by violence of which Kenya's and Zimbabwe's in 2007 and 2008 respectively were among the most emblematic. The disputed Ivory Coast Presidential elections in 2010 followed by post-election violence were yet another illustration of democratic reversals in Africa. Although Nigeria's 2007 elections were marred by fraud, there was no violence (Diamond 2008: 22). Four years later, Nigeria's elections were judged by observers as the most credible in the history of that country thus far. However, violence erupted once some of the opposition supporters disputed the outcome. As the cases of Kenya, Zimbabwe and Ivory Coast showed, most incumbent presidents in Africa were unwilling to concede defeat after losing elections because they had vested economic

and political interests in the existing power arrangement structures. Some fear being held accountable for inequities associated with their regimes. The Kibaki régime did not bring any lawsuit against Moi despite the litany of inequities that characterised the latter's régime ranging from corruption to gross human rights violation. The deduction was that Kibaki expected his successor to gloss over inequities under his watch. The Kibaki régime abetted corruption and perpetrated extrajudicial executions too. Prof Philip Alston, the UN Rapporteur on extrajudicial, summary and arbitrary killings (Alston Report 2009) and the Kenya National Commission on Human Rights report entitled '*The Cry of Blood*' Report on Extra-Judicial Killings and Disappearances documented summary executions by security agencies under Kibaki. The Kenyatta, Moi and Kibaki families illegally and irregularly acquired land as shown in chapter three. Hence the transfer of power from Moi to Kibaki was not revolutionary at all.

The successful 2002 elections in Kenya reinforced its image as an island of stability in a sea of turmoil within the East African, the Horn and Great Lakes regions (Human Rights Watch 2002: 3). The incident-free elections were conspicuous in the East African sub region known for its damaging internecine wars. In 2002, the then larger Sudan was making efforts towards a peace agreement following years of civil strife that had pitted the Khartoum government and rebels based in the southern part of the country against one another. Sudan officially split into two countries on July 9, 2011 which saw the coming into being of South Sudan. Ethiopia had a history of civil strife and authoritarian regimes. More than a decade earlier, in 2000, the semi-autonomous island of Zanzibar degenerated into violence following disputed elections. The eastern region of Democratic Republic of Congo had become a theatre of war since the overthrow of Mobutu Sese Seko in 1997. Both Uganda and Burundi straddled both socio-economic and political reconstruction following intermittent civil wars and political uncertainty. Rwanda was still reeling from the horrifying events of the 1994 genocide. Somalia was closer to what a failed state looked like and had never experienced peace since the overthrow of the socialist régime of Siad Barre in 1991. NARC's victory was therefore a great boost to Kenya's standing internationally and a beacon of hope in the conflict-ridden sub region. Accordingly, George W. Bush invited Kibaki for a state visit ten months into office. Barkan pointed out that Kibaki was the first African head of state he had honoured as such (Barkan 2004: 87).

The 2002 elections were iconic and a watershed in Kenya's political history in the sense that they ended KANU's entrenched hold on power since independence. Both international and local observers hailed the elections as untypically free and fair compared to the previous ones of 1992 and 1997 (Ajulu 2003: 5; Barkan 2004: 90). The KANU Presidential candidate conceded defeat and Moi subsequently handed over power to Kibaki during a public ceremony before a mammoth crowd at Uhuru Park. Kenya had not held controversy-free Presidential elections before. There had never been presidential elections under one party rule.

Opposition parties had protested against the credibility of the election results in 1992 and 1997. Kibaki petitioned presidential results in 1992 and 1997 but not surprisingly the petitions were dismissed on a technicality (Brown 2001: 731, 734).

6.5 Yet another False Start

NARC supporters expected the party to fully implement its reform agenda and streamline Kenya's politics. NARC's mandate was to institutionalise the notion of the rule of law that had been non-existent in the country because of arbitrary rule. Wanyande and fellow scholars observed that the concept of 'the rule of law' denotes 'a fair and just system of governance, where everyone is equal before the law and arbitration of disputes before the courts of law is based on evidence' (Wanyande, Omosa and Chweya 2007: 6). The scholars added that 'the principle of the 'rule of law'' envisages democratic governance based on an institutionalisation of fairness, predictability, and freedom from oppression that would otherwise occur through the exercise of extraneous powers (Wanyande, Omosa and Chweya 2007: 6). The 1963 Constitution had no checks against presidential powers thus compromising the rule of law especially under single party rule. In fact as *The Weekly Review* had noted during the peak of the one party state in 1988,

The history of Kenya's politics is very much the history of the evolution of the country's presidency. More than any other institution, the presidency has shaped the destiny of other institutions such as parliament, and the judiciary, and as in most young nations has for the most part been synonymous with the holder of the office of the President (*The Weekly Review* December 9, 1988: 25).

Consequently, the judiciary and parliament were rendered subservient to the executive and were thus robbed of independence. The twin net effects were a judicial system that abetted impunity by failing to prosecute high profile lawbreakers and a pliable parliament beholden to the executive. Throughout Kenya's independence the judiciary engaged in what David Strauss called 'judicial activism'⁴⁷ whereby court rulings were influenced by political exigencies and not the rule of law. These were some of the factors that rendered the KANU régime unpopular and precipitated the clamour for multiparty democracy in Kenya:

The failure of the post colonial KANU régime to manage public affairs in the interest of the citizens implies a corresponding failure of the established political instruments for governmental control and accountability, notably free and fair elections. This was enhanced by formulation of an electoral régime with non competitive characteristics such as the re election of the President without opposition, the exclusion of dissenting candidates from the electoral process, a conveniently controlled judiciary aimed at checking election petitions against government favoured candidates and manipulation of the National Assembly that undermined the capacity of the institution to control executive decisions and actions (Wanyande, Omosa and Ludeki 2007: 4).

The NARC victory was hailed by one newspaper as a 'revolution of sorts' (*The Standard* January 4, 2003). Yet to equate the NARC victory to a revolution was hyperbole. NARC's sole mission was to win the 2002 elections and that is why it became adrift once that objective was realised (Kadima and Owuor 2006: 204). Internal contradictions within the NARC coalition had derailed efforts at reform. The first false start might be seen as the 1963 independence government that was hijacked by an oligarchic postcolonial GEMA elite. The second so-called 'liberation that never was' might be the transition to multiparty politics in 1991. The NARC coalition reneged on the constitutional review pledge because it would have entailed institutionalising democratic and transparent governance, a prospect most NARC politicians could not countenance having been used to exercising powers with neither responsibility nor accountability. NARC rode to power on the groundswell of opposition against KANU that stemmed from years of misrule. Oyugi (2006: 69) stated

⁴⁷ David A. Strauss, a distinguished Professor of Law in the University of Chicago, argued that judicial activism referred to a situation in which a judge either overturns statutes or established precedents of law or makes rulings that go against popular understandings of the Constitution (*Standard on Sunday* February 6, 2011).

that NARC had a manifesto entitled *NARC: Democracy and Empowerment* and identified NARC's immediate goals as follows:

- Ensuring the completion of the current constitutional review process;
- Rehabilitating the national economy
- Restoring the rule of law
- Reducing poverty on sustainable basis
- Empowering the electorate to make and execute the decisions that affects their lives
- Promoting a sense of inclusiveness of all citizens of Kenya
- Nurturing a sense of nationhood and resistance to divisions based on ethnicity, social class, race or any other consideration.

These principles coupled with NARC's grandiose pledges such as the creation of 500 000 jobs annually inflated the hopes of Kenyans for real change. Diamond suggests that NARC's ambitious pledges were never a reflection of real political will, as there was never intent to deliver on them (Diamond 2008: 24). Barkan explains that they were able to make such pledges because there would be no consequences for failing to fulfil them (Barkan 2006: 24). Hyden argues that African leaders, including those in the opposition, were motivated by the quest for power but not the need to reform the state (Hyden 2006: 111). At the end of Kibaki's first five years in office, none of the five objectives except the second had been realised. Neither was the government making efforts towards fulfilling them. The violence riddled 2007 elections aggravated the situation because of ethnic polarisation. Thus NARC's mendacity was not an innovation. In an issue-based political system, where accountability asserts itself through multi-party politics, political parties are circumspect with regard to the pledges they make, aware that the electorate is bound to hold them to account if they treat their manifestos cavalierly. In most African states, where movement politics remains determinant, it is not so much ideas as the politics of Big Men that hold centre stage because it helps both the rulers and citizenry in their attempt to overcome challenges resulting from lack of institutionalised forms of governing (Hyden, 2006: 94-106).

6.6 NARC's Internal Contradictions

The renewal of the multiparty system, however, carried Kenyan voters on a wave of optimism. The opposition considered the clamour for political pluralism, in and of itself, as the *sine qua non* of competitive politics. Unlike Benin, South Africa and Malawi, for

instance, Kenya was among African countries that ushered in multiparty democracy without a review of the Constitution in tandem with competitive politics (Nasong'o 2007: 100). This anomaly made Kenya's democratisation process unwieldy, protracted and conflict-prone. In contrast, in some francophone African countries the national constitutional conference that preceded multiparty elections ensured a constitutional review that removed many of the advantages enjoyed by incumbent Presidents. The result was that some incumbents lost elections (Nasong'o 2007: 87). But in Kenya, Moi outmanoeuvred a divided opposition that naively believed that it could beat him at the polls without first effecting fundamental legal and constitutional reform (Mutua 2009: 141). Having been part of the KANU system and buoyed up by the belief that they could beat Moi, sections of the opposition targeted the immensely powerful presidency and conveniently, for Moi, avoided making constitutional reform an integral part of multiparty democracy (Murungi 2000: 72). It was only after twice failing to dislodge Moi that the opposition realised that the 1963 constitution was advantageous to the incumbent.

NARC was a variegated entity comprising both seasoned opposition politicians and thoroughgoing single party loyalties. There was mutual suspicion among these groups of politicians. However their interests were not mutually antagonistic. Bar some, most of them were after power for the sake of it. The incongruent political orientations between renowned crusaders of reform and longstanding defenders of single party autocracy would not facilitate reformation of the state. The MoU, pivotal in dislodging KANU from power, ironically turned out to be NARC's weakness. The MoU provided for unconstitutional posts such as the Prime Minister to which Kibaki was expected to appoint Raila Odinga after the anticipated constitutional review had been concluded as a reward for foregoing his Presidential ambition in 2002. Instead he appointed Odinga to the less glamorous post as Minister of Roads and Public Works. The MoU spelled out the sharing out of the anticipated government spoils between LDP and NAK. It was also meant to stabilise the fragile coalition until after the elections. NARC was based on delicate unity among ethno regional big men who had previously found it difficult to work together.⁴⁸ Implementation of the MoU would have ensured ethnic inclusivity in appointments to the government and related gatekeeping opportunities. Moreover it would have enhanced trust among the

⁴⁸ See Badejo (2006: 350-4) and Kadima and Owuor (2006: 242-252).

political elite and served as an act of reciprocity by Kibaki to Raila Odinga's LDP and other NARC affiliate parties which had made it possible for him to be elected President. Kibaki was successful in his third time attempt at being the President because of the backing of what a high school teacher in Sondu, referred to as 'tribal chiefs' representing Luhya, Luo, Kamba, Maasai among other ethnic groups (Interview, Guda, January 15, 2009).

It was however, easier to draft the MoU than implement it. The MoU was based on goodwill since it was not constitutionally enforceable. Kibaki ignored the MoU. One of the reasons for his disregard of the MoU according to Kadima and Owuor was that since Kenya had a Presidential system, there was no possibility that Kibaki's coalition partners would withdraw their support and even pass a vote of no confidence against his government unlike in a parliamentary system (Kadima and Owuor 2006: 211). Although the MoU contained prospects for Kenya's political renaissance, it also bore the seeds of its destruction. Kibaki and Raila Odinga personified NARC's internal contradictions. Kibaki was a quintessential system's man owing to his association with Kenya's successive postcolonial governments (*The Weekly Review* September 23, 1988: 5). He was one of the architects and defenders of the single party system and thus linked to its associated excesses. For instance in 1988, Kibaki participated in tabling a bill that removed the tenure of office for the High Court and Court of Appeal judges as well as members of the Public Service Commission (PSC). The bill also increased the period for which the police were permitted to detain capital offence suspects from 24 hours to 14 days (*The Weekly Review* August 5, 1988: 3). He also seconded the bill that turned Kenya into *de jure* one party state in 1982 (Morton 1998: 186). This was the infamous Section 2A of the Constitution repealed in 1991.

In contrast Raila Odinga was the prototypical Kenyan opposition leader and a veritable thorn in the flesh of the Moi régime. Whereas Kibaki was prone to equivocation, Raila Odinga had a knack for high octane politics. *The Weekly Review*, described Kibaki thus: 'In style Kibaki cultivated a moderate image, which in the final analysis did not go down well with his colleagues who saw it as a sign of vacillation' (*The Weekly Review* July 22, 1998: 5). While in opposition politics, Odinga was one of Kenya's most vocal and

controversial politicians and a consummate political schemer and strategist. Whereas Kibaki was more lackadaisical and ponderous in his ex tempore speeches, Odinga cultivated a flamboyant style. His prowess on the stump was inimitable. He often employed humorous football and other tantalising imagery that left his audiences in stitches during off-the-cuff speeches. Whereas Kibaki had an almost nonchalant political mien, Odinga etched in the consciousness of his supporters as a forceful and indefatigable politician. He was the galvanising force behind the twin events of the KANU implosion and Kibaki's subsequent rise to the presidency. In 1997, *The Weekly Review* had predicted Raila Odinga's emergence as one of Kenya's most influential politicians in years to come:

What is clear is that whichever way things go, Raila's defection from Ford Kenya will affect the strength of the party in the Luo Nyanza. Although he does not have the support of the community all wrapped up, he has emerged as a major political force in the area. In the period immediately after the death of Jaramogi Oginga Odinga, he did not appear to have much political weight, and was just among many of the Luo politicians who were perceived to be fighting to inherit the mantle of leadership of the community from the late Odinga. But Raila's battle with Wamalwa for the leadership of Ford-K caused him to emerge as the preeminent Luo politician. It also caused him to be perceived as the personification of Luo ambitions to the presidency, allowing him to eclipse others in the fight for political pre eminence in Luo Nyanza...If he manages to emerge as the pre eminent Luo politician, he will be in a position to play a leading role in any political alliances or realignments which may emerge (*The Weekly Review* January 3, 1997: 4-5.)

It appeared as if Kibaki reneged on the implementation of the MoU with the intention of taming Raila Odinga. Yet the contrast between the two politicians should not be overdrawn. Juxtaposed, their political careers and traits shared certain elements. Odinga's political persona was not entirely the antithesis of Kibaki's. Kibaki and Odinga served KANU and Moi in different high profile positions. Kibaki served as the Vice President of the country and KANU. He held several high profile cabinet portfolios while Odinga served as the Secretary General and Minister of Energy during the twilight period of the KANU rule. Consequently, both Kibaki and Odinga were vestiges of the KANU system defined by authoritarianism, tribalism, ineptitude, plunder, cronyism among a litany of other socio-economic and political malaise. This cast doubts on their ability to lead Kenya's transformational agenda. Miguna held the view that both Odinga and Kibaki were impediments to reform. He lumped Odinga together with *ancien régime* politicians,

He, like Kibaki and Kalonzo, isn't a genuine agent of change. He has proved to be as prone to corrupt, tribalistic and nepotistic tendencies as the worst of the merchants of impunity. He abuses power and doesn't uphold the law and the constitution. More importantly, he cannot be trusted. After the horrors of the post-election violence, the corrupt regrouped – one under Kibaki's State House and Harambee House and the other under Raila's Orange House and BP Shell House Building ' (Miguna 2012: 552-3).

Odinga led Rainbow Alliance decamped KANU in the run up to the 2002 elections for self-serving reasons. The Rainbow Alliance invoked lack of internal democracy in KANU with regard to the nomination of the party's Presidential candidate to explain away the fact that Moi pulled the rug from under their feet. During Kasarani I, Odinga became the KANU Secretary General through a choreographed electoral process cynically dismissed as 'chorus democracy' or *Kura ya Makelele* (Swahili for 'election by noise') whose euphemism was 'voting by acclamation' (*Daily Nation* October 14, 2002). Raila Odinga's failure to insist on secret ballot cast aspersions on his democratic credentials (Badejo 2006: 204) and portrayed him as part of the crop of self-centred Kenyan politicians who bandy the word 'democracy' only when at the receiving end of things. Had Moi anointed Odinga as his successor, he would not have decamped KANU. The opportunistic KANU-NDP merger and NARC coalition were illustrations of the enduring predatory politics in Kenya that both Odinga and Kibaki thrived on. These alliances were elitist and meant to serve the interests of the involved kleptocrats. They had no agenda for the citizenry whatsoever. The MoU belied NARC's avowed pursuit of democratic ideals and was interpreted by Njeru and Njoka as analogous to 'gangster-type-loot sharing arrangements that are made before and after the execution of a robbery' (Njeru and Njoka 2007: 34).

6.7 Demagogic Pledges & Recrudescence of Corruption

NARC popularised a song '*Yote yawezekana bila Moi*' that is, 'All is possible without Moi'. This campaign anthem implied that the ouster of KANU and exit of Moi was the panacea to Kenya's ills. The song connoted that challenges such as corruption, tribalism, ineptitude, impunity and politically instigated ethnic violence would cease with Moi's departure. Nothing symbolised NARC's demagoguery more than that song. NARC's promises such as universal primary education, the creation of 500 000 jobs per year, the eradication of corruption and the completion of the constitutional review in a 100 days of

ascending to power resonated with the poor who bore the brunt of economic mismanagement under Moi. The NARC government implemented the universal primary education programme but it was a populist initiative that was not accompanied by a policy framework to ensure promotion rates from primary to secondary schools and to tertiary institutions. Public primary schools were overcrowded, ill equipped and without enough teachers. Thus universal primary education became the preserve of poor children as the rich in droves transferred their children to private schools for fear of plummeting standards in public schools. Unless streamlined through concrete policies, the universal primary school programme had the potential to entrench social economic stratification by creating a lopsided and discriminatory dual system of education. A 19 year old high school student in Nakuru had this to say about universal primary education:

There is free education although it does not help us. Taxation has gone up and so it is not as free. This education is of low quality and there is truancy among teachers and there is no disciplinary action (Interview, Chege, January 13, 2009).

Barkan wondered how possible it was for NARC to fulfil the job-creation promise when it was quick to embrace World Bank and International Monetary Fund austerity measures imposed on the country under the KANU régime which among others, called for a freeze on employment by the government to cut the wage bill (Barkan 2004: 95). NARC's exaggerated pledges about job creation were reminiscent of Moi's notorious roadside declarations that his government could not implement. As the 1988 *Weekly Review* put it:

In Kenya, the arithmetic is reversed and the government's pursuit of affirmative action is likely to bring the support of the majority for the government and in particular the President. It projects him as a defender of the disadvantaged against the privileged - a role that his natural populist tendencies relish. It is of course one thing to promulgate revolutionary policies. It is quite another to put them into effect...(*The Weekly Review* April 8, 1988: 6).

NARC got embroiled in corruption scandals very soon after the elections. For instance, a dubious government tender for the procurement of tamper proof security equipment dubbed the Anglo Leasing scandal had been launched under the KANU government. The KANU government ordered and paid out astronomical amounts of money for phoney sophisticated passport equipment system and forensic science laboratories for the police from France and Britain respectively through a fictitious company called Anglo Leasing. The NARC government abetted the graft and paid yet more money to fictitious companies

abroad (Wanyande, Omosa and Ludeki 2007: 6). Mwangi detailed how this scam was executed and like previous large corruption scandals, senior ministers in the Kibaki inner circle used Anglo Leasing as a means of amassing money for the next elections in 2007 (Mwangi 2008: 274-277). The recrudescence of corruption under NARC rendered Kibaki's inauguration speech in 2002 where he railed against the vice, hollow:

Corruption will now cease to be a way of life in Kenya and I call upon all those members of my government and public officers accustomed to corrupt practice to know and clearly understand that there will be no sacred cows under my government (President Kibaki's Inauguration speech December 30, 2002).

Corruption in Kenya posed a serious challenge to governance and the majority of the citizenry. It undermined the rule of law as well as perpetuating poverty among the population (Human Rights Watch 2002: 5). Thus prior to the 2007 elections, the view of Human Rights Watch of Kenya as 'an island of stability in a war-torn region' somewhat belied the wider image of Kenya as 'a mire of corruption and poverty' (Human Rights Watch 2002: 3).

6.8 Tribal Big Men & NARC Win

NARC's 'Big Men' instrumental to Kibaki's rise to power, had run for President previously before the 2002 elections. Odinga, Wamalwa and Ngilu ran for President in 1997 and came third, fourth and fifth respectively. Ngilu hinged her Presidential prospects in ethnicity just as her male counterparts although also somewhat opportunistically highlighted her gender. Kadima and Owuor argued that three factors necessitated formation of alliances in Kenya. Firstly, the first-past-the-post electoral system made it imperative that parties enter into alliances in order to form a substantial voting bloc. Second, the requirement in the amended 1963 Constitution required that a Presidential candidate had to win 25 per cent of votes in at least five Provinces in addition to a simple majority. NARC enabled Kibaki to meet this requirement in 2002. Third, political parties continued to draw most of their support from the ethnic strongholds of their leaders (Kadima and Owuor 2006: 201-2).

Without the support of ethno regional spokesmen, Kibaki would not have won the 2002 elections. GEMA support on which his Presidential campaigns were previously based was

not sufficient. However, as Table 7 shows, that once tribal chiefs rallied their ethnic constituencies behind Kibaki, his victory was as good as assured. Kibaki led in all Provinces bar Rift Valley and North Eastern. The two were KANU strongholds.

Table 7

2002 Presidential Votes by Province

	Registered Voters	Uhuru Kenyatta KANU	Mwai Kibaki NARC	Simeon Nyachae Ford-P	James Orengo SDP
Nairobi	884,135	75,635 20.704%	279,709 76.568%	8,771 2.401%	890 0.244%
Coast	879,741	109,706 32.002%	219,409 64.004%	11,470 3.346%	1,430 0.417%
North Eastern	216,336	79,004 67.214%	33,348 28.317%	4,947 4.209%	169 0.144%
Eastern	1,734,209	233,614 25.819%	658,913 72.823%	7,188 0.794%	3,116 0.344%
Central	1,563,084	300,222 30.380%	680,386 68.850%	4,279 0.433%	1,383 0.140%
Rift Valley	2,415,555	734,932 52.510%	623,343 44.537%	35,972 2.570%	3,740 0.267%
Western	1,202,104	126,483 20.818%	468,037 77.036%	8,295 1.365%	3,195 0.526%
Nyanza	1,555,968	63,572 7.717%	522,121 63.380%	227,363 27.599%	9,630 1.169%
National Total % Votes Scored	10,451,150	1,723,168 31.050%	3,485,266 62.802%	308,285 5.555%	23,553 0.424%

Source: Ajulu 2003: 13

Most Presidential hopefuls arrogated to themselves the role of ethno-regional leaders. They hailed from the most populous ethnic communities and used fellow tribes people as bargaining chips in alliance formation at the national level. It was therefore almost impossible for a Presidential candidate from a smaller ethnic group to win the presidency regardless of his or her manifesto. This explained Nyachae's dismal performance despite being part of the *ancien régime* as table 7 shows. Although from the populous Luo

community and with a relatively better record in the democratisation process in Kenya, James Orengo was relegated to an also-run Presidential candidate in the 2002 elections since Odinga upstaged him for tribal supremacy among the Luo.

Raila Odinga's decision not only to back Kibaki but also to campaign for him was significant. Since the falling out between the foremost Luo leader Jaramogi Oginga Odinga, and Jomo Kenyatta in the mid-1960s and the alleged government involvement in the 1969 assassination of Tom Mboya, the relationship between the Luo and the Kikuyu political elite had almost irretrievably collapsed. Accusations of betrayal, victimisation and political aggression between these groups of politicians were often exchanged. Luo politicians blamed a 'crude and arrogant bunch of politicians, civil servants, and security chiefs-the Kiambu Mafia...' surrounding Kenyatta for Oginga Odinga's political ostracism and Mboya's death (*Daily Nation* December 24, 2002). Kikuyu politicians in turn accused their Luo counterparts of radicalism and propensity for belligerence and confrontational opposition politics.⁴⁹ Thus based on the previous history of mutual antipathy between politicians from the two ethnic groups, Raila Odinga's endorsement of Kibaki with electoral support from the Luo seemed remote prospects before 2002. The convergence of the two ethnic groups seemed to herald the thawing of ethnic polarisation in Kenya, undercurrents in the newfound political entente between Odinga and Kibaki notwithstanding.

6.9 The 2005 Constitutional Referendum

Throup suggests that the 2005 referendum symbolised, by a banana for approval and an orange for rejection, did not pose any direct threat to Kibaki's hold on power (Throup 2008: 292). Both the existing and proposed constitutions retained a powerful presidency.⁵⁰ Yet Kibaki vigorously campaigned for the draft constitution. His government arbitrarily created ethnically 'homogenous' administrative units called districts to woo communities

⁴⁹ Kenya's successive governments casually stereotyped the Luo as troublemakers who engaged in violence because they who had nothing to lose in the event of political instability not being part of the oligarchy (*Daily Nation* December 24, 2002: 21).

⁵⁰ 'State power in Kenya, harking back to the country's colonial past and decades of one party rule, remained vested in a centralized executive exercising control through a network of provincial administrators/district commissioners, a vocal but relatively powerless legislature and a compliant judiciary exercising few checks and balances. Therefore the presidency was rightly seen as the ultimate political prize' (Republic of Kenya 2008a:1).

to vote for the draft constitution. While in the opposition, he had opposed the idea on the grounds that the units were economically unviable and a tax burden onto the people (Ogude 2009: 13). Moi devised this strategy on Kenya's return to multiparty politics. John Michuki, a Kikuyu politician and minister under Kibaki, as an opposition politician had petitioned the courts to outlaw the districts that Moi had created. Like the KANU régime, Kibaki deployed state resources such as vehicles and helicopters in the campaigns eliciting criticism from opponents. Despite this abuse of state resources, the government lost the referendum with 43 per cent of the vote against 57 per cent (EU EOM 2008: 7; Republic of Kenya 2008a: 93). Upon losing the referendum, Kibaki dissolved the cabinet and prorogued parliament. He reconstituted the cabinet after sacking disloyal ministers allied to the Orange camp including Raila Odinga, the lodestar of the 'No' campaign.

But the aftershocks of the referendum almost brought Kibaki's government down as more than twenty ministers and assistant ministers declined to take up their appointments. Superficially this appeared to be innovative political behaviour in Kenya as most politicians considered appointment to the executive as the apogee of their political careers. Yet, as Whitaker and Giersch have shown, Ngilu and Musikari Kombo (the latter was the FORD-K leader who succeeded the fallen Kijana Wamalwa) only momentarily declined appointments to the cabinet in order to twist the arm of a politically weakened Kibaki to appoint more of their allies to ministerial posts (Whitaker and Giersch 2009: 13). To plug the void created by the sacked ODM rebels, Kibaki replaced them with MPs from KANU and FORD-People to form the Government of National Unity (GNU) despite NARC having competed against the two in 2002. The GNU however, was a convergence of reactionary forces. Nyachae, the FORD-P leader and one of those included in the cabinet, was a wealthy politician and the personification of the discredited provincial administration. He had risen through the ranks beginning as a clerk in 1954 in the colonial service, and retired in 1986, at the apex, as Chief Secretary, head of the civil service and Secretary to the cabinet. In between he had risen from district officer to provincial commissioner (*Daily Nation* November 19, 2002: 3). The co-optation of KANU and FORD-P in the government was testament to the fact that principle and ideology were secondary in Kenya's highly fickle and idiosyncratic politics. Kibaki uncharacteristically hit out hard at KANU during his inauguration in 2002:

Fellow Kenyans, I am inheriting a country which has been badly ravaged by years of misrule and ineptitude. There has been a wide disconnect between the people and the Government, between people's aspirants (sic) and the government's attitude toward them (Kibaki's Inaugural Speech December 30, 2002).

The 2005 referendum was a dress rehearsal for the 2007 Presidential election.⁵¹ The referendum outcome shaped the path towards the 2007 elections. Buoyed up by the plebiscite victory, the Orange camp transformed into a political party, the Orange Democratic Movement (ODM) and began preparations for the 2007 elections. Raila Odinga, its *de facto* leader and the face of the opposition against the draft Constitution, formed an ethnic alliance modelled on NARC Summit. Initially the Orange camp comprised the big ethnic groups, Luhya, Kamba, Luo, Kikuyu, Kalenjin and small ones from the Rift Valley, North Eastern and Coast Provinces. Uhuru Kenyatta, though, pulled out of the Orange camp after the referendum ostensibly to maintain the KANU identity.

When Raila Odinga and his supporters tried to register a party called the Orange Democratic Movement (ODM) they discovered that a party by a similar name had already been registered allegedly by people acting at the behest of the Kibaki government. The intention was to frustrate attempts by the victorious Orange camp in morphing into a political party. At issue was the word 'orange' a brand then associated with the referendum victory. To side-step this hurdle, the Odinga group registered a party with a similar name but with the addendum 'Kenya' (ODM-K) whose registered office bearers were individuals loyal to Kalonzo Musyoka. At different times Musyoka served as the KANU Organising Secretary and Vice-Chairman and had been a long time cabinet minister under Moi. He was one of the 'Johnny-come-latelies' into opposition politics in 2002. ODM-K officials led by Kalonzo's tribesman, Daniel Maanzo, refused to step down in favour of those perceived to be allied to Raila Odinga when a power struggle between Musyoka and Odinga ensued over the mode of nominating the party's Presidential candidate. The two parted ways. Odinga and his allies decamped ODM-K and took control of the 'original' ODM after individuals who had secretly registered it surrendered the party to him. Wanyama suggested that the Odinga group bought ODM from one Mugambi

⁵¹ A government report noted that although the 2005 referendum was peaceful and that the results were accepted without being contested, the battle lines were drawn as the ethnic fault lines widened thereafter. The significance of the Presidential victory in 2007 could not be overemphasised hence tensions began to rise (Republic of Kenya 2008b: 30).

Imanyara in whose name ODM had been registered (Wanyama 2010: 71). Raila Odinga then transformed ODM from a briefcase political entity into a formidable mass movement.

The 2005 referendum outcome exemplified another step towards the consolidation of democracy in Kenya. It appeared to build on the 2002 elections in which the electorate voted against choices favoured by incumbents and prevailed. However, for Kibaki and his coterie, the 2005 referendum did not raise the stakes. They could afford to lose. The flipside was that the referendum exposed campaigns saturated by ethnic stereotyping and innuendoes (KNCHR 2006). Kadima and Owuor observed that although the contents of the draft constitution were discussed and debated, the referendum campaigns showed that politicians canvassed for support along ethnic lines with the major tribes being galvanised against the Kikuyu and related ethnic groups in Mt Kenya region (Kadima and Owuor 2006: 220). Hate speech⁵² became rife and resurfaced in the 2007 election campaigns both among politicians and in the media. The substance of the draft Constitution was lost as politicians sensationalised and personalised the debate on the content of the document. According to the Kenya National Commission on Human Rights,

...the referendum was about a new constitution only in name. Rather, it was a moment to settle various political scores, up-end different political layers, and assert political superiority. And in this zero-sum game between politicians, ethnicity, patronage and incitement became the preferred tools of the trade, with the people of the country bearing the brunt of their antics (KNCHR 2006: 5).

Politicians implicated in making inflammatory speeches got away with obnoxious behaviour despite the KNCHR furnishing the Attorney General with detailed evidence of law breaching by the offending politicians. Wako, the Attorney General, frustrated efforts by those who sought to bring the offending individuals to justice (KNCHR 2006: 6). By the time elections were held in 2007 Kenya's political landscape was a powder keg. The controversial re-election of Kibaki was the spark required to ignite the polarised country into violence.

⁵² Hate speech is defined as 'a form of speech that degrades others and promotes hatred and encourages violence against a group on the basis of religion, race, colour, or ethnicity. It includes speech, publication or broadcast that degrades, as inherently inferior or degrades, dehumanizes and demeans a group' (KNCHR 2006: 37).

6.10 NARC Fallout & the 2007 Elections

Some prophets of doom have predicted a vicious in-fighting in following this victory. I want to assure you that they will be disappointed. When a group of people come together over an idea or because of a shared vision, such a group can never fail or disintegrate. NARC will never die as long as the original vision endures. It will grow stronger and coalesce into a single party that will become a beacon of hope not only to Kenyans but to the rest of Africa (President Kibaki's speech December 30, 2002).

Kibaki's decision to renege on the implementation of the MoU aggravated mistrust among Kenya's political elite. It defeated the sense of unity among opposition parties captured in his inauguration speech. It led to the disintegration of NARC. The MoU was meant to act as a guide in the formation of an inclusive government based on the political strengths of LDP and NAK. The trashing of the MoU took the country back to the 1960s polarisation between the Kikuyu and Luo. Elite fragmentation characterised Kenya's post-independence period (Cheeseman 2009: 3). However, unlike previous splits, this one snowballed into a series of political duels about such issues as the 2005 referendum and culminated in the unprecedented inter-ethnic violence of 2007 following the allegedly stolen Presidential election. The opportunity to lance Kenya's festering postcolonial abscess comprising the malaise of perfidy, mendacity, impunity, native-foreigner politics, opportunism and corruption, was squandered with the tossing out of the MoU. Consequently nefarious practices among Kenya's politicians manifested through setting one ethnic group against another for political capital prevailed and set the country lemming-like towards collective disaster.

6.11 Conclusion

The 2002 elections constituted one of the most significant phases of Kenya's political history. KANU was defeated after being in power since 1963. Although the 2002 elections appeared out of sync with the two previous ones, the ethnicity factor still played a role. The Luo, Kikuyu and Luhya and other small communities overwhelmingly voted for Kibaki since NARC was an ethnic alliance making it impossible for KANU to win. NARC turned out to be KANU in almost every aspect but in name. NARC was bedevilled by tribal polarisation, arbitrary rule, ethnicisation of the government bureaucracy,

corruption, and anti-reform tendencies. Moi attempted to outwit the opposition by appealing to ethnicity. The opposition responded in a similar fashion and prevailed. The Big Man politics had ensured that Kenya's politicians related to power exclusively for selfish ends. There was no place for accountability, transparency, justice and vision for a better society. Ethnic Big Men ran for president repeatedly since they owned their parties and counted on ethnic census. As long as they hailed from the most populous tribes, they believed they were guaranteed support. It was impossible to replace them as leaders of political parties even if they were devoid of leadership qualities thus the squabbles and constant disintegration of parties. KANU exploited the state for the economic benefit of the President and his inner circle, a trait that NARC exhibited after assuming power. Having been socialised under single party rule, to which most of them owed their political and economic fortunes, most NARC politicians were not only incapable but actively resisted state reformation. Until Kenya's politicians outgrow provincialism and internalise the notion that power should be exercised in the interest of the people of Kenya, it would be difficult to reform the state.

In 2002, Kenyan and foreign observers witnessed Kenya's 'free and fair' elections. However, it was one thing to replace Moi the embodiment of neopatrimonial politics but a totally different one altogether to rid the system of attributes associated with this system of rule. Ironically 2002 elections were a benchmark for a series of events stemming from the disintegration of NARC that culminated in the post-election violence in 2007. The acclaimed 2002 elections and the 2005 constitutional referendum were to be flashes in the pan rather than solid markers of a consolidated democracy. They were indications not of ideological definitiveness and directed policy, but rather illustrated the fickleness of Kenya's politics. Kenya was unable during this period to overcome the stranglehold of big men and patrimonial politics that perpetuated the ethnicisation of politics. The opportunity that reform of the one-party state presented towards the institutionalisation of the rule of law to strengthen multiparty democracy, regulating political parties, opening constitutional reform and creating independent oversight bodies was hoist on the petard of tribal politics. One lesson that Kenyans ought to have learnt from this period is that institutionalisation of politics would be in the best interest of all as opposed to emotionalism associated with the tribal identity of the President.

Chapter Seven

The 2007 Elections: A Moment of Democratic Reversal

7.1 Introduction

This chapter explores Kenya's disputed 2007 elections and attempts to explain the violence that followed the announcement that Kibaki had won. The chapter proceeds from the premise that the 2007 elections were like previous ones since Kenya's return to multiparty politics. As Throup has shown, except for the violent reaction that erupted almost countrywide after the announcement that Raila Odinga had lost the election in what were perceived as a 'stolen' Presidential election, other aspects of the elections were hardly novel in Kenya. Vote-rigging, intra-party violence, disorganised if not shambolic primaries and party hopping had characterised Kenya's previous multiparty elections (Throup 2008: 299). Thus the big question to be answered is why there was such widespread violence after these elections. The chapter argues that the 2007 elections and the violence that followed resulted from a confluence of issues. The key elements relate to the underlying discontent associated with historic grievances - land disputes, corruption, inequitable resource distribution and impunity. The masterminds of previous ethnic violence were not prosecuted which promoted an unaccountable leadership. Regional and ethnic favouritism and its opposite, discrimination linked to undemocratic behaviour, were resented. 2007 seemed to offer the possibility of change. The legacy of Kenyatta and Moi of excluding certain citizens on the basis of ethnicity exploded in 2002. Clients of these systems who were then in charge of the state resisted the change of power to Odinga a name that they had associated with the struggle for change and reform. A siege mentality overwhelmed these politicians who would rather the country implode than lose power. Ethnicity thus became the conduit through which the mentioned grievances were expressed.

The chapter illuminates the major political parties that contested the 2007 elections. I locate the formation and management of these parties within a political framework informed by personal interest couched in tribalism. These political parties were bereft of ideology and policy oriented politics. The chapter shows the complicity of the media in instigating the violence. The media fanned ethnic sentiment in the run-up to the landmark 2007 elections. The spotlight here is on the intelligentsia and how competition for the benefits of modernity forced them to politicise ethnic identity. The ineptitude with which the Electoral Commission of Kenya managed the elections falls within the ambit of weak institutions unable to impartially arbitrate political disputes. It was for this reason that the post-election violence only ceased following the AU sponsored mediation process. The chapter then dwells on the narrative of the 2007 elections. It highlights the attendant controversies and violence. The Kibaki régime deployed violence by security forces against opposition supporters just like Moi did. The matter is before the ICC at the time of writing. The chapter uses the Central Bank of Kenya to demonstrate how ethnic politics and political interference in the running of the financial sector bred corruption and economic hardship for majority of Kenya. The fear of losing control of the economy by Kibaki and his allies contributed to the disputed 2007 elections. Kenya's political competition is a zero-sum affair. The chapter shows that on the strength of past experience in which coalition politics depended entirely on the goodwill of politicians, the National Accord had to be enshrined in the Constitution to prevent the disintegration of the coalition government. There was no trust among politicians because of lack of a collective vision for the country that superseded parochial personal gain, political and ethnic affiliation.

7.2 The Big Two Political Parties

Two major political parties participated in the 2007 elections, the Party of National Unity (PNU) and the Orange Democratic Movement (ODM) led by Mwai Kibaki and Raila Odinga respectively, with a third somewhat overshadowed by these two, ODM-Kenya led by Kalonzo Musyoka. Unprecedentedly KANU did not field a Presidential candidate after its leader, Uhuru Kenyatta, decided to support Kibaki in what was seen as 'ethnic solidarity' (Kanyinga, Okello and Akech 2010: 12-13). PNU drew its support from the Kikuyu Embu and Meru communities. The ODM support base was concentrated among

the Luo, Luhya, Kalenjin and less populous ethnic communities at the Coast and North Eastern Provinces. Kibaki's main campaign plank was the economy. He cited economic growth during his first term in office to try and woo voters. The ODM countered this argument by stating that save for the political elite and his business cronies, the majority poor had not benefitted from the economic boom (Wanyama 2010: 87).

The ODM recast itself as best placed to reform the state. It underscored the importance of a shift in policy towards a devolution of power through a *majimbo* or federalist system. The ODM went further and portrayed Kibaki as a conservative non-reformer who had reneged on the NARC reform agenda particularly the promised review of the constitution. In turn, the PNU riposte to the *majimbo* debate with the trenchant criticism that should the ODM take power, this would simply promote ethnic balkanization under the guise of campaigning for the equitable distribution of resources through devolution. The *majimbo* debate was interpreted as a 'Kalenjin-get-the-land back' issue (KNCHR 2008: 24).

Although the two political parties did raise economic and constitutional issues as they canvassed for votes (Republic of Kenya 2008a), ethnicity remained a key factor. This can be deduced from the composition of the leadership of these political parties (KNCHR 2008: 24). Both parties tried to apply the age old 'provincial strategy' that KANU applied in balancing power among ethnic communities. Ethnic leaders within the ODM christened themselves, 'The Pentagon' perhaps to connote its ethnic might as the broadest ethnic alliance. The Pentagon comprised Raila Odinga (Luo) William Ruto (Kalenjin), Musalia Mudavadi (Luhya), Omingo Magara (Kisii), Najib Balala (Coast region and Muslims), Joseph Nyagah (Mbeere-GEMA) and Charity Ngilu (Kamba). These individuals could be described as ethnic kingpins and were expected to lead their respective communities in voting for Odinga, the ODM Presidential candidate. The Pentagon was reminiscent of the NARC Summit in its quest for ethnic diversity. Indeed The Pentagon was proof that the political trend of distributing party posts on an ethno-regional basis remained entrenched in Kenyan politics. Nothing brought these individuals together other the desire to consolidate ethnic votes and the prospect of sharing spoils in an Odinga government.

The ODM-Kenya was the third ethnically grounded political party although with a much more circumscribed support base confined to Musyoka's Kamba tribe. Although Musyoka

was deputised by a veteran Luhya woman politician, Dr. Julia Ojiambo, he did not make any impact among the Luhya. The Odinga supporters regarded the two as spoilers since they broke away from the Odinga camp (Oucho 2010: 509-0). Musyoka vindicated them when he took up an appointment as the Vice President soon after Kibaki's controversial Presidential win. The 2007 Presidential contest was basically a two-horse race. This can be seen particularly in the controversial results announced by the defunct ECK. However, the 2007 elections were as much defined by resentment, revenge and anger as by ethnicity. Musyoka felt betrayed by Odinga whom he had expected would endorse his candidacy for the presidency. He was an also-run candidate whose objective was to limit support for Odinga. Odinga and his supporters in turn wanted to exact revenge against Kibaki for sacking them after the 2005 constitutional referendum despite their contribution to his victory in 2002. Kibaki and his supporters adopted a siege mentality since they felt that the rest of the other tribes had ganged up against the Kikuyu (Mueller 2008: 201).

By the time the 2007 elections were held the government had assumed a Kikuyu face with a sprinkling of appointments from the Meru community. Most Kalenjin were purged from the government and replaced by the Kikuyu. This elicited resentment. The Kalenjin felt victimised while the Luo and Luhya accused Kibaki of betrayal for contravening the envisaged collegial leadership that the NARC was expected to uphold through The Summit. The siege mentality among the Kikuyu was so intense that that Uhuru Kenyatta, Official Leader of the Opposition, did the unthinkable by not running for President but instead chose to campaign for Kibaki, a fellow Kikuyu. Kenyatta's strategy was to tie up his position in order to inherit the mantle of leadership and support of the Kikuyu ethnic bloc after Kibaki. Moi himself had no time for KANU and endorsed Kibaki for re-election because both were *ancien régime* members wary of Odinga's ODM that had threatened to punish previous corruption and recover money stolen from the Exchequer (Mueller 2008: 201). In this context there was no contradiction in Moi supporting Kibaki who was unpopular among the Kalenjin. This logic of solidarity among Kenya's oligarchy explained Moi's support for Kenyatta in 2002. These plutocrats held the country to ransom. It is a self-perpetuating plutocratic system. There was no way Kenya's renaissance could be realised unless political and economic networks that bound this grouping were dismantled.

ODM was more organized and cohesive than PNU in spite of the latter enjoying the advantage of having the incumbent President lead the party. The ODM fielded a single candidate in the parliamentary and civic elections unlike the disjointed PNU (Republic of Kenya 2008a). In an attempt to stem a repeat of the NARC-like wrangling and fallout, Raila Odinga insisted on individual as opposed to party membership within ODM. PNU allowed for party membership. Its constituent parties emphasised their autonomy in municipal and parliamentary elections. Thus they could not agree on a single candidate in the constituencies for parliamentary and municipal elections. A consequence was that the parties that joined the PNU sponsored their own candidates in the municipal and parliamentary elections hence competing among themselves despite their support for Kibaki as President.

The PNU was formed with the sole aim of giving Kibaki a platform from which to defend the presidency after NARC disintegrated (Wanyama 2010: 83). Kibaki joined the PNU after being locked out of NARC. Charity Ngilu, Kibaki's former ally in the 2002 elections and 2005 referendum, refused to step down for him as the NARC leader. Kibaki's hopes of seeking a second term through NARC were dashed. With options narrowing and the clock ticking, Kibaki's close allies cobbled together PNU, an amalgam of political parties in similar fashion to NARC (Wanyama 2010: 83: 71). In the run up to the 2007 elections, Kibaki, Odinga, Musyoka and their respective supporters hopped from one political party to another. The frequency with which they and other Kenyan politicians switched parties was indicative of the weak ideological position and paucity of issues raised among political parties. This created room for ethnicity to become the overriding defining feature and essence of these parties (Mueller 2008: 199). The aim of PNU was to see Kibaki retain the presidency. The presidency was significant in Kenya's social economic and political matrix. Essentially the presidency was the centre of gravity in Kenya's polity in which the line between the economy and politics was not only blurred but also almost non-existent.

The amended 1963 Constitution centralised power in the presidency giving the incumbent and his supporters undue influence in economic and political affairs. Since the President had powers to unilaterally make appointments in the security sector, the academy, the

bureaucracy and the financial sector such as the CBK governor without the appointees being vetted, he had undue influence on the government. Rather than pledging their allegiance to the people of Kenya and the Constitution, these appointees owed allegiance entirely to the President. Competence was sacrificed at the altar of the benefits of patronage that the relationship with the President guaranteed. Kibaki and his supporters were aware of the strategic significance of the presidency. He was the incumbent but more significantly he was an *ancien régime* member. Kibaki and Mt Kenya mafia possibly knew that it would be difficult for PNU to garner parliamentary majority owing to the state of disorganisation in the PNU. However, with the Presidency he would make up for the possible shortfall in parliamentary numbers. Experience and history informed these calculations. Kibaki had easily replaced LDP MPs with their KANU counterparts in the wake of the 2005 referendum defeat. Moi had used financial and material benefits to induce some opposition MPs to switch allegiance. Alternatively the President could co-opt leaders of political parties into his government who would in turn convince MPs sponsored by these leaders' parties to support the government. Kibaki exploited the latter option after his disputed re-election when he appointed Kalonzo Musyoka as his deputy and some ODM-K MPs into the cabinet.

7.3 The Fusion between Politics and the Economy

In Kenya, the management of economy was susceptible to partisan tribal politics. Since Kenya's independence there had been a conflict of interest whereby the President and allies influenced the rules governing economic matters and at the same time pursued economic interests. In 1971, the Kenyatta government officially sanctioned this conflict of interest when it adopted a recommendation by the Ndegwa Commission that allowed civil servants to engage in businesses ventures to augment their income (Himbara 1993: 100). Endemic corruption in Kenya could, in large measure, be traced to that recommendation. It was not coincidental that those who had been President of Kenya owned large tracts of land (*The Standard* October 1, 2004). These politicians, their families and allies ranked among the wealthiest individuals in the country.

The Central Bank of Kenya (CBK) was an important institution in the looting of public coffers. That is why it did not operate free of political meddling. The Goldenberg scandal

involved senior individuals in Kenya's financial sector including the then Permanent Secretary in the Ministry of Finance, Wilfred Koinange, the CBK governor, Eric Kotut and his deputy Elphas Riungu (KHRC 2011). The three served under Moi. In 2008, Kibaki controversially appointed Njuguna Ndung'u, a Kikuyu, as the CBK governor. He curiously bypassed the then deputy governor, Jacinta Mwatela, a woman from the Coast region who had worked in the institution since 1977. Then in 2011, Kibaki unconstitutionally extended Ndung'u's contract. This drew protests from some MPs (*The Standard* March 1, 2011). A commission of inquiry had previously found him unfit to hold public office after he had lied to the public over his involvement in the irregular sale of the formerly Grand Regency hotel to the Libyan investors (*The Nairobi Star* October 12, 2011). In keeping with Kenya's ethnically fractious society, most of Ndung'u's defenders were fellow tribesmen. However, it was untenable to resort to ethnicity when in 2011, Ndung'u was voted the worst performing central bank governor in Africa (*The Standard* March 12, 2012). In 2012, an ad hoc parliamentary committee implicated him in the dubious rapid decline in the value of the Kenyan shilling against major currencies. This precipitated high inflation pushing the prices of basic goods beyond the reach of *wananchi*. The committee recommended that he step aside for once again lying to the committee and Kenyans and that a tribunal to investigate his professional conduct be formed (Republic of Kenya 2012). However, parliament let him off the hook. The CBK governor had the backing of Kibaki and other kleptocrats otherwise there was no explanation why he remained in office despite doubts being cast against his capacity to lead the bank. I give further details concerning this saga in chapter eight.

Another case of political interference in the management of the economy involved the Parliamentary Finance Departmental Committee. This committee recommended the reopening of the Charter House bank that had been closed over allegations of involvement in money laundering (*Business Daily* July 12, 2011). The Chairman of the committee, Chris Okemo and a long serving head of the state corporation, Kenya Power and Lighting Company (KPLC), Samuel Gichuru, had arrest warrants issued against them by the Island of Jersey, United Kingdom for money laundering. The two plundered KPLC and stashed the loot in the Island of Jersey (*The Nairobi Star* May 25, 2011). Okemo, an ODM MP,

served as the Finance Minister under Moi. Gichuru was the Managing Director of KPLC for almost two decades. He assumed the post in 1984 until 2003 when he retired.

7.4 The Media & the 2007 Elections

A minimum condition of democratic citizenship is that people have access to information on issues that shape their lives. Without it they cannot make informed democratic choices. Citizenship also requires people to be able to communicate their perspective into public debate, and to have spaces for public discussion on issues that most affect them. Without such spaces, democratic discourse cannot take place (BBC World Service Trust 2008: 3).

The above quotation reflects the view of the BBC World Service Trust, an offshoot of one of the leading global media houses, on the issue of freedom of information and communication for a democratic society to flourish. In this sense the Kenyan media had sensitised Kenyans to the significance of the vote and ensured high voter turnout during the 2007 elections (EU EOM 2008: 2). According to the BBC, the presence of the media in various parts of the country during the process of voting acted as a deterrent against electoral malpractices (BBC World Service Trust 2008: 7). Yet European Union Election Observer Mission report suggested that it was the media that was partly responsible for controversies surrounding the 2007 elections. Its major failure was not to afford equitable coverage to candidates and parties and for the partisanship of media houses in support of either ODM or PNU (EU EOM 2008: 25-6). Other reports emphasised that both established media and FM vernacular radio whipped up tribal sentiment both during the campaigns and after the elections (Republic of Kenya 2008b: 69, Kanyinga, Okello and Akech 2010: 19-20). In spite of the various Kenyan media conducting parallel tallying processes, they never made public the presidential results they gathered. Their silence on this issue until the time of completing the thesis is proof of the complicity of large sections of Kenya's media in partisan politics, ethnic polarisation, and mutual suspicion among Kenyans. Such compromised media is a threat to rather than a catalyst of social cohesion. Truth telling necessitated that the Kenyan media made public their results. Concealment reinforced amnesia. An independent, critical and professional media is indispensable to the sustenance of democratic tenets and ethos. Contrastingly, a partisan, insular and unprofessional media was inimical to political stability.

The Kenyan media was like most other institutions in the country, affected by tribal polarisation. The BBC said: 'As politics has become more factionalised along political and ethnic grounds, the media including much of the mainstream media, have been drawn into, and often aligned with different political interests' (BBC World Service Trust 2008: 9; 295). The biased media coverage of the 2007 elections was indicative of the pervasive erosion of institutional independence as a result of corruption and tribalism that afflicted even religious groups and civil society. The Kenya National Commission on Human Rights accused politicians and the media of purveying hate speech and ethnic profiling (KNCHR 2008: 25-6). Consistent with previous political contests such as the 2005 referendum campaigns, some Kikuyu politicians and a Kisii, Simeon Nyachae, in particular, campaigned on the basis of the 'politics of the foreskin' (KNCHR 2006: 45) whereby they derided and dismissed the Luo and other communities that did not practise male circumcision as 'unfit to lead'. The target was Odinga whom they perceived as being uncircumcised.

During the counting phase of the electoral process, the media dramatised coverage of the tallying of the election results. When results started trickling in, the media failed to appropriately situate results (KNCHR 2008: 26). For instance, they did not inform the audience that Raila Odinga's initial commanding lead was because the results relayed first came predominantly from ODM strongholds (Throup 2008: 293). Hence Kibaki's subsequent exponential surge in votes leading to the narrowing of the margin between him and Odinga took ODM supporters unawares. The ODM was anyway suspicious of the delay in the receipt of Presidential results from Kibaki strongholds and wondered why there was a delay in the relay of Presidential results from Mt Kenya region, close to Nairobi and with relatively better infrastructure. Moreover ODM could not understand how Raila Odinga's lead of over a million votes mysteriously dissipated and translated into a razor-thin victory for Kibaki (Mueller 2008: 203; Human Rights Watch 2008: 22).

7.5 Watershed Elections

The 2007 elections provided the stiffest test for Kenya's multiparty democracy. In the run up to the elections, opinion polls by various research firms consistently placed Raila Odinga ahead in the Presidential race (Cheeseman 2008: 168-9; Throup 2008: 290). There

was a strong possibility of Odinga defeating Kibaki. However, there was uncertainty as to whether Odinga would retain his parliamentary seat. Had Odinga won the presidency but lost the parliamentary seat would have created a constitutional crisis since the 1963 Constitution stipulated that the President had to be an elected member of parliament as well (Republic of Kenya 1963; KNCHR 2008: 16). It was alleged that Odinga's opponents were scheming to prevent him from winning a parliamentary seat and thus on a constitutional technicality, block his Presidential ambitions. The reason for this was that they considered his Presidential challenge formidable (Republic of Kenya 2008b: 195: 364). This allegation gained currency when Odinga went to cast his vote in Kibera, Lang'ata constituency, but discovered that his name 'was missing' in the voter register (Republic of Kenya 2008a: 83). Although the electoral body 'rectified' this and explained the anomaly in an attempt to diffuse the gathering tension, this hitch reinforced the rigging narrative that ODM increasingly highlighted in the period immediately before the elections.

The 2007 Presidential elections were thus a closely contested and bitter race pitting Odinga against Kibaki. Throup suggests that incumbency gave Kibaki an edge because of the highly centralised nature of the state (Throup 2008: 291). Yet, doubts about the credibility of the 2007 elections began when Kibaki made suspect political decisions before the elections. Branch and Cheeseman point to the fact that Kibaki appointed 19 out of the 22 commissioners to the defunct Electoral Commission of Kenya (ECK) and judges to the high court and court of appeal days before the elections (Branch and Cheeseman 2008: 17). The European Union Election Observer Mission in its subsequent report, pointed to the concern that most of the newly appointed commissioners lacked experience in the management of elections (EU EOM 2008: 5). Moreover, the ECK appointments were in contravention of IPPG reforms which required the President to consult the opposition before either making or replacing appointees to the electoral body. Kibaki had been a signatory to the agreement while serving as the Official Leader of the Opposition. Curiously Kibaki's long serving lawyer, Kihara Mutu, became the ECK vice chairman (Kanyinga, Okello and Akech 2010: 14). Thus these appointments reduced the electoral body to a pliable organ that Kibaki and his supporters could manipulate (Branch and Cheeseman 2008: 25). Ultimately these appointments testified to Cowen and Laakso's

argument that institutional arrangements were the means by which incumbent régimes in Africa tried to manipulate the results of elections (Cowen and Laakso 2002: 18).

The judicial appointments were widely interpreted as meant to pre-empt a dispute over the outcome of the Presidential results and to ensure a favourable ruling for Kibaki in the event of a petition (Republic of Kenya 2008a: 59). Although Kibaki was constitutionally mandated to make the appointments even without consulting the opposition, the timing of the appointments was confrontational. The ODM's confidence in the judiciary was immediately eroded. Indeed, already a history of executive interference in the judiciary existed (Republic of Kenya 2008b: 460-1). These unilateral decisions greatly raised the stakes and further fuelled the rigging narrative that ODM turned into a mantra during the homestretch campaigns. Ethnic polarisation that had developed due to the NARC fallout now became even more pronounced (Republic of Kenya 2008a: 30-1). Combined with subsequent controversies related to the tallying of votes, these controversial appointments ensured that the results of the 2007 Presidential elections would be disputed. That they would lead to post-election violence was less predictable. Yet one can argue that combined, they fuelled the tensions that led to the post-election violence. But the longer term historical grievances especially land related provided an equally important context. Branch and Cheeseman suggest that the controversy surrounding the 2007 elections was related to historical grievances and the single party legacy whose hallmarks included diffused violence, impunity, unresolved land disputes, elite fragmentation and disregard for the rule of law (Branch and Cheeseman 2008: 3). I explore these issues elsewhere in the thesis. Writing about what kind of legacy Kibaki would be remembered for, a columnist summed up the reasons as to why he felt Kibaki could not secure a place in Kenya's annals of history. He identified him as part of the cohort of politicians who designed and defended the one party state and a politician without any track record in reform (*The Standard* September 10, 2010). Kibaki could therefore not rise above the challenges Cheeseman points out which tipped Kenya into a near state of civil war.

7.6 The Narrative of the 2007 Elections

In monitoring the 2007 electoral process, European Union Observer Mission suggested that the stage involving the casting of votes was largely free of irregularities (EU EOM

2008:1). It was rather in the discrepancies in the counting and tallying of Presidential votes at the Kenyatta International Conference Centre (KICC) Nairobi, the nerve centre of the ECK, that derailed the process. Elections were held on the 27 December but by the fourth day, the ECK had not yet announced the Presidential winner. There was anxiety as the delay in declaring the Presidential winner took its toll on a restive nation. The ECK commissioners and staff both at the constituency level and the KICC derailed the electoral process as allegations arose that the Presidential results were being doctored in favour of Kibaki (Republic of Kenya 2008b: 124; Throup 2008: 295). Subsequently acrimonious disagreements over the veracity of the Presidential results and exchanges between ODM and PNU politicians ensued before the cameras at the KICC (Throup 2008: 295-6). As the electoral process began falling apart, hope that the ECK would resolve the dispute faded once the ODM accused the ECK of partiality. The ECK had been credited with the largely successful 2002 elections and the 2005 referendum. However, according to Throup since then the electoral body and particularly its head, Samuel Kivuitu, had failed to acquire the support and credibility of all parties and Kenyan citizens. Throup has argued that a number of factors were of particular significance. First, he suggests that in the 2002 elections the opposition victory was so decisive and overwhelming that minor irregularities were dismissed as inconsequential to the final result. Second, in the 2005 referendum, 'the Kikuyu-dominated power structure' was not at risk of losing power and could afford to live with a 'certain political embarrassment at losing the referendum' (Throup 2008: 291-2). Yet it was the earlier 1997 elections that had raised questions about Kivuitu's credibility. The 1997 elections were also conducted by the ECK while Kivuitu was at the helm. They were so thoroughly marred with irregularities that even Moi and KANU complained about rigging as voting was delayed in his Rift Valley stronghold (Throup 2008: 291). Kivuitu baulked when he was subjected to immense pressure in 2007. Throup suggests that this left his credibility and that of the whole electoral body irreparably damaged (Throup 2008: 292). In an interview with Okwiri, a trader in Nairobi dealing in metal work and owning 'a small food kiosk', he blamed the electoral body and particularly its chairman for mismanaging the elections. 'The ECK chairman bungled the Presidential election. He was influenced by the government to fraudulently declare Kibaki as leader. He is the cause of the problem. He was competent in 2002 elections and 2005 during the referendum' (Interview, Okwiri, January 26, 2009).

The controversial declaration of Kibaki's re-election and the subsequent hastily conducted swearing-in ceremony was the spark that ignited the country into violence. ODM and its supporters interpreted the speed with which the ceremony was held as indicative of the existence of a pre-meditated plot to rig Kibaki back into power. There were discrepancies between the results announced at the ECK nerve centre and those recorded in the constituencies (Throup 2008: 293-7). Despite the ECK Chairman being notified, he announced Kibaki as the winner. Cheeseman argues that Kenya's near degeneration into civil war exposed inherent fault lines in the country's political set up and the fragility of its multiparty system. He suggests that politics operated in a combustible mix of 'weak institutions, historical grievances, the normalization of violence and lack of elite consensus on the 'rules of the game'' (Cheeseman 2008: 167). Barkan puts it another way, and suggests that Kenyan politicians sought office for the benefits they would extract from it for themselves and their supporters but were oblivious of the idea of engaging in politics so as to render services to the people (Barkan 2006: 24). The point that these scholars make is that Kenyan politicians had not moved away from personal interest to acting in the national interest.

7.7 The Controversial Declaration

The naming of Kibaki as duly re-elected tipped the country into violence especially in ODM strongholds. Before Kibaki was sensationally named as the Presidential winner, Kivuitu announced that Odinga was only 38,002 votes ahead of Kibaki with 30 constituencies still to declare their results. This announcement unsettled ODM politicians at the KICC who vigorously disputed the credibility of the results (Throup 2008: 294). In spite of allegations of massive irregularities at the KICC, in ODM and PNU strongholds in Nyanza and Central Provinces respectively,⁵³ Kivuitu declared Kibaki the presidential winner giving him 4 584 721 and Odinga 4 352 993 votes (Khadiagala 2008: 7;

⁵³ Cases of vote inflation usually characterised by 'exceptionally high levels of turnout and discrepancy between the parliamentary and Presidential ballot' were reported in both ODM and PNU strongholds (Cheeseman 2008: 177). Cheeseman argued that Kenyans simultaneously voted for parliamentary and presidential elections and that most voters cast both ballots and so there was supposed to be the same total number of presidential and parliamentary votes (Cheeseman 2008: 177). However, in some PNU strongholds it appeared as if the majority of the voters preferred to vote for Kibaki but abstained from casting votes for parliamentary and civic candidates. This curious voting pattern had not been exhibited during previous elections in the country. Vote inflation was evidence of vote rigging.

Cheeseman 2008: 176). Musyoka was given 879,905 (Throup 2008: 298). Cheeseman demonstrated that whereas in Mbita and Karachuonyo constituencies in Odinga's Nyanza province, dubious cases of 95 per cent voter turnout were recorded, in Kibaki supporting constituencies such as Molo and Kieni there were discrepancies in results recorded at the constituency level and those the ECK announced. He cited Lari and Kandara constituencies in Central Province as some of the constituencies in which final figures were changed in Kibaki's favour. From the scholar's analysis an inference can be drawn that there were more acts of rigging in favour of Kibaki (Cheeseman 2008: 176-7). Before announcing the 'final' presidential results the ECK Chairman had casually alluded to suspected acts of electoral fraud and warned that he would not accept results from returning officers who had suspiciously made themselves hard to trace (Throup 2008: 295). But a hurriedly arranged Presidential swearing in ceremony followed.⁵⁴ In the midst of a somewhat confused situation, violence broke out in ODM strongholds (Human Rights Watch 2008: 7) just the announcement was joyfully celebrated in Mt Kenya region. The dispute took another twist when four ECK commissioners expressed doubts about the electoral process and Kivuitu admitted that he had been placed under immense pressure by PNU and ODM-K to announce the results and explosively confessed that he could not tell who was the Presidential winner (Cheeseman 2008: 177).

7.8 The Eruption of Violence

The post-election violence experienced in major urban areas, especially in ODM strongholds fell into four categories. First, there was spontaneous violence by ODM supporters that arose out of anger at what they perceived as a stolen election. Secondly, there was organized violence in the Rift Valley Province in which Kalenjin youth were mobilised against those perceived to be PNU supporters especially Kikuyu in the North Rift. Thirdly, there was also organised reprisal violence by PNU allied politicians and businessmen who enlisted the services of criminal gangs especially *Mungiki* to attack

⁵⁴ Cheeseman describes the stark contrast between Kibaki's inauguration in 2002 before a jubilant crowd and a hastily arranged swearing-in ceremony at State House Nairobi before a small crowd following the announcement of his questionable victory behind closed doors where the media, except the KBC TV, were barred. 'Guests at Kibaki's inauguration were hastily assembled, many arriving late and were seen live on television scuttling across the lawns of State House to take seats while the President was already swearing the oath of office. No one remembered to invite the band, no national anthem was played' (Cheeseman 2008: 166).

ODM supporting tribes, Luo, Luhya and Kalenjin in the same Province (Republic of Kenya 2008b: 346-7). *Mungiki* is a pseudo religious and cultural killer rag tag militia composed of youth from among the Kikuyu.⁵⁵ The fourth category involved excessive use of force against demonstrators by police officers (KNCHR 2008: 82; Republic of Kenya 2008b: 347). The violence escalated and resulted in gross human rights violations. These included murder, arson, rape, displacement of people, and the destruction to property. The *Mungiki* militia blockaded the main highway from Nairobi to the Western Kenya in Naivasha district and asked motorists and their passengers to produce identity cards so as to identify the tribe to which they belonged (International Crisis Group 2008: 13). People were attacked based on a perception that by virtue of their tribe they were either ODM or PNU supporters. The 2007 post-election violence *per se* was not surprising. Previous multiparty elections had been characterized by violence. However, the 2007 violence was unprecedented in the scale and the intensity of destruction (KNCHR 2008: 19). It was by far the most deadly and destructive ever witnessed since the reintroduction of multiparty politics. According to the Commission of Inquiry into Post-Election Violence report, a total of 1 333 people died, 3 561 were injured, 117 216 properties including residential houses, commercial premises, vehicles and farm produce were destroyed. Women and girls were subjected to gang and individual rapes, men and boys had their penises amputated while others forcefully circumcised using broken bottles. 350 000 persons were displaced either from their homes or places where they ran businesses (Republic of Kenya 2008b: 345-52). Much of the 2007 violence followed rather than preceded elections. It engulfed almost the entire country except for two out of Kenya's eight Provinces and affected both rural and urban areas. It was not confined to isolated districts in the Rift Valley, Nyanza and Western Provinces like previously (Republic of Kenya 2008b: 38).

7.9 Shoot-to-Kill Order

The police used excessive force and engaged in extra judicial executions while cracking down on demonstrators protesting against the 'stolen' elections (Human Rights Watch 2008: 26-34; Republic of Kenya 2008b; KNCHR 2008). It was as if the police had been issued with 'the shoot-to-kill' order (Republic of Kenya 2008b: 283). On 15 January 2008, a trigger happy police officer was caught on camera in Kisumu, Western region, as he

⁵⁵ For analyses on *Mungiki*, see Kagwanja: 2005; 2003

trailed two unarmed youth and shot them in cold blood (*The Standard* November 11, 2008; Human Rights Watch 2008: 31; Republic of Kenya 2008b: 189). In ODM strongholds particularly Nyanza Province, '80 per cent of deaths were as a result of gunshot wounds. Over 36 per cent of the total deaths reported were as a result of gunshot wounds' (Republic of Kenya 2008b: 346; Kanyinga, Okello and Akech 2010: 15). The Kenyan police were adversely implicated in similar incidents of gratuitous violence in most parts of the country before post-election violence. In Mt Elgon district the security forces were accused of unlawful killings and enforced disappearances while confronting a militia known as Sabaoth Land Defence Force (Human Rights Watch 2008b). The Kenyan National Commission on Human Rights report, *'The Cry of Blood' Report on Extra-Judicial Executions and Disappearances* showed that during the period preceding the 2007 elections the police summarily executed 500 youth in cold blood and arrested many more who disappeared without trace. The Kenyan Police force operated like a killer squad that eliminated suspected criminals and innocent citizens with impunity (Alston Report 2009). Alston, the Special Rapporteur of the United Nations Human Rights Council on extrajudicial, summary and arbitrary killings indicated it in his report:

I have received detailed and convincing reports of countless individual killings. It is clear from the many interviews that I have conducted that the police are free to kill at will. Sometimes they do so for reasons of a private or personal nature. Sometimes they kill in the context of a ransom demand. Often they kill in the name of crime control but in circumstances where they would readily make an arrest (Alston Report 2009: 2).

Official reports showed that at the height of the post-election violence the police acted unprofessionally as some of them stood by as atrocities were being committed, others exercised bias along ethnic lines while others engaged in rape (Republic of Kenya 2008b: 56-57). Clearly, the police force no less than politicians was susceptible to partisan politics owing to the influence of ethnicity in recruitment. Consequently the regular police, administrative police and the paramilitary General Service Unit tended to be biased in favour Kibaki and the ruling elite. Katumanga (2010) analysed the ethnicisation of the security sector in Kenya since the colonial period. He explores the process that led to the erosion of a sense of professionalism within the security sector under Kenyatta, Moi and Kibaki. Katumanga argued that these leaders made ethnically informed appointments to head Defence and Internal Security dockets not in the interest of the state but that of these

politicians and their political and economic allies. Competence was compromised giving rise to insecurity. This gave rise to the emergence of militia groups to fill in the void (Katumanga 2010: 534-542). The CIPEV report provided evidence that on the eve of the voting day some plainclothes Administration Police officers were deployed to parts of Nyanza Province to rig the ballots in favour of Kibaki's PNU but local residents became suspicious, identified them, hunted them down, injured some and lynched others (Republic of Kenya 2008b: 405-6; 373, Kanyinga, Okello and Akech 2010: 13). In spite of the use of force by the police against defenceless protesters, the scale of the violence was too enormous for the police to contain and Kenya tottered on the brink of civil war. It was not clear however, whether all the people who shot the protesters were security personnel. The ICC judgement delivered on January 24, 2012 that committed four Kenyans to full trial, for crimes against humanity during the violence, claimed that *Mungiki* youth were provided with security forces uniforms to disguise them as they attacked ODM supporters in the towns of Naivasha and Nakuru (ICC 2012: 48/155, 57/155, 64/155 Muthaura et al case-Decision on the confirmation of charges).

7.10 Weak Institutions, Polarisation & AU Intervention

Owing to the highly polarised political situation after the 2007 elections, Kenyan did not have organs and bodies that could arbitrate the political dispute. This had necessitated the intervention of the international community through the African Union. First came John Kufour, former Ghanaian President, followed by Kofi Annan leading a three-person Panel of African Eminent Personalities- the former Tanzanian President Benjamin Mkapa and Dame Graca Machel-Mandela. Constant interference by the executive in the judiciary had robbed it of the leverage and legitimacy with which to resolve the conflict (Republic of Kenya 2008b). The religious fraternity had also lost credibility for participating in partisan politics and so had lost any moral right to intervene. The Independent Review Commission (IREC) which had been set up to 'inquire into all aspects of the general elections held on 27th December 2007, with emphasis on the Presidential election' painted a combustible atmosphere preceding and during the 2007 general elections:

Civil society was accused of partiality; the faiths abandoned the true message, instead of leading their flocks to their respective nests. Observers to some extent

assumed the role of participants, with regrettable consequences. The electoral environment was expectant and fully charged (Republic of Kenya 2008a: 53).

ODM negotiators were James Orengo, William Ruto, Musalia Mudavadi and Sally Kosgei while the PNU ones were Martha Karua, Moses Wetangula, Mutula Kilonzo and Sam Ongeru. The composition of both teams brought to the fore the influence that forces against reform continued to wield. Except Orengo and Karua, the rest were formerly KANU loyalists and had benefitted from an unreformed state. Kilonzo was Moi's lawyer and had served him for years while both Wetangula and Ongeru had served in the Moi cabinet. I give details about the others elsewhere in the thesis. Karua exemplified opportunistic and tribal politics. Under Moi, she carved a niche for herself as a steadfast crusader of reform. But once Kibaki assumed power, like fellow Kikuyu politicians and others from the wider Mt Kenya region, she uncritically supported him and embraced exclusionary tribal politics. In due course she metamorphosed into a hardliner. She was the most vociferous defender of Kibaki's controversial victory in 2007. However, she fell out with Kibaki soon after the coalition government was sworn in. She subsequently resigned as Justice Minister citing frustration by Kibaki. However, the substantive reason why she left the government was subject to speculation. The point I am making is that these negotiators were part of the cause why Kenya plunged into near civil war. They were devoid of integrity. Ironically they were tasked with the responsibility of finding long term stability. The PNU negotiators had previously been thoroughgoing KANU loyalists. Karua was one of Kibaki's dependable politicians having served in his cabinet since 2003. Orengo became part of the ODM negotiating team courtesy of fraudulent primaries in which he was imposed on his constituents. The controversial primaries were a harbinger of the irregularities riddled general elections.

As Khadiagala argues a prerequisite for any negotiations that might lead to power-sharing was the avoidance of the 'who-won-who-lost' hard-line mentality and any calls for 'reruns and recounts' between ODM and PNU parties (Khadiagala 2008: 17). Khadiagala suggests that of greater importance was the need to consolidate and safeguard Kenya's democracy through the enactment and implementation of reforms anchored in a new constitution (Khadiagala 2008: 20). Odinga had to drop his intention to have himself sworn in as the people's President and call off a series of mass action rallies he had lined up to protest

against a 'stolen' election while Kibaki had to recognise that his 'victory' had been so marred by controversy that he lacked the legitimacy to rule to the exclusion of Odinga. Both politicians and their supporters had to give dialogue a chance. PNU had snubbed mediation efforts by South Africa's cleric Archbishop Desmond Tutu and casually received Kufour's intervention with a minister, John Michuki, denying that there was no crisis in Kenya (Khadijala 2010: 14). When Annan invited South Africa's Cyril Ramaphosa to join the mediators, PNU rejected him alleging that he had business links with Odinga. Although Annan had the gravitas to preside over the mediation, an agreement could not be reached because of the hard-line positions among the negotiators who could not rise above partisan politics. A series of mediation sessions did not yield any inspiring news to an anxious nation. Annan had to directly engage Kibaki and Odinga before announcing before Kenyans and the rest of the world that 'We have a deal' referring to a power sharing agreement between the two (Khadijala 2008: 24-5).

The National Accord was signed on 28th February 2008. Significantly the National Accord created the office of Prime Minister and two deputies and spelled out the duties of the Prime Minister that entailed the authority to 'coordinate and supervise the execution of affairs and functions of the government'. It also defined the composition and the coalition government and the procedure for appointment and dismissal of members of the cabinet. The National Accord spelled out the procedure of removing the Prime Minister from office and declared that the National Accord be entrenched in the Constitution (Republic of Kenya 2008c). A motion was thereafter tabled in Parliament to have the power arrangement enshrined in the Constitution through the National Accord and Reconciliation Act 2008. The Act legalised the formation of a coalition cabinet composed of PNU and ODM parliamentarians. The formation of the coalition cabinet appeared as the only viable path out of the internecine violence and political gridlock since neither party could govern on its own. Kibaki's PNU had insisted that they had won the presidency while ODM disputed this and accused PNU of robbing them of the presidency. ODM won 99 parliamentary seats against PNU's 43 although the combined number of seats among PNU allied parties gave rise to a hung parliament. The IREC observed that options such as a recount of the votes or even a rerun of the elections would not have helped resolve the dispute. First, electoral documents such as forms sent by returning officers from

constituencies had been tampered with making it impossible to verify the authenticity of results announced by the electoral body (Republic of Kenya 2008a). Second, a rerun would have undoubtedly aggravated the conflict given the fluid and tense political atmosphere in existence. Indeed, the PNU resisted a rerun having seen Kibaki through the swearing in ritual. Repeat elections would most likely have been overseen by the Electoral Commission of Kenya (ECK) which was partly blamed for the electoral impasse. IREC's report clearly showed that Kenya's 2007 elections fell far short of international standards in election management and organisation. The elections lacked integrity as the entire electoral process was marred by irregularities:

Although there is room for honest disagreement as to whether there was rigging of the Presidential results announced by the ECK, the answer is irrelevant, as (i) the process was undetectably perverted at the polling stage, and (ii) the recorded and reported results are so inaccurate as to render any reasonably accurate, reliable and convincing conclusion impossible (Republic of Kenya 2008a: 10).

Legally, the ODM should have sought redress from the courts of law through a petition. However, ODM had no confidence in the law courts according to press reports, and questioned Kibaki's legitimacy insisting that he had rigged the elections with the help of the electoral body in order to lever himself back into office (*Daily Nation* April 5, 2009). The two parties adamantly held onto these hard-line positions that meant that the polarisation among the electorate continued to take its toll.

7.11 (Mis) Trust and Coalition Politics in Kenya

The National Accord was signed against a long remembered history of betrayal and mistrust among Kenya's political elite dating back to the years immediately after independence when Oginga Odinga and Jomo Kenyatta fell out. This led to the first salvoes of an ethnically divided politics. Since there was no single tribe in Kenya that alone can elect a President, it forced politicians to form ethnic alliances to increase their chances of winning the presidency. In the post 1980s era, when multiparty democracy was ushered in, politicians remained at the behest of ethnic alliances in the absence of more conventional ideological and policy oriented democratic contestations. Thus ethnic and regional alliances were necessary in the absence of a single dominant tribe. However, coalition building was difficult to achieve in Kenya because of a deep lack of trust among

politicians. As Khadiagala has suggested, and is the argument in this thesis, the NARC coalition had collapsed because these alliances were expedient and therefore ephemeral (Khadiagala 2010: 79). It was therefore important that the National Accord be enshrined in the Constitution to prevent a repeat of the wrangles within NARC over the breach of the MoU. It was the only possible way to mitigate mistrust between Kibaki's PNU and Odinga's ODM, although disagreements were to rise later over the interpretation of the National Accord as discussed in chapter eight. The signing of the National Accord brought political events in Kenya full circle. The MoU had stipulated power sharing between Odinga's LDP and Kibaki's NAK. But the big difference was that the MoU was merely a gentleman's agreement while the National Accord while was constitutional and thus had legal weight.

7.12 Views from the ground – Ethnicity, Poverty, Corruption, Big Men, Gender, Land, Origins, Witchcraft and Impunity

The initial field research was undertaken while the country was reeling from the trauma of the 2007 post-election violence. In this context, in Central Province, home to the Kikuyu tribe, would-be respondents declined to be interviewed claiming that the question was too sensitive for them. Kinoo, is an area sitting astride Nairobi and Central Provinces. I was unable to have interviews with any of the Provincial administrators. I was however able to conduct semi-structured interviews with teachers, self-employed youth, businessmen, Christian and Muslim clerics, members of civil society and students. I was fortunate also to be able to interview politicians at the municipal level.

In most cases I could deduce party support and ethnic affiliation from a respondent's responses. *Ceteris paribus*, Luhya, Kalenjin and Luo respondents were sympathetic to the ODM while Kikuyu ones supported the PNU. I could hardly meet a respondent in Western and Nyanza Provinces, home to the Luhya and Luo respectively, who supported PNU. Most respondents in Kinoo were supportive of the PNU. The purpose of the interviews was to access opinions that reflected a cross-section of society. The focus of the questions (see appendix for the schedule of questions) was on issues involving the 2007 elections and the subsequent violence and efforts at post conflict state reconstruction. This not having been a survey, I am cautious of claiming that that these views are a full reflection

of the thinking of a majority of people in areas I carried out the research. However, they do reflect a strong anecdotal set of views. The following analysis draws from the triangulation of my research data.

7.12.1 Instrumentalisation of Ethnicity

Most respondents attributed repeated tribal violence in the multiparty period to incitement. Kenyan politicians from either side of the political spectrum exploited ethnicity during the 2007 elections as previously. Indeed, Kenyans had come to associate multiparty elections with tribal clashes. These clashes involved communities that had no known history of antagonism before the advent of multiparty politics. My respondents accused politicians of exploiting ethnic differences for political gain. Ambunya, a youth leader in Nairobi linked politicisation of ethnicity to poverty and a centralised political system in Kenya,

The government system is at fault. Everything is centralized and so each tribe wants to ascend to power to have their needs attended to. Politicians exploit tribalism to be elected. All Kenyan politicians from councillors, to MPs and President have benefitted from ethnicity. They deceive the voters into participating in tribal politics promising them goodies. But they are after their own interests. They do not represent ethnic interests (Interview, Ambunya, January 17, 2009).

The lack of policy oriented political parties, quest for power at all costs by Kenyan politicians and poverty created a volatile political atmosphere during elections. It then enabled politicians to instrumentalise poverty and ethnicity as they sought to outdo one another during elections.

7.12.2 Poverty and the Tribal link

While incitement was seen as one factor in the post-election violence, closely linked to this was the issue of joblessness and poverty. This was graphically portrayed by Kimani, an informant from Sondu who expressed the lack of opportunity that made people ripe for being used as pawns. The truism that tribal affiliation flowed from people's ties to chiefs or ethnically linked political leaders did not take central stage in people's discourse. It appears that lack of leadership was seen as a key aspect of the descent into violence, as the following excerpt from interviews shows.

No people are inherently violent. People get incited against others. Politicians are to blame. The people are simply pawns in political games. The ordinary people are busy sorting out their lives and no time to fight against one another. Those who were manipulated in 2007-08 were idlers who had nothing to lose. The youth have no investments. Poverty is the cause of ethnic violence. The idlers do not have work, are less educated due to poverty. Even graduates are idle and so this dampens the efforts of those who would want to go to school (Interview, Kimani, January 14, 2009).

Some of the questions I sought to explore were: Why did the masses participate in tribal based politics through voting for parliamentary candidates from their clans and Presidential ones from their tribes during primaries and Presidential elections respectively? Why did they afflict pain and suffering on fellow Kenyans during ethnic clashes? Respondents absolved the populace from responsibility for what Lonsdale elsewhere has described as 'political tribalism' (Lonsdale 2004: 79) and the consequent damage that it caused. Respondents mentioned widespread poverty in the country and massive unemployment among the youth as issues fuelling tribal politics. It was easier for politicians to whip up ethnic sentiment among impoverished youth because they were a disaffected and embittered lot with dashed hopes, lost education opportunities and unemployment even for those with qualifications, as the interview with Kimani shows. Respondents described the government as unresponsive to the needs of the poor and accused it of feeding politicians while the rest of the citizenry wallowed in dire economic circumstances. It was therefore hard for the youth to feel that they had a stake in the country's politics or in its political stability. Not only was there rampant poverty and dashed hopes, but it was also the availability of mobs of lumpenproletariat unemployed youth who rendered certain parts of the country ungovernable during the post-election violence. Paradoxically, an MP, Robinson Githae, observed in parliament that poverty was one of the causes of the violence. He implied that the violence gave the youth a sense of purpose and authority. Yet it was politicians themselves who promoted not only an unbridled acquisitive behaviour, but perhaps more pertinently, promoted an ethnic primordialism in the absence of a more policy-informed politics.

One of the reasons as to why the chaos that erupted after the last general elections lasted for a long time is because, for the first time, the youth had something to do. Previously, they were unemployed but at that time, they had something to do although very destructive. They were engaged. So we must give the youth something to do (Hansard 20th March 2008: 2:30 p.m.).

However poverty was not a sufficient reason to trigger the post-election violence. The confirmation of charges hearings at the ICC in The Hague in September 2011 with regard to the crimes against humanity committed during the post-election violence and the ruling by the pre-trial chamber II on Kenya's two cases showed that there was an 'organisational policy' by politicians on both sides of the political spectrum in the violence (ICC 2012: Muthaura et al case-Decision on confirmation of charges; ICC 2012: Ruto et al case-Decision on confirmation of charges). In December 2010, the ICC chief prosecutor Louis Moreno Ocampo named Uhuru Kenyatta, Francis Muthaura, a long serving bureaucrat, and Major Mohammed Hussein Ali, a former Police Commissioner, as the masterminds of retaliatory attacks against ODM supporters in the Rift Valley. William Ruto, the Kalenjin ethnic politician, Henry Kosgey, a veteran Kalenjin cabinet Minister who had been in parliament since 1979 and Joshua Sang, a radio presenter with KASS FM, a vernacular radio station broadcasting in Kalenjin, were accused of organising violence against PNU supporters in the Rift Valley Province.⁵⁶ The Kenyan media referred to these people as the 'Ocampo Six' who became the Ocampo Four after the ICC declined to confirm charges against Ali and Kosgey for lack of sufficient evidence. The pre-trial chamber II ruled that the post-election violence was planned.⁵⁷ The ICC judicial process tried to address impunity entrenched in Kenya's body politic. Kosgey and other politicians had previously been implicated in ethnic violence in the 1990s by a Judicial Commission Appointed to Inquire into Tribal Clashes in Kenya (Republic of Kenya 1999). Kosgey's long political career had been characterised by allegations of corruption both under Moi as well as Kibaki. The Kenya Human Rights Commission report entitled, 'Lest We Forget: The Faces of Impunity in Kenya' identified the ICC suspects, politicians, security chiefs and civil servants some of whom had served successive governments including Kenyatta's as unfit to occupy public office. Most of the blacklisted individuals served in the Moi and Kibaki regimes. These people were adversely mentioned in high level corruption, land grabbing, and incitement both during the 2007 post-election violence and previous tribal clashes (Kenya Human Rights Commission 2011).

⁵⁶ See <http://www.icc-cpi.int/iccdocs/doc/doc1050845.pdf> and <http://www.icc-cpi.int/iccdocs/doc/doc1050835.pdf>

⁵⁷ See <http://www.icc-cpi.int/iccdocs/doc/doc1314535.pdf> and <http://www.icc-cpi.int/iccdocs/doc/doc1314543.pdf>

Taking advantage of the seemingly reconciliatory atmosphere in the country after the signing of the National Accord, Githae, the politician I cited earlier, conceded that he and fellow politicians were to blame for vituperative and divisive politics in the run up to the elections and this was one cause of the incitement to violence. This interpretation resonated with the views of the respondents I interviewed in Kenya. At a cursory look, the excerpt below seems not to mention tribe. However, the issue of tribe and tribalism is couched in the phrase 'your people' and the word 'others'. In Kenya's political discourse, when a politician talks about 'your people', 'my people', 'our people' or 'others' he or she is engaged in what Atieno-Odhiambo (2002) referred to as 'othering'. In Kenya's context, the use of these phrases and the word 'others' connoted ethnic exclusion. They referred to members of a particular ethnic group but not the generality of Kenyans.

However shocking the violence was, we politicians from all divides were engaged in hate speeches in sending SMSs. Mr. Speaker, Sir if you tell your people: "You are poor because others have taken away your wealth," what are you saying? You are actually creating conditions for violence. When you tell your people, "You have no jobs because they have been taken by others" what are you saying? You are actually creating conditions for violence. When you tell your people: "You have no houses because they have been taken by others", what are you saying? You are actually creating conditions for violence (Hansard 20th March 2008: 2:30 p.m.).

Kenyans hardly mentioned each other's tribe in public but it was not difficult to tell the tribe or tribes in question in phrases such as 'Central Province people' or 'Mt Kenya people'. The former referred to Kikuyu while the latter was a euphemism for GEMA community. 'Luo Nyanza' was a political phrase used to refer to the region of Nyanza Province inhabited by the Luo community. The phrase was a political construct aimed at distinguishing the Luo from the Kisii and Kuria, the other tribes in the Province. Unlike the Luo, the two were not considered a threat to the Kenyatta, Moi and Kibaki régimes. The term underscored the history of opposition politics and the consequent political marginalisation of the community. Therefore much as the contribution by the politician in the Hansard appeared innocuous, it underscored preponderance of denial with regard to conversations among Kenyans around the question of tribalism.

Had Kenya's politics been issue driven, it would have been possible for Kenyans to be galvanised against the socio-economic inequality their ethnic affiliation notwithstanding. In my interviews, many respondents blamed poor leadership but not tribalism for their plight. If this was a widely shared position, why then did Kenyans enthusiastically participate in the kind of tribal politics that dominated the public platforms? There is no easy answer to this question.

7.12.3 Corruption and Political Instability

Kenya's politicians were disconnected from the people they represented. The high turnover of incumbent MPs after every election including the 2007 elections bore testimony to this argument (EU EOM 2008: 37). However, during elections the fact is that voting patterns show that most Kenyans engaged in ethnic voting which supports a view put forward nearly 25 years ago by Horowitz, that 'voting for the party identified with the voter's own ethnic group, no matter who the individual candidate happens to be' (Horowitz 1985: 320). Politicians distributed positions among themselves through defections, power sharing and co-optation and treated campaign pledges cavalierly. Interestingly this attitude exposed the futility of electing leaders based on ethnic affiliation. Throughout the time that I conducted my research, the Kenyans I interviewed complained about economic hardships that saw prices of basic commodities such as kerosene and maize flour rise exponentially beyond the reach of the poor. Indeed some parts of the country were famine stricken such as the semi-arid Turkana district and parts of the Eastern region inhabited by the Kamba. There was maize shortage in the country due to the post-election violence disruption and increase in farm inputs. Since maize was a staple in Kenya, the government was forced to import more maize to plug the shortfall. However, unscrupulous government officials in cahoots with unscrupulous businessmen, some of whom were not millers, imported maize and sold it to millers at a profit. The government aim of reducing prices was defeated (Africa Centre for Open Governance 2009; *Daily Nation* February 10, 2010). William Ruto, the then ODM sponsored Minister of Agriculture was accused of corruptly enriching himself and his supporters by buying maize from government reserves then selling to a cartel masquerading as millers who in turn resold it at huge profits (*Daily Nation* February 10, 2010). Ruto, was subsequently censored in Parliament but survived a motion by marshalling support from politicians from

his Rift Valley region, PNU affiliated politicians from Mt Kenya region and fellow ODM MPs (*Daily Nation* February 18, 2009). Mt Kenya MPs supported him because they hoped he would rally his supporters behind them in a similar case. At the time there was also an oil scam called Triton that saw the government lose billions of shillings in which politicians from Mt Kenya region led by Energy Minister, Kiraitu Murungi, were implicated (*Daily Nation* January 22, 2009).

Most of the interviewees condemned a corruption scandal involving the sale of the formerly Grand Regency Hotel in the centre of Nairobi to Libyan investors after being grossly undervalued (*Daily Nation* January 25, 2009). The maize, oil and hotel scams happened soon after the formation of the Grand Coalition Government leaving citizens to wonder whether corruption was the trade-off for peace. The National Accord stabilised the country but accountability remained an alien concept among the political elite. The Grand Coalition government was bloated and unwieldy in order to accommodate all political allies and because of this, tended to pander to ethnic interests. Thus ODM and PNU politicians were able to pursue their interests in corrupt ways, as the evidence shows without attracting any sanctions. This latitude exposed a lack of integrity in both parties, and rendered the ODM's reform agenda spurious and attracted criticism from a cross section of some of my respondents. 'ODM are corrupt like the rest because they are involved in illegal selling of maize. They only talk and make empty promises when campaigning' (Interview, Atieno, January 13, 2009).

Initially Odinga and Kibaki could not crack the whip against deviant politicians because the government was polarised between ODM and PNU. However, this appeared as an excuse to avoid acting against corruption. Certainly Kibaki did not act against corruption during his first term in office. Raila Odinga in turn was careful not to offend any of the ethnic groups that had supported him. Neither Odinga nor Kibaki could risk a backlash among communities from which the errant politicians came. However in the wake of corruption scandals involving looting of free primary education funds (*Daily Nation* December 14, 2009) and mismanagement of relief maize meant for the hunger-stricken Kenyans, Odinga, the supervisor and coordinator of government, suspended the affected ministers pending investigations but Kibaki revoked the suspensions immediately citing

lack of consultation (*Daily Nation* February 14, 2010). Article 5 of the Peace Accord stated that: ‘The removal of any Minister nominated by a parliamentary party of the Coalition shall be made only after prior consultation and concurrence in writing of the leader of that party’ (Republic of Kenya 2008c; *Daily Nation* February 6, 2010). Raila Odinga’s attempt to suspend the cabinet ministers could also be explained by the fact that he had fallen out with Ruto while Sam Ogeri, the Education Minister, belonged to the PNU. More fundamentally corrupt ministers went unpunished because Kenya’s successive governments did not consider corruption a serious national concern. Johnnie Carson, the US Assistant Secretary of State for African Affairs, was dismayed that under Kenya’s long serving Attorney General, Amos Wako ‘...not one, not one Government official or serving politician has been successfully prosecuted for corruption in Kenya for two decades. Kenya’s six year-old anti-corruption authority has demonstrated a similar success rate’ (*The Standard* September 28, 2009). In a quintessentially Kenyan style, politicians implicated in corruption attempted to shirk responsibility by mobilising members of their tribes against corruption allegations levelled against them (*The Standard* September 27, 2009).

In my research, most of the respondents doubted whether the government had the political will to address corruption. Corruption among top government officials had the severest of consequences for Kenya’s economic performance since it kept potential investors away and interfered with the rule of law. This ‘high level’ or ‘grand corruption’ as it is called in Kenya’s political parlance, was responsible for shoddy road construction and fraudulent tendering processes, stealing of medicine from state hospitals, embezzlement of school funds and nepotism and tribalism is the recruitment of personnel to the government bureaucracy. Even Kenya’s public universities were affected by corruption in form of tribalism in which recruitment, promotions and the award of scholarships were based on ethnicity (*Daily Nation* May 17, 2010). The International Peace Institute report showed that corruption had permeated the judiciary, police force, parliament and among other state institutions. This made it possible for organised crime to infiltrate the country’s state institutions. The report warned that unless the corruption within government structures was checked, Kenya risked turning into a criminalised state (Gastrow 2011). As Bayart, Ellis and Hibou put it,

...economic delinquency is overwhelmingly due not to the activities of insignificant individuals, of the common people, but of the most powerful people in society, the ruling classes, in pursuit of their political and economic goals. These powerful groups reserve for themselves, with complete impunity, 'the possibility of disobeying their own rules' and of creating 'a vast economic sector' which lies outside the law (Bayart, Ellis and Hibou 1999: 102).

Politicians and their allies engaged in the most destructive form of corruption. One could argue that ordinary Kenyans were culpable. They played a role in the entrenchment of tribalism. It was they who voted along ethnic lines, were involved in the violence that displaced thousands of people, assaulted and raped people and destroyed the property and lives of those they defined as foreign. My informants were clear that it was not sufficient to change leadership in Kenya, much as accountable leadership was a prerequisite to addressing the challenges facing Kenya. Kenyans needed to reorient their political culture towards the values of integrity, honesty and patriotism that the body politic was deficient of. Chapter Six of the Constitution underscores these values expected of public officers (Republic of Kenya 2010). A youth working with a state corporation observed that, 'We are all corrupt. Change must begin with each individual. We are equally corrupt and should not accuse them forgetting that we are equally corrupt'⁵⁸ (Interview, Onyango, January 25, 2009). Implied in this confession was *kitu kidogo* or 'petty corruption' in which ordinary Kenyans were complicit. This entailed paying out bribes and helping 'a distant 'cousin' from upcountry jump a queue or win special access' as Wrong puts it (Wrong 2009: 55). Corruption resulted in poverty because it impeded the government from delivering on public goods. But politicians and government officials exploited the weak institutions to generate rents and reward themselves.

7.12.4 Living Large

Kenya's MPs lived in opulence in stark contrast to the poverty that afflicted a majority of the citizenry (KNCHR 2006). Politicians were notorious among ordinary Kenyans for

⁵⁸ In a polity in which ethnicity was the base for political mobilisation, Meredith argued that both politicians and voters came to depend on ethnic solidarity. It enabled politicians whom he referred to as 'ethnic entrepreneurs' to ascend to power while voters regarded ethnicity as an avenue for accessing the 'a slice of the government bounty'. Essentially the voters voted for 'an ethnic patron' whom they believed would pick a share of the spoils for his community (Meredith 2006: 156).

awarding themselves hefty salaries and refusing to be taxed hence 'living large'.⁵⁹ The post-election violence occurred at a time of economic hardship, compounded by a global economic crisis. However Kenyans read a distinctly local element in the economic hardships facing them. For instance, a chemist in Sondu asserted that although high inflation had wiped out most peoples disposable income, their economic difficulties had preceded the economic crisis. He said that their woes could not be attributed alone to the '...the global challenge since Kenya's challenges started long before the world faced an economic crisis' (Interview, Ombeo, January 16, 2009). Throughout the interviews, Kenya's economy was invariably described as an 'economy of salaries' in which politicians perennially and arbitrarily awarded themselves hefty salaries and perks in complete disregard of the inability of the economy to sustain such high wage bills. In fact since Kibaki came into power profligacy became one of the defining attributes of the government whereby politicians across the board unjustly enriched themselves and wasted public resources. The Kenya National Commission on Human Rights report documented unnecessary buying of luxurious vehicles by the Kibaki government (KNCHR 2006). This political behaviour was consistent with a 'predatory state' characteristic of unaccountable régimes in Africa whereby rulers and their allies amassed massive wealth in contrast to the declining average incomes among the populace (Dryzek and Dunleavy 2009: 29).

Kenyan MPs' huge salaries were in sharp contrast with the high poverty levels.⁶⁰ These MPs were among the world's highly paid with each earning US\$ 9 300 a month of which only US\$ 2000 was taxed (BBC News Africa June 21, 2011). Incidentally the MPs tried to justify their grossly inflated salaries by invoking patronage in the sense that the salaries enabled them to pay for their constituents' expenses such as medical bills, school fees, funeral and wedding expenses, and hand-outs (bribes) during election campaigns (Wrong 2009: 55-6). This patronage should not be conflated with 'an inbuilt bias within African social theory in favour of the redistribution of wealth accumulated by successful

⁵⁹ I borrowed the phrase from Kenya National Commission on Human Rights (2006) 'Living Large Counting the Cost of Official Extravagance in Kenya'.

⁶⁰ Kenya had disturbing statistics when it came to wealth distribution. Its richest citizens earned 56 times more than its poorest citizens and 10 per cent of its citizens controlled 42 per cent of the country's wealth. The poorest 10 per cent controlled 0.76 per cent of the country's wealth making Kenya the tenth most unequal country in the world and the fifth in Africa (OMCT 2008: 7).

individuals to their constituent communities' (Chabal and Daloz 1999: 75). Wrong suggests that this was essentially corruption that stemmed from financial obligations imposed on the only successful son within the entire clan because 'propping up such vast networks made bending the rules virtually obligatory' (Wrong 2009: 56). The other arguments were that the high wages would make MPs resist bribery during debates on controversial motions and attract highly qualified people into politics. But higher salaries did not seem to provide greater commitment to the work of Parliament, as the press reported that it constantly suffered quorum deficits (*Daily Nation* November 10, 2009). I contest the assertion that politicians needed disproportionately high salaries to offset the financial needs of their constituents and argue that this type of logic gave rise to and nurtured poverty through creating a dependency syndrome and charity. The rule of law and institutionalised governance to guard against unnecessary intrusion of individual whims into economic matters were what Kenya needed. A church leader repudiated politicians for illegally amassing wealth to the detriment of Kenya's economy and had this to say:

Politicians artificially create poverty so that people perpetually depend on them for hand-outs, jobs, food, funeral and wedding expenses, school fees...they do not work for food sustainability for fear of empowering Kenyans. MPs are the only rich people in constituencies (Interview, Mwanza, January 27, 2009).

The youth were frustrated and convinced that the government had abandoned them. I met some Nairobi youth trying to eke out a living selling second hand clothes. They complained about harassment by government agencies such as the Nairobi City Council *askaris* and inexplicable levies and fees that made it impossible for them to sustain themselves by their income generating ventures:

Kenya's politics is horrible. It does not help the poor. There are only two tribes in Kenya: the rich and the poor. The poor continue to suffer in poverty...There are maize and oil scandals and teachers have not been paid because of selfishness. The traders are protesting against tax that has gone up. It is a fake government. There is famine while the farmers have maize which the government does not want to buy' (Interview, Njuguna, January 27, 2009).

Politicians were able to tap into these frustrations for political gain. The religious leader quoted earlier complained about the inequalities between politicians and educated people. 'Nincompoops in this country earn obscene salaries while educated people go home with peanuts. This creates room for stealing.' (Interview, Mwanza, January 27, 2009) This

strong language reflected a disgruntled citizenry in a polity in which there were deep inequalities and inadequate remuneration and recognition for industry, excellence and meritocracy. Nepotistic and tribal recruitment by the government and other sectors of the economy demanded that besides academic qualifications, jobless youth needed to know influential people to help them secure scarce job opportunities. A young man who ran a shop in Nakuru town in the Rift Valley, lamented about the difficulties he encountered while searching for a job,

...we were told Moi was bad but we did not know how. I went through high school because of Moi's bursary and had free milk. I did not know Moi's bad influence then. It was when I started searching for work that I realised that tribalism was such an influence in Kenya (Interview, Ndung'u, January 13, 2009).

Attempts to consolidate democracy in Kenya faced the triple challenge of corruption, poverty and tribal violence. The three mutually reinforced one another. Ogude described Kenya as a country in which 'poverty and opulence are locked in a bizarre embrace of death and one where amidst rampant poverty, those with 'big salaries'...daily feast in upmarket hotels' (Ogude 2009: 10).

7.12.5 Land and Tribal Violence

As I demonstrated in chapter two, injustices associated with land redistribution in the immediate postcolonial period were at the core of violence especially in the Rift Valley and Coast Provinces. Respondents blamed Kenyatta, Moi and their supporters for land conflicts in the Province and other parts of the country.

Land is a volatile issue in the Rift Valley but not addressed because the political elite possess the largest chunks of land. Moi settled his people in forests for votes. At the Coast, settlers occupy land...In the Rift valley people have emotions since the area belongs to the Kalenjin community. Poisonous arrows would be given out to drive outsiders out. The Kikuyu were believed to be in the Rift Valley since Kenyatta was the President, they were populous and couldn't all fit in the Central Province. As a result, Kalenjin and Kikuyu have been on antagonistic sides of the political equation (Interview, Agutu, January 25, 2009).

The Moi régime at least in terms of policy was a continuation of Kenyatta's. Moi did not attempt to address the land question but compounded it. He abetted grabbing of public land and participated in land grabbing and arbitrary allocation of communal land. This is

evidenced by civil society research (KNCHR & Kenya National Land Alliance 2006) and a report of the Commission of Inquiry into the Illegal/Irregular Allocation of Public Land (Republic of Kenya 2004). Moi, some of his children and close allies grabbed government land and excised forests. Moi hived off part of the Mau Forest, a vital water tower in the Rift Valley, on which he built Kaptagich Tea Factory. Furthermore under the Moi régime, the poor and landless encroached on the forest (KNCHR 2006: 21-24; Republic of Kenya 2002; *Daily Nation* July 29, 2009). The government evicted the poor but left Moi and other prominent land grabbers to continue occupying excised parts of the forest.

The Kalenjin on whose land the Kikuyu were resettled were opposed to Kenyatta's controversial approach to the land issue. They interpreted the resettlement of Kikuyu and other 'alien' tribes in the Rift Valley as an orchestrated plan to disinherit them of their ancestral land. The Maasai community also considered most of the land in the Rift Valley Province as their heritage as the British settlers had dispossessed them through coercive treaties (Kantai 2007: 109; OMCT 2008: 15). Resentment to dispossession remained a legacy of the past, as the views of a high school teacher in Nyanza Province shows:

Kenyatta carried some guys from his place and planted them in the Rift Valley in the middle of some other people and no one could complain for the complainant could have been eliminated...some people have large tracts of land and can only inspect by use of a chopper while some have nothing. Through violence the poor could get more land by chasing away foreigners (Interview, Machanja, January 15, 2009).

The resentment captured in the excerpt called for a redress to land disputes in the interest of stability and consolidation of democracy. The Kalenjin community through their 'warriors' was seen as having actively participated in tribal clashes that had been a perennial feature of conflict in the Rift Valley, the Kalenjin-Luhya borderlands and the Kalenjin-Luo borderlands since the early 1990s and even before (Republic of Kenya 2008b; Republic of Kenya 1999). The Kalenjin essentially formed a militia that drew upon a Kalenjin warrior tradition (Republic of Kenya 2008b: 76). Upon the advent of multiparty democracy, these militia were mobilised to defend the Moi government against any ethnic or tribal opposition. In the 2007 post-election violence, these 'warriors' were again pitted against the Kikuyu and to an extent, the Kisii. The Kalenjin community had felt doubly aggrieved following the controversial land redistribution programme orchestrated by the

Kenyatta government after independence, for they had also been dispossessed of their land earlier by the colonial régime. This perspective was articulated by one of my respondents:

The colonial establishment was not reformed after independence. The postcolonial government inherited Kenya with all its liabilities. The colonialists grabbed land and the neocolonialists black government continued oppressing fellow black people. Kalenjins were dispossessed of land by colonialists and by the Kenyatta government again. The enlightened families among the Kalenjin, Kikuyu and white settlers who remained grabbed land once more hence the all the liabilities of squatters (Interview, Cheruiyot, January 16, 2009).

The term ‘enlightenment’ connoted unethical and even criminal behaviour. In Kenya’s political context those who bent rules to amass wealth were not regarded as social aberrations but ‘street smart’. This behaviour became abominable only when those involved belonged to a different tribe. The Kenya Land Alliance and the Kenya National Commission on Human Rights both were clear that Kenyatta and Moi had abused their constitutional powers as trustees of public land when they amassed land together with their supporters. The Kenyatta and Moi families led in land ownership irregularly acquired (KNCHR and KLA 2006: 2). The NARC government under Kibaki set up the commission of inquiry into the illegal/irregular allocation of public land known as the Ndung’u commission. It submitted its report to him in 2004 that implicated prominent individuals in the Moi, Kibaki and even Kenyatta régimes in illicit acquisition of public land. Instead of acting on the recommendations, Kibaki shelved the report (Republic of Kenya 2004). Related to the question of land was a sense of belonging and the tendency to define ‘home’ in terms of ancestral origin.

7.12.6 Where do you originally come from? The Significance of belonging

Tribe is the first thing that Kenyans need to know about one another, the backdrop against which all subsequent interaction can be interpreted... The obsession with it is so pervasive, Kenyans struggle to grasp that it may not extend beyond the country’s borders (Wrong 2009: 44).

The preoccupation with the idea of ethnic identity among Kenyans overrides any other forms of identity that a person holds. The concept of ‘tribe’ was related to that of ‘home’. The concept of ‘home’ came into sharper focus during the post-election violence than ever before. One of the most ubiquitous questions in Kenya is: ‘Where do you come from?’ The

question seeks to establish a person's regional and tribal origin if it cannot be deduced from one's accent in speaking either Kiwashili or English or if one's surname does not give away one's ethnic identity. It is taken for granted that every Kenyan has a rural home. An urban setting such as Nairobi is seen as a temporary dwelling place where one seeks employment after which one retires to one's rural home. Upon one passing on, in most cases one's remains are interred in one's ancestral home.

Native-settler balkanizing politics that defined citizenship on the basis of ethnic belonging in the multiparty politics modified the question to: 'Where are you originally from?' This question is ubiquitous in the South African context too although here it referred to civic citizenship. These questions may appear innocuous but they are insidious and often belie the discriminatory mind set of whoever poses them. So destabilising was the 2007 post-election violence that most Kenyans, especially those affected by previous tribal violence, came to associate most urban areas with destruction and death. A rural home among one's own group was a symbol of peace and stability especially, at election time. To have no rural home implied homelessness bordering on vagrancy and one risked ending up as an internally displaced person in a derelict camp or worse, faced death. Many Kenyans lost lifetime investments during the post-election violence. Their losses made many question the wisdom of investing in areas away from their ancestral homes. The post-election violence forced a businesswoman in Kakamega to reflect on the concept of home: 'The post-election violence reminded me that Kakamega is not my home and that I should not invest here...it helped me realise that town is temporary and one's home is in the rural area and those without rural homes are homeless' (Interview, Felistas, January 20, 2009). Mwangi, an elderly man and a resident of Nakuru, reflected on the disruptive character of ethnic clashes in the Rift Valley. At the time I met him, he was eking out a living selling charcoal. He melancholically narrated how he suffered from the cyclical violence that accompanied multiparty elections since 1992:

1992 was the beginning of ethnic politics. There was unity among Kenyans but after voting, the Kikuyu were sent away from the Rift Valley. I was forced to relocate to Molo. In 1997 I did not vote since my home was destroyed. There were disputes about land boundaries and discrimination followed thereafter. The Kikuyu were sent away for being in the Rift Valley illegally. In 2002 I had given up on voting...2007 violence was the culmination of ethnic politics. Kikuyu and Kisii

were considered non indigenous in the Rift Valley. Blame lies with the government for not enforcing the law to ensure that people are free to stay wherever they want. I had bought 2 hectares of land in Molo and had stayed there for 7 years. I had done a lot on the land for that long and I lost all that. I abandoned my land. In 2006, I went back to check my trees and found that they had been cut down by invaders. In 2007, my friends (Kikuyu) had to abandon land in Molo. The councillors took the trees for saw milling (Interview, Mwangi, January 13, 2009).

7.12.7 'The Kikuyu Problem'

The most populous tribe (Kikuyu) felt that it was their birthright to rule. They believe that it was them who liberated Kenya from colonialism. But the colonial war was won through ideology as well. Since then a sense of entitlement developed among the Kikuyu (Interview, Owino, January 24, 2009).

The election of Kibaki in 2002 did not imply that other Kenyan tribes had overcome resistance against the Kikuyu ethnic hegemony. The notion that 'Kenya was not ready for another Kikuyu President after Moi' had partly contributed to the failure of opposition unity in 1992 and 1997. It prevailed even after Kibaki's victory and was reignited once Kibaki began concentrating power among Mt Kenya politicians. Aversion by other tribes to the perceived dominance of Kenya's political and economic spheres by Kikuyu was a refrain in most of my interviews with most members of other tribes as the excerpt shows. 'Refusal' by Kibaki to concede defeat after being 'beaten' by Raila Odinga in the presidential election was seen as an attempt by the Kikuyu to forcefully cling to power even after the tribe had 'ruled' twice through Kenyatta and Kibaki. According to a respondent, 'Other tribes did not want the Kikuyu to rule them once more. It was the turn of others to rule. Luos wanted their man. Kikuyus were fought since they have ruled, amassed property and are dispersed all over the country' (Interview, Wanjala, January 14, 2009).

Wanjala expressed sentiments prevalent among other tribes who interpreted the stalemate that arose after the disputed Presidential elections as the height of hubris and disregard for ethnic diversity among the Kikuyu. The Kikuyu were collectively perceived as 'saboteurs' of democracy despite Kibaki having been overwhelmingly voted for by Kenyans across ethnic divides in 2002. Some of the responses were tribally slanted either in support of or denunciation of Kibaki's controversial re-election. A kindergarten teacher in Kinoo, a

predominantly Kikuyu inhabited area, had this to say about the cause of the post-election violence: ‘Some tribes felt that they were the only people who could lead Kenya and were not ready to be led. It resulted out of not accepting defeat. The Rift Valley and Western Provinces could not accept defeat and that is why they chased away the other tribes’ (Interview, Njoroge, January 27, 2009).

Kibaki’s first five years in office (2002-2007) brought about some changes such as reconstruction of roads, rural electrification, allocation of money by the central government to constituencies under the Constituency Development Fund (CDF) and exponential enrolment in primary schools because of government subsidised primary education programme. The CDF initiative was a success in some constituencies in which MPs prudently spent the money. In such constituencies projects such as classrooms, cattle dips, bridges, and dispensaries were put up. The money was also used for grading of roads. In other constituencies corrupt MPs squandered the funds through nepotism, embezzlement and used it to fund campaigns (Republic of Kenya 2008a: 124). The 2010 Constitution expounded on the CDF initiative and provided for allocation of fifteen per cent of government revenue to each of the 47 counties. The counties were also given some latitude in the management of levies they would charge traders and such ventures (Republic of Kenya 2010). Hopefully this would tame corruption at the constituency level as a result of politicians being in charge of constituency funds a clear case of a conflict of interest.

In spite of Kibaki’s first term accomplishments (KNCHR 2008: 17), the greatest blot on his régime was the perpetuation of tribalism through the continued disproportionate appointment of the Kikuyu into the government. It wiped out the gains. A Nakuru trader’s assessment of Kibaki was that, ‘Although Kibaki is development conscious, the problem with him is tribalism - the Kikuyu problem’ (Interview, Wambua, January 14, 2009). Kibaki’s refusal to ‘accept defeat’ and the disproportionate appointment and recruitment of fellow Kikuyu into the government prompted other communities to question the perceived sense of entitlement among the Kikuyu. The persistent question was: *Kwa nini hili kabila liongoze tu? Si waachie wengine?* (Why should this tribe be the only one to lead? Why can they not leave power to the others? (Interview, Kamau, January 17, 2009). Those excluded

on the basis of ethnic citizenship were frustrated that the benefits of the economy were confined to Mt Kenya elite and their supporters. According to Michela Wrong, a British journalist who spent some time in Kenya, most Kikuyu felt that the community played a greater role in the attainment of independence and therefore had ‘the right to both lead the country and eat their fill’ (Wrong 2009: 112-3). Wrong shows how hubris reminiscent of the Kenyatta régime resurfaced after the 2002 elections and attracted distaste from other ethnic groups. The arrogance was so overwhelming and blinding that the Kikuyu elite could not notice let alone defuse the resentment that began building up across the country:

...the Kikuyu elite’s sense of entitlement was so great it did not see the need. That failure of imagination, Kiai [*a Kikuyu and former KNCHR chairman*]⁶¹ said, had been illustrated a year earlier, when the *Nation* published a photo showing Kibaki shaking hands with all his provincial commissioners. ‘All the suits that day were either Kikuyu, Meru or Embu. Every non-Kikuyu saw it, but the people at the *Nation*, who published the photo, didn’t even notice’ (Wrong 2009: 291).

The Kalenjin were particularly unhappy with what they perceived as the purge of members of the community from the government soon after Kibaki came into office. Some of the sacked Kalenjins were accused of complicity in the Moi-era corruption (KNCHR 2008: 24). But corruption prevailed under Kibaki. Wrong observed that each succeeding régime in Kenya did not see anything untoward in perpetuating tribalism because it was seen as the only way to redress the injustices of previous régimes including colonialism that distributed resources in just as an ethnically biased a manner (Wrong 2009: 52). In my interviews, the passion with which some of the respondents discussed the place of ‘tribe’ in Kenya’s politics indicated that Kenya’s sustainable stability depended on the extent to which the implementation of the 2010 Constitution would disabuse most Kenyans of the tendency to view the presidency through an ethnic prism.

A cross section of respondents observed that it was high time a member of a tribe that had ‘never ruled before’ was elected President. Members of the Kikuyu community were lumped together irrespective of class and internal rivalries and were considered to have collectively ‘eaten’ twice. ‘The violence arose because the Kikuyu were considered privileged because of leading all the time. The rest of the other tribes ganged up against the

⁶¹ My clarification.

Kikuyu. The mantra was 41 against 1 (ethnic groups)' (Interview, Kimani, January 14, 2009). Miguna alleged that ODM had a campaign strategy of '1 against 41' that entailed using populism to rally the other tribes against the Kikuyu on the premise that it was the turn of another tribe to lead since Kenyatta and Kibaki were Kikuyu (Miguna 2012: 171-2, Kagwanja 2009: 394-5). However, this does not mean that the Kikuyu were the only victims of the post-election violence. The horrendous details of atrocities committed during the post-election in 2007 and early 2008 relayed during the live transmission of the confirmation of charges hearings at the ICC in September 2011 showed that Kenyans, irrespective of tribe, suffered.⁶² The breakdown of deaths by tribe and a detailed analysis of the post-election violence corroborate my view (Republic of Kenya 2008b: 344). The 2007 elections and the subsequent violence were complex issues. The post-election violence had political and economic dimensions too as seen through the armies of unemployed youth that politicians hired to fight on either side of the political spectrum. The role of *Mungiki* in the violence had a lot to do with economic exploitation within the Kikuyu community. The *Mungiki* militia attracted descendants of victims of colonial collaborators who took over the control of the state after independence. These were dispossessed youth, descendants of freedom fighters marginalised by the Kenyatta régime (Kagwanja and Southall 2009: 269).

The disputed 2007 presidential elections resulted in the Kikuyu Diaspora (outside of Central Province) being targeted. They were attacked because the election irregularities that led to Kibaki's controversial re-election were attributed to politicians from the community. There was also resentment over land redistribution injustices perpetrated by the Kenyatta government. The post-election violence was not a simple dichotomy of 'the forty-one against one'. It would be fallacious to argue that the rest of the other tribes were ranged against the Kikuyu. In Kakamega, Western Province, the Kikuyu were attacked together with locals perceived to be PNU sympathisers. Being an ODM supporting area, PNU was considered anathema. Unlike in other parts of the country, the post-election violence in most parts of Western Province was a result of political differences but not ethnic animosity (Republic of Kenya 2008b: 164-5, 172). Some Luhya politicians defined as indigenes but contested civic seats under PNU were viewed as 'enemies' and 'sell outs'.

⁶² http://www.youtube.com/results?search_query=ICC+CONFIRMATION+HEARINGS&aq=o

The same fate befell some Luo politicians in Nyanza who had been sponsored by PNU. They were forced to seek refuge in neighbouring Tanzania once the post-election violence broke out. It was however, not easy to shake off the ethnic angle even in these incidents since these politicians attracted resentment from their tribes for associating with the PNU led by a Kikuyu. The violence also exposed economic inequalities that cut across ethnic divides. The youth who took up machetes to fight were indicative of neglect by Kenya's successive governments which served the economic interests of the elite.

7.12.8 Witchcraft, Livestock & Clashes in Sondu

In Sondu, the conflict was not any less complex. There were accusations of witchcraft among the communities in addition to contestation over belonging. Sondu is an area at the intersection of Nyanza and Rift Valley Provinces, where a majority of the inhabitants came from the Kipsigis, Kisii and Luo communities. The Kipsigis (a sub-tribe of the Kalenjin) accused the Kisii of bewitching their cows so as not to produce milk. Fighting ensued between the two communities ostensibly over that accusation resulting in Kisii property being torched and the members of the community displaced. Although the post-election violence began on or around December 30, 2007, the Kisii in Sondu had been displaced before then. In my interviews investigating the violence, it was not clear to some of the residents in the area why tension erupted when the two communities accused each other of witchcraft during the electioneering year yet they had lived together harmoniously and even intermarried for years. The residents could not recall witchcraft having been an issue before.

In September 2007, Kalenjin were in conflict with the Kisii. The Kalenjin accused the Kisii of bewitching the Kalenjin cows so as not to produce milk. The Kalenjin (Kipsigis) intermarry with Kisii but not Kipsigis and Luo. The Kisii property was burnt down. The Kisii were accused of witchcraft but the Luo, Kamba and Kikuyu practised witchcraft too. Why the accusation of witchcraft close to the 2007 elections yet these people have intermarried for many years?... Kisii have lived with Kalenjin for 40 years. Why witchcraft accusations against the Kisii now? (Interview, Kamau, January 17, 2009).

Previous ethnic violence in the area had pitted the Luo and Kipsigis against each other. Sondu was illustrative of Chabal and Daloz's prediction that transitions to multiparty politics in Africa and the accompanying political competition were likely to foreground the

world of the irrational exemplified through religion and witchcraft (Chabal and Daloz 1999: 76).

Sondu market centre is surrounded by hilly land and undulating land inhabited on three sides by the Luo, the Kisii and on the side with a river passing through. The setting of this small and apparently serene rural shopping centre hid a tortured past. Indeed once this history is known, the area then appears as embedded in a trapped location. Although appearing tranquil and lively, Sondu in fact had a violent past that continued to haunt some inhabitants. The experience of Kamau, a local resident captures some of this history:

I came to Sondu in 1967 as a young boy and have been brought up here. I know this place as my home. I coexist well with my neighbours from different ethnic groups. I lost my wife last year [2008] after my houses were torched. She died of shock. Greed begets ethnicity. As a young man in 1969, while Kenyatta was greedy and this led to Tom Mboya's murder, the Kikuyus suffered a lot. Kikuyus were driven out of Sondu. This resulted into tribalism. The Luo felt that the Kikuyus as a group had assassinated Mboya. It affected innocent Kikuyus. At school, the Luo would point at me saying *hawa ndio waliomwua* (these are the ones who killed) Tom Mboya... All along since 1992 politicians gather members of their tribes at night 'to conspire' (Interview, Kamau January 17, 2009).

Sondu was a microcosm of Kenya's turbulent multiparty and even postcolonial period. According to Samoei, 'disagreements over things like livestock destroying neighbours' farms spilled over into a conflict between tribes. There are no historical land issues in the Rift Valley' (Interview, Samoei January 17, 2009). It is not possible for such a dispute that involves at most two families to escalate into an intertribal conflict unless there were latent issues between members of the involved tribes. The politician's denial that the Rift Valley did not have a history of land disputes does not stand the scrutiny. The local politicians in Sondu periodically and expediently exploited its multi-ethnic composition with devastating consequences as noted by a government report that explored the causes of the tribal clashes in the 1990s (Republic of Kenya 1999: 104-6). Samoei asserted that members of the Kikuyu community resident in the area were attacked because of what he referred to as 'displacement anger.' He said '...we can't reach Kibaki who stole elections but since you voted for him, we will deal with you' (Interview, Samoei January 17, 2009). This view emerged during my interviews in Kakamega when I asked a respondent why the Kikuyu were attacked. He was of the opinion that, 'Kibaki, a Kikuyu, stole votes and his

tribesmen and women had to be punished for that' (Interview, Shisaina, January, 20, 2009). But Muluka, quoted earlier, dismissed this 'displacement anger' explanation. He asserted that during the 2007 elections all Kenyans voted on the basis of ethnic consideration. He painted the Kikuyu lumpenproletariat as victims of exploitation by the Kenyatta régime and added that it was therefore unwarranted to accuse and victimise the Kikuyu further because of the way they voted.

Kikuyu settlers were displaced by colonialists. Kenyatta robbed Kikuyu peasants of their land. Kenyatta amassed the entire land and former white highlands. He had to settle the Kikuyu in the Rift Valley because there was vast land...The Kalenjin started feeling that they wanted their land. The Kikuyu are getting another cane by being driven out of Rift Valley. We are not being fair to them. They voted along tribal lines just like everybody else (Interview, Muluka, January 23, 2009).

In Kenya's ethnically based politics, it may be true as an interviewee asserted that, 'The Kikuyu have never voted for any other Presidential candidate other than one of their own regardless of whether that candidate stood a chance to win or not' (Interview, Ochieng', January 24, 2009). What was not in doubt, however, was that no Kikuyu Presidential candidate had ever stepped down for a candidate from another ethnic group since Kenya's return to multiparty politics thus the Kikuyu had consistently voted for presidential candidates from the community since 1992. Consequently, the other tribes regarded the Kikuyu as a community that did not vote for a presidential candidate from another tribe.

The question of belonging in Kenya was nuanced. Whereas in Sondu one could not contemplate participating in elective politics unless one was a native, in Kakamega one needed not meet that requirement. Kamau, the Kikuyu 'settler' in Sondu whom I quoted earlier, said he would be rejected as a foreigner if he sought to represent Belgut constituency in parliament. The constituency would say, '*Si mtu wa hapa!*' (He is not an indigene!) (Interview, Kamau January 17, 2009). Belgut is a constituency predominantly inhabited by the Kalenjin in which Sondu falls. In contrast, a woman 'foreigner' who bought land in Kakamega municipality was elected a councillor, 'In Maraba, a woman ran for civic seat on an ODM ticket and got elected although she is a foreigner in the area since she bought land there' (Interview, Shisaina, January 20, 2009). In Kenya civic rights often clash with ethnic citizenship. The KNCHR suggested that whereas the constitution allows one to settle and own property in any part of the country, the discourse framed

within ‘native-settler’, ‘foreigner-indigenous’, ‘outsider-indigenous’ binaries prevalent especially in the Rift Valley and Coastal parts of the country is strongly opposed to the ‘foreigner-outsider’ seeking political leadership within his host community (KNCHR 2008: 18). Sondu, like most parts of the Rift Valley province had experienced tribal violence before. However, the lack of prosecution for the instigators ensured that violence remained integral to Kenya’s multiparty elections.

7.12.9 Impunity and the 2007 Elections

The ICC has exposed Kenya’s judiciary as a failure. It has also exposed leadership failure in this country. The process will remove impunity from this country. By impunity I mean disregard for the rule of law, (Interview, Shisaina, January 18, 2011).

Flagrant disregard for the rule of law among the political elite was the norm rather than the exception throughout Kenya’s post colonial period. It was for this reason that some of the respondents I spoke to after the ‘Ocampo Six’ were summoned to The Hague, spoke in support of the intervention of the ICC in an attempt to afford justice to the post-election victims. The excerpt captures the frustrations of Kenyans with the inability of Kenya’s successive governments to bring to account prominent individuals implicated in criminal behaviour. The Kenyatta-Moi-Kibaki régimes epitomised impunity as the evidence I have provided elsewhere shows.⁶³ Despite numerous commissions of inquiry that unearthed criminal behaviour among public officials throughout Kenya post colonial period, no senior public official had ever been held to account for corruption, incitement to ethnic violence and stealing of public land.

Impunity prevailed even under the new constitutional dispensation. Kibaki controversially and unconstitutionally attempted to unilaterally appoint the Director of Public Prosecutions, the Attorney General, the Chief Justice and Director of Budget. Odinga denounced the appointments citing lack of consultation. The constitution demanded that

⁶³ The international human rights law defines impunity as, ‘the impossibility, de jure or de facto of bringing the perpetrators of violations to account whether in criminal, civil, administrative or disciplinary proceedings since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victims’ (KHRC 2011: 3).

‘consultation’⁶⁴ between the President and the Prime Minister take place before approval of the nominated persons by parliament. He was forced to back down following reactions from civil society, the ODM wing of the government, the Judicial Service Commission (JSC) and a cross section of lawyers. The Constitution Implementation Committee (CIC) pronounced the appointments unconstitutional. The High Court too ruled that the appointments were unconstitutional (*The Standard* January 31, 2011; *The Standard* February 3, 2011). Kibaki and the NAK wing wanted to use the appointments to argue that Kenya would have had a restructured judiciary in order to challenge the admissibility and jurisdiction of the cases before the ICC. Kibaki was simply concerned with shielding the Ocampo Four, especially Uhuru Kenyatta and his ally Francis Muthaura, from facing justice and perpetuate impunity. Kibaki feared that he could be implicated in the case during the trial having been linked to *Mungiki* during the confirmation of charges hearings. The Human Rights Watch report showed that four years since the post-election violence took place nobody had been prosecuted for masterminding the crimes that were committed. It detailed structural deficiencies in the local criminal justice system and cited the lack of political will for this impunity (Human Rights Watch 2011). The policeman caught on camera shooting protesters in Kisumu was acquitted for lack of evidence.

Kibaki’s decision to disregard the Constitution was consistent with established behaviour whereby politicians and other prominent government officials broke the law, disobeyed court orders and directives by statutory bodies without being sanctioned. The National Cohesion and Integration Commission (NCIC) warned politicians and particularly Uhuru Kenyatta and William Ruto, the two politicians among the Ocampo Four, against hate speech but they persisted until the ICC warned them against whipping up ethnic sentiment in their attempt to politicise the ICC issue (*The Standard* April 7, 2011). The judiciary was an indispensable cog in the impunity machine. Under the previous Constitution, judges of the High Court and Court of Appeal were Presidential appointees often selected on the basis of ethnicity and political connection as opposed to competence (Republic of Kenya 2008b: 28-9). Although there had been some reforms in the judiciary to accord it independence, it would take time before the judiciary won the confidence of Kenyans

⁶⁴ The term ‘consultation’ was not defined in the national accord and so the two principals disagreed on what ‘consultation’ entailed. However, the dispute pointed at entrenched perfidy and mistrust in Kenya’s political system that trumped constitutionalism.

owing to the legacy of the system of personal rule that rendered it subservient to the executive.

The Moi-Kibaki régime were adept at instituting commissions of inquiry in the wake of corruption scandals and other excesses to deflect public attention, assuage Kenyans' anger and wear them out. In most cases these commissions of inquiry laundered those supposed to face the full arm of the law. In 1998, Moi had set up a commission of inquiry to investigate causes of tribal clashes in some parts of the country since 1991, known as the Akiwumi Commission, but then ignored the commission's recommendations after it implicated senior KANU politicians (KNCHR 2008: 19; Republic of Kenya 1999; Republic of Kenya 2008b: 447). Kibaki as head of the NARC government formed a commission of inquiry to investigate the Goldenberg export compensation scandal cited and explained earlier. The commission recommended that high profile politicians and government officials should face criminal charges and that Moi should be investigated further (*Saturday Nation* April 23, 2011). Moi was never summoned before the commission. Kibaki criticised the report, a fact that lent credence to the view that '...special anticorruption units and commissions exist essentially to attack political and economic rivals, while at the same time placating aid donors' (Bayart, Ellis and Hibou 1999: 101). There was no political will to address impunity in Kenya which accounted for the propensity among politicians to make incendiary speeches, incite ethnic violence, embezzle state funds, engage in electoral fraud, grab public land and excise water towers without being sanctioned. Instead of acting against the malfesants, Moi, Kibaki and even Raila Odinga simply asked ministers and high ranking government bureaucrats suspected of involvement in corruption and even crimes against humanity to momentarily step aside to cool off. These individuals resumed their posts or were reassigned other portfolios after the furore had died down. The aspect of being cleared of the allegations first through an impartial process did not arise. Moses Wetangula, the Minister of Foreign Affairs, stepped aside over corruption allegations levelled against him. He resumed office before being cleared (*The Standard* November 9, 2011). Kibaki reassigned Amos Kimunya, a fellow Kikuyu and Finance Minister implicated in the irregular sale of the Grand Regency Hotel, to a new ministry (*Daily Nation* January 26, 2009). Okwiri, the trader quoted earlier, raised this matter during our interview, 'The former Finance Minister implicated in corruption

was reinstated yet he has corruption charges to answer. There is an outcry from MPs and the general public wondering why he was reinstated.’ (Interview, Okwiri, January 26, 2009). Uhuru Kenyatta ‘stepped aside’ rather than ‘resign’ as the Finance Minister and retained the post of Deputy Prime Minister following confirmation of charges by the ICC. Odinga ‘suspended’ Caroli Omondi and Mohammed Isahakia,⁶⁵ his aides stationed in the Prime Minister’s office after they were adversely mentioned in what became popularly known as the ‘Maize Scandal’. The ‘suspension’ was a subterfuge since it was alleged that these individuals continued reporting to work and carrying out their duties as if nothing had happened (Miguna 2012: 420-1). ‘Step aside’ became a by-word for momentary easing out of the system those facing serious allegations of impropriety to calm public outcry after which they resumed office. Accountability was anathema in the coalition government as had been during the previous governments.

Impunity eroded confidence in Kenya’s judiciary and contributed to calls for mass action by ODM over the disputed Presidential elections. The youth engaged in violence partly due to the already existing infrastructure of violence prior to the 2007 elections and also for lack of confidence in the capacity of the law courts to adjudicate the dispute. Sondu, Mt Elgon district in Western Province and parts of the Rift Valley Province were engulfed in violence before the post-election violence erupted (Human Rights Watch 2008b; Republic of Kenya 2008b: 162). In Central and Nairobi Provinces *Mungiki* terrorised people. Organised criminals such as *Chinkororo* terrorised people in the Kisii region of Nyanza Province (KNCHR 2008: 26).

Impunity ensured that there were two sets of law in Kenya. One was for the dispossessed, disenfranchised, idle and unemployed youth and majority poor on the one hand and the other for the political elite and their cronies on the other. The latter did not feel morally obliged to submit their conduct to the rule of law. For long access to justice in Kenya depended on social status with the rich literally able to buy their way out of culpability.

⁶⁵ The two were relics of the KANU system and seemingly personified it through malfeasance and plunder. Omondi had served in the infamous YK’92 and was allegedly involved in several mega scams such as the Maize Scandal that dogged the coalition government. As Odinga’s aide, he allegedly exploited the position to peddle influence while Isahakia had served under Moi in various capacities and been implicated in numerous acts of corruption such as illegal land transactions involving grabbing of government houses, looting of public funds and dismissed twice as Permanent Secretary for incompetence (Miguna 2012: 168-9, 428).

Whereas perpetrators of economic crimes and crimes against humanity went scot free, the same treatment was not extended to the poor and petty offenders. Notably Kenya's cases at the ICC were *sui generis* because the Office of the Chief Prosecutor intervened after Parliament repeatedly failed to set up a special local tribunal in accordance with the Rome Statute threshold to try the masterminds and perpetrators of the post-election violence. Almost all the respondents I interviewed after the ICC issued summonses were in support of the ICC. An interviewee at the Jomo Kenyatta International Airport (JKIA) was unequivocal and wanted those who bore the greatest responsibility for the post-election violence be tried at The Hague, 'I support Hague for truth and justice. It is a fair court and they cannot compromise The Hague process. If it is carried out in Kenya it will be compromised through bribery and constant postponement of cases' (Interview, Richard, April 3, 2011). The ICC intervention divided the coalition government. Whereas Odinga and ODM seemed to be in support of the ICC judicial process for the lack of an alternative legal process locally, Kibaki and PNU affiliates was opposed to it and employed government resources to try and have the ICC cede jurisdiction over the two cases. Kenyatta and Ruto, the most prominent of 'the Ocampo Four', harboured presidential ambitions. They tried to politicise and ethnicise the ICC cases for political capital ahead of the 2012 elections. They attempted to hold their nemesis, Raila Odinga, responsible for their predicament in spite of having previously been vocal supporters of The Hague process. In 2009, William Ruto was a strong supporter of the ICC and opposed plans to set up a local tribunal expressing fears that it would be manipulated to be used against certain politicians (*The Standard* April 4, 2011).

A Nairobi taxi driver was opposed to The Hague process arguing that it would not solve the country's problems. He accused it of bias. 'There was violence in Kibera, Kisumu and Mombasa but nobody from these areas is on the Ocampo list. Why? There was no violence in Central Province but Uhuru is a suspect among the suspects who caused the post-election violence!' (Interview, Ndung'u, April 3, 2011). The ICC process took a tribal dimension. Some of those opposed to the ICC judicial process wondered why the list of the suspects was not more ethnically representative. The question posed in certain quarters was 'Why is there no 'O' on the list?' which meant why was there no Luo among the six suspects. Most Luo male names began with letter 'O'. It was lost on the interviewee that if

the Kibaki government had been accused of crimes against humanity, those to face justice would have been members of his Kikuyu tribe owing to the ethnicisation of appointments in the security sector just like in other sectors.

Most of the respondents I interviewed were of the view that justice was a prerequisite to a cohesive and stable Kenya. They felt that perpetrators of atrocities and criminal behaviour such as political assassinations, tribal clashes, police massacres, land grabbing, corruption and fraudulent elections had to atone for their actions. A revived and accountable legal and judicial system was part of the process of eradicating impunity and ensuring confidence in the rule of law. Politicians and other occupiers of public office would have to adhere to probity, observe accountability and conduct themselves with restraint. Alluding to a litany of inequities that had been left to fester, a church minister had this to say:

There is no peace in this country. It is only calm. The grievances that precipitated the chaos have not been addressed. You cannot take away my cow and expect me to forgive you before you give it back to me. The Rift Valley problem is land. Raila cannot settle the dispute between Kalenjin and Kikuyu since he is a Luo (Interview, Mbohah, January 14, 2009).

The cow image was a reference to what most Kenyans felt were stolen elections in 2007 as well as other acts of injustice committed by earlier governments against individuals and whole communities. Controversy surrounding the 2007 elections can only be understood in the context of a history of electoral malpractices, corruption, institutionalised violence, land grabbing, impunity and politicisation of tribalism. The Truth Justice and Reconciliation Commission, set up in the wake of the signing of the National Accord, was expected to provide an avenue through which some of Kenya's historical grievances would be confronted and hopefully addressed. It was required to investigate social, economic and political crimes committed between December 12, 1963 and February 28, 2008 (TJRC-Kenya). The politics that seemed to militate against the realisation of the terms of reference of the commission are covered in chapter eight. In the next section, I discuss the issue of resource distribution.

7.12.10 Resources and Politics of Eating in Kenya

Resource distribution related grievances were also contributory to the 2007 post-election violence. Kenya was a country of inequalities in terms of region, gender, and urban-rural divide in terms of access to social amenities such as tap water, electricity, medical care, quality education, and even life expectancy. A report by Society for International Development illuminated these inequalities. It significantly showed that the country's top 10 per cent of the households controlled 42 per cent of the total income while the 10 per cent controlled less than 1 per cent (SID 2004: v). Since Kenya gained independence there was a perception that members of the President's ethnic community received preferential treatment in the allocation of resources such as appointments to the civil service, diplomatic and parastatal sectors and even in parliamentary representation. Moi engaged in gerrymandering in the Rift Valley creating more constituencies thus more parliamentary seats for KANU compared to other more densely populated opposition strongholds (Cheeseman 2008: 178; Republic of Kenya 2008a: 9). Other resources such as equipped schools, hospitals, tarred roads, piped water and electricity tended to be differentially distributed with a bias towards the region from which the President came, a trend that Kenyatta set in motion and persisted under the Moi and Kibaki régime. Therefore most Kenyans believed that by electing a Presidential candidate from their tribe, it would herald 'our turn to eat' (Wrong 2009: 52-3) which loosely meant disproportionate access to these resources by members of the President's tribe. Not every member of the President's tribe 'ate' though. Save for the skewed allocation of public goods such as paved roads, entire ethnic communities did not benefit from ethnic politics. 'Eating' was a euphemism for corruption or 'the gorging on state resources by the well-connected' (Wrong 2009: 11). It also implied ruling. A trader in Kakamega was of the view that there was a link between regional disparities in development and the President's tribe. He asserted that: 'In Kenya development such as paved roads, electricity, piped water, better performing school etc. favour the President's region. I visited Eldoret and saw well tarred roads, an international airport, a public university and even a bullet factory all which were set up when Moi came into power' (Interview, Shasaina, January 20, 2009). A fellow trader in the same town concurred: 'Kenya's politics is tribal because of the national cake. There are no good roads in Nyanza and Western Provinces. In Central Province there are better roads. Raila has started working on the road network in Nyanza after he became the Prime Minister' (Interview, Musyoki, January 19, 2011).

A second hand clothes trader in Kinoo, did not believe in 'our turn to eat' ethnic logic: 'I am a Kikuyu but suffering although Kibaki is in leadership. Kalenjins did not benefit when Moi was in power. I stayed in Rift Valley and witnessed Kalenjins suffering' (Interview, Njuguna, January 27, 2009). However, the principal of a school in the coastal town of Mombasa was more nuanced in her opinion,

There is some truth but the entire community does not benefit. Moi considered loyalty in rewarding people with water, electricity, roads etc. Some areas develop better than others since the President's area is given priority...Busia road was tarred after NDP merged with KANU in 2002 (Interview, Orieyo, January 30, 2009).

Losing the Presidential election therefore tended to result in dashed hopes and resentment for communities. The risk of continued existence in political and economic limbo among some of the ODM supporters following Raila Odinga's controversial defeat was unsettling. Thus the urge to find those to hold responsible:

The thinking during the post-election violence was that our tribe has suffered enough. They have stolen the presidency from our tribe. We must kill...Those who did not vote well (e.g. the Kisii who split their votes between PNU and ODM) must also be punished (Interview, Machanja, January 15, 2009).

The perception of universal eating owing to ascendancy to the presidency by a member of a given tribe was enhanced by the previous Constitution that heavily centralised executive power hence merging both government affairs and private business interests. In the absence of guidelines on how national resources should be distributed among the regions, the President and his close allies did so on the basis of political and tribal factors. The 2010 constitution attempted to disperse some of the excessive executive powers to administrative units called counties headed by directly elected governors. The counties replaced Provinces some of which were previously declared exclusive political turfs of certain politicians and their parties. The Moi régime zoned off the Rift Valley Province and declared it a KANU zone in which opposition leaders dared to campaign on pain of attack (Republic of Kenya 1999). Cheruiyot, quoted before, observed that resources and revenue from other Provinces were taken to Nairobi, the capital city, whence they were inequitably distributed to the rest of the country,

Land problem is the source of Kenya's problems. Distribution of resources is a problem also. Rift Valley produces a lot of produce together with Western and Coast but Central is always on their own. What is produced from these regions is centralized in Nairobi and later redistributed. Those who produced get nothing since this depends on the person at top (Interview, Cheruiyot, January 16, 2009).

The respondent tried to link a centralised political system, skewed distribution of resources, tribal animosity and the cyclic ethnic violence in Kenya.

Nepotistic and tribal considerations in recruitment in the civil service by Kenya's successive governments fanned ethnic sentiment. Kenya's civil service was dominated by the Kikuyu followed by the Kalenjin whose percentages of the total civil service jobs were disproportionate to their population percentage. The Kikuyu constituted 17.7 per cent of the population but occupied 22.3 per cent of all jobs in the government. The Kalenjin occupied 16.7 per cent of all civil services jobs disproportionate to their 13.3 per cent of the population (*Daily Nation* April 6, 2011). This is attributed to the fact that the first two Presidents came from both ethnic groups (*Daily Nation* April 6, 2011). Most of the respondents I interviewed were opposed to the tribally biased recruitment system not on ethical-moral grounds but because it excluded 'our own' from the government trough. This ethnic logic was articulated by a resident of Kibera who did not have a problem with tribalism save for what he called *ukabila ni kabila moja* (a certain tribe promotes tribalism). It was not difficult to tell the tribe he was referring to given that Kibaki was in power and his régime had come under criticism for favouring the Kikuyu. As long as 'eating' was evenly spread among the different ethnic elite, he had no reason to complain: 'Let politicians from our tribe also eat since all politicians are corrupt anyway. It is better to have our politicians benefit from corruption as well rather than have 'them' eat all by themselves (Interview, Odemba, January 17, 2009). This perspective reflected a fatalistic mentality preponderant among some Kenyans. It prompts me to wonder what benefit the poor derive from high level corruption. Hulterstrom suggested that in this case the benefits of tribal allegiance are primarily symbolic not material and is about who 'the real owners of the country are' (Hulterstrom 2004: 49).

Kenyans in public office, the media, and in their daily interactions schizophrenically denounced tribalism and simultaneously admired corrupt politicians from their tribes. The

failure of Kibaki to address corruption saw members of the other communities view him as the abettor of the vice, hence corruption was described as a ‘Kikuyu problem’ (KNCHR 2008: 24). ‘Owing to historical injustices most Kenyans feel that only leaders from their communities can solve their problems’ (Interview, Machanja, January 15, 2009). Yet unresponsive, corrupt, predatory and callous leadership affected ordinary Kenyans regardless of their tribal affiliation. Institutionalisation of governance, equitable distribution of resources and emphasis on probity in public service would be likely to reduce the destructive pull of ethnic ties. A youth observed,

We need a new constitution to ensure economic development rather than development that relies on politics. We need institutions that work and decentralization of development in addition to professionalizing the government to separate politics from the day to day management of the economy (Interview, Shombe, January 24, 2009).

Unequal distribution of national resources was made possible by a centralised Constitution that vested immense powers in the President. The enactment of the Constitution with both horizontal and vertical checks was meant to tame abuse of power for the benefit of the incumbent, his allies and his region.

7.12.11 The Constitution and Political Renewal

Quest for a constitution reform was the leitmotif of my interview discussions. Most of the respondents argued that Kenya needed a new Constitution to ensure there was the doctrine of separation of powers and to create independent institutions to scaffold multiparty democracy. A church minister had this to say, ‘The constitution is outdated. It is archaic and has to be reformed since it is at the core of our problems’ (Interview, Kariuki, January 14, 2009). Kenyans hoped that a new constitution would help in curbing impunity, corruption, irregular allocation of state resources and the consequent ethnically informed politics. However whereas the Constitution promulgated in August 2010 provided for checks and balances, a Constitution was as good as the values and ideals that informed public and private conduct of the citizenry. Kenyans needed to wean themselves of damaging behaviour and feel morally obliged to obey the Constitution irrespective of their status. The biggest impediments to the realisation of Constitutionalism were the political vestiges of the one party state socialised into impunity. A programme officer with a civil

society group wondered why Kenyan politicians unnecessarily argued over the Constitution even in cases where the provisions were unambiguous. He was sceptical of their commitment to the implementation of the new set of laws. He observed that:

The new constitution has not changed our politics and will not change anytime soon. The controversy surrounding attempted appointments to the judiciary is proof. Anti-reformers are regrouping. Kibaki retreated not for the people but did so momentarily. He is playing the nice guy. He saved face and did not want to be seen in bad light internationally (Interview, Maina, February 26, 2011).

The Constitution provided a framework within which to reorganise politics in Kenya through enactment of the relevant Acts. The controversial 2007 elections were derailed as much due to a bad Constitution as to the political culture that accepted somewhat fatalistically the existence of corruption and impunity. The previous Constitution outlawed practices such as ballot stuffing, use of violence to intimidate political opponents, misuse of state resources during campaigns, giving and accepting bribes, corruption and ethnic incitement but these destructive attributes remained integral to Kenya's political culture (KNCHR 2007; Republic of Kenya 2008a: 23-4). Accordingly, a respondent counselled that Kenyans had to be realistic concerning what a new Constitution could do for them: 'A good document would not amount to much as long as we have corrupt and greedy leaders. We have to educate our people in order to have new leadership.' (Interview, Agutu, January 25, 2009) Enlightening 'our people' in and of itself would not necessarily restructure the country's politics. Reform called for a combination of factors including promoting a culture of observance of the rule of law, attitudinal change, retribution for illegal acts such as corruption, reward for industry, recognition of merit and alleviation of poverty. Most respondents speaking in early 2009, reflecting their own despondency predicted that disillusionment was likely to set in even after a new Constitution had been promulgated. A youth was doubtful that a new Constitution would be achieved in the first place unless there was ecclesiastical intervention. 'The country was polarised after elections. It is difficult to review the Constitution under this atmosphere. A new Constitution will be achieved by the grace of God' (Interview, Owino, January 24, 2009).

Doubts as to whether a new Constitution would improve governance in Kenya were borne out of the recurrent election-related violence that mostly destabilised Kenyans resident in

areas other than their ancestral regions. Although since independence the Constitution recognised the right of every Kenyan to settle and legally own property in any part of the country, that did not deter destruction of property, displacement, pogroms during elections and rogue behaviour among politicians. It was one thing to have a progressive Constitution and quite another for politicians given to impunity to start respecting it. These politicians were responsible for the widespread sense of social indiscipline. Ndung'u, a Nakuru shopkeeper, called for the government to ensure that the rule of law prevailed, 'The government should implement the Constitution to ensure that everyone is free to stay anywhere he or she likes but because of impunity the youth are mobilized into violence but their godfathers are set free' (Interview, Ndung'u, January 13, 2009). The 2010 Constitution on its own was not likely to rein in rogue politicians. However, its implementation and the even-handed application of the rule of law would help in reducing the amount of anxiety that engulfed Kenyans during elections. It would also stem the bizarre behaviour whereby corrupt politicians and others facing criminal charges ranging from economic crimes and crimes against humanity were elevated to folk heroes among some members of their ethnic groups who cheered them on. Kenyatta and Ruto insisted on contesting the presidency regardless of the ICC charges. In the estimation of their supporters, drawn from their tribes, the two were political martyrs. A respondent had this scenario in mind when he regretted the tendency among Kenyans to celebrate unsavoury behaviour among public figures, 'Thieves in the name of politicians perpetrate corruption scams and we run after them the same way flies run after children with soiled backsides' (Interview, Muluka, January 23, 2009). This cynical view best captured the complicity of both politicians and their ethnic supporters in impeding reformation of the state.

7.12.12 Cynicism about the Coalition Government

The Grand Coalition government stabilised Kenya but it at the same time further alienated Kenyans from the state. Most respondents were so uninspired by the Grand Coalition Government that they felt it was the worst form of government thus far. Irungu, a resident of Nakuru, was so disillusioned with the pervasive corruption in the government that he would not have minded had the coalition government disintegrated. He felt the government had neither the will nor commitment to improve the lot of Kenyans. Irungu was unable to name any positives that he could credit the government with. He was curtly

dismissive: ‘*Serikali ya muungano, bure kabisa! Hata ivunjike tu!* (This coalition government is utterly dysfunctional! Even if it collapsed I couldn’t care less!) (Interview, Irungu, January 14, 2009). This view was representative of the mood in the country at the time of undertaking the research. Almost all my respondents struggled to find positive things to say about the coalition government and a sense of cynicism was pervasive. A respondent observed,

There is cat and mouse game in the government. They take us common people for a granted. No commitment to fight corruption but have set up so many committees that do not serve any purpose at all... There is nothing good these people have done for Kenyans. Lots of famine and the cost of living has gone up. The only change is that the cost of living has gone up while we have a bloated government (Interview, Cheruiyot, January 16, 2009).

The cynicism that pervaded my interviews sharply contrasted with a sense of buoyancy and optimism in the country after 2002 elections. In 2003, 79 per cent of Kenyans said that they were either ‘fairly’ or ‘very satisfied’ with the ‘way democracy works in Kenya’ (Logan, Wolf and Sentamu 2007: 5). After the 2007 post-election violence, although my research was not a survey, and comprised a random sampling of ordinary people, most respondents were sceptical about the state of Kenya’s economy, social cohesion and political stability. Their hope waxed and waned in accordance with the chequered path of political pluralism since the early 1990s. Many of them had been optimistic following the legalisation of multiparty politics. Despondency set in soon after owing to in-fighting among opposition leaders and prevailed during the successive elections in 1992 and 1997. Hope emerged when KANU was defeated during the 2002 elections but the collapse of NARC plunged Kenyans into cynicism again. There was a groundswell of optimism once again in the run up to the 2007 elections but dissipated after the elections were ‘stolen’. The anger that followed tipped the country into chaos. The promulgation of the Constitution in 2010 inspired hope among Kenyans. Kenyans hoped that it marked a renewal of the country’s body politic.

7.12.13 Dynastic Leadership Successions

Political leadership in Kenya was almost a dynastic affair, and was held within families and often reinforced an ethnic basis and approach to politics. It was common for a fallen or

retired MP (rare) to be succeeded by either his son or relative. Moi entrenched this practice in the 1980s and was still in practice even under the coalition government. Politicians such as Musalia Mudavadi, Oburu Odinga, Joseph Nyagah, Joyce Laboso and Florence Kones succeeded either their fathers or relatives. Laboso and Kones succeeded their fallen sister and husband respectively during the tenth parliament (2007-2012). Beneficiaries of this kind of politics supposedly represented the aspirations of their communities just as their fathers had before them. Raila Odinga, Musalia Mudavadi and Uhuru Kenyatta occupied this status. Those who did not enjoy dynastic connections but had Presidential ambitions such as Kalonzo Musyoka and William Ruto, invoked their 'peasantry' backgrounds to cast themselves as more reform oriented than their opponents socialised in privilege. Musyoka even invoked ecclesiastical images such as miracles reminiscent of a politician with a Messianic sense of destiny to rule. The youth, whom I interviewed, expressed their disenchantment with dynastic leadership successions. They also opposed the retention of bureaucrats who had attained the retirement age. The former head of the civil service and one of the Ocampo Four, Francis Muthaura, had attained retirement age in 2007 but he was among senior bureaucrats that Kibaki retained in the system (*Daily Nation* June 20, 2008). It was common for retired civil servants to plunge into elective politics. Some of them had questionable career records such as embezzlement of state funds and joining active politics was a way of evading accountability although even their previous stint in government in itself shielded them from prosecution. Powerful bureaucrats under Moi such as the former Permanent Secretary for Internal Security and Provincial Administration, Zakayo Cheruiyot, the former Commissioner of Lands, Sammy Mwaita, the former Head of Civil Service and Secretary to the Cabinet, Sally Kosgei and Franklin Bett, the former Comptroller of State House among others were elected into parliament in 2007 through the ODM sponsorship. A KHRC report mentioned Kosgei, Cheruiyot and Bett among prominent Kenyans implicated in human rights violations and economic crimes. Kosgei and Bett were implicated in incitement during the 2007 post-election violence (KHRC 2011).

Kenya's political and bureaucratic space was incestuous in that it was dominated by the same families and individuals. The ubiquitous names in this domain were Odinga, Mudavadi, Kenyatta, Moi, Nyagah, Nyachae etc. Kibaki was likely to be succeeded by his

scion. In 1994, Raila Odinga's elder brother, Oburu Odinga, succeeded Oginga Odinga as the MP for Bondo. He remained the MP since then until writing. His younger brother made⁶⁶ him the Assistant Minister of Finance in the coalition government.⁶⁷ Gideon Moi succeeded his father as the Baringo Central MP in 2002 although he lost the seat five years later. In 1997 Uhuru Kenyatta failed in his attempt to become the MP for Gatundu, constituency that his father represented. He captured it in 2002. Musalia Mudavadi and Joseph Nyagah stepped into their fathers' political shoes too. Joseph Nyagah served as the MP for Gachoka constituency (1997-2007) having succeeded his younger brother Norman Nyangah (1992-1997). Their father Jeremiah Nyagah represented the constituency from 1963 until 1992 when he retired from active politics. Despite Joseph Nyagah losing the seat, Odinga nominated him to parliament and made him a cabinet minister. It was a reward for having been part of the Pentagon and the foremost politician from Mt Kenya region to support his presidential bid. These dynastic successions made it almost impossible for an unknown quantity to penetrate the political system let alone rise to the presidency. A respondent pointed out this lack of transformation in Kenya's politics,

The problem is the old guard who were there during the Kenyatta time, Moi time and now Kibaki time. They pass leadership to their children after taking them abroad for studies. We have old guard Permanent Secretaries and septuagenarian Ministers. Both Raila and Kibaki are Moi carryovers. It is a government of dynasties: Raila, Uhuru, Kibaki, Nyagah... Uhuru was raised in the State House, wants to succeed Kibaki and wants to raise his children in the State House. No! (Interview, Nicholas, January 27, 2009).

The formation of a coalition government after the signing of the National Accord saw Raila Odinga, Uhuru Kenyatta and Musalia Mudavadi assume the newly created positions of Prime Minister and the two deputies respectively. Mudavadi senior was Moi's political mentor (Morton 1998:174). Most politicians from these 'pedigree' families were architects and beneficiaries of Kenya's patrimonial political system and so could not be expected to bring about radical changes that threatened the interests of this exclusive group. This oligarchy was the greatest impediment to reform and cordoned off the state from rank

⁶⁶ I use the word 'made' as opposed to 'appoint' because in the coalition government there was a dispute over the exercise of executive authority.

⁶⁷ Unlike other ministries, Oburu Odinga had a rare privilege of serving as the only Assistant Minister in the ministry of Finance. Miguna cited other appointments in the government in which Raila Odinga's relatives were beneficiaries to back up his claim that Odinga was a nepotistic politician with a provincial definition of citizenship that did not go beyond the larger Odinga family (Miguna 2012: 175-6, 345).

outsiders. 'The old guard get replaced by their children. It is near impossible for someone from outside this group to make a breakthrough to the eating table,' lamented a respondent (Interview, Ochieng', January 24, 2009). Although Raila Odinga represented Lang'ata constituency in Nairobi, he had succeeded his father as the Luo leader. However, most respondents observed that Raila Odinga fought his way to the top of Kenya's political pyramid. Odinga was treated exceptionally because of his contribution to the democratisation process in Kenya through resistance against one party autocracy and related excesses. Unlike the other oligarchic dynastic political families, the name 'Odinga' was synonymous with the struggle for reform. Thus this reserved endorsement, 'The Odinga dynasty might deliver the change that Odinga had for this country. The younger Odinga has proven to be a reformer' (Interview, Ochieng', January 24, 2009). However, Odinga's reform credentials had been tainted by a number of factors. As the Prime Minister and co-principal of the coalition government, he had not only been part of but also presided over the coalition government that the interviewees blamed for a slump in their living standards, owing to endemic corruption, nepotism and tribalism. Odinga was allegedly implicated in some of the corruption scams that took place under the coalition government through close aides and family members. Miguna, Odinga's former aide and advisor on coalition, constitutional and legal affairs, portrayed Odinga as part of Kenya's oligarchs involved in wheeling and dealing, patronage and extraction of rents from the state (Miguna 2012). The erstwhile Odinga loyalist turned fierce critic, attempted to unmask Odinga and dismissed him as a kleptocrat in the same mould as Kenyatta, Moi, Kibaki. He described Odinga as a 'deceptive, opportunistic, weak, cowardly, disorganised, and nepotistic leader...' (Miguna 2012: 258).⁶⁸ Significantly as the leader of ODM, Odinga's deputy was William Ruto⁶⁹ while the party chairman, was Henry Kosgey. The two belonged to the ODM wing of the cabinet before corruption charges forced them to step aside. Kosgey was later reinstated. Their political careers were mired in corruption and other egregious excesses dating to the Moi government. Odinga had packaged his

⁶⁸ Miguna's memoir contains his reflections as someone who had an up close and personal view of shenanigans in Kenya's sanctum of power. He used Raila Odinga as an anchor of his insights about opportunism, corruption, lethargy, malfeasance, impunity and lack of probity that frustrated Kenya's quest for reform. Miguna portrayed Kenya's politics as pervasively and incorrigibly murky, sleazy, corrupt and opportunism-riddled and held hostage by oligarchs and charlatans.

⁶⁹ Although Ruto fell out with Odinga following the formation of the coalition government, and went on to form his political party, he did not resign as ODM deputy party leader. Neither did ODM relieve him of the post.

presidential candidature as heralding reform, it was paradoxical that the ‘lodestar of change’ had his side of the coalition cabinet largely comprising Moi era carryovers. KANU survivalists in the cabinet courtesy of Odinga included William Ole Ntimama, Kipkalia Kones, Fred Gumo, Sally Kosgei, Chris Obure, Dalmas Otieno, Joseph Nyaga among others. Odinga also recommended the appointment of KANU loyalists in the bureaucracy. Odinga’s choice of appointments both in the cabinet in other sectors of the government cast aspersions against his commitment to reform. His bureaucratic appointees, Mohammed Noor and Abdul Mwasera had served Kibaki as Provincial Commissioners in Western and Rift Valley provinces respectively during the post-election violence. Mwasera got transferred to the Prime minister’s office as Odinga’s aide after the coalition government came into being (Miguna 2012: 344). The police and armed militias committed horrendous atrocities against ODM supporting tribes of Luhya, Kalenjin and Luo in the two provinces. Like Kibaki, Odinga recycled relics of the retrogressive and despotic KANU era at the expense of capable ODM members not associated with the previous governments. No politician aspiring for the presidency could reform Kenya’s system unless they had the audacity to extirpate the self-perpetuating Kenyatta-Moi-Kibaki/Odinga plutocratic networks and institutionalise accountability.

Some of the respondents expressed desire for fresh blood. However, the chances of someone outside the domineering post colonial political elite rising to the presidency were slim regardless of their credentials. Kenya’s politics was conducted along ethnic lines and therefore those adept at mobilising support along ethnic lines thrived. Second, few politicians including many economically established politicians could afford the large amounts of money and resources required to mount a presidential campaign. One of my informants was convinced that it would be long before the country elected a President on the strength of his policies because in ‘Kenya leadership springs from home, clan, tribe and it is not about capability. Ethnic spokesmen articulate grievances of their communities and are therefore held hostage by these grievances’ (Interview, Wanjala, January 14, 2009). These politicians purport to champion the interests of their tribes but this is a camouflage for their sense of self preservation.

These politically and economically dominant families were however not invincible. Musalia Mudavadi lost in parliamentary elections in 2002. Except for the 2002-2007 hiatus, Mudavadi had served as MP for Sabatia constituency in Western Kenya since 1989 when he inherited it from his father. He recaptured the seat when he aligned with ODM then the most popular political party among the Luhya. He was Odinga's running mate in the 2007 presidential elections which would have enhanced his chances of succeeding Odinga had ODM won the presidency. Uhuru Kenyatta's debut in parliamentary and Presidential bids in 1997 and 2002 respectively were unsuccessful. In the run up to the 2007 elections, William Ruto, as the ODM point man in the Rift Valley Province, dislodged Moi as the indisputable foremost Kalenjin leader and caused political ripples that saw Moi's sons' lose in parliamentary elections. Ruto contributed to the obliteration of KANU as the choice party among the Kalenjin. Moi had been at the centre of Kalenjin politics since 1955 when he entered the colonial Legislative Council (Legco) as the Rift Valley representative (Morton 1998: 74). The indictment of Uhuru Kenyatta for crimes against humanity by the ICC showed that Kenya's oligarchy was accountable before the international accountability mechanism. It may be 'untouchable' locally but it could not afford to be law unto itself entirely.

7.12.14 Opportunism in Kenya's Politics

The violently disputed Presidential elections exposed the fragility of expedient political agreements. Since Kenya's return to multiparty democracy, politicians resorted to stop-gap political arrangements that served their own interests. The most prominent illustrations of this opportunism were the 1997 IPPG pact, the 2002 MoU and the appointment of Kalonzo Musyoka as Vice President after Kibaki's controversial re-election. Kalonzo came a distant third in the 2007 Presidential elections with 879 899 votes or 8.9 per cent (EU EOM 2008: 37). In a functioning multiparty democracy, before ODM-K and PNU formed a coalition government, there would have been harmonisation of the manifestos of the two parties first. However, as Diamond put it opportunism among Kenyan politicians was, 'not an aberration or an illness to be cured' but 'a natural condition' (Diamond 2008: 42-3). Kenya's opportunistic elite pacts served the interests of individual politicians and their allies. The pacts were a threat to political stability since they were whimsical. I argue that

makeshift political arrangements courtesy of political behaviour unregulated by the rule of law was at the crux of Kenya's socio-economic and political problems.

7.12.15 Women as Honorary Men

Could the inclusion of a critical mass of women in Kenya's politics improve governance, reduce violence and corruption? Could the election of a female President reform Kenya's polity? According to some respondents it was probable that more female MPs and even a female President would change the country's political trajectory. Atieno, a hairdresser in Nakuru, observed that 'A woman President would be considerate as opposed to men. Perhaps if Kenya elected a woman there would be change' (Interview, Atieno January 13, 2009). However others were cynical and averred that increasing the number of women parliamentarians *per se* could not transform Kenya's politics. Kavaya, doubted that merely electing a female President would reform Kenya's politics. 'A female Presidential candidate could do better than male politicians but I can't be certain' (Interview, Kavaya, January 13, 2009). My respondents called for a new Constitution as a prerequisite to reforming the country. The respondents argued that Kenya's problems were both structural and historical and could not be addressed on the basis of the gender of politicians. A respondent was of the opinion that Kenya's female politicians exhibited traits similar to those of their male counterparts and dismissed the idea that women's representation would change the substance of politics:

They are honorary males and behave like males and excel males in the vices of men. Like their male counterparts, most of them are completely unprincipled and blow both hot and cold...There is no feminine touch in women politicians. The human being is killed in a man who does not have the feminine touch. You become a beast. Our politicians have killed the mother in them (Interview, Muluka, January 23, 2009).

The destruction of the mother image connoted a lack of an ethics of care or the nurturing instinct among female politicians too. Ironically women's entry into politics embodied the destructive character of political behaviour in politics. Traits such as opportunism, callousness, exploitation of primordial differences for political gain, corruption and other unethical behaviour were seen as the hallmark of public politics. Male and female politicians were both tarred with the same brush. They selectively condemned issues such

as corruption depending on whether those implicated were members of their tribe or not. Hence Kenya's almost 50 years of independence were characterised by economic mismanagement, political patronage corruption (OMCT 2008: 7) and impunity. Ominde, was critical of male and female politicians in Kenya:

Whether a woman or man Kenyan will remain the same. Male and female politicians in Kenya are one and the same thing in that they are all corrupt. We keep voting for the same politicians and yet what we have to do is to change the politics (Interview, Ominde, January 13, 2009).

7.13 Conclusion

The chapter highlighted salient issues attendant to the 2007 elections. They were largely unresolved historical issues that found resonance in ethnic exclusion. The argument that I have made in the chapter is that institutional weaknesses owing to the 1963 Constitution played a great role in the post-election violence. The 1963 presidential Constitution had promoted impunity because it was devoid of checks. As a result it ensured that political activity took place in an unregulated atmosphere and so did not provide a legal framework for the resolution of disputes. The chapter showed that unless Kenyan political parties were regulated and decoupled from the obsession among their leaders to ride on the wave of ethnicity to win elections, they were likely to remain breeding grounds for ethnic animosity and balkanisation. The import of tribalism in either changing people's fortunes in life or sealing their fate is manifested in the salience of ethnicity throughout the Kenyan body politic. Civil society, the religious fraternity, and the education sector that ordinarily would be expected to devise an alternative form of politics were not spared either. It was for this reason that Kenyans had to be saved from themselves through the involvement of external mediation efforts to restore stability. The chapter draws from field research and especially the thinking of *wananchi* to give a human face to the issues discussed. Kenyans interviewed yearned for better systems of governance and abhorred opportunism, corruption, the politicisation of ethnicity and the perpetuation of a form of dynastic politics. Irrespective of socio-economic, political, ethnic and geographical background, they demonstrated understanding of the issues in question and what needed to be done to reform the system. While the question of tribe is a deeply emotive one in Kenya its salience is linked to the discourse and practice through which politics is articulated. If we

are to identify an ideological force in Kenyan politics, it is that of ethnicity and tribe. The reason for this is because both are the means through which political power and authority is wielded. It is hard to separate out the distinctive causes of the terrible violence that erupted in Kenya after the 2007 elections. Tribal identity was certainly the form in which violent acts were perpetrated. Yet the violence was an expression of the deep frustrations of those who reacted to the outcome of the elections. The widespread poverty throughout the country called for a renewal of politics, one which would address the needs and interests of all citizens, but in particular those of the poor. The challenge was that politicians tasked with leading in this regard profited from such a dire situation and so had no motivation to change the status quo. They had no compunction about earning disproportionately huge salaries, engaging in profligacy, not paying tax in a weak economy that did not justify such ostentatious living. Despite this retrogressive behaviour, these politicians could still afford to talk about leading Kenya into a middle income country by 2030. Such was a schizophrenic approach to the concept of development. The poverty of the people was matched by the poverty of ideas among the political elite. They continued to compete with one another using the new structures of the multiparty system, but in effect, politics remained in the mould of the old regional and ethnic divisions that permitted patrimonial and dynastic elite control to remain. Ultimately the chapter exposes the paucity of ideals and programmes among the political elite and argues for a reformation of the state to streamline its social, economic and political life.

Chapter Eight

Reform and Kenya's Political Stability

The issue of Constitutional reform and creation of a sound legal framework for multiparty and free and fair elections had been raised by a section of opposition politicians, civil society and religious organizations prior to the 1992 elections. The mainstream opposition parties, however, decided to 'win' the elections first and then change the Constitution once they got to State House. The feeling was that since we were winning the elections anyway, the reforms could wait until the opposition came to power. An attempt to boycott the voter registration exercise in 1992 was abandoned when the consensus on the issue collapsed (Murungi 2000: 72).

8.1 Introduction

The above excerpt shows that there had been lack of commitment towards the constitutional review process among some opposition leaders in the run up to the 1992 elections. Therefore the salience of ethnicity and the concomitant violence under multiparty politics could as much be blamed on Moi and defenders of the one party state as on sections of the opposition. This quest to capture the state for extractive purposes among these leaders coupled with KANU's resistance against reform had rendered the reform process protracted and polarising. Since dialogue could not prevail among Kenya's fragmented political class, resort to violence became a means of making claims around control of the state. The chapter argues that the narrative of Kenya's struggle for multiparty politics was publicly portrayed through the clamour for Constitutional reform. However, to large sections of the opposition, this was a Trojan horse. The chapter focuses on the protracted and contested reform process since 1991 when single party rule officially ended until 2010 when the promulgation of a new Constitution took place. The period immediately after independence under Kenyatta and the one party Moi state provide a background to this struggle. I cite instances of opposition against one party autocracy both during the Kenyatta and Moi tenures to demonstrate that Kenyans' demand for accountable leadership preceded the collapse of the Berlin Wall. The chapter presents the post colonial state as the replica of its colonial precursor since it retained the colonial infrastructure of oppression and exclusionary politics. The Kenyatta, Moi and Kibaki régimes were as repressive as the colonialists because they followed an authoritarian Constitution that centralised the exercise of power in the executive. Arguably the most visible arm of this repression was the provincial administration. Kibaki insisted on

retaining the provincial administration even after the 2010 Constitution outlawed it. The chapter identifies the role players in the reform process who included civil society activists, opposition politicians, academics, the urban poor, journalists and the international community. However, the chapter exposes the opportunism and ethnic bigotry among some of these crusaders. They were fervent in their condemnation of excesses under the Moi tenure but turned into supporters of the Kibaki régime despite it being just as responsible for similar if not more egregious excesses. This underscored the lack of values among Kenyans and inability to understand the import of integrity in leadership. Kenya had no collective understanding on what constituted abhorrent public behaviour since what passed for reprehensible behaviour unbecoming of public officials depended on the tribal identity of the victim. The failure by the NARC to realise the reform agenda despite having ascended to power on a reform platform during the 2002 elections and the support Kibaki continued to receive from among the Kikuyu and related tribes was illustrative of the point. The 2005 referendum and the disputed 2007 elections unprecedentedly brought the idiom of reform to the centre of the country's political discourse. Lack of independent institutions made it impossible for the 2007 electoral disputes to be amicably and dispassionately resolved leading to ethnic violence. However, the scale and intensity of violence necessitated efforts by civil society, politicians and the international community through the African Union, to ensure realisation of legal, institutional and Constitutional reforms in order to avoid further violence during subsequent elections. The chapter reflects on the process that led up to the promulgation of the new Constitution on August 27, 2010. I argue that although the promulgation of the new Constitution had the potential to change the trajectory of Kenya's politics from politics of exclusion, impunity and abuse of power, civil society had to continually remain vigilant since Kenyan politicians could not be expected to exercise power according to the Constitution. Besides the new Constitution, there was also need to overhaul the political composition of the country to rid it of vestiges of the old order, itself anxious about the consequences of a reformed state and therefore obstructed change.

8.2 Background to the Constitutional Review Process

Kenya's inability to transition into a democratic society was linked to a centralised Constitution that vested immense powers in the presidency which in effect placed

occupant 'above the law'. The tendency among Kenyan politicians to prize acquisition of power over reform that would herald politics based on equity, the rule of law and national interest compromised Kenya's renewal as a democratic country. During the 1992 elections, the contest between the opposition and KANU was about the presidency. The opposition paid little attention to the Constitution beyond the repeal of Section 2A. However the failure by the opposition to dislodge KANU from power in 1992 made the opposition demand a review of the Constitution to even the political playing field. But at the crunch time in the run up to the 1997 elections they capitulated to Moi's chicanery. The new Constitution in itself was not a prerequisite for Kenya's political rebirth. Its full implementation by credible leadership unencumbered by the baggage of antireform tendencies was.

Mutua suggests that the battle for the transition from a one-party state to multiparty democracy in Kenya was in effect the battle of the Constitution (Mutua 2009: 99). Even before the height of the one party autocracy in the 1980s, politicians such as Oginga Odinga, Masinde Muliro, Martin Shikuku, Achieng' Oneko, Oduya Oprong, Zephania Anyieni, George Anyona, Bildad Kaggia to name but a few had called for reform and multiparty politics to promote accountability among those who wielded political power (Ochieng' 1995: 98-9). The argument for constitutional change became the unifying refrain among some of the pro-democracy actors in the 1980s who operated clandestinely to avoid detection by the state. In their estimation, the Constitutional reform was a means of emancipating Kenyans from both the economic and political stranglehold of the Kenyatta and Moi régimes. Nyinguro and Otenyo suggest there was a link between the demand for a new Constitution and a more equitable resource distribution in Kenya (Nyinguro and Otenyo 2007: 16). The one-party Constitution had promoted patronage and 'Big Man' politics that tended to exclude critics of the régime and the tribes to which they belonged (Khadiagala 2010: 70). The affected communities had comparatively lagged behind in access to public goods and economic opportunities such as jobs. This precipitated disgruntlement and resentment against the Kenyatta and Moi régimes.

The Lancaster House Constitution heralded the independence of Kenya from colonial rule. It was deliberated upon and ratified by Kenyan delegates in the Lancaster House between

1960 and 1963 (Morton 1998: 90-116). It provided for a bicameral parliament, the posts of President and Prime Minister and for devolved powers to regions. It had nurtured a nascent multiparty system with the two major political parties, the KANU and KADU (Osamba 2001: 91). Khadiagala suggests that despite its provision, for democratic competitive politics and the separation of powers, including its devolution to regions, the Lancaster Constitution was in essence colonialist with 'a strong executive with imperial powers' (Khadiagala 2010: 67). The President was as powerful as a chief under what Mamdani referred to as the colonial 'decentralised despotism' because he exercised 'legislative, judicial and administrative' powers. But unlike this chief, the President was not answerable to any higher authority (Mamdani 1996: 53-4). This Constitution created what Mamdani called a 'Janus-faced, bifurcated' Kenyan state (Mamdani 1996: 18). It created privileges for Kenyatta and his supporters and enabled them to act with impunity and alienated opponents and their tribes who bore the brunt of the excesses of the régime. The same scenario repeated itself under Moi and Kibaki. The dissolution of KADU in 1964 paved the way for the Kenyatta régime to consolidate power through arbitrary amendments to the Constitution to create a unitary and centralised state. Ochieng' observed that between 1963 and 1978 the Kenyatta régime carried out 13 fundamental amendments to the Constitution to ensure political and economic dominance of Kenyatta and his inner court (Ochieng' 1995: 94, 106-7). These changes maintained and even reinforced the oppressive character of the colonial state in that '...to some it began to look as though the old colonial power had simply transformed itself into one where Kenyatta was a new-style Governor and the Kikuyu had replaced the Europeans as the top dogs' (Ochieng' 1995: 106). The Lancaster Constitution came into being without including the views of *wananchi*. The arbitrary amendments built a strong executive and confined the control of the state in the hands of Kenyatta and his close allies. The Constitution had no countervailing institutions and structures to curb abuse of power. Hyden referred the period after independence until the end of the 1980s as the period of opportunism in Africa in which 'the constitution was prized more as a political instrument than as a statement of fundamental principles about how to conduct politics' (Hyden 2006: 106).

The changes to the independence Constitution in effect led to its emasculation through the removal of the doctrine of the separation of powers that enabled Kenya's slide into

authoritarianism first during the Kenyatta period and then by the Moi administration (Mwangi 2009: 266-7). Devoid of oversight structures and organs, the amended Constitution abetted impunity, institutional weaknesses and corruption as the executive became virtually a law unto itself while opponents of these régimes were subjected to draconian laws. Kibwana argued that the amended Constitution rendered Kenya's politics acrimonious and violent because it created a centralised state in which most politicians and other leaders in the system such as provincial administrators and top ranking individuals in the security sector exercised power without accountability (Kibwana 2002: 273). A significant effect of the constitutional amendments was to enhance the salience of ethnicity in the Kenyan polity because they promoted exclusionary politics. The powerful executive resulted in authoritarianism that provided a bulwark for the prebendary interests of the President and allies drawn almost entirely from his community. The speed with which the Kenyatta administration mutilated the independence Constitution was staggering. As Mutua puts it:

It took just six years to dismantle the 1963 Lancaster House Constitution (the Independence Constitution), a process that indigenised executive despotism and tore down the Constitutional order imposed on the post colonial state by the British. A revealing fact is the ease with which Kenyatta used KANU to create a rubber stamp parliament, pass far-reaching Constitutional amendments and laws, centralise power, stifle dissent, and construct a near-monarchical personality cult (Mutua 2009: 64).

After Kenyatta confined Oginga Odinga and his supporters to political oblivion and proscribed opposition parties and had potential rivals such as Mboya physically eliminated (Ochieng' 1995: 102-3) he ruled without any organised challenge save for individual MPs some of whom I have mentioned earlier. Even after Moi succeeded him in 1978, resistance against the one-party dictatorship continued although clandestinely after the 1982 coup attempt. Following the fall of the Berlin Wall in 1989, this opposition came to the fore although scholars such as Mutua cast aspersions against the commitment of opposition groupings to reform. He argued that much as Moi opponents expressed dislike against inequities and excesses associated with the régime, their stance was not entirely free of 'ethnic considerations or the quest for personal power' (Mutua 2009: 77). Vocal activists in the reform movement during the Moi tenure such as Kivutha Kibwana, Mutava Musyimi, Dr Mukhisa Kituyi, Kiraitu Murungi, Paul Muite, Martha Karua, Gitobu

Imanyara, Koigi wa Wamwere among others became ardent defenders of the status quo under Kibaki defined by impunity, tribalism, rapacity, mendacity and malfeasance. Initially Timothy Njoya, a Presbyterian clergyman and a prominent voice against the one party dictatorship, uncritically joined the Kibaki bandwagon. In the post 2007 election violence period, he seemed to have had a Damascene-like transformation and became a critic. The formation of the coalition government following the disputed presidential elections in 2007 presented yet another opportunity for another batch of yesteryear opposition politicians to embrace reactionary politics. James Orengo, Anyang' Nyong'o and even Raila Odinga suddenly lost the firepower that previously had identified them as among Kenya's gallant soldiers of multiparty democracy and human rights. Upon joining the coalition government through ODM, they appeared comfortable with the status quo. The principle of collective responsibility did not preclude them from robustly opposing Kibaki and his henchmen who frustrated the implementation of the Constitution. In order to benefit from the state largesse, the Young Turks of years gone by became clients and resorted to sycophancy that the Moi rule encouraged and which they had decried and condemned. My interviewees accused the coalition government of abetting corruption, lethargy, and prebendalism as shown in chapter seven. They were particularly disillusioned with ODM that had recast itself as champions of the rule of law, good governance and constitutionalism only to end up in the same cesspool of dysfunctionality and inertia like PNU.

Moi acceded to multiparty politics in 1991 but he did not cede political space beyond allowing the formation of more political parties (Klopp 2001: 481-3). Mutua observed that emerging opposition parties took Moi's considered capitulation as sufficient a victory and therefore participated in the 1992 elections without fundamental reforms to ensure a competitive electoral process (Mutua 2009: 100). Mutua suggests that sections of civil society comprising Kenya Human Rights Commission (KHRC) and Release Political Prisoners (RPP) formed the Coalition for National Convention (CNC) in their quest for more reform beyond 'a narrow focus on elections and the transfer of political power from one faction of the political class to another' (Mutua 2009: 100). Despite the existence of more political parties, the one-party state edifice in which laws and institutions favoured the ruling party was intact. The President had the prerogative to appoint the electoral body,

the entire Provincial Administration and could mobilise state resources even security instruments in campaigns (Kibwana 2002: 107). Efforts by the opposition did not enjoy the support of the donor community. The CNC initiative was unpopular with the donors hence the credibility of the 1992 elections was in doubt (Mutua 2009: 100-01). Stephen Brown details the complicity of the donor community in the frustration of reform by Moi during both the 1992 and 1997 elections. Brown showed that these donors were quick to endorse flawed election results in both cases, urged both the KANU and the opposition to reach an agreement irrespective of its substance and resumed funding the government in the wake of dubious elections (Brown 2001). The donors constituted an indispensable actor in Kenya's politics because Kenya is a donor dependent country and relies on donors in augmenting its recurrent budget. Mutua observed that some civil society groups called for political but not economic reforms for fear of offending donors (Mutua 2009: 79). Here a cautious adage counselling one against biting the hand that feeds one prevailed. Civil society personnel that took up positions in the Kibaki administration did not find it difficult to acclimatise despite the unreformed state of the Kibaki régime. The exception was John Githongo, the Permanent Secretary for Ethics, who resigned and went into exile once he discovered that the Kibaki administration was as corrupt as Moi's. Although the donor community had leverage on the reform process, the donors were more interested in safeguarding their interests in the country rather than insisting on comprehensive changes to ensure competitive elections. Their decision was rational and so the onus of pushing forward the reform agenda rested with Kenyans. The donor community could only catalyse.

8.3 Civil Society and the Model Constitution

In November 1994, civic groups operating within the legal profession released a Model Constitution dubbed 'The Kenya We Want' under the umbrella of the National Convention Executive Council (NCEC). Subsequently a forum was organised and attended by some religious organisations and civic groups but boycotted by opposition parties except for Raila Odinga then a member of FORD-Kenya (Khadiagala 2010: 7; Mutua 2009: 102; Lumumba 2008: 3). As the excerpt below shows the document spelled out a raft of radical reforms that most politicians both in KANU and opposition were uncomfortable with.

Most of these politicians did not want to be seen to be subscribing to a political agenda set by civil society. So the two camps were mutually suspicious of each other (Mutua 2009: 105). As Mutua puts it the principal features of the Model Constitution included:

Introduction of genuine multipartyism with an accountable executive; separation of powers; creation of a national as opposed to an ethnic, consciousness; reconstitution of citizenship; respect for human rights; an autonomous legislature; representation and political participation; an independent judiciary; reform and democratisation of the executive; fiscal accountability; and the land reform (Mutua 2009: 102).

In the wake the 1992 elections, the momentum for a new Constitution slackened because Moi received a comfortable majority in Parliament having won 100 seats compared to 88 for the combined opposition (Steeves 2006: 199). But five years later, on the threshold of the 1997 elections, civil society National Convention Assembly (NCA)⁷⁰ convened to deliberate on minimum reforms to ensure that these elections would be free and fair. The NCA came up with a raft of Constitutional and legal reforms which included need to reduce the powers of the President, the principle of public funding of political parties, and outlawing defections by MPs to other parties (Mutua 2009: 105). NCA's executive arm, NCEC agitated for the implementation of the three elements as a minimum reform programme before further comprehensive reforms were developed (Mutua 2009: 105). The NCEC organised mass rallies before the 1997 elections to pile pressure upon Moi to accede to a raft of minimum reforms (Khadiagala 2010: 72). Initially the KANU government was recalcitrant and responded highhandedly to the protestations. Then Moi deflated NCEC by convincing MPs affiliated to it to enter talks with KANU for a parallel set of minimum but less threatening reforms to Moi's hold on power (Kibwana 2002: 277; Mutua 2009: 107). The KANU led talks produced what were referred to as the IPPG reform package that enabled Moi to scuttle the NCEC initiative and convinced the opposition to participate in the elections (Musambayi 2002: 188).

⁷⁰ Mutua shows that some human rights NGOs formed the Citizens' Coalition for Constitutional Change (4Cs) in mid 1990s. 4Cs affiliates included the Kenya Human Rights Commission, International Commission of Jurists-Kenya, and the Law Society of Kenya. 4Cs formed the National Convention Assembly (Mutua 2009: 102, 105).

8.4 Inter-Parties Parliamentary Group (IPPG) Minimum Reforms

The IPPG reform package was a set back to the reform process because it was designed to still thunder from the civil society led reform initiative. IPPG was a set of minimum reforms arrived at between Moi and opposition members of parliament struck on 11 September 1997 (Cowen & Kanyinga 2002: 129; Mitullah 2002: 132). The NCEC had adopted a clarion call of 'No Reforms, No Elections' before the 1997 elections (Mutua 2009: 109). Principal changes included in the IPPG were: the formation an electoral commission with representation from the opposition parties; the freedom of political expression and association; provision of equality in airing of competing political views by the state media; the registration of all unregistered political parties before the 1997 elections and the removal of legal barriers to multiparty representation in the cabinet (Khadiagala 2010: 72). Other reforms included the repeal of the offence of sedition that Moi had exploited to clampdown on dissidents (Lumumba 2008: 2). The IPPG reform with regard to elections stipulated that the President makes nominations to fill in the 12 nominated seats in proportion to each party's elected seats unlike previously when they were a preserve of KANU (Whitaker and Giersch 2009: 4). Despite these changes, Moi retained extensive powers since the IPPG reforms did not involve the executive. Moi and his immediate circle were averse to the reform process because it would mean a substantial limitation on their power and authority. Moi had exploited the powerful executive to stifle comprehensive reform because it threatened the entrenched patron-client system (Kibwana 2002: 274-5).

Moi then pulled the rug from under the feet of the opposition parties after the IPPG agreement. He dissolved Parliament and announced the date for the 1997 elections. He thus continued to determine the pace of politics in the country. The problem with the IPPG reform package was that although it provided hope for change, it did not lead to what was critically required: constitutional change. This meant that Moi could easily renege on the reform process without breaching the Constitution because its implementation depended on his goodwill. In spite of the IPPG reforms being in place, the opposition parties remained vulnerable to Moi's machinations. However, Moi's manoeuvres did not end the battle for the control of the constitutional review process which continued after the 1997 elections nonetheless.

8.5 Tribalism and Self Interest beneath the Idiom of Reforms

Kenya's reform process became a bandwagon that carried along politicians on all sides, civil society actors and clerics all of whom were at the same time driven by their relationship to tribal, regional and religious interests. Thus the pursuit of power remained locked within the stranglehold of the legacy of the despotic politics of the past, unable to transmute into a new democratic culture (Mutua 2009: 77). The opportunism of politicians who strove to acquire power but were not ready to observe accountability was evident in the scramble for acceptance into the party or an alliance with those who could provide access such as IPPG. The participation of civil society in the reform process was also constrained by donors as indicated earlier. This lack of commitment to comprehensive reform made Kenya's reform nothing more than an avenue for fighting for access to prebends and rents. The process was protracted. Opposition politicians were guided by disparate and primarily self-serving interests and could not agree on the need for comprehensive reforms (Kibwana 2002: 277). Murunga argued that most of them equated removal of Moi to reform (Murunga 2004: 199). They were incapable of rising above obsession with the ouster of Moi because the language of reform was as alien to them as it was to Moi. To both, reform was mere rhetoric.

The struggle for change in Kenya was made up of two camps with diametrically opposed positions on how to go about reforming the state. There was a group of politicians who advocated the legalisation of opposition parties with minimum legal and Constitutional reforms and their main aim was to capture political power. These were formerly members of the one party system who had either been sacked or left the system for reasons that had nothing or little to do with reform. The Kibaki régime exposed Kibaki and other phoney reformers some of whom I have mentioned earlier. The second group, as shown before was located within civil society and advocated a Constitutional overhaul of the state in an attempt to inculcate the rule of law into the polity (Mutua 2009: 99-100). Civil society represented through NCEC was conscious of the fact that without comprehensive reforms change in office bearers would amount to a game of musical chairs. Most politicians shifted positions on the Constitution review process based on narrow tribal considerations and pursuit of benefits of power. The vacillation of politicians underscored the inherent gamble in entrusting them with power under an undemocratic Constitution for they were

not committed to the policies they purported to stand for during election campaigns. The erstwhile reform crusaders both within civil society and among opposition politicians joined forces with *ancien régime* members to frustrate the reform process once Kibaki ascended to power in 2002. John Michuki, a Kikuyu and cabinet minister under Kibaki, publicly confessed to the press that the Kikuyu were only interested in a share of the executive powers while Moi was in power. However, with the ascendance of Kibaki to power, they were no longer interested in Constitutional reforms (*Saturday Nation* January 30, 2010). Some clerics promoted partisan and ethnic politics (Ghai 2008: 213). Timothy Njoya, the Presbyterian cleric and one of the bellwethers of Moi critics, lodged a lawsuit against the legality of the National Constitutional Conference after it had passed a draft Constitution and the court ruled in his favour. Njoya and the ruling judges were accused of sabotaging the clamour for a new Constitution and working at the behest of Kibaki and those opposed to reform (Mutua 2009: 216-19). John Njue and Ndingi Mwana 'a Nzeki of the Catholic Church flip flopped with regard to constitutional reforms. They acted as shepherds and opposed excesses of the Moi régime against their flock and Kenyans at large, but turned into uncritical supporters of Kibaki yet the system was just as undemocratic and thuggish. During the Kibaki tenure, the Catholic clergy abandoned the practice of releasing pastoral letters as was the practice during the Moi régime through which they denounced social injustice and other state sanctioned inequities. The Kibaki régime perpetrated human rights violations such as extrajudicial and summary executions, disappearances, corruption and exclusionary politics. Civil society organisations, the UN Rapporteur on extrajudicial, summary and arbitrary killings and Human Rights Watch documented some of the worst human rights violations under the Kibaki régime. Religious groups not only campaigned against the new Constitution during the 2010 referendum but also stoked religious animosity. They tried to mislead Kenyans especially Christians into rejecting the draft document by falsely stating that it would introduce *Sharia Law* (*Daily Nation* February 5, 2010). The lack of moral conviction among these clergy portrayed them as cynical. By their status in the society they were expected to be the conscience of the society, uphold ethico-moral values and rise above the narrow, tribal, mundane and fleeting politics of the day. In a nutshell, they were called to promote life-affirming politics. Ironically some religious leaders fuelled deleterious politics that gnawed at Kenya's social fabric since their interest in politics seemed to be driven by personal gain.

8.6 The Constitution of Kenya Review Commission (CKRC)

After the 1997 elections, KANU and Raila Odinga's NDP tried to exclusively take charge of the Constitutional review process through their cooperation. With a combined majority seats in parliament, they established the Parliamentary Select Committee (PSC) with Odinga as chairman. Lumumba observed that the KANU-NDP alliance made amendments to the Review Act 2000 ostensibly in preparation for a comprehensive review of the Constitution (Lumumba 2008: 4). KANU and NDP selected commissioners to the CKRC took over the Constitutional review process. However, religious groups and civil society countered them by forming a parallel Constitutional review process dubbed 'Ufungamano Initiative' named after a conference venue from where they held proceedings. This rival constitutional review process later assumed the more official, People's Commission of Kenya (PCK) name and like CKRC sought to include ordinary Kenyans' views in the Constitutional debate (Lumumba 2008: 4). However, to avoid polarising the country, the two Constitutional review processes merged to become a joint review of the Constitution (Diepeveen 2010: 232).

The inclusive CKRC started collecting views nationwide. The Constitutional review process ran between 2001 and 2005 and operated on the basis of open consultations at the constituency level (Diepeveen 2010: 232). Diepeveen averred that the process was meant to accord Kenyans an opportunity to define a vision they had for their country (Diepeveen 2010: 232). However, the 2002 succession politics overshadowed the Constitutional reform process since Moi was serving his second and last term (Khadiagala 2010: 74). Due to frictions and suspicions within the KANU-NDP cooperation that I have discussed in chapter five, it was difficult for the two parties to strike a common agreement on the direction of the Constitutional review process. Raila Odinga and Moi were bitter political rivals despite the cooperation and did not trust each other. Each one of them sought to steer the process in the direction that would serve his political interests (Mutua 2009). The CKRC Chair, an internationally renowned law Professor, Yash Pal Ghai was caught in the crosshairs of jostling for control of the process. Mutua captures the drama:

Ghai was only good to Odinga if he remained strong enough to deliver a Constitution, sufficiently independent from Moi to resist the President's hidden agenda to scuttle the process, and distant enough from Ufungamano, the

opposition, and civil society to resist being captured by them to Odinga's detriment. Control of the review process became, for many of the key players, a zero-sum game. Virtually all saw it as the battlefield on which the war for state power would either be won or lost, and no one wanted to come out the loser. The struggle over the merger involved ideological tensions that have defined the Kenyan postcolonial state since independence. They ranged from antidemocratic, ultraconservative expressions of political thought and the radical, progressive, and redistributive politics of transformation (Mutua 2009:123).

In spite being bipartisan, CKRC was held hostage by a myriad of interests. Kibwana observed that CKRC faced political interference from the KANU government (Kibwana 2002: 278). PLO Lumumba, Secretary to CKRC pointed out some of the challenges the body faced. First, CKRC lacked credibility since most of its commissioners contravened the oath of office and served ethno regional and political interests. Second, the merger between PCK and CKRC rendered CKRC unwieldy and factional. Lumumba summed up CKRC's challenges as government interference, squabbles over remuneration and factional differences pitting Ghai and commissioners appointed to frustrate its work (Lumumba 2008: 97-8). KANU sympathetic commissioners whom Lumumba called 'pro-KANU commissioners' (Lumumba 2008: 39) were determined to scuttle the CKRC work (Mutua 2009: 129-130; Kibwana 2002: 280). Moreover, Ghai and commissioners perceived to be reform-minded came under a barrage of criticism from Moi and his supporters and had to contend with several politically motivated lawsuits that questioned CKRC legality. Analysts attributed these acts of sabotage as aimed at ensuring that there was no new Constitution before the 2002 elections (Mutua 2009: 134-5; Lumumba 2008: 78-86). Moi was determined not to lose the political initiative as he approached the sunset years of his presidency.

8.7 The National Constitutional Conference (NCC)

In Kenya, the NCC came into being after two earlier futile attempts by the opposition to dislodge KANU from power. KANU itself took a leading role in setting up the NCC and had exercised a greater say in the selection of delegates to participate in the conference. KANU could not afford to let the NCC operate independently and risk writing itself out of power as the case was in Benin in the early 1990s (Ihonybere 2006: 14). KANU had learned this less from the experience of Benin and other African countries in the early 1990s. In Benin, the Democratic Republic of Congo and Togo, national constitutional

conferences had been organised and had been instrumental in dislodging from power some of the entrenched régimes. Mutua suggested that constitutional conferences in these conferences had an element of spontaneity about them (Mutua 2009: 143).

National Conferences were forums in which ‘People of all walks of life in a carnival of national renewal participate in a national dialogue on the defining elements of the new state and political order they aspire to’ (Kibwana 2002: 267). However, although CKRC was set up as an independent statutory body, this was not immune to political machinations. Moi had ensured that the CKRC was not entrenched in the Constitution to expose it to political meddling (Lumumba 2008: 36). On the eve of the 2002 elections, Moi adroitly dissolved the parliament denying the NCC quorum as MPs constituted a significant fraction of the delegates that resulted in adjournment (Lumumba 2008: 86).

8.8 NARC and the Constitution Review: A Sense of Déjà Vu

In 2002 NARC had campaigned on a platform of reform that included delivery of a new Constitution. But Kibaki and his allies impeded the attainment of this pledge after winning the elections. After the 2002 elections the NCC fell under the command of NARC, a coalition that was voted in on a platform of reform. NCC delegates reassembled at the Bomas of Kenya, the venue for the conference in August 2003. However, internal feuds within NARC over power sharing between Kibaki’s NAK and Raila Odinga’s LDP spilled over into the NCC. NAK allied delegates, like KANU and Moi before, attempted to scuttle the NCC through adjournments and deliberate misinterpretations of the Act governing the mandate of the conference. This forced some delegates to file a lawsuit arguing that, ‘...once the Conference was convened, no authority other than itself, not even the Commission, had the power to adjourn or determine the time and place of its sittings’ (Lumumba 2008: 136-7). In January 2004 the government deployed the police to block access to the conference venue by some of the CKRC commissioners and delegates led by Ghai out to see the Constitutional review process to completion (Lumumba 2008: 131-137). The NCC was turned into a political battleground between Kibaki and Raila Odinga as ethnic factionalism took centre stage. Mutua observed that delegates from religious circles, civil society and other interest groups took ethno political positions in

consonance with the split in the government that robbed the Conference of the requisite political will and national consensus to ensure the success of NCC (Mutua 2009:155). Some of the LDP sympathetic delegates formed the Coalition for Commonsense Constitution (CCC) later christened Katiba Watch (Swahili for Constitution). Katiba Watch membership was composed of sections of the NGO sector and old generation politicians such as Martin Shikuku and criticised the Kibaki faction of the NARC government for renegeing on its promise to deliver a new Constitution (Mutua 2009: 220-1).

Kibaki and a group of Mt Kenya politicians opposed radical Constitutional reforms that would dismantle the authoritarian 'imperial presidency' and so picked up from where Moi left off. They continued frustrating the NCC. In contrast Raila Odinga and his supporters clamoured for reforms and particularly favoured a shared executive between a Prime Minister and a President. Odinga had in fact a hand in the selection of most of the NCC delegates while serving as the KANU Secretary General and so most of the delegates owed allegiance to him. He was therefore able to outmanoeuvre Kibaki and his supporters and persuaded the conference to adopt a draft Constitution with a parliamentary system comprising an executive Prime Minister and President who although not ceremonial, had reduced powers (Lumumba 2009: 197; Mutua 2009: 203). The produced document was christened the Bomas draft (Mutua 2009: 197).

The CKRC presented this draft constitution to the Attorney General in 2004 four years after its formation. The AG received it in his capacity as Delegate No 575 rather than as the chief government legal advisor. This bore testimony to the hostility against the draft Constitution by the Kibaki allied NAK wing of the government (Lumumba 2008: 199-219). The key elements of the Bomas draft included the devolution of authority to district and regional governments and a substantial reduction of Presidential authority with the establishment of the office of the Prime Minister (The Draft Constitution of Kenya 2004). These reforms deepened acrimony within NARC (Khadiagala 2010: 76) in the sense that whereas the Odinga faction approved them, the Kibaki one opposed. The crux of the Constitution review process had been the twin contentious issues of the structure of the executive and devolution because they defined how power would be exercised and

national resources distributed. Kibaki and his allies exploited incumbency to water down the Bomas draft and published their version that inverted the powers of the President and the Prime Minister. The version retained executive powers in the President but created a ceremonial Prime Minister. They therefore whittled down the provision on devolution of power (Khadiagala 2010: 76). The revised version was named the Kilifi draft after Kenya's coastal town from where the Parliamentary Select Committee led by Simeon Nyachae met to draft it. The Kilifi draft was then subjected to a referendum in November 2005 as the Wako draft, named after the Attorney General who published it. The draft Constitution was subjected to the plebiscite and was thus three times removed from the 'original'. The stage was set for bruising and polarising referendum campaigns in which the merits and demerits of the draft were subsumed in an avalanche of ethnic and religious chauvinism, hate speech and revenge politics. I discussed the issues attendant to the 2005 referendum in chapter six. The rejection of the draft Constitution brought to a halt the protracted search for a new Constitution. Odinga led disgruntled voices within NARC and remnants of the vanquished KANU to mobilise Kenyans into rejecting the Wako draft because they saw it as designed to safeguard and perpetrate the economic and political hegemony of Kikuyu and allied politicians. Still smarting from Kibaki's scathing inauguration speech coupled with the purging of the Kalenjin from the government, Moi and the Kalenjin voted against the draft. Uhuru Kenyatta, the Moi protégé, opposed the draft too. The 'people driven' (Whitaker and Giersch 2009: 4) Constitution was hijacked by politicians in their quest for political supremacy.

8.9 The National Accord

The constitutional reform struggle manifested itself in the violently disputed 2007 Presidential elections in which Odinga accused Kibaki of stealing his victory. This dispute partly resulted from a disproportionately powerful presidency that made it difficult for free and fair elections to be held. The National Accord was pivotal in settling the dispute through the formation of the coalition government between Kibaki's PNU and Odinga's ODM. It was significant in the sense that it halted the violence that was quickly turning into a gory carnival of mass displacement of people, rape, arson, looting and murder. Cheeseman and Tendi observed that 'power sharing involved the construction of a more or

less inclusive government that represents a broad range of concerned parties, but may also include provisions regarding the distribution of bureaucratic posts and new rules for the make-up of the security forces and their subsequent management' (Cheeseman and Tendi 2010: 204). The two scholars cited three major advantages of power sharing over other alternative conflict resolution strategies. First, power sharing offers the shortest route to ending conflict since it provides all parties with access to power. Second, it confers legitimacy on the government and its actions since it allowed for a broad participation hence enhancing reconciliation. Lastly, it provided political leaders with incentives to maintain their proximity to power that moderated their positions that created an atmosphere conducive for institutional reform necessary to address the root causes of the conflict (Cheeseman and Tendi 2010: 204). However, since the grand coalition government came into being, it plodded along largely because of countrywide anxiety over the possible far reaching consequences were Kenya to relapse into internecine violence. Khadiagala argued that this fear forced Kibaki and Odinga to work for the stability of the coalition government (Khadiagala 2010: 78). If the grand coalition government collapsed it would make it almost impossible for reform to be realised before the 2012 elections because political goodwill from both political partners was crucial for the realisation of sustainable political stability.

However, Cheeseman and Tendi faulted power sharing as a means of resolving conflict. They argued that the approach should be applied only as a last resort because power sharing was 'a generous title for a process which has condemned opposition parties to accept inferior positions within the government, despite their success at the ballot box' (Cheeseman and Tendi 2010: 225). These scholars advance three reasons to show that power sharing eroded democratic gains that a country had previously made. First, it was a throw back to the one party rule and a disincentive to opposition activists. Second, it put opposition politicians in an awkward state whereby it was hard for them to explain their stance on issues to their supporters. Third, and of significance, it enabled elements that had stymied democracy to maintain the privileges of incumbency which threatened the impartiality of future elections since they could interfere with the electoral process (Cheeseman and Tendi 2010: 225).

The National Accord was not a panacea to longstanding mutual hostilities and suspicion among ethnic groups in Kenya particularly in the Rift Valley Province. Neither could it prevent politicians from inciting Kenyans against one another during subsequent election campaigns. The National Accord did not imply that hostility driven politics due to sectarianism, mistrust and exclusion would stop. The 2010 referendum campaigns proved that old political habits in Kenya indeed die very hard. Some politicians employed tribal innuendoes and hate speech (*Daily Nation* October 15, 2010). The National Accord was historical because it created a political atmosphere within which comprehensive institutional, legal and Constitutional reforms could be carried out. The centrepiece of the national accord was Agenda Four which spelled out Kenya's reconstruction process. Its full implementation would, to a large extent, address most of the challenges facing the country because it entailed institutional and Constitutional reforms, land reform and national reconciliation and healing.

8.10 The Constitutional Interpretation of the National Accord

The National Accord depended on mutual goodwill of both Kibaki and Odinga to be effective in restoring political stability. Owing to the polarising 2007 elections, the coalition government lacked mutual trust. After the enactment of the National Accord and Reconciliation Act no 4 of 2008, a dispute arose over the sharing of cabinet posts. The country almost relapsed into violence as an impasse emerged over the sharing of the most powerful ministerial posts. At issue was a disagreement over the interpretation of the Accord. ODM argued that by signing the National Accord, Kibaki and Odinga affirmed that: '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' (*Daily Nation* May 11, 2009).

The ODM accused PNU of appropriating all the strategic ministries such as Defence, Internal Security, Finance, Education and Foreign Affairs. These are the ministries with high budgetary allocations and so are strategic for patronage and rent seeking. They are also the core of the government. The instruments of legitimate violence that successive governments had exploited for partisan politics fell under the Defence and Internal Security dockets. Since the formation of the grand coalition, all these ministries have been

implicated in corruption which had forced the Minister of Foreign Affairs, Moses Wetangula to step aside pending investigations over embezzlement of funds (*The Standard* October 27, 2010). In their discussion on 'Coalition Theory', Budge and Laver state that whereas all ministers had one vote of equal weight, there was a perception that some had more influence and conferred more benefits than others (1986: 491).

The ODM faulted PNU for breaching the National Accord that emphasised 'portfolio balance' in power sharing that ODM interpreted to mean based on its parliamentary majority it was entitled to more powerful ministries. Notably the power sharing agreement had been reached after Kibaki pre-empted mediation by appointing a 17-member cabinet soon after being controversially sworn in. The ODM argued for a reconstitution of the cabinet, the civil service and diplomatic postings to ensure sharing of posts in accordance with the parliamentary strength of the two parties (*Daily Nation* May 11, 2009). The PNU resisted this call on grounds that dividing posts along political party lines would politicise and ethnicise the civil service. Kenya's bureaucracy had no history of impartiality with regard to the politics of the day and had been tribally constituted since independence (*Daily Nation* November 20, 2002). Before the promulgation of the 2010 Constitution, recruitment in the civil service was not carried out competitively since the President had the prerogative to appoint virtually the entire bureaucracy that disproportionately favoured members of the President's tribe. It was as a result of this history that this Constitution demanded that the composition of Kenya's public service must represent the country's diverse communities in terms of gender, ethnicity and disability (Republic of Kenya 2010: 148). The preoccupation with posts after the signing of the national accord had nothing to do with serving Kenyans but 'a predatory loot-sharing conspiracy' (Baregu 2010: 33).

There was another dispute as to whether it was the National Accord and Reconciliation Act No 4 of 2008 or the executive clause in the Kenya Constitution of 1963 that gave Constitutional legitimacy to the coalition government. Whereas ODM argued that the Act superseded the 1963 Constitution because the latter was a set of defective laws that contributed to the 2007 disputed elections and the subsequent violence, the PNU tended to recognise the 1963 Constitution as the supreme law (*Daily Nation* April 28, 2009).

There was also a dispute over the pecking order between the Prime Minister and President. The executive structure of the 1963 Constitution was amended to include new offices of the Prime Minister and two deputies in the cabinet. Section 4 of the National Accord and Reconciliation Act 2008, spelled out the powers of the Prime Minister as:

He (sic!) shall have authority to coordinate and supervise the execution of the functions and affairs of the government, including those of ministers.
He shall perform other duties as may be assigned to him by the President or under any written law.
He shall nominate persons to be appointed as ministers and assistant ministers bearing in mind coalition parties parliamentary strength and the principle of portfolio balance and thereafter be fully consulted by the President on the appointment of all ministers. (Republic of Kenya 2008c)

The ODM insisted that ‘power sharing’ meant that in the exercise of the executive power both the President and Prime Minister had an equal share of the power and authority. However, the PNU disputed this interpretation and maintained that although the National Accord contained the ‘language about real power sharing’ existed in the National Accord itself, the definition of ‘real power sharing’ did not go beyond the appointment of cabinet ministers and the procedure of dismissing them (*Saturday Nation* May 23, 2009). Hence the PNU held that the Prime Minister ranked lower than the President. It was difficult to square this interpretation with the fact that the President had no prerogative to dismiss the Prime Minister and ODM allied cabinet ministers unless the two principals agreed in writing. However, Adar, in a close analysis of the National Accord Act, argued that because the word ‘executive’ did not feature in reference to the office of the Prime Minister, this meant that the Act did not substantially alter the exercise of power by the President who could consult the Prime Minister but was not obliged to act according to the advice given (Adar 2008: 65).

The PNU exploited this lacuna to argue that Kibaki ranked higher than Odinga. ODM interpreted the Act to mean that the President served as Head of State and Commander-in-Chief of the armed forces while the Prime Minister’s mandate entailed execution of all government functions and affairs as spelled out in the Act: ‘The Prime Minister supervises and coordinates implementation of government policies.’ In a word, ODM’s interpretation was that the President was responsible for state functions and issues of defence and

security while the Prime Minister was in charge of the organization of government and implementation of its policies (*The Standard* May 18, 2009) an interpretation that PNU contested too. ‘He (sic!) shall have authority to coordinate and supervise...’ was an amorphous wording hence the controversy. Nowhere in the Act were the words ‘coordinate’ and ‘supervise’ defined because the meanings were assumed.

As the dispute between PNU and ODM over the ‘correct’ interpretation of the Act dragged on, some of my respondents stopped short of dismissing the power struggle as a charade. A trader I interviewed in Kakamega observed that the Act was skewed in favour of the President: ‘The Constitution vests too many powers in the hands of the President. The PM office is hollow and not as powerful as people think’ (Interview Tobias, January 21, 2009). Similarly Adar argued that the 1963 Constitution was essentially a Presidential one and it was the one Kibaki swore allegiance to prior to the commencement of the mediation talks and the National Accord did not change that (Adar 2008: 64). I argue that the National Accord significantly changed the executive provision in the 1963 Constitution. It was legally and politically untenable for Kibaki and his allies to ignore this. By signing the National Accord, Kibaki conceded that the legitimacy of his re-election was in doubt. However, if Adar’s interpretation were to be taken into consideration, the ODM’s insistence that both the President and Prime Minister exercised executive powers was constitutionally indefensible. Kibaki carried out state functions as if oblivious of the Act. He made appointments and renewed contracts of state functionaries in the military and the intelligence without consulting Odinga. The persistent bickering between the two parties stemmed from a combination of factors that formed the crux of Kenya’s political crisis and which were embedded in the 1963 Constitution that Cheeseman summed up as ‘..., a lack of credible institutions autonomous from the executive, and the focus of an ethnic winner-takes-all view of politics in which control of the presidency becomes the only prize that matters’ (Cheeseman 2008: 171).

Wrangles within the coalition government deepened a sense of scepticism in the country. Most of the people I interviewed in January 2009 were sceptical about the ability of the coalition government to last until 2012. A Sheikh in Nairobi, captured the divided loyalty bedevilling the coalition government thus: ‘Raila can only supervise and coordinate ODM-

headed ministries. PNU affiliated ministers and civil servants sabotage the Prime Minister's work' (Interview, Ramadhan, January 26, 2009).

8.11 The New Constitutional Dispensation

The promulgation of a new Constitution in 2010 was a watershed moment in Kenya's post-independence history. The Constitution was meant to herald a new form of politics that would promote accountable leadership. Specifically Chapter six set a high threshold of integrity that public officials had to meet. Before then individuals implicated in corruption, the 1990s tribal clashes and of questionable integrity could hold office as long as they were the President's allies. The Constitution review question remained on Kenya's political radar after the 2005 referendum. It featured prominently during the 2007 election campaigns. ODM, comprising mostly former LDP members, portrayed themselves as change agents and painted Kibaki and his allies as reactionaries who refused to facilitate the realisation of a new Constitution as pledged during the 2002 elections. The Constitution review was the centrepiece of the efforts geared towards Kenya's social economic and political renewal in the aftermath of the 2007 post-election violence. As shown in chapter seven, the powerful executive gave Kibaki an edge over his fellow competitors in the 2007 Presidential elections. The international community through the Panel of Eminent African Personalities led by the former UN Secretary General Kofi Annan, observed that a new Constitution would ensure sustainable political stability in Kenya (*Daily Nation* August 6, 2010). Power sharing between Kibaki and Raila Odinga was only a stop-gap meant to stabilise the country for the carrying out of a comprehensive review of the Constitution and other institutional and legal reforms to ensure credible elections in 2012 and beyond. Baregu was of the position that the power sharing was a transitional arrangement rather than a coalition government because it was meant to restore the legitimacy of the Kenyan state by facilitating the enactment of a new constitutional order to address institutional weaknesses and other challenges that precipitated the post-election violence (Baregu 2010: 33).

In the wake of the 2007 post-election violence and power sharing agreement, a number of measures were put in place to try and reform Kenya's body politic. A Committee of

Experts (CoE) was formed to spearhead the search for a new Constitution. Since there had been people-centred consultative processes through which Kenyans of various persuasions made submissions regarding the kind of Constitution they desired, the CoE did not see the need to hold countrywide meetings once more to receive input from ordinary Kenyans and civil society. In particular the process that produced the Bomas draft had been elaborate. Except for the executive and devolution clauses, the draft was less polarising. There were several Constitution drafts that provided the baseline for the CoE work. The CoE released a draft Constitution in November 2009 that was neither Presidential nor parliamentary as it envisaged a shared executive by both the President and Prime Minister. This draft was more elaborate in the issue of revenue collection between the national and the devolved governments (Revised Harmonised Draft Constitution of Kenya 2010). It was then reviewed by a parliamentary Constitutional committee that agreed on a purely Presidential system modelled on the US with checks and balances including an independent judiciary and the clear delineation of powers between parliament and the executive. The understanding was that a shared executive provided two centres of power and had the potential to create paralysis in the government in the event the President and Prime Minister could not work in harmony. The parliamentary committee whittled down the devolved government system and retained substantive financial decisions within the national government (Republic of Kenya 2010). Politicians in this committee were guided by partisan, ethno-regional and even self-interest. The CoE had proposed that both the national and county governments be granted powers to prepare and approve their own budget (Revised Harmonised Draft Constitution of Kenya 2010). The Constitution sought to inculcate the doctrine of separation of powers in the body politic. Nyinguro and others argued that strengthening the institutional authority of the judiciary and parliament would be the *sine quo non* of a transition to democracy in Kenya (Nyinguro and Otenyo 2007: 16). Kenyans voted for and approved the new Constitution by 67.25 per cent of the total votes cast on August 4, 2010 (*Daily Nation* August 6, 2010). The new Constitution provided for devolution of power and resources from the centre to the new administrative units called counties in an attempt to address skewed resource allocation. It had an elaborate bill of rights that included economic and social rights the state was required to enforce (Republic of Kenya 2010).

The 2010 referendum campaigns were less polarising than the 2005 ones for a number of reasons. First, both Kibaki and Raila Odinga, the protagonists of the 2007 Presidential dispute, campaigned for the approval of the new Constitution. Second, there was immense pressure for reform from the international community especially Washington that insisted that a new Constitution must be achieved (*Daily Nation* October 6, 2010). The US government issued travel bans against politicians and senior government officials deemed to be hindrances to reform. Third, the ICC was in the process of gathering evidence at the time against the masterminds of the 2007 post-election violence. Kenyan politicians realised that usage of violence to either gain or defend political power could have severe consequences. These factors restrained politicians who would have wanted to derail the process. Finally, the Constitutional review act was drafted in such a way that it was protected against political interference to curtail designs by anti-reformers. The review process and implementation of the new Constitution had inbuilt timelines hence was self-propelling. However, the MPs managed to extend the period within which they were constitutionally required to pass the Land Bills. This was indicative of the sensitivity of the land question that Kenya's oligarchs were reluctant to address. The decision was consistent with the self-serving behaviour of Kenyan politicians who would rather amend the Constitution to have their way than adhere to it (*The Standard* February 24, 2012).

8.12 Institutional, Legal and Constitutional Reforms

The National Dialogue and Reconciliation Committee, as the Annan-led mediation team was officially called, seized the opportunity presented by the post-2007 election crisis to set up a roadmap for engineering Kenya's politics through strengthening institutions such as the judiciary, addressing longstanding grievances and realisation of reconciliation and healing. The Committee drew up a programme that spelt out the reform process that included both immediate and long-term reforms to address festering challenges that had festered for long. The four core components of this programme were encapsulated in what were called 'Agendas':

Agenda One: immediate action to stop violence and restore fundamental human rights.

Agenda Two: addressing the humanitarian crisis and promoting national reconciliation.

Agenda Three: negotiations on how to overcome the current political crisis.
Agenda Four: developing long-term strategies for durable peace
(South Consulting 2009: 5; Khadiagala 2008: 16).

The coalition government agreed to set up a number of commissions whose recommendations it adopted. These commissions included, the Commission of Inquiry into Post-election Violence (CIPEV) or the Waki Commission, the Independent Review Commission to inquire into the General Elections held on 27th December with a focus on the Presidential elections (IREC) or the Krieglars commission, and the Truth, Justice and Reconciliation Commission and the Committee of Experts. IREC was the first commission to begin and complete its work. On the strength of its recommendations, reform had to start with the electoral law because part of the controversy surrounding the 2007 elections stemmed from either a defective or non-enforceable electoral law.⁷¹ The discredited ECK was disbanded as a first step towards achieving this end. So compromised was the ECK that in the run up to the 2007 elections, it was infiltrated by state intelligence elements who doctored the results in favour of Kibaki (Khadiagala 2010: 77-8). IREC pointed out cases of incompetence in the management of the 2007 elections and previous ones as well. The IREC concluded that the whole electoral process was so thoroughly compromised by interference that it could not tell who had won the Presidential election. IREC concluded that:

The conduct of the 2007 elections was so materially defective that it is impossible, for IREC or anyone else, to establish true or reliable results for the Presidential and parliamentary elections. IREC has, however, established by means of statistical analysis of a sample of constituencies that innumerable elementary mistakes in tallying and/or transcribing results as well as patent mistakes of omission, duplication, and confusion were made (Republic of Kenya 2008a: 9).

IREC dwelled at length on the defective electoral law and recommended it be reformed to among other remedies, inject internal democracy in political parties since undemocratic practices within parties affected the credibility of general elections and impeded the entrenchment of multiparty politics in Kenya. For instance, the ECK could not sanction errant candidates who defied its orders (Republic of Kenya 2008a: 110-1). IREC recommended that the reformed electoral law should give the electoral body prosecutorial

⁷¹ See EU EOM on the conduct of Kenya's elections in 2007.

powers over all electoral offences so as to secure the credibility subsequent elections (Republic of Kenya 2008a: 110-1).

Since the signing of the National Accord Kenya has made attempts towards reform and ensure free and fair elections in 2012 and beyond. The ECK was disbanded and replaced by an Interim Independent Electoral Commission (IIEC). IIEC has since organised a number of credible by-elections including the watershed 2010 referendum (*Daily Nation* October 8, 2010). However, this could not be cited as an indication of the credibility of the newly reconstituted electoral body. It took more than the inclusion of the word ‘independent’ and successful by-elections to inspire confidence in the electoral body. The decision by IEBC under Isaack Hassan⁷² to move the date of elections from August 2012 to March 2013 soon after Kibaki had unilaterally expressed preference for that date was reminiscent of how the previous discredited electoral body operated. Hassan and the IEBC appeared compromised and in connivance with the executive to derail the elections. Instructively, there was a pending court case over the constitutionally binding date of the elections. The IEBC Chairman ignored the court process which was a clear case of impunity. IEBC did not know whether to revert to the discredited manual registration of voters or embrace the electronic system as recommended by the Krieglar commission owing to disputes over the tendering process for the biometric voter registration equipment. The challenge was not which system was used but disregard for the rule of law that resulted in fraudulent elections. Preparations for Kenya’s elections did not inspire confidence that the elections would be free and fair. There was an eerie sense of déjà vu. Despite the new Constitution, institutions such as IEBC were yet to exhibit ‘independence’ envisaged in the Constitution. It would take time for them to win the confidence of Kenyans. The new Constitution is expected to strengthen the electoral system so as to restore Kenyans’ confidence in elections through an elaborate electoral framework (Republic of Kenya 2010). The defunct ECK was not autonomous of the executive. Hitherto the electoral law was incoherent because it was made up of several laws without an integrated electoral act (EU EOM 2008: 5). For instance, there was no provision for dispute resolution before the swearing in of the declared Presidential winner (EU EOM

⁷² Hassan served as a commissioner of the CKRC. He was among commissioners who did the bidding of Moi and KANU (Lumumba 2008: 131-2). He had no track record in reform and so his appointment as the chairman of IEBC was part of efforts by the *ancien régime* to perpetuate itself.

2008: 13-14). Had there been one, Kenya might not have degenerated into violence since ODM would have had to exhaust that option before embarking on mass action.

The electoral system needed the inclusion of the electoral disputes resolution mechanism courts of law with the required capacity and confidence to arbitrate of election related disputes. Hitherto election petitions dragged before courts of law for almost the entire term of parliament. Many were the cases in which a court nullified an MP's election few months to the following general elections rendering such a nullity irrelevant to the petitioner. Since 2007, the election of several MPs had been nullified a year or two before the 2012 elections. This was a clear illustration of how defective the then electoral law was and cast aspersions against the capacity of the judiciary to speedily and effectively resolve electoral disputes. Chances of a petition lodged by a Presidential loser being ruled in favour of the petitioner were almost nil due to lack of judicial independence as the petitions filed by Presidential losers in 1992 and 1997 testified. It was hoped that if the electoral body, oversight statutory bodies and the judiciary became independent of executive meddling, Kenya would hold credible Presidential elections.

The 2010 Constitution includes a comprehensive land law under chapter five. The chapter covering Land and Environment was revolutionary since until then this piece of legislation was non-existent in Kenya's legal framework. The absence of land policy in Kenya accounted for misuse of land as a resource by the Kenyatta, Moi and Kibaki régimes for patronage purposes. The Constitution stipulates that the National Land Commission must be set up to manage public land and related matters (Republic of Kenya 2010). This piece of law was meant to reduce land related conflicts that have bedevilled the country since independence and were part of the reasons behind the recurrence of tribal clashes particularly in the Rift Valley Province since the advent of the multiparty system.

The Commission of Inquiry into Post-election Violence (CIPEV) known as the Waki Commission was set up to 'investigate the facts and circumstances surrounding the violence, the conduct of state agencies in the handling of it and to make recommendations concerning these and other matters' (Republic of Kenya 2008b). The Waki Commission recommended reforms in the police force. Kenya's security forces were adversely

implicated in extrajudicial executions and other egregious crimes such as rape before and during the post-election violence (KNCHR 2008; Republic of Kenya 2008b; HRW 2008b; Alston report 2009). Consequently the National Task Force on Police Reforms was constituted and came up with modalities of how to transform the police force. The new Constitution envisioned a reformed police force independent of the executive and allied politicians (*The Standard* August 11, 2010). However, there was resistance against police reform by the Kibaki arm of the government that tended to make cosmetic and self-serving decisions in response to the task force recommendations. For instance they tried to have the police vet themselves. Even as Kenya approached the 2012 elections, not much had been achieved with regard to police reforms. Odinga complained about lack of consultation and disowned Kibaki's decisions. By all indications, Kenya would hold the 2012 elections with an unreformed police force still in place.

CIPEV recommended that the organisers, masterminds and financiers of the post-election violence be tried either through a special local tribunal or at the International Criminal Court. The commission was guided by the history of inaction by successive Kenyan governments on recommendations by commissions of inquiry. A motion seeking to set up a special local tribunal failed to garner the required two-thirds of the vote on February 5, 2009. Subsequent efforts to establish it failed due to a repeated lack of a quorum in the parliament. There was fear that some of the suspects, especially those occupying influential positions in the government, would interfere with a local tribunal to evade prosecution. The MPs' clarion call sung in rhyme in parliament was 'Let's not be Vague; let's go to The Hague' (*The Standard* April 5, 2011). Most MPs doubted the capacity of Kenya to set up a tribunal that would meet the Rome Statute threshold. Others preferred the Hague judicial option under the notion that it would take years for the cases to be concluded. Both Kibaki and Odinga tried to marshal MPs to support efforts towards establishing a special local tribunal but in vain. After this, the ICC took over the Kenyan case. The Chief Prosecutor presented two cases on Kenya before the Pre Trial Chamber I in December 2010 after which summonses were issued against six Kenyans alleged to have masterminded the violence. In January 2012 the Pre Trial Chamber II indicted four out of the six for crimes against humanity during the post-election violence.

The Interim Independent Boundaries Review Commission (IIBRC) was set up. The work of the commission included ‘making recommendations to parliament on the delimitation of constituencies and local authority electoral units and the optimal number of constituencies on the basis of equality of votes’ (EISA.org.za). The IREC found that delimitation of boundaries in Kenya did not respect the basic principle of equality of the vote (Republic of Kenya 2008a: 77). This was seen to be caused by the skewed constituency delimitation pattern in which constituency population sizes differed substantially. Cheeseman observed that the ODM had benefited from the gerrymandering that the Moi régime had carried out in the Rift Valley Province. Following return of the multiparty politics, the delimitation subdivided smaller and sparsely populated constituencies in the Province but left densely populated ones in opposition areas intact. This partly explained ODM’s parliamentary majority but in ‘a close to call’ Presidential race (Cheeseman 2008: 178; Republic of Kenya 2008a: 9). Kibaki tried to pre-empt the work of IIBRC by arbitrarily creating more districts and reconfiguring Provinces (*Sunday Nation* July 18, 2009). IIBRC tenure came to end and it wound up amid controversy over a list 80 new constituencies it had created. Initially MPs from Central and Coast Provinces rejected the list of new constituencies claiming that their regions had been allocated fewer constituencies than they deserved (*The Standard* November 11, 2010). However, parliament approved the list months later (*The Standard* June 2, 2011) although that did not mean the proposed constituencies had come into being. A permanent Independent Electoral Boundaries Commission (IEBC) that took over the functions of IIEC and IIBRC was later set up and was expected to continue with the delimitation process and other preparations ahead of the 2012 elections. The IEBC gazetted the additional 80 constituencies and resisted attempts by parliament to create additional wards (*The Standard* March 8, 2012).

The Truth Justice and Reconciliation Commission (TJRC) was appointed on July 22, 2009 to investigate social, economic and political crimes committed since Kenya’s between 12 December 1963 and 28 February 2008 (TJRC-Kenya). TJRC was tasked with probing ‘Looters of public funds, land grabbers, political assassinations, and gross violators of human rights’ (*The Standard* July 23, 2009). TJRC was set up under Agenda Four but was mired in a credibility crisis over the suitability of its head. Pressure was mounted both locally and internationally for the resignation of TJRC’s head Bethuel Kiplagat, allegedly

over his role in some of the excesses of the Moi régime which he served in various senior positions (*Saturday Nation* October 30, 2010). Moreover, the Indemnity Act barred TJRC from handling human rights violations during what was called Shifta war (1963-67) launched by the Kenyatta government against irredentist moves by Kenyan Somalis (*Saturday Nation* September 4, 2010). The Indemnity Act barred ‘victims of human rights violations from seeking compensation from any court, tribunal or commission’ (*Saturday Nation* January 30, 2010). Civil society called for the repeal of the Indemnity Act claiming it would make it difficult for people in the affected areas to appear before the commission. TJRC constantly appeared in the news over the controversy surrounding Kiplagat, lack of funding, hiring of staff, fears that would not fulfil its objectives by the time its tenure expired but not for what it was set up. The greatest challenge to the TJRC was lack of political will given that some of the people accused of crimes under its investigation still held prominent positions in the government. These individuals could not be expected to promote truth telling and that explained why Kiplagat was approved by parliament and appointed by Kibaki despite his questionable past. Another challenge was that the period under investigation was too long in comparison to the resources available to the commission and the time frame within which to complete its work.

The National Cohesion and Integration Commission (NCIC) was formed to address forms of discrimination and hate speech (NCIC site). It had to ensure that not more than a third of employees in any government department or entity belonged to one tribe. However, the Kikuyu disproportionately occupied positions in the government. The commission was timid and susceptible to political influence. NCIC never held to account politicians who promoted hate speech and incited people by fanning ethnic animosity. Two of the Ocampo Four, Uhuru Kenyatta and William Ruto openly engaged in ethnic profiling after they were named among the masterminds of the 2007 post-election violence and got away with it. During the 2010 referendum campaigns, politicians engaged in hate speech but went scot-free. Although MPs Dr Wilfred Machage of Kuria and Fred Kapondi of Mt Elgon were arraigned in court for hate speech, they were acquitted in keeping with the tradition of impunity entrenched in the county’s body politic (*Africa Review* July 24, 2012). Like the TJRC, NCIC was dysfunctional and served as a source of sinecures for those appointed to serve in it. In fact the two commissions were a hindrance to national cohesion because they

lacked the requisite credibility to discharge their mandates. They tried to whitewash serious issues of injustice, memory, germane to the realisation of healing, reconciliation and justice.

8.13 Challenges to the Coalition Government

In spite of the reform initiatives including enactment of the new Constitution, the coalition government had to contend with persistent challenges. Some of the challenges were related to Kenya's chequered postcolonial political history while others were related to the disputed 2007 elections in the wake of which Kibaki and Raila Odinga were forced to work under the same government amidst mutual suspicion and allegations of rigging thus the constant wrangling.

Because of the manner in which the state had used its legitimate force to promote sectional interests, the ruling elites lost much of the legitimacy that governments hold in deploying force. Multi-party politics had ushered in a kind of 'organised disorder', where the idea of 'disorder as a political instrument' deployed by Chabal and Daloz has some salience (Chabal & Daloz 1999). Since the 1980s through the early 1990s following the advent of multiparty politics, the government lost monopoly over the legitimate use of force (Republic of Kenya 2008b; Mueller 2008: 187-194). In the 1980s the KANU had used its youth wing to perpetrate violence against dissidents and ordinary citizens. In the early 1990s the Moi régime gave free rein to the 'Kalenjin warriors' to attack tribes perceived to be supporting opposition politics in the Rift Valley and neighbouring provinces such as Western and Nyanza. In the mid-1990s security forces allowed gangs such as *Jeshi la Mzee* (The old man's army) to break up protests by opposition activists agitating for reform along the streets of Nairobi (Kagwanja 2005: 56) Anderson explored how Kenya's successive governments since Kenyatta's had exploited the illicit violence by gangs and militias to achieve political ends. He observed that some of these gangs sprung up to provide security in shanty and informal settlements (Anderson 2002). In the lead up to the 2002 elections, the *Mungiki* militia gang openly brandished machetes in the streets of Nairobi while demonstrating in support of KANU and its Presidential candidate, Uhuru Kenyatta (Kagwanja 2005: 63). Despite the Kenyan press and some politicians linking Kenyatta to Mungiki, Anderson observed that the politician did not respond to the

allegations (Anderson 2002: 540-1). In January 2012, Kenyatta was indicted by the ICC for mobilising *Mungiki* against ODM supporters in the Rift Valley towns of Nakuru and Naivasha during the post-election violence. The court ruled that there were 'substantial grounds to believe that' on November 26 2007, Kenyatta, Kibaki and head of civil service Francis Muthaura held a meeting at State House in Nairobi with *Mungiki* leaders. During the meeting *Mungiki* extracted concessions from the government such as, stoppage of extrajudicial killings against its members by the police, demanded recruitment in the security and armed forces and release from prison of its leader in support of Kibaki's re-election (ICC 2012: 107/155-107/155 Muthaura et al case-Decision on confirmation of charges).

The ICC bench also ruled that there were 'substantial grounds to believe that' another State House meeting was held on 30 December 2007, the day Kibaki was controversially sworn in, in which Kenyatta gave money to some MPs and *Mungiki* coordinators to for attacks against ODM supporters in Naivasha (ICC 2012: 119/155-120/155 Muthaura et al case-Decision on confirmation of charges). Against this backdrop, in the wake of the formation of the grand coalition government, there was a resurgence of militias and vigilante groups across the country the foremost being *Mungiki*. Vigilante groups sprung up in Central Province to counter the *Mungiki* menace but were just as brutal using summary execution of those they deemed 'guilty' (*The Standard* May 18, 2009). A new genre of violence involving kidnapping for ransom sprung up in urban areas especially in Nairobi (KNDR MR 2009: 7). This state of affairs was symptomatic of the general sense of lawlessness bedevilling many Sub Saharan countries described by Bayart, Ellis and Hibou:

...there is a development, in many countries south of the Sahara, of private police forces. A state which thus acquiesces in the renunciation of its claim to uphold a monopoly of legitimate violence opens the way to the privatisation of violence and the loss of legitimacy of the public order (Bayart, Ellis and Hibou 1999: 100).

The coalition government became a drain on the taxpayer. The numerous Commissions set up to expedite the reform process depleted the exchequer. With 40 cabinet ministers and 50 assistants, plus the Presidential and Prime Ministerial offices, Kenya's cabinet was arguably one of the largest and most expensive in the world. The cost of running the

government was exacerbated by the fact that despite Kenyan MPs being among the world's highly paid as the figures I cited in chapter seven showed, majority of them refused to pay tax. Kenya's economy could ill afford such a huge wage bill. Cheeseman and Tendi referred to the Kenya's bloated coalition government as 'politics of collusion' in which previous political opponents united in the pursuit of the state largesse and with the aim of forming new political alliances (Cheeseman and Tendi 2010: 207, 223). Uhuru Kenyatta and William Ruto, who had supported Kibaki and Odinga respectively during the 2007 elections, attempted to form an ethnic alliance after the ICC indicted them for masterminding the post-election violence. The two whipped up ethnic solidarity between the Kikuyu and Kalenjin communities despite being accused of crimes against humanity. The two politicians were accused of targeting among other groups, each other's community. So cynical was the politics of alliance formation in Kenya that political survival trumped criminal responsibility and Kenya's efforts towards the realisation political stability.

The implementation of the 2010 Constitution through the enactment of the relevant Acts and vetting of personnel for positions in various arms of government presented a challenge. MPs, in connivance with elements within the government opposed to the Constitution, enacted Acts inconsistent with the spirit of the Constitution. These politicians were driven by a sense of self-preservation. Overall the intention was to preserve the old order of centralised power and unaccountable leadership (*Daily Nation* February 17, 2012). 'Vetting', hitherto an unheard of word in Kenya's political lexicon, applied in which the competences of those seeking public office was scrutinised before appointment. Whereas in some instances, the process had been seen as competitive, in others it had been marred by ethnic and regional politics and horse-trading between Kibaki and Odinga whereby they shared and distributed the posts among their allies. Parliament 'vetted' the nominees on the basis of ethno regional and party loyalty resulting in candidates of questionable credibility being appointed.⁷³ The process that led to the appointment of the Director of Public Prosecutions, Keriako Tobiko, was flawed. He was a KANU relic and among CKRC commissioners who tried to sabotage the realisation of the new Constitution

⁷³ Some long serving judges that the Judicial Service Commission interviewed and recommended for appointment were sacked by the Judges and Magistrates Vetting Board for professional misconduct and corruption.

(Lumumba 2008: 12-3). He had nothing to show in terms of prosecutions for atrocious crimes as the holder of the office before it was decoupled from the office of the Attorney General under the new Constitution. He was confirmed to the post despite allegations of corruption and impropriety levelled against him in the course of vetting. MPs and oligarchs supported Tobiko in order to perpetrate the culture of impunity. The intention was to ensure that economic crimes and human rights violations were not investigated and those implicated prosecuted. ODM endorsed him for fear of causing a backlash among the Maasai, a tribe to which Tobiko belonged. Consequently, some of the most qualified candidates for the created offices under the 2010 Constitution were bypassed either for lack political connections or on the basis of their ethnic origin. In this context the independence of parliament that was envisioned under the new Constitution remained a mirage. The ‘watermelons,’ a term the press coined to refer to vacillating politicians during the 2010 Constitutional referendum campaigns and the ‘Reds,’ those who campaigned against the draft Constitution, tried to obstruct the implementation of the Constitution after it had been promulgated. ‘Red’ symbolised ‘No’ was the colour for those opposed the new Constitution while ‘Green’ symbolised ‘Yes’. Reds and Watermelons were mostly *ancien régime* defenders and beneficiaries. These were carryover politicians from the Kenyatta and Moi régimes and who derailed the envisaged NARC reform agenda of 2002.

The Reds and Watermelons were opposed to reform and had exploited the centralised Constitution and proximity to the President for self-enrichment. The Reds and watermelons posed the greatest impediment to the implementation of the new Constitution. Most members of these groupings grabbed land, looted public coffers, were implicated in crimes against humanity and were generally accountability averse. Their names featured prominently in the report by Kenya Human Rights Commission (2011) entitled ‘Lest We Forget: The Faces of Impunity in Kenya.’ It was in the best political and economic interest of these lords of impunity that the implementation of the Constitution be derailed. The Finance Ministry headed by Uhuru Kenyatta before he resigned after being indicted by the ICC, tried to obstruct the devolution of resources to the Counties in favour of the status quo. It was odd and farcical that politicians who had opposed reform dating to the one party state were entrusted with the task of implementation of the Constitution. This state of affairs vindicated cynics who doubted the pace of reform in the country.

Some clerics who campaigned against the passing of the new Constitution, tried to impede the implementation of the Constitution too. They opposed the nominees to posts of Chief Justice and the deputy because the candidates were deemed too liberal for their comfort. The Chief Justice spotted a stud on his ear while the Deputy Chief Justice was said to be sympathetic to gay rights (*Daily Nation* May 24, 2011). There were attempts by the executive to amend the Constitution and change the date of the 2012 elections from ‘the second Tuesday in August in every fifth year’ (Republic of Kenya 2010: 84) to December 2012 ostensibly because there was no sufficient time to organise credible elections in August 2012. However, the government had had ample time since 2008 when the Krieglar commission released its report in which elaborate recommendations on how to reform the electoral system were made. The judiciary led by the Supreme Court did not provide a definite and an unequivocal ruling on the exact date of the 2012 elections. The High Court gave an unambiguous ruling that held that elections could either be held in 2012 or 2013. Alternatively it referred the matter to Kibaki and Odinga despite the Constitution having taken away the prerogative to name the date of general elections from the President. How the courts expected the two to agree on such a politically sensitive issue in a coalition government afflicted by endemic wrangling defied logic. The Appeals Court ruled that elections would be held on March 4, 2013. This ruling affirmed the impunity of the IEBC. It was yet another illustration of judicial activism. The courts neither explained what law legitimised Kibaki’s tenure beyond December 30, 2012 nor why the term of the tenth parliament had to be illegally elongated. Despite the new constitutional dispensation, the legacy of a subservient judiciary that pandered to the interests of the executive was largely intact. The courts did not arbitrate the election date issue in consonance with the law thus contributing to divisive politics as before. Odinga and sections of the society preferred elections to be held on December 17, 2012. The press reported that a section of the executive toyed with the idea of once more postponing the elections to August 2013 (*Daily Nation* July 23, 2012). The sense of unpreparedness for elections by IEBC and uncertainty over the election date appeared deliberate and part of an orchestrated scheme by forces of impunity hell bent to torpedo Kenya’s democratisation process. Succession politics and the ICC cases had rendered the 2012 elections dicey. The insistence by Kenyatta and Ruto to run for president in spite of The Hague trials expected to in April 2013, was bound to be

yet another litmus test for the judiciary. The oligarchs and their cronies were keen to perpetuate themselves in power so as to evade accountability. In a bid to entrench impunity further, they attempted to push the elections further back or even postpone them indefinitely in order to buy time for manoeuvre with regard to the Kibaki succession. Unless the election date issue was resolved once and for all and in time for preparations for credible elections, it had the potential to destabilise the country.

The implementation of the Constitution became a battleground for political supremacy between factions of political elite in Kenya. Whereas it was imperative that individuals of proven credibility be appointed to positions in the various institutions and bodies created under the new Constitution, *ancien régime* members were determined to have malleable and reactionary individuals take up the posts. The suspension of the Deputy Chief Justice, Nancy Baraza, after allegedly assaulting a security guard in a Nairobi Mall seemed to be illustrative of a rebirth in Kenya's public service in which integrity counted. However, the decision was suspect and appeared political. It was curious that Kibaki who effected the suspension and formed a tribunal to investigate her conduct, was reluctant to relieve those indicted for crimes against humanity of their responsibilities. Uhuru Kenyatta and Francis Muthaura only 'stepped aside' following pressure from civil society and the ODM wing of the government but even then, Kenyatta retained the post of the Deputy Prime Minister that demanded even a higher sense of integrity. The Attorney General, Githu Muigai, whom Kibaki ostensibly appointed in keeping with the spirit of the 2010 Constitution, deliberately misinterpreted the Constitution in a manner to show that he belonged to the old order defined by impunity and subservience to the executive. He tried to defend the continued hold of public office by the ICC indictees in a most bizarre and incoherent manner. He asserted that they could not vacate office because they had appeared in the ICC in their 'individual and private capacity' (*Daily Nation* January 24, 2012). He appeared biased in the discharge of his responsibilities akin to someone deployed to serve oligarchic and ethnic interests. He proved to be worse than his predecessor, Amos Wako, as far as brazenly breaching the law to reinforce impunity was concerned. The government was more preoccupied with defending the Ocampo Four to the extent that it ignored the plight of internally displaced persons following the post-election violence. Almost five

years since they were driven from their homes, they continued to live in deplorable conditions.

Parliament remained ethnically divided and beholden to powerful and influential forces in the country. It could therefore not discharge the responsibility of holding the executive to account fully. This political behaviour was at odds with the 2010 Constitution that underscored the principle of separation of powers. It envisaged parliament that would check the executive. The following illustration demonstrates that ethnic loyalty and mercenary ethos continued to exert influence on Kenya's parliament. In 2011, Kenya's currency, the shilling, rapidly depreciated to an all-time low against foreign currencies especially the US dollar. An ad hoc parliamentary Committee was set up to investigate the circumstances surrounding the rapid decline of the currency and make recommendations (Republic of Kenya 2012: 2). Its report implicated Njuguna Ndung'u, the Central Bank of Kenya governor. The governor was among other acts of professional misconduct accused of having been 'less candid with information to Kenyans and when he appeared before the committee' (Republic of Kenya 2012: 6). He was also accused of 'creating the opportunity for Banks and individuals to make quick money through hoarding and speculation' (Republic of Kenya 2012: 6). The report recommended that the governor steps aside pending the formation of tribunal to investigate his 'conduct, incapability and incompetence to perform the functions of the office...' (Republic of Kenya 2012: 8). However, when the report was tabled in parliament, MPs voted for amendments that resulted in the name of the governor and adverse recommendations against him being expunged from the report (*Saturday Nation* March 10, 2012). Shakeel Shabbir, an ODM member of the committee, claimed that some MPs were bribed to vote against the report. Had the report been adopted without alterations, Kibaki would have had to form a tribunal to ascertain allegations levelled against the governor. Once again efforts were made to save Ndung'u's career just like in the case of two of the Ocampo Four. It was the second time the governor's suitability to head the Central Bank was called to question. As I showed in chapter seven, Kibaki renewed his contract despite a commission of inquiry having found him unfit to hold the office. Kikuyu MPs were in the forefront in defending the governor.

8.14 Conclusion

The chapter primarily focused on the struggles around the establishment of a constitutional dispensation in Kenya. The Lancaster House Constitution of 1963 was partly to blame for the ongoing social and economic challenges that Kenya had faced since independence. It was a weak Constitution that did not adequately provide for the doctrine of the separation of powers. Both Kenyatta and Moi tampered with the Constitution, fundamentally ensuring that multiparty democracy could not challenge their somewhat despotic régimes. However, the propensity among Kenya's politicians to blatantly disregard the law posed a more challenge than the mere fact that the Constitution was defective. In 2002, Kibaki came into power on a platform of reform. However, he reneged on the pledge to deliver a new Constitution hence setting the stage for the controversial and destabilising 2007 elections. He flouted the 2010 constitution and acted as if Kenya was still under the old set of laws. Ethnicity became entrenched in the country's body politic because of the preponderance of opportunism among politicians, civil society activists and even the clergy. Civil society personnel, some clerics and some of the critics of the one party state camouflaged their insular tribal, sectarian and selfish interests behind the name of reform. They had framed the glamour for reform in the language of respect for human rights, democracy, the rule of law and probity. Their duplicitous approach to Kenya's politics was exposed once Moi left office. They turned into ardent defenders of the *ancien régime* and frustrated efforts towards reformation of the state. The inability of Kenya's politicians and other local actors to envision Kenya in which the collective interests of people counted, reinforced frictions and fed into recurrent ethnic conflict. Hyden suggested that it was easier for Kibaki and his supporters to demand constitutional reform while in the opposition but realised after ousting KANU that reform was incompatible with the dictates of personal rule (Hyden 2006: 104).

Kenya's social, economic and political renaissance required that Kenya's politicians acted in accordance with the Constitution. This was a challenge because the Constitution was often disregarded owing to personal rule and the tendency to conduct the business of governance through informal rather than in a formal and institutionalised manner. Hyden

(2006) identifies Personal rule as inimical to the African polity since the logic that guides most African rulers is political advantage for the ruler and his supporters rather than how effective to manage economy for the wellbeing of the citizenry. Kenya's Constitution reform was held hostage by schemes by the political elite. The CKRC, NCC, the 2005 referendum and implementation of the 2010 Constitution were not opportunities through which Kenyans negotiated on how to govern themselves but veritable battlegrounds and incubators for political intrigues and violence. Although Kenya had made tremendous strides towards reform in the aftermath of the 2007 postelection violence as reflected through some reform in the judiciary and efforts towards setting up a credible electoral body, there was dearth of attitudinal change among the politicians and even within the judiciary and many other statutory bodies including the IEBC. The partisan manner in which Kibaki and his loyal allies in concert with some of the institutions meant to check him went about implementing the Constitution bore testimony to the fact that Kenya's body politic was in need of constitutionalism. Attempts by the cabinet and MPs to amend the Constitution in a manner reminiscent of the arbitrary amendments carried out on the Lancaster Constitution and refusal by MPs to pay taxes, horse-trading between Kibaki and Odinga in making appointments in the system indicated that there were lingering vestiges of Big Man politics. It was this seemingly intractable and immutable mind-set that Kenyans had to combat. I argued that those who had benefited from one party autocracy and their allies from religious circles and civil society posed the greatest threat to Kenya's transition and transformation. These individuals had never lived in Kenya in which the rule of law applied. The fear of accountability and even of losing their ill-gotten wealth compelled these people to block reform. Kibaki and his Mt Kenya allies continued to frustrate reform even after the promulgation of the Constitution. Under his tenure Kenya became more ethnically polarised since his decisions were more informed by self-preservation, ethnic interest as opposed to national interest. He lacked the requisite credentials to reengineer Kenya to greater heights of social economic and political transformation. His tenure was a rude awakening to the debilitating effects of ethnic coalitions to the country. Tribalism served the interests of ethnic barons and their cronies while the entire country suffered economically, politically and socially.

Chapter Nine Conclusion

I have shown in this thesis that ethnic politics in Kenya is a phenomenon that provided political and economic advantage to the privileged owing to the fact that there was a close link between tribalism and economic opportunities and power. This form of politics could only make sense to mostly those in strategic sectors of the economy and in active politics. Those without the advantage of formal schooling to enable them compete for the privileges of the state find tribalism relevant once they offer themselves for election to political office or seek services and public goods either for themselves or their dependants. There was no evidence that ethnic politics was atavistic and confined to the poor in the rural settings or in the informal settlements. The notion that those who have been to school are 'civilised' and so had nothing to do with tribalism does not stand scrutiny. The intelligentsia vote rationally in consonance with their privileges. Paradoxically, these same people were meant to devise alternative forms of political organisation. Barring the reification of ethnic differences by the intelligentsia, *wananchi* would have no problem casting their votes on the basis of leadership capability. They know when the economy is in straits for they bear the brunt. The thesis has debunked the notion that only communities such as the Luhya, Kalenjin, and Mijikenda are social 'inventions'. The thesis argued that Kenyan tribes, like others elsewhere on the continent, were social constructs. For alternative forms of politics to emerge in the country, it was imperative that most of the current crop of politicians, especially the ethnic Big Men are eased out of politics. Entrenched oligarchic networks bringing together the Kenyatta, Moi and Kibaki/Odinga governments must be dismantled. Unless these were achieved, the reform path will remain circuitous as the kleptocrats fight back to maintain the status quo.

This thesis explored the salience of ethnicity in Kenya's attempt at transition from single party rule to multiparty democracy. Although the thesis traces postcolonial ethnic disharmony to instrumentalisation of tribalism during colonialism, the running argument in the thesis is that Kenyan politicians exploited ethnicity as an axis of political mobilisation for personal gain owing to several challenges inherent in the body politic. The centralised state and the lack of a regulated political party system made appeal to ethnicity by politicians almost inevitable. Gatekeepers sought to hijack the state in order to collect rents. The new constitutional dispensation, strove to institutionalise politics reinforce the

rule of law through the principle of separation of powers, promote integrity and accountability in public office and curb impunity. For Kenya, to escape tribal politics and its attendant effects, Kenyans had to learn to collectively demand accountability from their politicians. They must espouse the values enshrined in chapter six of the constitution to inculcate integrity in both private and public office. One who acted without honour in private cannot act with integrity in public. Change of constitution per se would not alter the state of the country's politics unless it was accompanied by a shift in value system within the entire society. In a way, Kenya's politicians and other public figures were a microcosm of the paucity of morality within the generality of the population.

The thesis demonstrated that Kenya's political party system is weak, personality driven and anchored in tribal politics. There is a relationship between the lack of internal democracy within political parties, the winner-takes-all electoral system and the recurrence of ethnic violence at election time. After the turn to multi-party politics, a strong aspect of political party formation was that they were increasingly short-term coalitions whose objectives were not to promote a coherent policy agenda, but rather were formed solely as vehicles for contesting elections. This accounts to the very high turnover of political parties. But the leaders of these parties were a constant in Kenya's politics. In the absence of issue-based politics, election campaigns were conducted on the basis of ethnic profiling, innuendoes and exploitation of primordial differences such as 'politics of the foreskin'. Kenya needs to enforce the regulatory framework within which political parties operated. The Register of Political Parties must crack the whip in cases whereby politicians flout the Political Parties Act. MPs who hop from one party to another must have their parliamentary seats declared vacant so that they can seek fresh mandate. The Register of Political Parties should not hesitate to deregister political parties that promote ethnic hatred and other sectarian interests. Political party alliances must be streamlined to outlaw expedient ethnic unions meant to either win election or retain power. Only by being strict in the enforcement of the law would political parties cease to serve as an avenue for the ideology of ethnicity. Tribal politics is normative in Kenya's polity because politicians have no regard for ethico-moral behaviour hence the endemic corruption and are incredibly insular in their definition of the concept of citizenship.

Predatory politics encouraged rent seeking among the politicians who sought power for the opportunities it provided in terms of government contracts, ability to influence recruitment in the civil service and even divert national resources to one's region. These were the issues that made ethnicity determinant in the country's politics. The colonial legacy did not predetermine Kenya's postcolonial politics since the exploitation of ethnicity in the post colonial period and the resultant tribal politics was a rational decision by the successive Kenyan regimes and politicians. In Kenya, ethnicity is combustible because it is a prism through which 'political entrepreneurs' interpret real and perceived opportunities and fears. Through a strict enforcement of the law that leads to the prosecution of ethnic warlords and those who incite people on the basis of ethnicity, these politicians would be able to predict the consequences of engaging in cynical politics that preys on the hopelessness of the poor and unemployed youth.

In chapter two, I reviewed literature on ethnicity and ethnic politics and its link with electoral and political party politics. The institutional one party framework stifled reform and had an impact on multi-party politics. The FPTP electoral system was amenable to ethnic mobilisation because a presidential candidate did not have to appeal to the diversity of Kenya's ethnic composition. In 2007, Kibaki's controversial re-election lacked legitimacy. He 'won' by a dubious narrow margin. The shift from the simple majority FPTP system to fifty per cent plus one vote threshold before one is declared a presidential winner would encourage presidential candidates to transcend narrow ethnic enclaves. This would also attract only presidential contestants with a realistic chance of winning the presidency unlike previously when opportunistic also-runs contested the presidency with the aim of forming ethnic alliances with the winning presidential candidate.

Chapter three analysed the Moi tenure popularly known as *Nyayo* era. The chapter argued that ethnicity remained a factor in Kenya's politics even after the shift from the authoritarian one-party state. The hallmarks of the *Nyayo* régime such as intolerance to alternative political views, patronage, instrumentalisation of ethnicity, malfeasance, corruption and impunity survived this régime. The chapter highlighted the fact that the absence of the doctrine of the separation of powers resulted in Moi resorting to other structures such as KANU and the provincial administration to govern. The only way to

curb this state of affairs that remained in place even after Moi left power was to institutionalise the state affairs. By so doing the destiny of Kenya would be redeemed from the caprices, idiosyncrasies and whims of erratic politicians. Politicians who brazenly flout the law must be made to account for their actions to dispel the notion that there were two sets of laws in the country with the poor being required to uphold the law while the privileged thrived on impunity. *Wananchi* should enjoy the rights enshrined in the bill of rights unlike previously when their individual rights did not matter at all. The government should be taken to task if it fails to deliver on social and economic rights such as education, housing, water and healthcare.

The Moi régime abused the *Harambee* system to distribute state largesse and loot from the public coffers. The noble aim of *Harambee* of mobilising communities to contribute towards self-help projects was lost. *Harambee* became a conduit for perpetrating corruption and reinforcing patronage networks. Big Man rule under Moi showed that political behaviour among Kenya's politicians must be regulated. NARC attempted to ban the *Harambee* system but politicians did not adhere to the ban. The CDF initiative would have replaced the *Harambee* system but was also prone to abuse. What ailed Kenya's politics was politicians' refusal to submit their character to the provisions of the constitution. Regardless of the reform Kenya effects, it would take a selfless and visionary president to confront the entrenched culture of impunity and turn the country around. Such a president must be ready to demonstrate through word and action that there would be no sacred cows in his/her government. He/She must refuse to be held hostage by sectarian interests and work in the best interest of all Kenyans.

Like Kenyatta, Moi schizophrenically condemned and instrumentalised ethnicity at the same time. He banned tribal groups on grounds that they promoted tribalism but his régime was biased towards members of the Kalenjin community. Moreover, Moi introduced the 'provincial strategy' into Kenya's elections. This in essence institutionalised distribution of party seats during national elections along ethno-regional lines. The strategy was meant to produce broad ethnic coalitions that were reflective of Kenyans' ethnic diversity. The flipside was that it stifled the emergence of political talent since ethnic balancing took precedence over leadership qualities. Political parties under the multiparty system had to

contend with this legacy. It was for this reason that the Kibaki administration had been stuck in the same socio-economic and political rut that Moi created. It was highly unlikely that any politician socialised within this type of politics could conceive an alternative form of politics. Voices committed to reform in civil society, the religious fraternity, the media and professional bodies owed it to themselves to sensitive Kenyans and agitate for a rule-based society. Kenyan politicians must realise that their role was that of serving the people. The tendency of politicians to relate to constitutional institutions cavalierly and treat the citizenry with contempt must stop for the sake of national cohesion and political stability. The judiciary must ensure that the law is applied both in spirit and letter.

The chapter showed how the question of land contributed to Kenya's instability during the multiparty system. Kenyatta sowed seeds of land disputes especially in the Rift Valley and Coast Provinces. Kenyatta, Moi, Kibaki and their allies amassed large tracts of land in a country in which arable land is scarce. In many ways, the Moi régime was a continuation of Kenyatta's except for changes in the inner court composition. The politicisation of ethnicity, the use of land as an item of patronage, tribal prioritisation and favouritism in state appointments defined the Kenyatta, Moi and Kibaki regimes. Long-term political stability in Kenya required restitution with regard to the land question. Recommendations contained in the Ndung'u Commission must be implemented to address the question of land dispossession. Chapter five of the constitution on land must be fully implemented. This could not happen under any President beholden to the three successive governments since they were equally culpable for land inequities. The land clause in the 2010 Constitution must be applied to the letter to address cases of land speculation and land grabbing. There was a psychotic mentality among Kenyan politicians and bureaucrats that made a fallow piece of land irresistible thus the indiscriminate grabbing of public land including public toilets and cemeteries. All grabbed land including forests, water towers, road reserves, land meant for public facilities such as schools, and agricultural development farms must revert to the government. Kenya's political system must be weaned of this 'business as usual' style of doing things in order to cross the Rubicon.

The issue of disparities in regional development contributed to the inability of a national interest to emerge and the continued ethnic fragmentation of Kenya along ethnic lines. These disparities contributed to ethnic politics precisely because Kenya's successive postcolonial governments tended to be guided by ethnic politics in the allocation of resources. Thus regional disparities in development enhanced ethnic animosity and acrimonious elections, especially at the presidential level because they reinforced the myth of 'collective eating'. There must be equitable resource allocation to all the regions, meritocratic recruitment in the bureaucracy and upholding of the rule of law among politicians to reduce the passion that ethnicity elicits whenever Kenyans talked about challenges besetting them. The Constitution attempted to realise this through the devolution of resources to the counties and the appointment of personnel in the civil service in proportion to ethnic diversity. Effective implementation of the Constitution to guarantee institutional independence and the effective setting up of devolved governance structures would somewhat reduce the stakes during Presidential elections. However, devolution in itself would not be a panacea to the issue of social inequalities. The people resident in the counties must remain vigilant to check the possibility of this tier of government being nothing else but another stage for patronage, corruption, tribalistic and clan politics. In the run up to the 2012 elections, the contest for the President remained as intense with jostling for power through ethnic alliances as before. This implied that centralisation of power was still intact given that MPs were hesitant to set up structures for the county governments as stipulated in the constitution ahead of the elections. Kibaki's attempt to unconstitutionally retain the provincial administration bore testimony to this point.

Chapter four covers the first and second multiparty elections after Kenya's return to multiparty politics in 1992 and 1997. The chapter argues that in spite of the repeal of Section 2A of the Constitution, there was no transformation in Kenya's politics. Moi shrewdly acceded to the formation of many political parties but retained control of the state. The Moi régime combined state largesse and state sponsored violence to resist further reform. The two multiparty elections exposed not only the continued salience of ethnicity in Kenya's multiparty politics but also its destructive potential. The chapter highlighted the negative impact of ethnicity on the political party system. Ethnicity

derailed Kenya's return to multiparty politics although other factors such as opportunism, abuse of state power by the incumbent played a role too. Moi exploited his incumbency and patronage to exacerbate divisions in opposition parties. Insidiously, the Moi régime evoked the 'indigene-settler' binary opposites within the distorted *Majimboism* narrative to ignite and stoke ethnic violence. Big Man politics continued to exert influence on the country's politics. Kenya embraced political pluralism without democrats. For this reason, opposition politicians had a quest for power for self-serving ends and when they failed, they acceded to KANU's suggestion of a raft of minimum reforms that rendered both the opposition politicians and Moi indistinguishable with regard to commitment to reform. Kenya should avoid stop-gap political deals and ethnic alliances that only serve the ends of the predatory political elite. The Constitution tried to outlaw this pattern of politics but politicians thwarted efforts by enacting acts of parliament that retained both pre and post-election coalitions.

Chapter five analysed the Moi succession in the run up to the transitional 2002 elections. Moi attempted to deploy ethnicity to safeguard the interests of Kenya's oligarchy even after he left power. The ideology of ethnicity influenced succession politics. Since assuming power, Moi had adroitly exploited the 'provincial strategy' to maintain power through an alliance of tribes. However, the strategy boomeranged in the lead up to the 2002 elections. Moi's scheme was thwarted by a fall-out within KANU since the politics of succession had reduced him to a lame duck President. His erstwhile loyalists openly defied him and transferred their support and that of their ethnic constituencies to the opposition. Odinga was instrumental in the opposite events of the disintegration and subsequent loss of power by KANU and the NARC victory in the 2002 elections. He deployed political genius in neutralising Moi by means of the same ethnic ideology that Moi had relied upon throughout his tenure. The KANU defeat masked the persistence of ethnicity in alliance formation. The opposition parties were united by the resolve to defeat KANU but were bereft of an alternative form of politics beyond the obsession with tribe. Thus no sooner had NARC attained victory than cracks emerged. With the 'common enemy' out of the way, the NARC entity became adrift. The persistence of the single party mentality and its attributes such as tribalism, corruption and impunity under NARC proved that the process of slaying the cockerel would be protracted. This phase of the country's

political history was characterised by manoeuvrings in the run-up to the Moi succession. Big Man politics created room for Moi to single-handedly try to drive the succession politics and impose his wishes upon Kenyans. In 2007 Kibaki exploited a lacuna in the Constitution about the procedure to be followed in swearing in the President and had himself hurriedly sworn in at dusk after 'stealing' presidential elections. The process of transition as spelled out in the new Constitution must be followed after the next elections to avoid plunging the country into another period of political uncertainty.

Chapter six covers the period between the 2002 and 2007 elections and advanced the argument that although the 2002 elections marked the end of Moi's tenure, the elections did not mark the beginning of Kenya's social, economic and political renewal. The inability of Kenya to devise a politics reflective of the country's ethnic diversity after the 2002 elections underscored the difficulty of effecting reform in the Kenyan polity disproportionately dominated by antireform politicians. NARC's infighting in the wake of the electoral victory brought to the fore a number of issues. It underscored the paucity of issues in Kenya's political parties. The legacy of communal grievances, betrayal and mistrust among Kenya's politicians were issues that could not be realised through mere reform rhetoric. Of even greater importance was that self-serving backroom agreements by Kenya's politicians were not a substitute for comprehensive reform. The regulation of the political party system in the country was of paramount importance to avoid a repeat of the 2007 maelstrom. In the estimation of ODM supporters, Kibaki and Musyoka lost in the presidential elections but ended up as President and Vice President respectively courtesy of a 'stolen' election and backroom deals.

The 2002 elections and the subsequent referendum in 2005 suggested that Kenya was consolidating its democracy. The two events were largely incident free and in both cases a majority of Kenyans voted against incumbents. However, the two events masked underlying challenges within Kenya's body politic. The highly ethnicised 2005 referendum and the 2007 presidential elections were illustrative of the existence of deep tribal divisions within Kenyan society. Kibaki was unable to provide the requisite leadership for the resolution of these divisions. The election of Kibaki propelled into leadership a cohort of Kikuyu and GEMA politicians and marked a resurgence of Kikuyu

political hegemony that had been disrupted after Moi assumed power in 1978. These politicians were part of the *ancien régime* and therefore impeded reform. The misrule under Moi caused so much disgruntlement among Kenyans that they were ready to vote for anybody other than Moi or his protégé. This rendered them vulnerable to unscrupulous politicians masquerading as reformers. These politicians' only claim to reform was simply opposing Moi. It is only by having their living standards uplifted, would Kenyans resist the temptation to fall prey to charlatans, quacks and political con artists passing for reformers. Kenya stands in need of a truth-telling process in which issues of justice, restitution and reconciliation would be candidly addressed. It is high-time Kenyans abandoned the collective sense of amnesia and mendacity that previously prevented them from taking stock of their painful history and learning from its lessons.

Chapter seven focused on the disputed 2007 elections and the aftermath. I argued that the controversy surrounding the 2007 presidential elections was a culmination of issues that defined Kenya's postcolonial period. Kibaki's inability to effect reform after the 2002 elections removed prospects for the country getting out of the mould of divisive politics that alienated sections of the Kenyan society. Historical issues such as grievances over ethnically skewed land redistribution and use of land for patronage purposes remained unresolved. Impunity remained in place as perpetrators of previous crimes such as political assassinations, tribal violence in the 1990s, architects and beneficiaries of massive economic rip-offs such as the Anglo Leasing, Goldenberg, Maize Scandal, Triton Oil among other scams, and instigators of crimes against humanity enjoyed freedom. Most these suspects occupied public office. It was this history of impunity that inspired those who derailed the 2007 presidential elections and the masterminds of the violence. The complicity of the defunct ECK in the dispute over the winner of the presidential elections, the refusal by the ODM to take recourse in the law courts and the intervention of the international community through the Koffi Annan led mediation were indicative of Kenya's weak and dysfunctional institutions. It was therefore not entirely unexpected that Kenya almost plunged into full blown civil war five years after what appeared as exemplary watershed elections by African standards. I cannot overemphasise the need to strengthen oversight institutions recognised in the Constitution. The police, the intelligence, the military and other arms of violence must be depoliticised and

professionalised to avoid these legitimate instruments of force from being abused through partisan tribal politics. The IEBC must rise above partisan politics and resist the urge to do the bidding of the executive and other nefarious forces keen to disenfranchise Kenyans through engineering election results that do not reflect the wishes of Kenyans in 2012. Unless these reforms take hold, a repeat of the 2007 post-election violence is a real possibility.

Until the change of Constitution in 2010, Kenya's political framework changed little from what it was during the one party state. It did not enhance competitive politics due the non-existence of the doctrine of separation of powers and lack of independent institutions to act as arbiters of political and economic disputes. The state remained captive to exclusionary politics, corruption and impunity. The dispute over the results of the presidential elections and the resultant violence pointed at failure of leadership under Kenyatta, Moi and Kibaki. The three régimes stifled reform and steered the country along a perilous political trajectory in which ethnic divisions were nurtured because they ensured continued hold of power by the these politicians and their allies. Ethnic divisions prevented the development of a national imaginary and collective action by Kenyans in confronting social, economic and political malaise. Chapter six of the Constitution that requires integrity among public officials, must be fully enforced to free the country from the fetters of individuals who ascend to power simply because either they hailed from influential political lineages, had wealth or were connected to ethnic chiefs. Anyone who falls short of the provisions of this clause must be disqualified from leadership to instil integrity, morality, probity, accountability and confidence in the country's politics. All those adversely named in acts of corruption and other breaches of the law in the past must not hold public office. I recommend that Uhuru Kenyatta and William Ruto, two of the Ocampo Four required to appear for the ICC trials in April 2013, should be debarred from running for President in 2012 owing to the egregious charges facing them at The Hague.

The post-election violence was illustrative of the view that the politicians had delegitimised the Kenyan state. The violence showed that Kenyans had become alienated from this state that politicians exploited for their own personal ends. The analysis of findings from the field research demonstrated that those interviewed, their ethnic affinity and station in life notwithstanding, decried state decay due to the appropriation of power

by coterie of politicians, their corruption and the impunity that accompanied their actions. The interviewees identified the land question and the inequitable allocation of resources as sore thumbs in Kenya's social, economic and political matrix. The demonstrations and violence reflected a demand for better governance. Moreover the findings demonstrated that economic straits contributed to political instability since it was easy for opportunistic politicians to enlist idle youth into violence. The top-down approach to leadership in Kenya must be replaced with a consultative process that takes into account the needs and concerns of people. The President and presidential candidates should learn to explain themselves to Kenyans through media interviews. Kenyan presidential candidates preferred addressing unstructured and chaotic rallies during funerals and other large open air meetings in which demagoguery worked as opposed to fielding questions from the media. They eschewed a situation whereby Kenyans would be able to gauge their stand and appreciation of pressing societal issues. 'Accountability' was sorely absent in their lexicon. More often than not, those who appeared enthusiastic to enter media studios were in pursuit of publicity during electioneering. Once one gets elected President, he resorts to speaking ex cathedra as Moi did. Kibaki tried but times had somehow changed. From my interviews, I deduced that there was disconnect between the citizenry and the politicians. The cynical tone that characterised my respondents' views was a pointer to widespread discontent that had repeatedly proved to be injurious to peace and stability.

The issue of tribal affiliation was central in access to political and economic power. It was a smokescreen behind which politicians keen to illegally amass wealth, commit heinous crimes and evade accountability hid. The section entitled 'The Kikuyu Problem' showed that the conversation around tribalism could not be wished away. The views of interviewees from other tribes were in stark contrast with the political correctness that the media tried to promote as seen through the introductory excerpt to the thesis. The other challenge that impeded reformation was the dynastic leadership successions that made certain surnames permanent fixtures at the top of Kenya's political hierarchy. Most beneficiaries of this kind of power transfer wielded power because of lineage and the need to protect the economic and political interests of the country's oligarchy. It did not matter whether they were visionless and clumsy. Kenya's reservoir of leadership talent can only be explored once these oligarchic connections had been neutralised. The media and the intelligentsia must lead in initiating a conversation among Kenyans with regard to the issue

of tribalism and socio-economic inequalities. The country must resist the temptation to wish away its challenges by engaging in cosmetic processes such as the one led by the Truth Justice and Reconciliation Commission and National Cohesion and Integration Commission. These Commissions had been bogged down by credibility issues that hampered the full discharge of their mandates yet were expected to lead in promoting cohesion and integration among Kenyans.

Chapter eight traced Kenya's reform process. In this chapter I argued that the centrepiece of the quest for reform was the realisation of Constitutional reform despite the opportunism that accompanied the process. The constitutional review process had been protracted in the context of Kenya. The search for a new Constitution was under the control of Moi and later Kibaki. Both exploited the state machinery to block the attainment of a new constitutional dispensation because of vested interests in the status quo. The unprecedented tribal violence after the 2007 elections awakened Kenyans to the fragility of the country's democratisation process. Agenda Four must be fully implemented to address the long-term issues that undermined cohesion. Without giving due emphasis and attention to this agenda, all that was attained in other areas would fall away. It is the fulcrum of reform.

The Kenyans I interviewed counted on Constitutional, institutional and legal reform as the *sine qua non* for the reformation of the state. Kenyans had demanded a new set of laws ever since the one party autocracy under Kenyatta. They attributed the country's social economic and political woes to a centralised state without horizontal and vertical checks. The upshot of the system was abuse of power, patron-client politics and corruption. My interviewees hoped that a new Constitution would restore the rule of law, eliminate impunity, result in equitable distribution of resources, uphold the doctrine of separation of powers and strengthen oversight institutions. Despite the attainment of a Constitution, there seemed to be no corresponding attitudinal shift among the politicians. First, the inability of the judiciary to decisively rule on the date of the 2012 elections as stipulated by the Constitution cast doubts on the ability of the judiciary to rein in rogue behaviour among the politicians. The High Court ruling was a throw back to the 1963 Constitution in which the announcement of the elections date was a prerogative of the President. Second,

the government continued abetting impunity. It was unable to sanction those implicated in corruption, the masterminds and other perpetrators of the 2007 post-election violence and its spirited effort to scuttle the ICC judicial process against the four Kenyans indicted, indicated that those who had thrived on impunity had the capacity to torpedo the new constitutional dispensation. The two Kenya cases at The Hague must run to their conclusion. However, the government must try other lower level perpetrators of the violence, and must compensate and resettle the internally displaced people for the sake of justice and reconciliation. To achieve this, the judiciary must be reformed to rid it of incompetent, tardy, lethargic and compromised officers who had for years connived with unscrupulous politicians to deny Kenyans justice. Judicial reform will enable the judiciary to assert its independence through rulings that are devoid of executive meddling and the influence of corruption since that is what the Constitution demanded of it. The judiciary must not demur in the face of breaches of the law by the executive and legislature. It must interpret the law 'without fear, favour or ill will'.

The removal of deadwood from the judiciary would inject the moral and legal conviction requisite for upholding the rule of law. The Magistrates Vetting Board purged the judiciary of some corrupt and incompetent judges although it was unclear what criteria they used to separate chaff from wheat in a highly tainted and compromised judiciary that had no regard for jurisprudence. The suspension of the Deputy Chief Justice was a case of selective application of the law. In the light of crimes against humanity charges against Kenyatta and the incompetent Central Bank Governor both who continued to hold public office, 'integrity' in Kenya's polity was invoked for expedient reasons. The suspension of the Deputy Chief Justice was informed by oligarchic and tribal interests but did not mark the start of probity in public office. The other woman on the Supreme Court was Kikuyu and the law stipulated that there was need for gender balance in appointment of the Chief Justice and Deputy Chief Justice. Oligarchs, the merchants of impunity, were determined to curtail judicial independence and maintain the status quo of a malleable judiciary. The mere fact that Kenyans debated whether people accused of crimes against humanity could run for public office was proof enough that 'integrity' was still an alien concept in both the body politic and society at large.

The refusal by MPs to pay taxes in contravention of the Constitution through the deliberate misinterpretation of the Constitution to suit their interests and the attempt by the Attorney General to defend the Ocampo Four against calls to resign after crimes against humanity charges against them were confirmed by the ICC, demonstrated that there was resistance to comply with the Constitution. Uhuru Kenyatta, one of the ICC accused, refused to resign as Deputy Prime Minister. He too elected to misinterpret the Constitution by asserting that he could only be removed by MPs. As such, whereas the challenge of realising the Constitution had been achieved, the challenges of attaining constitutionalism and the development of fidelity to the rule of law within the judiciary, parliament and executive were bound to prove more daunting. The struggle for a reformed Kenya in which the rule of law applied irrespective of one's station in life and Kenyans enjoyed the benefits of the progressive bill of rights will not come easily. The struggle will be ranged against formidable forces keen to retain the status quo. In spite of these challenges, I am of the view that implementation of the Constitution would provide a framework for Kenya's renaissance. An attempt to address the land question, create independent institutions and devolve government structures to check executive excesses and ensure equitable distribution of resources were bold moves. The caveat is that for the Constitution to find traction, there was need for vigilance by civil society, the media, reform oriented politicians, and ordinary Kenyans. The election of a President outside of Kenya's *ancien régime*, ready to place Kenya above self, family, clan and tribe would likely provide the requisite leadership in institutionalisation of reform. There is need for a new phase in Kenya's politics distinct from the Kenyatta-Moi-Kibaki/Odinga responsible for the upheavals bedeviling the country.

The intriguing question that merits further research is why the Kenya's poor, irrespective of ethnic background, abhorred tribalism, and were aware of the shenanigans of political entrepreneurs yet continually voted along ethnic lines. This was a paradox. Since 1992 election results especially at the presidential level had displayed an ethnic hue. At least from the evidence that I gathered in my research, these people were not ignorant of the country's politics. How then, do we explain this paradox? This remains an open question.

Appendix- One

The Role of Ethnicity in Kenya's Transition from Single Party Rule to Political Pluralism (1992-2007)

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Dear Sir/Madam,

REF: REQUEST FOR INTERVIEW

I am a Doctoral student at the University of the Witwatersrand, Johannesburg. I am conducting research on the role that tribalism has played in Kenya's transition from the one-party state to multiparty politics between 1992-2007. My supervisor is Prof Sheila Meintjes, Head of the Political Studies Department.

I kindly request you to respond to my interview questions. You are free to decline to be recorded. You are also free not to respond to any question(s) you are uncomfortable with. You are also free to stop the interview if you wish to.

The research is for academic purposes. If you wish to remain anonymous, I shall grant you anonymity.

Yours Sincerely,

Shilaho Westen Kwatamba.

Appendix- Two

Interview Schedule

- How has ethnicity influenced Kenya's politics since the beginning of multiparty democracy in 1991?
- Why did the opposition not unseat Moi in both 1992 and 1997 general elections?
- Is ethnicity an issue among Kenyans' daily interactions?
- Is there a link between ethnicity and allocation of national resources in Kenya?
- In what ways was the 2002 political transition affected by ethnicity?
- Why do you think the National Rainbow Coalition (NARC) collapsed?
- Was ethnicity a factor in the 2007 elections?
- What caused the 2007 post-election violence?
- Is there a difference between the Kibaki and Moi regimes?
- Do *wananchi* (ordinary people) play a role in tribal politics?
- Does the National Peace Accord guarantee Kenya's longterm political stability?
- In what ways do you think the grand coalition government between ODM and PNU is significant?
- Why have there been perennial tribal clashes in the Rift Valley province since Kenya's return to multiparty politics in 1991?
- Have you ever heard about the International Criminal Court? If yes, in what context?
- Do you support the trial of the masterminds of the 2007 post-election suspects at the ICC? Why?

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