

The Political Economy of Kenya's Crisis

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ABSTRACT Using political economy analysis, this paper discusses three precipitating factors that were ignited by Kenya's 2007 election, which was too close to call beforehand and highly contested afterwards. These factors were: the gradual loss of the state's monopoly of legitimate force and the consequent diffusion of violence; the deliberate weakening of institutions outside the executive in favour of personalized presidential power, raising questions about the credibility of other institutions to resolve the election on the table rather than in the streets; and a lack of programmatic political parties which gave rise to a winner take all view of parties that were inherently clientist and ethnically driven, something that raised the stakes of winning and gave rise to violence. The paper discusses each of these factors in historical perspective. It explains how and why they arose and what made each so dangerous. It also aims to place what happened in Kenya into a wider framework of understanding by drawing on a broad range of literature in political economy ranging from Max Weber to Douglas North. Of the three factors discussed, the diffusion of violence followed by institutional issues constitute serious challenges. The resilience of both has the potential to undermine Kenya's transition to democracy.

Introduction

'So this is how it begins' (Kenyan political scientist, Nairobi, January 2008)

To the outside world, Kenya in 2007 was a model of stability and future possibilities. The draconian repression experienced under former President Moi in the 1980s and 1990s had finally ended. It was replaced with hard fought for freedoms of speech, press, and association. They emerged towards the end of Moi's rule and expanded after President Kibaki's election in 2002. The days of imprisonment, detention without trial, and torture of opposition party supporters were gone. A once vibrant economy had been decimated and brought to its knees by Moi. By 2007, just five years after installing a new government, Kenya had an annual growth rate of over 6 per cent and was poised to do even better. The mood was optimistic and most thought Kenya was back on an economic roll. Some in government spoke of Kenya following East Asia's tigers and becoming another Newly Industrialized Country (NIC). This was one side of the story.

The other was Kenya's low scores on the World Bank's Governance Indicators, which placed it below the mean for Sub-Saharan Africa in three out of the following four areas: government effectiveness (28/28 per cent), political stability (15/35.6 per cent), control of corruption (16/30 per cent, and the rule of law (15.7/28.8 per cent).¹ Kenya was rocked by financial scandals at the top of government, infrastructure continued to crumble, and

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foreign companies were still skittish about investing.² Crime, from gunfights in the central business district of Nairobi to carjacking, holdups in houses, and gangland-style murders, peppered the lives of ordinary Kenyans as well as others. This duality of both positive transformation and imminent decay aptly characterized Kenya in the post-Moi era.

The thesis of what follows goes somewhat beyond the above description of duality. It argues that Kenya was precariously perched and poised to implode even prior to the election because of three underlying precipitating factors.³ These factors put Kenya on a dangerous precipice notwithstanding the many impressive changes experienced under its new government. The argument here is that the 2007 election, which was too close to call beforehand and contested afterwards, was the spark that ignited them. Hence, Kenya's descent into a spiral of killing and destruction along ethnic lines and the consequent fracturing of the fragile idea of nation was not altogether surprising.

This article identifies these underlying precipitating factors as follows: a gradual decline in the state's monopoly of legitimate force and a consequent generalized level of violence not always within its control; deliberately weak institutions, mostly overridden by a highly personalized and centralized presidency, that could and did not exercise the autonomy or checks and balances normally associated with democracies; and political parties that were not programmatic, were driven by ethnic clientism, and had a winner-take-all view of political power and its associated economic byproducts. The argument here is that: violence was diffused, could be ignited easily, but not controlled; institutions outside the presidency normally associated with vetting a contested election were not viewed as being sufficiently neutral to do so and did not; and the nature of Kenya party politics predisposed both leaders and followers to see politics as a do or die zero sum game, which is what this election became. Had the election not been so close, these same factors may have been held in check for a while. Nevertheless, they were dangerous and looming problems. The aim of this article is to discuss these factors and show why the contested 2007 election triggered them. It argues that two of the three factors (e.g. weak institutions and ethnically driven clientist political parties) are common in Africa and therefore cannot alone be viewed as causal. It maintains that diffused violence, however, upped the ante, with a too close to call election raising the stakes in causal terms.

The intent of what follows is both to identify and outline these factors in the context of Kenya's political history. It is also to place the discussion within the framework of contemporary political economy analysis as well as to raise questions concerning the transition to democracy. It argues by implication that false optimism about Kenya and other transition economies has two causes. First, scholars and policy-makers often have focused on the formal aspects of institutions such as parties, parliament, administrative structures, and elections rather than on the incentive systems guiding the behaviour of political actors in them. This has led to overly positive views about how institutions both in and outside government actually function and false enthusiasm about the future. Second, concentrating on the formal nature of institutions as *sui generis* entities has also meant neglecting how these institutions really operate. In this case there was a deliberate hollowing out of formal institutions by those in power in the face of a diffusion of violence over more than a generation.

The conclusions reached here from the study of Kenya are of interest for three reasons. Firstly, in many democracies, from Bangladesh to the Philippines and Kenya, politicians depend on violence to build electoral influence. The role of violence in democratic

electoral competition is largely unexplored in the literature. This study does not examine the still open question of when violence becomes important and when it does not, but it does document the long-run consequences for democratic sustainability. Secondly, policy-makers and academics have advocated formal institutional reform (e.g. decentralization, proportional representation and strengthened parliaments) as a solution to political violence. The analysis here suggests that violence is not purely a social phenomenon in need of being re-channelled through different types of formal institutional vehicles of political competition and decision-making. Instead, it is in part a product of political competition itself and for that reason may threaten the sustainability of any institutional reform that is devised to control violence. Furthermore, as the discussion below makes clear, institutional innovation that attempts to graft formal technical changes on to old systems will be undermined by prevailing norms and will not work. Thirdly, the civil conflict literature has focused on conflict triggers ranging from greed to grievance and on both the macro causes of violence (poverty) and the micro causes (the ability of rebels to finance insurgency). Elections are usually taken at face value in the literature and democracies are not distinguished according to the quality or specific dynamics of electoral competition. The violence in Kenya suggests that this is a mistake. Although all the major drivers of conflict are present (e.g. historic and significant inter-ethnic conflict over land), a key driver here has been the deliberate use of violence for electoral advantage and to maintain power indefinitely if possible. This is important because of its potential to destroy the integrity of the state itself as is clear from what follows.

Diffused Violence

'Government has Lost Control of Some of this Country' (*Nation*, 28 January 2008)
'Gangs are Driving the Political Agenda' (*Nation*, 6 February 2008)

For Max Weber, the defining characteristic of a state is its ability 'to control the monopoly of legitimate force over a given territory'.⁴ Without this monopoly a state cannot maintain order, ensure peace and security, or govern effectively and it becomes vulnerable to descending into a Hobbesian state of nature. Hence, for Weber this characteristic of the state is essential. For a variety of reasons to be discussed below, the state under President Moi, while exercising a draconian level of violence against those opposed to it, also manufactured institutionalized violence outside of the state, both by design and neglect. Over time, these sources of violence, some of which were generated by the state to support it, began to take on a life of their own and, often, the state could no longer control them. It is in this sense that the state slowly began to cede its monopoly. Even when there was no crisis, the violence which the Moi state had generated was there to explode, with or without its blessing. When Kibaki took over government in 2002, extra-state violence had not been checked, had trickled down into the general population, and was out of control and ready to be tapped on call in a variety of ways, as it was after the 2007 election.

The discussion which follows discusses four types of extra-state violence that emerged under the Moi regime: that of politicians having their own bodyguards and goon squads; the emergence of groups of young thugs who were used by the state and its politicians to

kill and displace opposition supporters in the Rift Valley, the Coast, and other provinces prior to two multi-party elections in the 1990s; the resulting Mafioso violent shakedown gangs that began to emerge and operate as shadow states in Nairobi's slums, in other cities, and in the countryside, as well as in support of certain politicians; and the generalized level of crime and violence that thereby confronted ordinary citizens from the 1980s onward and has continued to do so ever since.

The Kenyatta period was not without violence. However most of it, including the assassination of three politicians, the use of the provincial administration and preventive detention laws to repress opposition politics, and the harnessing of regular and paramilitary security forces to disrupt student and political rallies, was controlled by the state.⁵ Although some writings on this period mention the role of the Kenya African National Union (KANU) party youth wingers, their role was relatively minor, did not threaten the state's authority, and did not come up in discussions with the Kenya People's Union (KPU) party and other opposition supporters concerning repression.⁶ Their negative experiences came mainly from the state itself and those who discriminated against them out of fear of being associated with the opposition.⁷

The Moi era was infinitely more repressive than that of Kenyatta's rule, with some authors describing this period as an 'imperial presidency'. Throup and others argue that after independence Kenyatta had a good deal of patronage he could use to consolidate support, in contrast to Moi. Kenyatta's supporters received jobs in the civil service and land, both of which had opened up with the exit of settlers. In addition, the coffee boom generated revenue for the state and prosperity for Kenya's many farmers. In contrast, by the time Moi took over, none of the above handouts were available. In addition, coffee prices had plummeted while the cost of oil had gone up. Moi also faced a recalcitrant Kikuyu elite, who had tried to overthrow him before he took office, Kalenjin supporters who wanted to 'eat', and a growing population waiting for perks.

Unlike Kenyatta, who could give without taking away, Moi had to take away before he could give. Hence, the means Moi used both to consolidate support and control those opposed to him were cruder and more repressive.⁸ This entailed 'destroy[ing] Kikuyu hegemony and dismantl[ing] the economic foundations of the Kenyatta state' to 'build Kalenjin privileges into the structure of the state.'⁹ This was important because controlling the state was the means to entrench an ethnically defined class and to ensure its enrichment. Moi's methods were to tax and destroy Kikuyu agricultural associations, to fill the civil service, parastatals, and the university with unqualified individuals from his own ethnic group, and to replace the elected Nairobi City Council with an appointed Commission to undermine Kikuyu control of the city.¹⁰ He also plundered the treasury, in part to support a constantly changing inner circle, in contrast to that of Kenyatta's, which was more stable.¹¹ All of this gave rise to outrage in some quarters. Moi, in turn, responded by having his critics and even their friends followed, detained, tortured, and killed. He used indiscriminate violence against ordinary citizens, particularly against the poor and defenceless.¹² He and his politicians also began to use extra-state violence early on, possibly initially as a prophylactic antidote to the formal security forces, whose loyalties may have been in question, a tendency that increased during his 24-year rule. Ironically, the more extra-state violence was used to consolidate Moi's rule, the greater was its potential to erode the state's monopoly of legitimate force.

The Privatization of Public Violence and Bodyguards

Even in the early and mid-1980s, politicians such as Nicholas Biwott, William Ntimama, and others had personal bodyguards and gangs of supporters, something mostly not experienced during the Kenyatta period. The meting out of private justice through personal gangs was something opposition politicians and their supporters experienced as the Moi regime became more entrenched and more violent. This was the beginning of what Katamunga aptly has called 'the privatization of public violence' when the state both invoked extra-legal forces to retain power and became criminalized itself. This period, particularly after Kenya became a '*de jure*' one-party state in 1982, also coincided with a 'revival of the KANU Youth Wing', a tool used 'to monitor, silence, and even punish dissidents, usually the lumpens in urban and rural Kenya'.¹³

Multi-Party Democracy and Privatized Extra-State Violence

The great leap forward in the privatization of violence came in 1991 when the legislation which had turned Kenya from a *de facto* one-party state in 1969 into a *de jure* one in 1982 was finally repealed following pressure from internal critics and financial sanctions from donors. After this the Moi regime was faced with the prospect of multi-party elections for the first time in twenty-two years. Moi's thoughts on multi-partyism were well known: he detested the idea and wanted to stay in power.¹⁴ His means were to use hired gangs to displace and kill those opposed to him in key electoral areas. Dead and displaced people don't vote. These groups and gangs were made up of young unemployed males and were recruited and hired by key KANU politicians, who wanted to win at any cost.¹⁵

The new rules on elections, designed to appeal to the marginalized areas, necessitated three conditions for winning the presidency: being elected as an MP, obtaining a majority of votes, and receiving more than 25 per cent of the votes in five out of Kenya's eight provinces. The adhesive which kept Moi in power for 24 years was a mixture of repression and anti-Kikuyu epoxy. He used the latter to consolidate support among his own and other marginal ethnic groups in the Rift Valley and other parts of the country. As Anderson has noted, '[u]nder Moi, KANU bec[a]me KADU reborn'.¹⁶ This revived coalition, known by the acronym KAMATUSA, also appealed to other marginal ethnic groups at the Coast and elsewhere.¹⁷ At independence they had opted for the opposition party, the Kenya African Democratic Union (KADU), for a federal system known as *majimboism*, and for a regional constitutional arrangement.¹⁸ They were worried about being dominated by Kikuyus and other 'upcountry' groups, as well as the latter's monopoly of jobs and their acquisition of land outside their 'home' areas. KADU nevertheless folded and joined the governing party KANU in 1964, just one year after independence. In part, this was because *majimboism* had been so diluted in various constitutional conferences that it had become unviable both economically and politically. Hence, KADU MPs slowly gave up and crossed the floor.¹⁹ Kenyatta also soothed the pain and enticed the top echelon of the party with ministerial appointments, parastatal and other jobs, and access to choice land in the Rift Valley.²⁰ When asked later why he and his cohorts had never tried to bring back *majimboism* with a constitutional amendment from 1978 to 1990 when one of their own was president, William Ntimama, the MP and for Narok and a minister in Moi's cabinet, answered, 'Power is sweet'.²¹

However, even afterwards, these same past issues continued to be salient for ex-KADU ethnic groups who thus found Moi's anti-Kikuyuism appealing. Population pressures in the Rift, the comparative poverty of ordinary pastoralists as opposed to agriculturalists, and land scarcities continued to increase.²² Pressures on the land were rising, jobs were in scarce supply, and many individuals in these areas were illiterate. All of this combined to feed already existing feelings of resentment of outsiders and marginalization. Many 'outsiders' in fact were long-term residents who had lived in parts of the Rift and elsewhere for over 30 to 40 years. In addition, a number of contentious land issues arose from local elites grabbing land illegally from their own poor co-ethnics through their control of local land committees and their influence over the provincial administration.²³ Hence, mobilizing resentment against outsiders over land dovetailed with the self-interest of local elites and with efforts to ensure Moi's political survival after 1991.

Faced with a new multi-party situation and new rules for elections, Moi and his entourage were determined to win at any price. He was particularly worried about the demographics of the Rift, with its increasing influx of Kikuyu, as well as Luhya and Luo. Moi feared that their vote for upcountry opposition politicians running for president might keep him from obtaining 25 per cent of the ballots cast, which he needed to win the Rift Valley Province. He also worried about losing seats to opposition politicians elsewhere, something which potentially could eat away at his parliamentary majority.

Politicians in multi-party democracies always face the possibility of losing. They have two options: to appeal to potential constituents and try to wean them away from the opposition or to get rid of the opposition itself. One way of eliminating a defined group of opposition opponents is to gerrymander them out of a district. Another method, used by James Curley, the corrupt Irish Catholic mayor of Boston was to get his Protestant Brahmin opponents, whom he referred to as 'an inferior race', to move out of Boston entirely and into the suburbs, thereby eliminating their votes in the city. His means were to let their part of the city fall apart, and direct all public works, infrastructure, and new jobs to his Irish Catholic base. His strategy worked and he managed to stay in power for over 40 years even though his redistributive methods led to both Boston and his own constituents being worse off. Economists Glaeser and Schleifer have named this syndrome 'the Curley Effect': doing whatever is necessary to increase the size of one's base to retain power through 'distortionary wealth reducing policies', even if it leaves your supporters worse off than before.²⁴ This argues against more conventional theories, which assume politicians need to curry favour with constituents to get re-elected or they will be thrown out of office and against those who argue that multi-partyism thereby induces sounder economic policies.²⁵

Moi's use of violence outside the state, in a parody of Clausewitz's statement on war, might be called gerrymandering or Curleyism by more drastic means. The means employed by Moi in both the 1991 and 1997 multi-party elections were violent attacks on his political opponents in the Rift and elsewhere, literally designed to eliminate them. He used privatized violence or gangs. In most cases these gangs were formed, aided, or abetted by the state's security apparatus and the provincial administration. Gangs of youth were organized by key KANU politicians who were identified by name in both human rights reports and those produced by a government commission. In the 1992 election, these tactics in the Rift and elsewhere led to the killing of over 1,500 individuals and the displacement of over 300,000 others, most of whom were Kikuyu. Consequently, they were not able to vote.²⁶ This included 15,000 voters who were pushed out of Narok,

when the Masai MP William Ntimama used the right of eminent domain to reclaim the land and evict inhabitants who might vote against him. Before the election, he had told Kikuyus to 'lie low like envelopes' and other politicians were equally virulent in their warnings.²⁷

Later, in 1997, government again used similar tactics. In both cases, coded hate messages were used at rallies, including discussions of *majimboism*. As Judge Akiwumi, who later conducted an inquiry into the 'tribal clashes' of the 1990s in the Rift Valley, Western, Coast, and Northeastern Provinces, noted with respect to the Rift, '*majimbo* according to the evidence presented to us was not federalism in the real sense of the word, but an arrangement in which each community would be required to return to its ancestral district or province and if for any reason they would be reluctant or unwilling to do so, they would by all means be forced to do so.'²⁸ According to Boone, they were. The total combined fallout from the two elections in the 1990s was 2,000 killed, 500,000 displaced, and others intimidated into not voting.²⁹ Even after the 1992 election, Africa Watch argued that the political landscape of the Rift had been permanently altered. Boone confirms this, noting that 70 per cent of those who had been pushed off their land in the 1990s had not returned by 2002.³⁰ For Moi, this was mission accomplished.

Those who participated in the violence and in many cases were dressed as warriors, and paid according to whether they destroyed huts, permanent structures, or killed people.³¹ Some were promised land but, according to the testimony of one witness to the Akiwumi Commission, most did not get it.³² Another report by the Jesuit Refugee Service of East Africa argues that 'land was allocated to the corrupt' while Africa Watch notes some was bought at 'sums below market prices' or was 'illegally occupied by squatters'.³³ Boone notes that land was given as patronage to reward 'supporters . . . party militants, local officials, and unemployed youth'. However, the extent to which this happened is not clear.³⁴

There appears to be no systematic information about whether those who killed and destroyed the property of Kikuyus and other upcountry inhabitants in the Rift and other marginal areas were forcibly impressed into service, or motivated by long-standing grievances, pay, prospects of land, or other perks. This is an unfortunate gap in our understanding of what happened and why. Nevertheless, Kamungi argues that one important side effect of the clashes, particularly in northern Kenya, was an 'arms race' and a general 'militarization of society' as individuals increasingly felt a need to defend themselves when government did not.³⁵

A good deal of the statistical work in the political economy literature on conflict argues persuasively that conflict, particularly civil war is driven mainly by greed rather than grievance, while others disagree.³⁶ From the standpoint of the elite, many of whom already owned large tracts of land in the Rift and elsewhere, greed for political power, both by MPs from the area and by President Moi, appears to have been the motivating factor in the face of multi-party elections. Grievance over the dominance of land and jobs by upcountry individuals in the marginal areas was long standing. However, one needs to explain why, after living side by side for many decades, extra-state violence was employed systematically only with the reintroduction of multi-party elections as well as why it became an attack on upcountry voters rather than on the indigenous landed elite by the indigenous poor. In the case of the actual perpetrators, the motives are less clear. At the Coast, Digo youth who invaded the Likoni Police Station to obtain arms to be used to attack inhabitants from upcountry were organized by local politicians, but were also

reacting against long-standing harassment of them by non-coastal government officers occupying the police and administrative apparatus.³⁷

The result of the above is that while the state had aided and abetted the ability of groups who were formed from groups outside the state to perpetrate violence, these non-state actors continued to exist even after the elections as they were never punished. Hence, 'privatized violence' was there to be used again for similar or different purposes or to act on its own some other day for some other end. The main point here is that the very violence used by the state for its own ends at one time frittered away its future monopoly of legitimate force.

Urban Gangs and Mungiki

During the 1980s and 1990s, urban crime also became a serious problem. The urban poor were increasingly harassed by the state, evicted from certain areas, and had some of their *jua kali* markets destroyed.³⁸ At the same time, due to the criminalization of the state itself, Nairobi's City Council and later the City Commission began to ignore many of its own city ordinances, simultaneously taking over land illegally, constructing buildings while bypassing its own regulations concerning safety, and allowing the poor to set up shacks and kiosks in areas where they were prohibited. What began as an initial lapse in ethics in the 1980s when the new head of Nairobi's City Commission, Brigadier Shigolla, bought overpriced drapes for his office in City Hall, soon turned into more flagrant errors of judgement, including an unexplained decision to let garbage rot in public areas rather than collecting it. As a result, Nairobi, 'city in the sun', began to be transformed into an increasingly unattractive city of thieves and underworld activities, where ordinary citizens felt threatened and began to see their once thriving middle-class city decay. Gone were the days when pink and purple bougainvilleas adorned *Uhuru* highway's centre divide.

It was into this milieu of decay that urban gangs began to appear as significant actors. The largest and most prominent of these was 'Mungiki', a gang that began as a Kikuyu cult cum religious revival group in Laikipia District in the mid-1980s. Its origin, nature, and activities have been discussed and disputed in numerous articles.³⁹ However, its main *raison d'être* from the mid-1990s onward was as a violent, Mafioso-style shakedown gang. It operated almost as a shadow state in some Nairobi slums, in parts of the countryside and began to control certain businesses, such as *matatus* by demanding 'protection money'. The gang had a known leader, was hierarchically organized like an army or an urban inner-city gang in the US, and by the mid-1990s was said to have somewhere between 3.5 and 4 million members.⁴⁰ The 1990s were a significant point of departure for Mungiki as a number of its members were Kikuyu who had been displaced from the Rift Valley by Moi's ethnic cleansing operations during the multi-party elections of the 1990s.

Initially, Mungiki claimed some moral authority where it operated by offering security, protection, and services in Nairobi's slums and the working-class housing estates that had been largely abandoned by the state. However, its main import soon became that of a well-armed violent gang. It intimidated and demanded payment from citizens, murdered those who refused to cough up, settled disputes, and meted out justice in the slums. In some areas, it became a shadow state, even charging for the use of pit latrine toilets. Mungiki began to expand into the *matatu* urban transport arena, vying violently for control over certain routes. It also engaged in other business activities, including demanding payments from *jua kali* car repair men working on Kirinyaga road, claimed

effective hegemony to govern certain areas, and routinely got into wars with gangs, such as the Luo Taliban and others. Their wars were usually over turf rather than ethnicity, although the two often coincided, something not so surprising given the earlier organization of self-help groups along ethnic lines. For instance, in one case the Luo Taliban attacked Kikuyu slumlords for raising rents in Kibera, which invited counter-attacks by Mungiki, which was Kikuyu.⁴¹ However, the Mungiki did not discriminate and was equally virulent in its attacks against other Kikuyu in Nairobi, Central Province, and elsewhere.

Various authors have suggested that Mungiki both received guns from and was aided by state security forces. The main point as made by Gecaga is that notwithstanding its origins, Mungiki evolved into a classic capitalist operation. It was a gang for hire. It operated on a willing-buyer willing-seller basis, anxious to sell its services 'to the highest bidder'.⁴² That explains its interaction with security forces which it initially claimed it detested, as well as its alleged willingness to support a myriad of politicians, ranging from some in Kenneth Matiba's FORD ASILI to Moi's KANU and his candidate for president in 2002, Uhuru Kenyatta. The latter seems odd given that some Mungiki members were originally displaced by Moi from the Rift Valley in the 1990s. This decision seems less odd, however, when one considers that in exchange for supporting Moi, Mungiki was then 'allowed to take over certain transport routes'.⁴³

In extorting from the poor as well as the rich Mungiki members, at least those at the top, were doing very well financially from their criminal activities. As Katumanga estimates, the annual value of the 'bandit economy' in 2004, including resale of highjacked cars, was about \$3.8 million a year, while the subscriptions Mungiki raised from its members were around \$58,000 per month as early as the mid-1990s.⁴⁴ This information also tends to support both Collier's argument about greed rather than grievance being the motivating factor in conflict as well as the upwardly mobile material motivations of hierarchically organized gangs.⁴⁵

When Kibaki took over power in 2002, he banned Mungiki. As recently as 2007, after Mungiki beheaded certain *matatu* drivers who refused to be shaken down, the now former Minister of Security, John Michuki, went after Mungiki with a shoot-to-kill policy. However, Mungiki still continued to operate, available for business and for hire. The main point from the standpoint of this article is that long before the 2007 election, Mungiki had become a virtual shadow state in certain areas. While reputedly sometimes used by the state and its politicians from Moi onwards, it nevertheless also operated outside state control. As such, it reduced the state's monopoly of legitimate force which had been severely compromised by the time of the 2007 election.

Gangs and Politicians

While Mungiki may be the largest and the most written-about gang for hire in Kenya, there were others that also frittered away at the state's monopoly of legitimate force. Their names alone were provocative: *Kamjeshi*, Baghdad Boys, *Jeshi la Mzee* (the elder's battalion), *Jeshi la Embakasi*, *Kaya Bombo* Youth, *Chionkororo*, *Amachuma*, *The Rwenjes* Football Club, the *Jeshi ya King'ole*, *Jeshi la Mbela*, etc. They operated in various parts of the country: Nairobi, Kisumu, Mombasa, Kwale, Taita Taveta, rural Kisii, Ukambani, Murang'a, and elsewhere.⁴⁶

These gangs had various functions: shakedown gangs engaged in survival, gangs defending themselves from violence by the state security forces, gangs used to disrupt opposition rallies, gangs organized to support state politicians afraid of the opposition, and vice versa.⁴⁷ Politics by other means had taken root all over the country while various gangs both appeared and disappeared. All of this was a further indicator that the state's monopoly of legitimate force was being challenged and diminished. This diffusion of violence fits into Bates' observation that 'the shift to competitive politics appears to heighten the level of political disorder'. Elites fear losing power and lose incentives to 'refrain from predation', while citizens 'anticipate' this and 'prepare to defend themselves'.⁴⁸

Trickle-Down Violence

Aside from the above, there also were trickle-down effects from the diffused violence that emanated from formal gangs. Freelancers operated as well and there was a demonstration effect arising from the general diffused violence that had plagued Kenya for so long. Ordinary citizens were constantly plagued by violence in their daily lives. Their vehicles were carjacked, their houses were invaded, and they were often robbed, duct-taped, or raped in their apartments. Their friends were murdered in their homes, on their way to church, or while waiting for a guard to open their gates. Certain parts of Nairobi and even certain routes into the countryside became no-go areas. Everyone from every class was touched by violence, although those in poor housing estates and in certain rural areas experienced the worst of it.

By the time of the 2007 election, this was the situation facing the majority of Kenyans. In contrast to the Moi period when they mostly feared the heavy hand of the state, they now had to worry about gang violence, freelance violence, and everything connected with both. A recent survey indicated that only 16 per cent of all respondents did not fear violence and that 30 per cent had been threatened by politicians.⁴⁹ What began as an attempt by Moi and his entourage to ensure their hegemony and win elections had escalated so severely that the state was in jeopardy of losing its monopoly of legitimate force. Violence was biding its time in the corridors of Nairobi and the countryside, waiting to explode when and if it was tapped. It was and it did after the 2007 election results were announced amidst cries of rigging. Given the way in which the state had ironically abandoned its monopoly while trying to strengthen it, the explosion was not so surprising.

Deliberately Weak Institutions

'A nation state is failed when its institutions no longer work' (*Nation*, 26 January 2008)

'[There is] a failure of our institutions to come up with results that are auditable and verifiable' (*East African Standard*, 28 January 2008)

One of the hallmarks of democracy is its system of checks and balances among the executive, legislative, and judicial branches of government. Douglas North argues that government, as well as other organizations, operates according to 'rules of the game' that

determine how it actually works. Formal rules of the game are laid down in written constitutions, laws, and organizational directives. Informal rules of the game consist of unwritten norms that are enforced through often unspoken sanctions and rewards. Both, but particularly informal rules of the game, tend to support the status quo and the interests of the actors which they serve. This is why attempting to transpose systems from one part of the world to another mostly does not work; old norms undermine new systems.⁵⁰

Since independence, the formal rules of the game in Kenya have been changed over time to buttress a strong executive at the expense of other parts of government. The informal norms increasingly have undermined even these changed formal rules by trumping the autonomy of independent branches of government in favour of a highly personalized presidency. Hence, the independence of institutions outside the presidency has been weakened deliberately by those whose interests it supports.

This phenomenon of deliberately weak autonomous institutions outside the presidency was a precipitating factor in explaining why Kenya imploded after the 2007 election. When both internal and external election observers challenged the legitimacy of the election on numerous counts, the question arose as how these challenges could be dealt with and resolved. Parties to the election as well as citizens did not believe that the Electoral Commission of Kenya (ECK) was independent from the executive and felt that the results it announced had been doctored either there or in the field.⁵¹ Less than two months before the election, President Kibaki replaced all of the ECK's commissioners, simultaneously appointing his former lawyer as the ECK's Vice-Chairman. This violated an informal agreement from 1997 that all parties would have a say in appointing commissioners to the ECK.⁵² Also, in contrast to past practices, commissioners were now responsible for overseeing election results in their own provinces as well as hiring returning officers, who in turn owed them loyalty. Overall, this dissipated confidence in the ECK.⁵³

Furthermore, when the Attorney General said that disputes over the results should be resolved in the courts, there was a huge outcry. The reason was that on important issues, Kenya's judiciary is viewed as partisan rather than impartial and as tied to the executive rather than independent from it. This has been a long-standing problem, but was exacerbated in the run-up to the election when a new bill created 57 judicial vacancies in the high court and 17 others in the court of appeals.⁵⁴ Hence, the argument over who won the presidency took to the streets after the ECK announced the election results. The crisis sparked by contested results ignited this second underlying precipitating factor: that of deliberately weak institutions. Again, had the election not been so close, and had there not been allegations of rigging, it might not have come to this. But it did, in the face of elections that were too close to call beforehand and contested afterwards.

The Executive Presidency

From the standpoint of formal rules, the history of the presidency has been one of increasing personalized power at the centre. Odiambo-Mbai notes that after passing a constitutional amendment in 1964 that made Kenyatta both head of state and head of government, KANU put through nine other amendments by 1968 that increased the power of the executive at the expense of other organs of government. During this period, federalism was abolished, the opposition parties at independence folded, KANU became

an arm of the state, and the influence of local authorities was denuded.⁵⁵ These amendments included the notorious preventive detention act. As early as 1970, 'the powers of government revolved exclusively around Kenyatta and Leys referred to his home as a 'court'.⁵⁶ At the same time, parliament became little more than a rubber stamp for the executive.

In terms of the formal rules of the game, opposition parties were legally allowed until an amendment to the constitution in 1982 prohibited them. However, those who joined the opposition KPU in 1966 were punished when they crossed the floor, losing jobs, parastatal appointments, and being harassed.⁵⁷ Those who came back to the fold were in turn rewarded. These were the well known informal rules of the game which everyone understood. As Kenyatta himself said at the time when he went to Gem constituency in Nyanza in an attempt to wean back the opposition, 'Kenyatta has the sugar, . . . go lick his hands'.⁵⁸ Most did.

Under President Moi, numerous other amendments to the constitution were passed, including Section 2A of the constitution, which turned Kenya into a *de jure* one-party state in 1982. By 1991, the constitution had been amended about 32 times. Although Section 2A was removed in 1991, the other clauses pertaining to 'personal rule' were 'left intact'.⁵⁹ In addition, Moi erased distinctions between party and state, took away the lifetime security of tenure of the Attorney General, Solicitor General, and judges, and introduced queue voting for elections in 1988.⁶⁰

As Gimonde notes, Moi's rules, both formal and informal, created a 'culture of fear', there was a 'breakdown of constitutional checks and balances', and the judiciary became an appendage of the executive.⁶¹ For advocates who did not conform to this breakdown, the penalties were draconian: torture, detentions without trial, and attempting to kill a human rights lawyer in his home by lighting his downstairs drapes on fire while he and his family slept. No part of government was left untouched. Even vehicles from the parastatal electricity company, Kenya Power and Lighting (KPL), and the Kenya Posts and Telecommunications Company (KPTC) were used in surveillance: to follow suspects, harass them, and enter their premises under false pretences often when they were not home. It was not possible to speak of institutional integrity or adherence to formal rules when government at the behest of the president worked to destroy both. Civil servants from earlier times were utterly demoralized, but too powerless and afraid to do anything.

Furthermore, as discussed earlier, Moi ruled more crudely than Kenyatta. Having no 'fruits of *uhuru*' he could use to reward his supporters, he plundered the state instead, relying on it more heavily than Kenyatta as 'an arena for the primary accumulation of capital and to retain political support'.⁶² By definition, the combination of looting of the state and abandoning rules meant entrenching corruption. As Odhiambo-Mbai notes, there was so little regard for the formal rules of the system, that Moi often issued decrees which were followed even though they violated the constitution and sometimes even reversed his own cabinet's decisions on whim.⁶³

Turning back to the perversion of the judiciary and the formal rules of other parts of government under Moi, it is possible to understand the norms of the informal system and the sanctions and rewards that enforced them by examining the Akiwumi Report on the 'tribal clashes' of the 1990s. In hearing testimony from various parties, the judge was trying to determine why individuals in the provincial administration, the police, and intelligence did not protect citizens against the violence and come to their defense in conformity with the formal rules under which they were operating, did nothing in the

face of intelligence reports warning of clashes, or were complicit in them. What he found was that individuals were afraid of displeasing their bosses (who supported Moi), were fearful of losing their jobs if they challenged the status quo, and were rewarded with promotions if they kept their mouths shut and did nothing. In contrast, an advocate who had evidence of the complicity of the Provincial Administration in the ethnic clashes in Narok and filed a case, thereby challenging the normative rules of the game, was punished as a result. Within hours of going to court his house was raided, he was arrested, imprisoned, and charged with having illegal documents. While later released, the point of the case was to warn others who might challenge the status quo that the price for doing so would be high. This is in fact how the enforcement mechanisms of the informal system worked and undermined the already battered formal system.⁶⁴

Moi's rule has aptly been described as an 'imperial presidency': he simply ignored the formal rules that got in his way and did what he wanted. Everyone understood the informal rules: support the president not the formal rules or be punished and possibly die. It was a very violent, corrupt, and dangerous period in Kenya's history. The formal institutions outside the presidency had their autonomy almost totally curtailed, and this was deliberate. One of the best descriptions of how this system actually functioned was written by Koigi wa Wamwere, a former opposition politician. As he noted of parliament as late as 1992, '[it] is a parliament that is held prisoner by the Executive. It is a Parliament under siege. The police roam the corridors, restaurant, galleries and bars of Parliament as if Parliament were Special Branch Headquarters'.⁶⁵

The almost total abandonment of the rule of law and independent institutional checks on a highly personalized presidency also paved the way for gross corruption during Moi's twenty-four year rule. In the 1980s and 1990s, numerous new banks such as the Trade Bank, the Exchange Bank, and others mushroomed. Many were nothing more than front organizations designed to loot and cleanse stolen public sector funds. In a living parody of medieval times, Moi also held court in his rural home, receiving briefcases full of cash from visitors, while plying those he wanted to buy off with hard cash, something that became known as going to 'eat ugali' with the president.⁶⁶ The full extent of how this lawless system actually worked and who benefited came to light only later: first in the Goldenberg Commission hearings and later in the Kroll report. The latter identified conduits and names, putting the value of state funds stolen by Moi, his family, and associates such as Nicholas Biwott at \$2 billion.⁶⁷ By this time, corruption had trickled down to all aspects of daily life.

The Continued Weakness of Autonomous Institutions Post-2002

Even after the creation of multi-partyism in 1991, Asingo argues correctly that those in favour of democracy did not 'creat[e] strong political institutions, structures, and processes supportive of democratic values'.⁶⁸ Furthermore, rules were often non-existent or ignored, particularly when it came to party nominations and election financing.⁶⁹ Acemoglu and Robinson argue that institutional innovation tends to take place normally under two conditions: first when a ruling group is entrenched and there is no fear of losing from innovation and, second, when they face a high degree of competition and not making innovations might lead to their replacement.⁷⁰ When neither of these conditions applies, politicians tend to fear institutional innovation because innovating might lead to losses of political power and rents. The conditions favouring institutional change do not

apply in Kenya. Hence, while the political atmosphere and the economy in Kenya greatly improved after the election of the NARC government, it is not surprising that institutions outside the presidency still continued to be weak and deliberately so.

A few examples will suffice. They show how large parts of government ignored the formal rules of the system, which were mostly paper rules that did not govern actual behaviour. It also demonstrates that while ignoring the formal the checks and balances on the presidency did not work at one level, at another level the informal rules of the game worked very well for those in power. Under Moi and Kibaki, there were two big financial scandals: Goldenberg under Moi and Anglo-Leasing under both presidents. One involved the fictitious export of non-existent gold to take advantage of an export compensation scheme while the other consisted of air contracts to non-existent foreign companies abroad. Under the former, about US\$ 1 billion left the Central Bank illegally, while the latter also involved several hundred million dollars in transactions, each in part having to do with campaign financing. In both cases, the formal rules of the Central Bank and the Ministry of Finance were suspended and ignored. In the Goldenberg case there was a long commission hearing. In the Anglo-Leasing case some ministers were dismissed temporarily and then reinstated. No higher-ups were ever punished. Both cases involved gross corruption and bypassing all the formal financial controls in the system, something that had profoundly detrimental effects on the economy and the integrity of the political system. The Anglo-Leasing case occurred under the new National Rainbow Coalition (NARC) government, which had come in on an anti-corruption platform. Even before the public became aware of the Anglo-Leasing scandal, which involved a number of high-level ministers, Kibaki had hired John Githongo to be his anti-corruption tsar in the office of the president. Githongo brought the corruption emanating from the scandal to the attention of the president and his inner circle. His reward was being threatened for having betrayed his boss and fleeing the country in fear for his life.

Later in 2007, there was the mysterious case of the so-called 'Armenian brothers', two individuals who apparently were not Armenian but were closely involved with the alleged daughter of the President and his 'second wife', Mary Wambui. The 'Armenians' appeared to be implicated in contraband activities, including drugs, and possibly in undercover security operations, although none of this was ever made clear. For reasons not entirely obvious, they had a scam which involved suspending airport security and allowing them to pretend to be coming back into the country while carrying guns and clearing some imports thought to be contraband. All formal rules governing airport security were violated to allow this fictitious re-entry to take place after officials at the airport received a call from the president's daughter. Before that she had been working in a ministry where she never appeared. Shortly afterwards, *The East African Standard* newspaper was invaded and pulverized by a masked gang, allegedly attempting to prevent the publication of a damaging story about the 'Armenian' brothers, what they were doing in Kenya, their links to the president's family, and possibly other matters.

As mentioned earlier, in the last year before the election, the president appointed new commissioners to the Electoral Commission of Kenya (ECK) and three new judges to Kenya's High Court, where contested election appeals would be adjudicated. In all of the above cases formal rules or laws were ignored, bent, or misused in contrast to their original intent. The informal rules rewarded the perpetrators and punished those who did not play ball. Aside from further destroying the integrity of the state, the malleability of formal rules to accommodate executive and inner circle whims, opened up the door to

massive corruption, this time under President Kibaki. Given Kenya's long history of changing formal rules to increase presidential power and of undermining the autonomy of other institutions designed to provide for checks and balances in favour of informal norms designed to weaken them, Kenya's contested election, presented a serious systemic challenge. Institutions such as the ECK and the courts, which in theory could have dealt with these challenges, were not viewed as independent or credible. They were seen as part of the presidency, not as separate from it. The apparent pressure to announce results at the ECK, allegations of rigging in the field both at the polling and constituency levels, changed numbers on forms and missing forms, ECK officials in the field who could not be reached, delays in tallying results, and votes reaching Nairobi, as well as implausibly high turnouts and significant differences between the presidential and parliamentary vote in some areas fuelled suspicions of rigging. Suspicions were further heightened when the head of the ECK, under pressure from both domestic and foreign observers said he himself did not know who had won the election (a point he has since reiterated), and President Kibaki was sworn in secretly amidst allegations of rigging and then quickly appointed half of his cabinet. Hence, the historic and contemporary problem of deliberately weak and non-autonomous institutions outside the presidency was sparked by a too close to call contested election. It pushed the resolution of Kenya's elections off the table and into the streets.

Non-Programmatic Clientist Political Parties

'We failed to develop democratic struggles where opponents do not become enemies' (*Sunday Nation*, 27 January 2008)

'The only time government and opposition agree is when they want to fatten their pay checks' (*Nation*, 22 January 2008)

The third underlying precipitating factor ignited by the contested 2007 election was non-programmatic clientist parties based on ethnicity. Although Kenya has many ethnic groups who have lived side by side for years, politicians polarized and politicized ethnicity negatively in the run-up to the election. This ignited fears on both sides about what would happen if their parties did not win. When irregularities concerning results raised questions that were not resolved, some local opposition politicians and elders apparently organized ethnically driven violence in Eldoret and other parts of the Rift Valley among their supporters to protest the results and attack the Kikuyu, who supported Kibaki. Spontaneous violence also erupted in Nairobi, Kisumu, and elsewhere. Government responded with a shoot-to-kill policy in both Kisumu and Nairobi. Violence continued to escalate and then counter-violence, organized as ethnic retribution by supporters of government in Nakuru and Naivasha, also matured until Kenya was engulfed in death and destruction in many parts of the country. Human rights organizations and Western governments maintain that some of this violence, on both sides, was organized and orchestrated by politicians and businessmen. To understand why they chose to tap ethnicity, one must understand more about Kenyan politics and its political parties.

Political Parties

Kenya's political parties are not programmatic. Their ideologies, policies, and programs are largely indistinguishable and are not seen as particularly salient.⁷¹ Politics is viewed primarily as a winner-takes-all zero-sum ethnic game. The national economic cake is the prize. Various ethnic groups argue openly that it is their turn to 'eat'.⁷² The means to this end is controlling the state and having a fellow co-ethnic become president. As parties are not programmatic and institutions are weak, politicians are seen primarily as personal distributors of private rather than public goods.⁷³ Even though alliances and cross-ethnic coalitions are necessary to win the presidency, the winner is seen by others as the chief ethnic in charge. Hence, the importance of winning and not losing, particularly as political losses have meant being excluded from 'access to state resources'. This historic reality has encouraged what Cowen and Kanyinga call a 'communal logic' of 'tribalism' from above and 'below' to 'access state resources through one of our own because this is the only way to eat'.⁷⁴

Kenyan politicians obtain power mostly by using ethnic arithmetic and clientage as mobilizing factors, whether articulated openly or not. As such, Kenya's leaders and politicians have shifted from party to party and in the process made strange bedfellow alliances with each other.⁷⁵ Even those who are in opposition now have been in each other's governments and cabinets at one time or another. For instance, Kibaki was Moi's Vice-President in KANU from 1978 to 1988. Odinga as head of the Liberal Democratic Party (LDP) joined Kibaki's NARC government until he broke with him over a watered-down constitutional referendum in 2005 designed to create the post of Prime Minister and decentralize government. Before that, Odinga was a minister under Moi until 2002 when Moi anointed Uhuru Kenyatta as his would-be KANU candidate in the upcoming election to succeed him as president. Piqued at being sidelined Odinga then went into a rainbow coalition of parties known as NARC with Kibaki. More recently, before the 2007 election, Kibaki made a seemingly unholy alliance with Moi and Biwott of KANU and with Uhuru Kenyatta, who by that time had shifted to the PNU, Kibaki's new party. Odinga then in another alliance of convenience to gain votes in the Rift valley and other marginal areas joined hands with questionable KANU *majimboist* stalwarts, who either faced gross corruption charges or had been named as perpetrators in the ethnic cleansing operations of the 1990s. All of the above was possible given the parties' lack of ideology and their meagre differences in party programs. Many other parties (aptly called 'briefcase parties') have no offices, no national network, and no apparent ideology. They spring up at election time to allow individuals to stand as MPs. This phenomenon has increased, particularly now that MPs mostly untaxed salaries have risen to about \$190,000 annually. For instance, in the 2007 election, Limuru District in Kiambu Province had 25 individuals running on as many different parties to be the MP while 2,248 candidates ran for 210 parliamentary seats.⁷⁶

Given the non-programmatic nature of Kenyan political parties, the lack of institutional checks on the president, his consequent personal power, and the expectations of benefits from clients, ethnicity is seen as critical in determining the distribution of national resources. In part, this explains the length to which leaders and followers are willing to go to get their leader in power and the means they are willing to use to achieve their ends. Hence, politically inspired violence has accompanied successive multi-party elections from 1992 until 2007. Under these circumstances it is not so

surprising that some of Odinga's supporters threatened to burn up his farm and other property in Nyanza if he did not return home from negotiations with the presidency.

During Kenyatta's rule, other ethnic groups argued that the Kikuyu benefited, obtaining land and civil service jobs at their expense. Moi in turn used his power to destroy the Kikuyu's economic base while rewarding his own ethnic Kalenjin and other marginal groups with jobs and appointments to government. Since assuming power, Kibaki also has been criticized for favouring the Kikuyu from his area, known as the 'Mount Kenya Mafia' and ignoring high-level corruption in his inner circle. Even when such views do not always tell the whole story, they take on a heightened significance, in part explaining why politics is seen as a zero-sum ethnic game.

Literature in political science has termed the above syndrome as 'prebendalist', 'patrimonial' and 'neo-patrimonial'. Nevertheless, recent discussions of ethnicity suggest that 'co-ethnics' often do not benefit from having one of their own in power and may even be taxed more than non-co-ethnics. This happens for two reasons: either it is assumed they will vote for a co-ethnic anyway and hence do not need to be bought off or because well-to-do intermediaries who mobilize the general co-ethnic population benefit at the latter's expense.⁷⁷ Furthermore, co-ethnics also may vote for one of their own as a defensive strategy, effectively against another ethnic group assuming power. As Kasara notes, 'co-ethnics supporters are reluctant to oust rulers for fear that rival ethnic groups will take power and make them worse off'.⁷⁸ Under these circumstances, it also may not be necessary to shower supporters with rewards to obtain their votes.

This in part explains the pattern of voting in the 2007 Kenyan election and the hate and violence that was able to be mobilized in case of a loss. The voting was as much against large coalitions of ethnic groups as it was in favour of any one. The old Gikuyu Embu and Meru Association (GEMA), a defensive ethnic alliance initially created during Moi's time, and its allies feared Kikuyus would be displaced from their land and jobs if ODM came to power with Odinga's ex-KADU *majimboist* allies. The '41 against one campaign' (all 41 ethnic groups against the Kikuyu) and all that implied frightened them. Moi, Biwott, and the Kenyatta family all joined inter ethnic hands to support Kibaki as president, principally to protect their fortunes in spite of ethnic and other past squabbles. This protection was perceived as necessary as ODM had promised to go after corruption and return what had been looted from the Treasury. Odinga's run satisfied the Luo's belief that it was 'their turn' for the presidency, something *majimboists* from marginal areas were prepared to stomach to put KADU back in power and rid themselves of the Mount Kenya Kikuyus. Hence, the 2007 election was as much about what one might call exclusionary ethnicity and who would not get power and control the state's resources as it was about who would. Understood this way and given the saliency of ethnicity due to the personalization of power, the weakness of institutions, the lack of programmatic parties, and the perceived importance of clientism, it is easy to see how politicians could use political loss to politically ignite ethnic violence.

Political economists examining the question of the circumstances under which ethnicity can be polarized and mobilized for political ends, including using violence, argue that the size of ethnic groups is a factor.⁷⁹ Hence, this sort of mobilization is not characteristic of Tanzania or Zambia where there are large numbers of small groups rather than a few large groups. Furthermore, Posner argues the size of ethnic groups tends be redefined as larger in multi-party as opposed to single-party elections, something that has

happened in Kenya.⁸⁰ In the 2007 presidential election, for instance, Odinga took on the old KADU anti-Kikuyu alliance and hence ODM was perceived in those terms by some PNU Kibaki supporters. Conversely, ODM increasingly viewed the PNU as another GEMA Kikuyu power grab, given its own M.P.s' exclusion from Kibaki's cabinet over the 2005 referendum and Kibaki's refusal to honor a Memorandum of Understanding before the 2002 election that would have created the post of Prime Minister for Odinga. As former MP Koigi wa Wamwere has noted, 'today, many express surprise that we are fighting. They say we buried negative ethnicity in 2002. We did not. As all united against the Kikuyu during the [2005 constitutional] referendum and last elections, in 2002, all united against KANU, Moi and the Kalenjin.'⁸¹

None of this alone explains the post-election violence, but demonstrates how the nature of non-programmatic winner-take-all clientist political parties fed into the polarization of ethnicity for political ends, which could be ignited violently after a contested election and was. Nevertheless, as Fearon and Laitin argues, just because individuals are 'mobilize[d] along ethnic lines' does not mean ethnic diversity is the root cause.⁸² In the case of Kenya, the violent mobilization of ethnicity had been a political project to win elections, (as well as to control the state, and gain access to its resources) since the 1990s, which was never checked and hence thrived because of certain underlying conditions.

Post Election Violence and Its Escalation

'Those who came to kill me are the same people I had come to regard as relatives'
(*Nation*, 23 January 2008)

'Both ODM and PNU painted each other as ethnic demons' (*Sunday Nation*, 27 January 2008)

The above argument is that Kenya was already on a precipice because of the three factors just discussed. The 2007 disputed election was the catalyst that ignited them and led to Kenya imploding with violence that was already sitting in wait in large parts of the country ready to be tapped.⁸³ Violence infused the run-up to the 2007 elections and escalated afterwards along ethnic lines engulfing large parts of the country. By February 2008, an estimated 1,000 people were dead and over 350,000 had been displaced in camps. Individuals who had lived their whole lives in different parts of the country fled for safety fearing former friends, and neighbours as well as organized gangs. Some went east and some west, often to places they had never lived, now designated their ancestral homelands. Essentially, the idea of nation had been fractured and Kenya appeared to be turning rapidly into a set of politically and economically unviable, ethnically homogeneous Bantustans.

The diffused violence after the election and the frittering away of the state's monopoly of legitimate force also took their toll in ways that can only be described as chilling. Gangs not only began to patrol slums and various parts of the countryside, but also moved into middle-class urban and rural areas, with reports of new militias arming along ethnic lines to extract retribution, as well as to rob, kill, maim, and take over the control various areas. This raised the question of who was in charge: government or gangs.

Gang wars in Nairobi's slums continued unabated as before. During the election campaign, the Kenya National Commission of Human Rights (KNCHR) and the local

press documented the following problems: intimidation, threats or attacks on parliamentary candidates, hate speech, the distribution of hate leaflets, violence between groups of rival supporters, shootings, plus ethnic clashes and the displacement of 2,000 families in Mount Elgon and Kuresui, with police doing nothing even when they had been informed in advance. They also noted that an assistant minister and another MP were transporting weapons in their vehicles, while journalists mentioned a run on *pangas* (machetes) in Nairobi's upscale supermarket chain, Nakumatt. Some Kikuyu in parts of the Rift Valley which had experienced election violence reported being intimidated by gangs of youth and having their voting cards ripped up in front of them. In the Dandora housing scheme in Nairobi, Kikuyu small businessmen said their shops were marked for takeover in anticipation of an opposition win. Without more information, it is impossible to assess the extent of these activities.

Although the election itself was peaceful, violence escalated when Raila Odinga's early lead for the presidency began to dissipate and the results were delayed amidst allegations of rigging. Violence consisted initially of spontaneous violence, destruction of property and killings along ethnic lines, first by ODM supporters in Kisumu, and then in the ethnically mixed slums of Nairobi, where youths armed with machetes and Mungiki gang members went on a killing spree. It then quickly spread to other parts of the country with ethnically mixed populations, particularly after 30 December when the ECK declared Kibaki president and he was swiftly and secretly sworn in. Often, victims spoke of having been attacked by neighbours and fellow workers whom they viewed as friends.

Organized violence of Kalenjin gangs against Kikuyus in Eldoret area quickly took over. Whole families of Kikuyu were burned alive in a church in Burnt Forest, property was torched, and many others were killed with machetes in other parts of the Rift and elsewhere in the country. In Uasin Gishu, properties of departed residents were stripped of their old signs and renamed. In response, individuals of different ethnic groups then began to set up road-blocks out of Nairobi towards Limuru and then on the main roads in and out of various parts of the Rift, including in and out of Naivasha, Nakuru, Kisumu and parts of Kisii. Citizens of various ethnic groups in different areas, who happened to be in the 'wrong' place, were dragged from their cars, homes, and shops, and hacked to death or had their property destroyed. If they were from a minority ethnic group, they were asked for their identity cards, names, or to speak the language of their attackers and then brutally killed if they had the 'wrong' name or spoke the 'wrong' language. Property also was destroyed and towns such as Kisumu were decimated.

The police finally stepped in, but with a shoot-to-kill policy, particularly in Kisumu, which was criticized both by the opposition and human rights' groups. Retaliatory violence then began in Nakuru and Naivasha with Kikuyu gangs, alleged to be Mungiki, going after both Luos and Kalenjins. Accusations mounted that *ex-majimboist* politicians in the opposition were responsible for the organized killings in Eldoret just as they had been in the 1990s, while the ODM accused government and pro-Kibaki businessmen of hiring Mungiki to carry out retaliatory raids. In addition, freelance violence escalated with resulting robberies, looting of shops, rapes, and other crimes. Meanwhile, text-messaging was full of hate and cries to get rid of the *madoadoa* (spots).

Schools and universities, which always had attracted students and faculty from different parts of Kenya, were unable to protect them and everyone who could decamped to their so-called 'ancestral homes'. Local officials at Baraton University, a religious college in the Rift Valley, had to plead with gangs to allow a bus of ethnically mixed

evacuees out of the compound. Individuals from western Kenya working in the Kikuyu tea and coffee estates and the Bata shoe company around Limuru took refuge in camps for internally displaced people (IDP) in Tigoni. Kikuyus who had lived and had businesses in Kisumu escaped to Uganda, while horticultural enterprises in Naivasha provided shelter for their workers from western Kenya, as they worried about their wilting roses and not being able to fly out their flowers to meet their Valentine's Day quota in Europe. Kikuyu, Luo, and Luhya who had made their homes in Eldoret and other parts of the Rift for decades decamped, vowing never to return. Even in Nairobi, some middle-class workers in the upscale Kabete and Lower Kabete areas, who were concerned for their safety, decided to move to more ethnically homogeneous parts of the city. Businesses, such as polling firms, could not send staff out to do surveys because of the potential for violence against workers whose ethnicity was different from those in the areas where they were going work. The atmosphere in certain ethnically mixed offices was chilly and some workers worried about being poisoned.

Recently diffused violence and the state's diminished monopoly of legitimate force also took their toll in ways that were frightening. Gangs were patrolled the slums and moved into more middle-class urban and rural areas. Here, they intimidated their hapless victims, meting out justice and robbing them. In Nakuru, young men demanded 'youth levies' from residents. Mungiki, in turn, threatened journalists with text messages. Sometimes the motive appeared to be political, sometimes not, indicative of the state's impotence or its abnegation of responsibility for maintaining law and order.

In mid-February, a gang of thirty masked men invaded the house of ODM James Orengo, in upper-class Runda, while other MPs asked the state for protection and body guards. In Nairobi, Kisumu, Nakuru, and elsewhere in both urban and rural areas, ordinary citizens found gangs rather than the state's security forces in charge. They 'issued threats,' 'maintained segregation' between groups, used the pretext of hunting for 'particular communities' to enter people's houses and rob them, threatening those in mixed marriages, and force them to move. In defence, some citizens organized their own security, arming themselves with guns and machetes. Hence, as discussed earlier, the diffusion of violence away from the state increasingly began to jeopardize the very integrity of the state itself.

At the same time non-state violence was escalating and becoming more diffuse, the two political parties took two months to agree to a power sharing agreement on a new government, with future discussions concerning legal, constitutional, and other arrangements still pending. However, even if mutually agreeable changes come to pass, new formal rules of the game may not solve Kenya's problems. The reason is, as earlier sections of this article have indicated, informal rules and enforcement mechanisms in the past have tended to support the *status quo* and the interests of their actors while undermining formal rules, especially new ones that might disrupt it. There is no reason this could not happen again, particularly as political parties are clientist, non-programmatic, and revolve around the chief ethnic group in charge winning and capturing the state. The additional assumption that decentralization would be a panacea also is suspect. The same informal rules of the game that have governed politics nationally could just be transferred downwards. Furthermore, as Treisman notes, in countries that are economically underdeveloped, federalism or decentralization actually increases rather than decreases corruption, contrary to current popular mythology.⁸⁴ When legal systems are not effective, increasing the number of actors heightens corruption, something that

also could be a problem for Kenya given its long history of having created deliberately weak institutions with little autonomy from the president. Also, with its new power sharing arrangement, Kenya now may have backtracked into a one party state, at least for the life of this parliament, raising further questions concerning its transition to democracy; beyond this, diffused violence could easily be ignited once again.

Conclusions

'In history, the stories of failure are more frequent than the stories of success'
(Mantzavinos, North and Shariq, 'Learning, Institutions and Economic Performance', 2004)

In the 1990s, policy-makers and academics greeted Africa's embrace of multi-party democracy and its ensuing elections with euphoria. They assumed incorrectly that most countries were heading down a one-way path to democracy and development. Later, some of the same pundits critiqued their own over-reliance on elections, renaming the transition entities in both Africa and the former Soviet Union 'virtual democracies'.⁸⁵

The point of this article has been to dissect what happened in Kenya and why. It suggests a need to look more closely at political economy factors outside the electoral process itself. These include the incentive systems driving the state, violence, institutions, and the nature of political parties, among others. The 2007 election ignited deep-seeded historical trajectories underlying each of these factors. In many cases they suggest what Douglas North has aptly described as 'path dependence', the tendency of systems to revert to stasis and rely on established rules of the game, rather than easy prospects for fundamental change.⁸⁶ For this reason and others discussed in the introduction to this paper, both the incentive system and these trajectories need to be explored further in Kenya and elsewhere.

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Notes

¹ World Bank, *Governance Indicators*. Available from http://info.worldbank.org/governance/wgi2007/sc_country.asp; INTERNET.

² Between 1999 and 2002 140 foreign companies left Kenya. Katumanga, 'A City Under Siege', 517.

³ This author mentioned this during visits to Kenya in 2005 and 2006 in discussions with individuals in government and with donors.

⁴ Weber, *Basic Concepts in Sociology*, 119–23.

⁵ Mueller, 'Government and Opposition in Kenya'; Mueller, 'Political Parties in Kenya'. Also see Branch and Cheeseman, 'Politics of Control', 11–28.

⁶ Mwangola, 'Leaders of Tomorrow', 147–48.

⁷ Mueller, 'Government and Opposition in Kenya', 407–26; and Mueller, 'Political Parties in Kenya'.

- ⁸ Throup, 'Construction and Destruction', 34–36, 57–73; Throup and Hornsby, *Multi-Party Politics*, 26–27; Asingo, 'Political Economy of Transition', 23; Odhiambo-Mbai, 'The Rise and Fall of the Autocratic State', 65.
- ⁹ Barkan 'Divergence and Convergence', 24–29; Chege, 'Return of Multi-Party Politics', 59; and Cowen and Kanyinga, 'The 1997 Elections', 135.
- ¹⁰ Stren, Halfani and Malombe, 'Coping with Urganization', 185–86.
- ¹¹ Barkan, 'Divergence and Convergence', 27.
- ¹² Katumanga, 'City Under Siege'; KHRC, *Where Terror Rules*, 1–26; Carver and Kirschke, *Deadly Marionettes*, 15–25.
- ¹³ Katumanga, 'City Under Siege', 505, 508; Kagwanja, 'Youth, Identity, Violence', 90.
- ¹⁴ Moi, *Nationalism*, 174–83.
- ¹⁵ Asingo, 'Political Economy of Transition', 37–38; Anderson, 'Vigilantes, Violence, and the Politics of Public Order', 547–53.
- ¹⁶ Anderson, 'Yours in the Struggle of Majimbo', 563. For a further elaboration of this point also see Anderson, 'Decline et Chute de la KANU'; Ngunyi, 'Resuscitating the "Majimbo" Project', 183–213; Kanyinga, 'Contestation over Political Space', 18.
- ¹⁷ The acronym KAMATUSA is a short hand for Kalenjin, Masai, Samburu, and Turkana.
- ¹⁸ Anderson, 'Yours in the Struggle of Majimbo', 552–53, 555.
- ¹⁹ *Ibid.*, 561–63.
- ²⁰ Bates, *Beyond the Miracle of the Market*, 61–63; Widner, *The Rise of a Party State in Kenya*, 55.
- ²¹ Quoted in 'Is Majimbo Federalism', *The Nation*, 20 May 2001.
- ²² Wilcove, *No Way Home*, 91–93.
- ²³ Mwangi, 'Subdividing the Commons', 825–26, 829.
- ²⁴ Glaeser and Schleifer, 'The Curley Effect', 1–2, 9–12.
- ²⁵ See also Bates, 'Institutions and Development', 28, 31. Bates argues multi-party elections may distort economic policies if politicians feel at risk and there is no accountability.
- ²⁶ Africa Watch, *Divide and Rule*, 70–72, 79–80; KHRC, *Kayas of Deprivation*, 48–49; KHRC, *Kayas Revisited*, 38–47; Republic of Kenya, *Akiwumi Report*.
- ²⁷ Africa Watch, *Divide and Rule*, 30.
- ²⁸ Republic of Kenya, *Akiwumi Report*, 78.
- ²⁹ Boone, 'Winning and Losing', p. 9.
- ³⁰ *Ibid.*, p.20.
- ³¹ Africa Watch, *Divide and Rule*, 52.
- ³² Republic of Kenya, *Akiwumi Report*, 88.
- ³³ Kamungi, 'The Current Situation', 11–12, 23; Africa Watch, *Divide and Rule*, 70, 77, 2.
- ³⁴ Boone, 'Winning and Losing', 19.
- ³⁵ Kamungi, 'The Current Situation', 13, 15.
- ³⁶ Collier, *The Bottom Billion*, 23–32; Collier and Hoeffler, 'Greed and Grievance in Civil Wars', 563–95; Ballentine and Sherman, *Political Economy of Armed Conflict*.
- ³⁷ KHRC, *Kayas of Deprivation*; KHRC, *Kayas Revisited*.
- ³⁸ Katumanga, 'City Under Siege', 513.
- ³⁹ Anderson, 'Vigilantes, Violence, and the Politics of Public Order', 531–55; Kagwanja, 'Facing Mount Kenya or Facing Mecca?' 25–49; Kagwanja 'Power to Uhuru', 51–75; Gecaga, 'Religious Movements and Democratization', 58–89.
- ⁴⁰ Katumanga, 'City Under Siege', 513.
- ⁴¹ *Ibid.*, 512
- ⁴² Gecaga, 'Religious Movements and Democratization', 78, 80, 83–85.
- ⁴³ Katumanga, 'City Under Siege', 513.
- ⁴⁴ *Ibid.*, 513–17.
- ⁴⁵ Collier, *The Bottom Billion*, 22–25; Levitt and Dubner, *Freakonomics*, 89–116.
- ⁴⁶ Anderson, 'Vigilantes and Violence', 547–53; KHRC, *Kayas of Deprivation*; Katumanga, 'City Under Siege', 512; Kagwanja, 'Politics of Marionettes', 72–100.
- ⁴⁷ Anderson, 'Vigilantes and Violence', 547–53; KHRC, *Kayas of Deprivation*; Katumanga, 'City Under Siege', 512; Kagwanja, 'Politics of Marionettes', 72–100; Asingo, 'The Political Economy of Transition in Kenya', 37–38.
- ⁴⁸ Bates, 'Institutions and Development', 57.
- ⁴⁹ 'Ethnicity, Violence, and the 2007 Election in Kenya', 3.

- ⁵⁰ North, 'Economic Performance through Time', 360–62; 366.
- ⁵¹ Kibara, 'The Challenges and Efficiency of Election Monitoring', 284–302. Nyamu, 'Managing Elections in Kenya', 265–89; Aywa and Grignon, 'As Biased as Ever?', 102–05.
- ⁵² *Africa Confidential* 48, nos. 23 and 25, 16 November and 14 December 2007. For a further elaboration of this point see the testimony of the US Deputy Assistant Secretary of State for Africa. Swan, 'The Political Crisis of Kenya'.
- ⁵³ International Crisis Group, 'Kenya in Crisis', 13.
- ⁵⁴ *Africa Confidential* 48, no. 25, 14 December 2007.
- ⁵⁵ Odhiambo-Mbai, 'The Rise and Fall of the Autocratic State', 60–63.
- ⁵⁶ *Ibid.*, 64.
- ⁵⁷ Mueller, 'Government and Opposition in Kenya', 406–26.
- ⁵⁸ Quotation from field notes of Malcolm Valentine, cited in Mueller, *ibid.*, 423
- ⁵⁹ Odhiambo-Mbai, 'The Rise and Fall of the Autocratic State', 69.
- ⁶⁰ Kanyinga, 'Limitations of Political Liberalization', 103–04.
- ⁶¹ Gimonde, 'The Role of the Police', 239, 252; Africa Watch, *Divide and Rule*, 49–52.
- ⁶² Cowen and Kanyinga, '1997 Elections in Kenya', 136.
- ⁶³ Odhiambo-Mbai, 'The Rise and Fall of the Autocratic State', 68.
- ⁶⁴ Republic of Kenya, *Report of the Judicial Commission*, 43–44.
- ⁶⁵ wa Wamwere, *The People's Representative and the Tyrants*, 25.
- ⁶⁶ *Ibid.*, 99–100.
- ⁶⁷ See *Africa Confidential* 48, no. 18, 7 September 2007.
- ⁶⁸ Asingo, 'The Political Economy of Transition in Kenya', 26.
- ⁶⁹ *Ibid.*, 42–47; Oloo, 'The Contemporary Opposition in Kenya', 100–08.
- ⁷⁰ Acemoglu and Robinson, 'Economic Backwardness in Political Perspective', 117.
- ⁷¹ Oloo, 'The Contemporary Opposition in Kenya', 95, 100–03.
- ⁷² See Jonyo, 'The Centrality of Ethnicity in Kenya's Political Transition', 155–79.
- ⁷³ For a discussions of why politicians in 'young democracies' find it cheaper and more efficient to deliver targeted private, as opposed to public goods, see Keefer, 'Clientism, Credibility and Policy Choices', 804–21 and Keefer and Vlaicu, 'Democracy, Credibility, and Clientism'.
- ⁷⁴ Cowen and Kanyinga, 'The 1997 Elections', 170.
- ⁷⁵ Wanyande, 'The Politics of Alliance Building in Kenya', 128–84; Ajulu, 'Kenya's 1992 Election'; Ajulu, 'Kenya: Reflection on the 2002 Elections'.
- ⁷⁶ *Africa Confidential* 48, no. 25, 14 December 2007.
- ⁷⁷ Kasara, 'Tax Me If You Can', 159–72.
- ⁷⁸ *Ibid.*, 161.
- ⁷⁹ Collier, *The Bottom Billion*, 25–26; Posner, 'The Political Salience of Cultural Differences', 529–45,
- ⁸⁰ Posner, 'Regime Change and Ethnic Cleavages', 1302, 1304–05.
- ⁸¹ *Daily Nation*, 15 February 2008.**
- ⁸² Fearon and Laitin, 'Ethnicity, Insurgency, and Civil War', 88.
- ⁸³ The examples discussed below come from discussions and news reports from the *Nation*, the *East African Standard*, and the international media.
- ⁸⁴ Treisman, 'The Causes of Corruption: A Cross-National Study', 399–457.
- ⁸⁵ See Carothers, 'Democracy Without Illusions' 22–43; Joseph, 'Democratization in Africa', 363–82; Joseph, 'Africa, 1990–1997', 5–19.
- ⁸⁶ North, 'Economic Performance through Time', 365–67.

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