

Kenya's Experience with Power-Sharing

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Introduction

This chapter examines the power-sharing agreement that was implemented in Kenya from 2008 to 2013. It was adopted in responses to widespread ethnic violence triggered by a disputed presidential election in late 2007 and expired with the country's subsequent multiparty election in 2013. The power-sharing accord had the immediate effect of ending the spiral of communal violence that threatened to lead the country into a full-blown civil war. The institutions, however, did little to encourage elites to implement substantive reforms aimed at ameliorating the longer-term sources of conflict. To explain these outcomes, the chapter argues that in Kenya power-sharing contributed to the cessation of violence through two related mechanisms. First, by coopting opposition leaders, the power-sharing accord removed incentives for opposition politicians to encourage or support the post-election violence in order to enhance their bargaining position with the incumbent government. Second, the incorporation of opposition figures provided an important signal to their supporters, mollifying the fears of exclusion and the inter-communal resentments that contributed to the eruption of violence. Yet, the power-sharing institutions did little to incentivize deeper reforms among political leaders with vested interests that ran counter to change. In sum, the Kenyan case suggests that power-sharing can serve as an effective strategy for addressing outbreaks of ethnic violence, but is less likely to generate incentives for more thorough-going reform in settings where political elites prefer the status quo.

The structure of this chapter is as follows. The first section describes the sources of instability in Kenya, focusing on the political salience of ethnic divisions. The second section describes the 2008 power-sharing agreement. The third section looks at its effects,

evaluating its impact against the primary goals articulated during the negotiations process, namely stopping the violence and addressing deeper sources of ethnic tension.

The fourth section examines the potential for renewed conflict.

1. Challenges to Political Stability in Kenya

This section provides a brief overview of the threats to stability in Kenya. It distinguishes between long-term sources of tension that stem from the politicization of ethnicity since independence and the short-term factors that contributed to the outbreak of violence after the 2007 election.

The Politicization of Ethnic Differences

The divisiveness of ethnic cleavages in Kenyan is in large part the result of a history of ethnic favoritism by successive Kenyan leaders.¹ It is widely believed that the first President, Jomo Kenyatta, favored his own ethnic community, the Kikuyu, in a variety of ways. After independence, Kenyatta appointed many trusted members of his own Kikuyu ethnic group, particularly those from his home area of Kiambu in the Central Province, to high-level positions in the Cabinet and other state agencies (Throup 1987). Moreover, the land redistribution scheme, undertaken shortly after independence, was seen as disproportionately benefiting Kikuyus (Kyle 1999). Because Kikuyus were

¹ While this section draws primarily from anecdotal and historical accounts, there is a growing body of empirical research that finds evidence of ethnic favoritism in public service delivery (e.g., Franck and Rainer 2012; Kramon and Posner 2012; Burgess et al., 2013; Jablonski forthcoming). Moreover, public opinion surveys routinely find that Kenyans believe ethnic favoritism to be endemic to Kenyan politics (e.g., Ross 1975). In my own survey, conducted in November-December 2012 (N=1,246), an overwhelming majority of respondents indicated that favoritism is common. When asked how much of the time government leaders favor their own ethnic groups, 52% said “almost always” and 31% said “some of the time.” Only 12% said “rarely” and 3% “never.”

relatively better off than other ethnic groups at independence, they were able to take advantage of the sale of highly productive land that was purchased from departing white settlers by the government and then resold on a “willing-buyer, willing-seller” basis. In addition, it is widely believed that Kenyatta handed out prime tracts of land and many business concessions to co-ethnic supporters (Kanyinga 2009; Kamugi 2009; Harbeson 2012).

After Kenyatta’s death in 1978, the Vice President, Daniel arap Moi, a Kalenjin from the Rift Valley, assumed to the presidency. Like Kenyatta, Moi relied on an inner circle drawn largely from his own ethnic group, the Kalenjin (Kanyinga 2007, Throup 1987). Moreover, Moi promoted co-ethnics within the government administration, parastatals, the military, and the police, perpetuating the sense that state largesse was distributed along ethnic lines. The advance of Kalenjins within government structures came in many cases at the expense of Kikuyus (Kanyinga 2007).

In 2002, Mwai Kibaki, a Kikuyu from Central Province, became Kenya’s third President. Kibaki came to power at the head of a diverse coalition party, the National Alliance Rainbow Coalition (Ndegwa 2003). While Kibaki was elected on a promise to end tribalism, in practice, Kibaki, like those before him, was seen as favoring his own group, particularly in promotions to top Cabinet and administration positions (Africa Confidential 2003, Barkan 2008).

A second factor behind the politicization of ethnic differences in Kenya is the party system, which has historically reflected and reinforced ethnic cleavages. Prior to independence, competing parties emerged as champions for different ethnic blocs, turning early electoral contests into an “us-against-them” battle for control of the state

and its resources. The first party to form in the early 1960s was the Kenya African National Union (KANU), which initially brought together leaders from across the ethnic spectrum, united in the goal of gaining independence from Britain. However, within a short time, leaders from several smaller ethnic groups split from KANU after becoming convinced that they would never play a major role within the party. The break-away faction, headed by leaders from the Kalenjin, Maasai, and coastal groups, formed the Kenya African Democratic Union (KADU). Central to KADU's platform was a demand for a federal constitution that would give ethnic groups greater control over their own affairs and limit perceived domination by larger tribes. This position resonated with Kenyans in the Rift Valley and on the coast who were worried about Kikuyu and Luo "migrants" snatching up prime land in these areas (Sanger and Nottingham 1964). In the two national elections before independence – held in 1960 and 1963 – ethnic identities played an important role in determining voting behavior, with many voters lining up behind their "ethnic champions" (Bennett and Rosberg 1961, Sanger and Nottingham 1964).

Shortly after independence in 1963, Kenya became a de-facto single party state under the KANU government, which had emerged victorious in the 1963 election. For the subsequent two decades, opposition parties did not exist. When multi-party competition was again legalized in 1991, parties once again formed around ethnic blocs (Throup and Hornsby 1998). In the 1992 and 1997 elections, the opposition parties garnered support from Kikuyu and Luo areas, while the incumbent party, headed by Moi, maintained its strongest support among Moi's own Kalenjin group and among pastoralists from the Rift Valley (Barkan 1993, Barkan and Ng'ethe 1998). In the 2002

election, opposition parties united behind Kibaki, drawing support from most ethnic communities, other than the Kalenjin who by and large remained loyal to KANU (Ndegwa 2003).

A third factor, which is both a reflection of the politicization of ethnic differences and which has sharpened such divisions, is a history of episodic violence associated with elections. In the multi-party era since 1991, significant ethnic violence has taken place in three election rounds (1992, 1997, and 2007). Much of the responsibility for this violence is thought to rest with politicians who have exploited latent communal tensions for electoral gains, fueling divisions between groups. For example, prior to the 1992 election, Kalenjin politicians in the Rift Valley used fear tactics to mobilize support within their communities, claiming that Kikuyus would seek retribution against Kalenjins if they came to power (HRW 1993, Throup and Hornsby 1998). Leaders called on Kalenjins to defend their ethnic homelands and to chase Kikuyus out of the area. Studies of this period have found that top KANU politicians funded groups of “Kalenjin warriors” that attacked and killed Kikuyus living in the area. Reports estimate that 1,500 people died in these clashes and another 300,000 were chased away from their homes, mostly in the Rift Valley, during the months before and after the 1992 election (HRW 1993). A similar dynamic was seen in the lead-up to the 1997 election, with violence this time occurring both in the Rift Valley and also in some ethnically-mixed areas along Kenya’s coast (KHRC 1997; KHRC 1998). The violence that erupted following the disputed election in 2007, described below, should therefore be seen as a part of a general pattern, not an isolated event.

The 2007 Election

The 2007 presidential election featured two main candidates, drawn from different ethnic communities. The incumbent President Mwai Kibaki, a Kikuyu from Central Province, headed the Party of National Unity (PNU). His main challenge came from Raila Odinga, a Luo from Nyanza Province in southwestern Kenya, who led the Orange Democratic Movement (ODM). The election also included Kalonzo Musyoka, a Kamba from Eastern Province, who headed the Orange Democratic Movement-Kenya (ODM-K).

By the time the 2007 election campaigns got under way, Kenyans were already severely polarized. Despite real achievements made by the Kibaki government in terms of infrastructure, economic growth, education, and expanded political freedoms, many Kenyans felt Kibaki had failed to live up to the promises he offered in 2002. As mentioned, Kibaki had come to power on a promise to end tribalism. Yet, after taking office he reneged on a pre-election commitment to create a Prime Minister position that was to be filled by Odinga. To many Luos, this was seen as a betrayal. Moreover, during Kibaki's first two years, a divisive constitutional review process took place, culminating in an acrimonious referendum that pitted ethnic groups against each other (Lynch 2006, KNCHR 2006). Kibaki's administration also became embroiled in a number of conspicuous corruption scandals, betraying his promise to end the pervasive corruption of the Moi era.

But the Achilles heel for Kibaki was the perception that he had favored his own Kikuyu ethnic group at the expense of others. A survey conducted in mid-October 2007, about two months before the election, found that the majority (57%) of Kenyans thought that Kibaki's government served the interests of certain ethnic groups at the expense of

others.² Among ethnic groups aligned with the opposition, large majorities believed that Kibaki favored his own community. For example, 90% of Luos and 79% of Kalenjins thought that the Kibaki government favored some groups over others. And among those who felt that the government favored certain groups over others, the vast majority (91%) said that the government favored Kikuyus.

In the election campaigns, the opposition parties – ODM and ODM-Kenya – exploited these perceptions, using emotional appeals that tapped into a sense of injustice and resentment (Horowitz 2012; Barkan 2008). As evidence, opposition candidates claimed that Kibaki had disproportionately appointed Kikuyus to top positions in the Cabinet and the government administration. Moreover, the opposition charged that Kibaki unfairly favored the Kikuyu region – Central Province – in the distribution of funds for social services and infrastructure, while neglecting other parts of the country. At the same time, the opposition alleged that Kibaki had callously persecuted certain groups, for example by evicting Kalenjin squatters from the Mau Forest, a protected watershed, and deporting Muslims from coastal regions. Opposition appeals played on long-standing grievances against Kikuyus, who have historically been better off economically than other groups in Kenya. As expected, voting closely followed ethnic lines, with voters from several groups lining up en masse on opposite sides of the ethno-political divide (Gibson and Long 2009).

A Disputed Election as Trigger for Post-Election Violence

² Data comes from a survey conducted by the Steadman Group (n=2,718) in mid-October, 2007.

The national election took place on December 27, 2007. Over the next few days, the Electoral Commission of Kenya (ECK) failed to address concerns about possible manipulation of the vote counting process (Throup 2008). The official figures showed Kibaki ahead of Odinga by a sizable margin, but ODM leaders argued that the vote counts from several areas had been inflated to favor Kibaki after the polls closed. Despite lingering concerns about the integrity of the tally, the ECK Chairman, Samuel Kivuitu, announced Kibaki as the official winner in the early afternoon of December 30. Less than two hours later, Kibaki was sworn in at a rapidly assembled inauguration ceremony. Minutes later, the violence began.

Over the next two months at least 1,000 people were killed and another 300,000 were chased from their homes (ICG 2008; KNCHR 2008; CIPEV 2008; Anderson and Lochery 2008). While much of the violence initially appeared to be spontaneous rioting, it quickly became clear that Kibaki's ethnic group, the Kikuyu, were being targeted. Kikuyus living in ethnically-mixed areas had their houses burned down and their businesses destroyed. Many fled their homes and sought protection in police stations and other government buildings. The brutality of the clashes was conveyed to the outside world on January 1, 2008 when an angry mob burned down a church in Eldoret in which dozens of people had sought refuge. Kikuyus fearing for their lives headed toward the Central Province, the region where the ethnic group is concentrated. At roadblocks set up along the main highways, gangs pulled people from their cars, beating and killing those with the "wrong" identity. Shortly thereafter, reprisal killings began, as Kikuyu militias sought to stem the violence and exact revenge. As the violence escalated, observers worried that the clashes would spiral into a much larger conflict.

2. The 2008 Power-Sharing Agreement

As violence between ethnic communities escalated in the weeks after the election, a long list of foreign dignitaries attempted to restore stability and resolve the political impasse between PNU and ODM. This list included Bishop Desmond Tutu; John Kufuor, President of Ghana and out-going head of the African Union (AU); UN Secretary General Ban Ki-Moon; and US Secretary of State Condoleezza Rice; among others. Foreign heads of state and international donors put pressure on the two main political parties to bring an end to the violence (Lindenmayer and Kaye 2009; Brown 2009; Kanyinga and Walker 2013). Little progress was made, however, prior to the arrival of the negotiating team headed by former UN Secretary General Kofi Annan on January 23, 2008.

The power-sharing negotiations began with a wide gulf in the positions of the two sides (for detailed accounts of the negotiations see Lindenmayer and Kaye 2009 and Griffiths n.d.). The opposition party, ODM, believed that it had rightly won the presidential election. ODM's position was that an interim government should be created for a period of six months, after which time the presidential election would be re-run. On the other side, PNU was unwilling to consider a re-run of the election, and argued instead that ODM should submit any complaints regarding election fraud to the courts. Once it became clear that a re-run of the election was unlikely, the negotiations shifted to seeking terms for a power-sharing arrangement that would allow the two parties to govern jointly.

As the negotiations proceeded, ODM advanced several core demands. First, it sought the creation of a Prime Minister (PM), who would serve as Head of Government

and have the authority to appoint and remove government officers, including Cabinet members. Second, ODM demanded that Cabinet portfolios be divided equally and that high-profile ministries – e.g., Interior and Finance – be shared between the two parties. Third, ODM called for proportionality at all levels of government. Lastly, ODM sought to have the deal entrenched in the constitution. On the other side, PNU demanded that the President remain as Head of Government and retain the authority to determine the composition of the Cabinet. PNU’s negotiators pushed for a Prime Minister that would oversee the ministries but would not have executive functions related to hiring or firing.

At several points during the negotiations, which unfolded over five weeks, the intransigence of the two sides threatened to derail the bargaining. Annan’s adroit management was of considerable importance in maintaining progress. Early on Annan ended the acrimonious war of words that was being waged in the media by the two parties. At a critical point, Annan sequestered the negotiators for several days in Tsavo, one of Kenya’s wildlife preserves, to remove the process from the limelight in Nairobi, the nation’s capital. And in the last stages when the negotiations were stalled over key details, Annan bypassed the negotiation teams appointed by each party and appealed directly to the principals, the heads of the two parties. This move marginalized hardliners within the two camps, resulting in the final agreement.

The final deal, which was signed on February 28, was limited in scope.³ As shown in Table 1, the accord called for the establishment of a coalition government that would include PNU and ODM as equal partners. The position of Prime Minister would be created and would be filled by the party or coalition with the largest number of seats in

³ “Agreement on the Principles of Partnership of the Coalition Government.” February 28, 2008. The agreement was entrenched in the constitution through adoption by Parliament of the National Accord and Reconciliation Bill, 2008.

Parliament. In practice, this meant that ODM, which held the largest share of seats, would be able to nominate Odinga to fill the position. Two Deputy Prime Ministers would be created, one to be filled by ODM and the other by PNU. In appointing Cabinet ministers, the principle of “portfolio balance” would be followed, whereby the number of seats would be assigned in proportion to the parties’ strength in parliament.

[TABLE 1 ABOUT HERE]

To safeguard against the possibility of renegeing, guarantees were provided to ODM, which as the opposition party was in the weaker position. It would only be possible to remove the Prime Minister through a vote of no confidence passed by a majority in parliament. Given that ODM held the largest share of Parliamentary seats, this provision meant that it be difficult to remove the PM without ODM’s consent. Similarly, Cabinet Ministers would be removed from office only with concurrence from both parties. And the agreement would be entrenched in the constitution through a bill passed by Parliament.

Other aspects of the agreement remained vague. Regarding the powers of the Prime Minister, the accord stipulated that the PM would “co-ordinate and supervise” affairs of government, without specifying exactly what power and authority would be vested in the position and how executive powers would be divided between the PM and the President. While it was clear that that the agreement was temporary in nature, the accord left unresolved the question of how long the coalition government would last and what would happen if it collapsed. The agreement stipulated that the coalition could be

dissolved if the parliament were dissolved, if the parties agreed in writing, or if one coalition partner withdrew from the coalition. However, the agreement did not specify what would happen if the coalition were to collapse before the next election scheduled for 2012. In the event, the coalition survived through the full term, expiring at the subsequent election, which after being delayed was held in March 2013.

In addition to the creation of a power-sharing coalition, the parties agreed to address the root sources of conflict, the so-called “Agenda Four” items listed on the initial agenda for the negotiations process. These included constitutional reform, regional economic imbalances, land reform, and poverty, among others.⁴ In this spirit, the parties subsequently agreed to establish a set of investigatory committees charged with examining fraud during the election, the causes of the post-election violence, and the sources of long-standing grievances in Kenyan society.

The first of the three committees to get underway, the Independent Review Committee, was charged with looking at electoral fraud during the election. The committee, headed by former South African judge Johann Kriegler, issued the so-called “Kriegler Report” in September 2008. The report ruled that it was not possible to conduct a re-count of the ballots in order to determine the actual winner of the 2007 election. The main recommendations of the report related to the overhaul of the Electoral Commission of Kenya, and particularly the adoption of measures to strengthen the body’s independence.

The second investigatory committee, the Commission of Inquiry on Post-Election Violence, was mandated to examine the sources of the post-election violence. The

⁴ “Agenda for the Kenyan National Dialog and Reconciliation.” Accessed online at <http://www.irinnews.org/pdf/Annotated%20Agenda%20Ver%202.pdf> on October 22, 2008.

committee, which was headed by High Court Justice Philip Waki, submitted its findings to Annan on October 17, 2008. The report provided a detailed account of the post-election violence and included a list of alleged perpetrators of the violence, implicating several sitting Ministers and Members of Parliament (MPs). The Commission called on the Coalition government to establish a tribunal to bring the alleged perpetrators to trial. However, within days of the report's release, it became clear that there was weak support for its implementation among many top leaders in the government. President Kibaki urged Kenyan to be cautious in pushing for prosecutions, arguing that doing so might undermine peace and stability (*Daily Nation*, 10/21/2008). ODM was initially divided over the report. While Prime Minister Odinga and some top leaders called for its full implementation, the party announced its opposition to the report after several senior MPs from the Rift Valley – William Ruto, Henry Kosgei, and William ole Ntimama – opposed it (*Daily Nation*, 10/24/2008). With political leaders failing to launch a domestic tribunal, Justice Waki, made good on his threat to deliver the list of alleged perpetrators to the International Criminal Court, which subsequently opened investigations in Kenya in 2010.

Last, parliament created the Truth, Justice, and Reconciliation Commission (TJRC) in 2008. The body was charged with a broad mandate to investigate all forms of historical injustice committed between the nation's independence in 1963 and 2008 and to recommend appropriate actions or reforms. Yet, the eventual composition of the body insured that it would have little moral authority. As its chair, President Kibaki appointed Bethuel Kiplagat, a former high-ranking member of the government and diplomatic corps, with a controversial record of alleged improprieties related to land theft and

political violence. Whether by intention or not, Kiplagat's appointment hamstrung the commission, leading to the active revolt by other commission members and judicial proceedings seeking his removal. The controversy over his involvement on the commission served both to distract attention from the Commission's work and to undermine its legitimacy (Hansen 2013). The final report, issued in May 2013, contained little new information.

3. Effects of the Power-Sharing Agreement

Did Kenya's power-sharing agreement work? In answering this question, I evaluate the agreement against the two main goals set forth in the negotiations that led to its creation, namely ending the post-election violence and addressing the underlying conditions that contributed to it. I focus primarily on the key institutional innovation contained in the agreement, the coalition government that brought together elites from the two main political factions, and argue that the power-sharing arrangements had strong positive effects on the violence but less substantial effects on the long-term sources of tension.

Ending the Violence

By any measure the power-sharing agreement succeeded in achieving the primary goal of ending the conflict and restoring stability. How did it do so? Answering this question is important both for making sense of Kenya's unique experience and for contributing to larger debates about when and how power-sharing can be an effective remedy to ethnic violence.

Debates about power-sharing as a solution to ethnic violence typically focus on civil war settings in which one or more armed group challenges the state militarily. In this context, one way in which power-sharing agreements are thought to help restore peace is by making negotiated settlements credible. As Walter (1997) has argued, the main impediment to negotiated settlements is often the concern by rebel forces that they will be persecuted by state powers after laying down their arms, regardless of the guarantees provided in the peace accord. Building on this logic, Gates et al. (2013) suggest that power-sharing agreements contribute to peace only when they include institutional protections for rebel groups and the communities that support them.

While this theoretical framework may be useful for understanding the effects of power-sharing in civil wars, it is less useful in cases like Kenya where the violence was more informal in nature. Anecdotal accounts suggest that the perpetrators were loosely organized groups, sometimes using violence against other members of their localities spontaneously and sometimes with coordination by local community leaders, businessmen, and politicians (IGC 2008; Njogu 2009; KNCHR 2008; CIPEV 2008). While reports suggest that more formally organized groups, in particular the Mungiki, did assume a more central role as the violence escalated, the conflict was not one between organized fighting forces and the state. This is important for two reasons. First, it meant that at the elite level, the main parties to the negotiations were not military leaders who might be preoccupied with concerns about their security in the post-conflict period. Rather, they were politicians, who in all likelihood were concerned first and foremost with access to positions of power within the next government. Second, the informal nature of the violence meant that post-conflict security concerns would have also been

less relevant for the foot soldiers, many of whom would have likely been able to avoid persecution for their crimes with relative ease. Thus, the “critical barrier” to peace in Kenya was not security concerns; rather the key challenge was to find a way to break the spiral of violence before it escalated further.

In this context, the power-sharing accord worked through two related mechanisms. First, it served to co-opt opposition leaders in ODM, and in so doing reduced incentives for these leaders to encourage further violence. As an IGC report claimed, senior ODM leaders saw the violence as a useful bargaining tool during the negotiations. The report argued that “ODM believes that if international mediation fails, its only protection against repression and hope for a settlement will be its capacity to raise the stakes through violence” (ICG 2008, p. 24). While it is unclear whether ODM leaders exerted much direct control over the violence, the successful end to the negotiation process eliminated any incentives to support the violence to enhance their bargaining position with PNU. It is noteworthy that while Odinga called for peaceful protests during the negotiations, his most forceful appeal for peace came only at the conclusion of the power-sharing accord, when he asked his supporters to move from the “phase of confrontation to the beginning of cooperation” (BBC, 2/28/2008).

Second, the power-sharing agreement served an important signaling function for opposition supporters. In previous sections of this chapter I argued that the violence was fueled in part by perceptions that one community – the Kikuyu – had unfairly benefited from power while others had been excluded. The alleged theft of the 2007 election by PNU – a party led by Kikuyu politicians – brought to a head resentment against the larger community. In coopting opposition leaders, the power-sharing agreement signaled that

communities aligned with the opposition would not be excluded from the benefits of power after the election. In Kenya, it is widely believed that gaining a fair share of state-controlled resources for one's ethnic group depends on electing leaders from one's community to positions of power. By creating the position of Prime Minister, which was to be filled by Odinga, and by institutionalizing the principle of proportionality in the cabinet and the bureaucracy, Kenya's power-sharing agreement signaled that state funds would be distributed equitably across groups. By doing so, it addressed a central grievance that motivated anti-Kikuyu violence in the wake of the 2007 election.

It is important to note that the agreement offered few provisions to allay possible concerns about the credibility of the deal. In particular, there were no guarantees that the agreement would insure equitable treatment across ethnic communities in the event that PNU might seek to use its control of the presidency to favor its own constituents. Nor did the agreement put in place the kinds of institutional protections that Gates et al. (2013) argue are critical for power-sharing to be effective over time. These observations strengthen the point that Kenya's power-sharing agreement worked mainly by coopting opposition elites and by helping to mitigate the anger and frustration that fueled the violence, consistent with conventional arguments made by power-sharing advocates (e.g., Lijphart 1997; Sisk 1996). While Gates et al. 2013 fail to find any systematic relation between inclusive power-sharing arrangements and stability in a global sample of countries, the Kenyan case suggests that in some settings inclusion may be a useful institutional remedy.

Addressing Long-Term Sources of Conflict

While Kenya's power-sharing agreement had an immediate positive effect on the post-election violence, the agreement did little to generate incentives for elites to address the deeper sources of instability. The bright spot on the reform agenda has been the ratification of a new constitution in 2010. However, it is debatable whether this success can be attributed to the power-sharing institutions. As argued below, key political leaders had individual incentives that may have inclined them to cooperate in producing the new constitution, and conflict, not cooperation, has been the more typical dynamic between the coalition partners. Moreover, little or no progress has been made in other critical areas, such as land reform, bringing to trial those responsible for the election violence, or altering the zero-sum nature of electoral competition. I review these aspects in turn, arguing that while the power-sharing agreement may have contributed to the passage of the new constitution, the agreement did not diminish elite resistance to more thoroughgoing reforms.

The 2010 constitution is perhaps the crowning achievement of the coalition government. Marking the culmination of nearly two decades of efforts to reform key aspects of the Kenyan political system, the constitution has been widely heralded as a major milestone in Kenya's journey toward democracy (Barkan and Mutua 2010; Kramon and Posner 2011). Notable in this regard are provisions that devolve power and resources to county-level government, increase legislative oversight of the president, and enhance individual rights.

To what extent did the power-sharing agreement contribute to the new constitution? Two instances of elite cooperation were critical to its passage, and the power-sharing agreement might plausibly have increased incentives for key leaders to

cooperate. As in the previous attempt to draft a new constitution in 2004, top party leaders held widely divergent preference on critical provision (Kramon and Posner 2011; Amandi 2009; Murray n.d.). A key priority for Odinga and ODM was devolution, which was strongly opposed by PNU leaders. Likewise, Odinga preferred a parliamentary system with a Prime Minister to be chosen by parliament, while the PNU contingent favored the retention of a presidential system with a directly-elected chief executive. In 2004, political leaders failed to reach compromise on similar issues, leading to the breakdown of the reform effort and the ultimate rejection of a government-sponsored draft in a national referendum. By contrast, in 2010 a compromise was reached, whereby ODM abandoned its demands for a shared executive and PNU dropped its opposition to devolution, paving the way for the final version of the draft, which was approved by voters in a subsequent referendum. Second, in sharp contrast to the 2005 referendum, in which Odinga led the charge against the proposed constitution, Odinga and Kibaki joined forces to persuade the Kenyan public to support the 2010 referendum. The alliance between Odinga and Kibaki is all the more notable in that key members within their respective parties were either lukewarm on the draft or in outright opposition to it. Given the influence top leaders exercise on public opinion, it is doubtful that the 2010 referendum would have passed had Odinga and Kibaki not come together to support it.

It is not implausible to think that the power-sharing agreement encouraged cooperation and compromise in drafting and ratifying the constitution. In its absence, Odinga and ODM might have had stronger incentives to oppose any cooperation with Kibaki and PNU, both as a matter of principal and in order to avoid sharing credit for a popular initiative. However, as part of a coalition government, Odinga and ODM bore a

greater burden of blame for inaction and stood to reap greater benefits from satisfying public demands for reform.

Yet, observers have more typically viewed the coalition government as an impediment to reform (e.g., Amandi 2009; Cheesemen and Tendi 2010). And it is important to note that both Odinga and Kibaki may have had personal motivations for supporting constitutional reform. Kanyinga and Long (2012) note that there was considerable support for reform among the Kenyan public. They speculate that for Odinga it may have been important to deliver on his campaign promise to revise the constitution, and that doing so would position him well for another run at the presidency. Likewise, the authors hypothesize that although Kibaki was barred from seeking a third term in office, concerns about his legacy, which had been greatly tarnished by the 2007 election, may have motivated him to support the reform initiative. Moreover, the key compromises on the content of the reform may have also stemmed from private interests. For Odinga, the 2007 election demonstrated that he was a viable contender for the presidency, and his desire to capture this post in 2012 may well have led him to abandon his insistence on a parliamentary form of government (Kramon and Posner 2011). Thus, while the power-sharing agreement may have reduced the opposition's incentives to oppose collaboration with PNU, it is difficult to separate these institutional effects from other incentives that may have inclined also key actors to support the constitutional reform effort.

It is noteworthy, moreover, that these episodes of cooperation stand in sharp contrast to the more acrimonious and divisive relations that typified the coalition government throughout its lifespan. From its inception the coalition government was

hampered by disputes over basic procedural issues within the legislature. The first major task under the accord was the assignment of MPs to Cabinet posts in the new coalition government. While both parties were prepared to honor the principal of portfolio balance, initial negotiations deadlocked over which positions would go to each party. Both sides sought control of the key ministries, such as Finance, Internal Security, and Public Service, among others. The stalemate, which dragged on for several weeks, threatened to undermine the accord. In frustration over the delays and PNU's perceived hardline position, ODM supporters in Kisumu and Nairobi returned to the streets for riots in April 2008 (*Daily Nation*, 4/2/2008). Equally frustrated with the impasse, the European Union threatened to cut off aid if a deal was not reached (*Daily Nation*, 4/9/2008). After several tense weeks of negotiations, the parties finally called on Annan to help broker a deal. The final agreement, which was announced on April 13, allowed PNU to keep Internal Security and Finance, while ODM gained other key ministries, including Public Service, Local Government, and Agriculture (*Daily Nation*, 4/14/2008). In May 2009 the two parties again deadlocked over the question of which party would fill the position of Leader of Government Business within the House, a stalemate that was only broken when the Speaker of the House stepped in and assumed the position himself (*Daily Nation*, 6/4/2009). The parties also came to an impasse on the assignment of members to the twenty-seven committees within the House. As a result of these procedural tussles, all legislative business was halted for several months in 2009 (*Standard*, 6/14/2009).

The coalition government was also characterized by persistent accusations of foul play with regard to the core provisions of the agreement. In March 2009, for example, ODM's leadership called for a renegotiation of the deal, alleging that the party had been

shut out of a series of important decisions that had been made unilaterally by PNU. ODM cited in particular the unilateral appointment of staff to several government agencies. ODM's Secretary General, Peter Anyang Nyong'o, summarized the party's position as follows: "The Coalition Government has fallen far short of implementing the National Accord in letter and spirit, thereby shortchanging our Party in appointments to the civil service, public corporations, and the security services" (*Daily Nation*, 3/3/2009). Taken together, these instances suggest that the power-sharing accord did little to enhance incentives for elite cooperation overall.

Likewise, the power-sharing institutions did little to diminish elite resistance to addressing the more fundamental causes of conflict in Kenya. Aside from the passage of a new constitution, little progress was made on any of the Agenda Four items. It is not difficult to see why: members of the political elite had private interests that ran counter to reform. In this context, the creation of a grand coalition drawn from the existing elite did not lead to substantive reform because it did not create new rewards for reform or alter the composition of the policy-making elite. As a result, continuity, rather than change, has been the outcome in most areas (Cheeseman and Tendi 2010; Hansen 2013).

The failure to address deeper sources of conflict can be seen first in the decision not to pursue domestic legal proceedings against those responsible for the post-election violence. As many have noted, violence has become a routine feature of elections in Kenya in part because the judicial system has so far failed to take action against those who commit atrocities (KNCHR 2008; Kamugi 2009). Thus, ending the impunity enjoyed by the brokers of violence has been identified as a core priority for reducing future bloodshed (KNCHR 2008; CIPEV 2008). In the aftermath of the 2007 violence,

however, Kenya's political leaders showed little interest in punishing either the organizers or the foot-soldiers. As noted, prominent leaders, including President Kibaki, argued that a judicial approach would further divide the country, jeopardizing the fragile peace that had been achieved. Instead, the President called for a blanket amnesty. The decision by the International Criminal Court to investigate the violence and ultimately to open a case against several top leaders briefly provided an impetus for a debate about whether to launch a domestic tribunal. Once again, however, the political elite failed to take action. Given that many high-ranking political leaders are thought to have been involved in orchestrating the violence, key actors in the coalition government had strong incentives to resist a judicial response (Brown and Sriram 2012; Hansen 2013). By creating an oversized coalition drawn from the existing political elite, the power-sharing agreement ensured that these actors would be well positioned to block the creation of a local tribunal. While it is perhaps unlikely that such a tribunal would have materialized in the absence of the power-sharing accord, it is clear that the institutions of power-sharing did little to create incentives for reform in this area.

Political leaders have also shown little enthusiasm for efforts to investigate or address historical injustices related to inequities in regional development or access to land. As noted above, the TJRC was hampered by disputes about its leadership and ultimately failed to unearth substantial new details about past injustices. More recently, the National Land Commission – a product of the 2010 constitution – was formed with a similar mandate to examine historical improprieties particularly with regard to land and to offer recommendations for reform. Yet, like the TJRC, the Land Commission is unlikely to have much impact, as it is mandated only to offer recommendations and lacks

the authority to initiate reforms on its own (*Business Daily*, 3/24/2013). The lack of enthusiasm for more substantial action on historical injustices is not surprising given that many senior political leader are thought to have been involved in or benefited from past abuses of power (KNCHR 2008; CIPEV 2008). While the history of inaction and obfuscation, particularly on land, suggests that little progress would have occurred in the absence of the power-sharing accord, it is again clear that the creation of a grand coalition did little to incentivize reform.

Finally, progress in altering the polarizing dynamics of electoral competition has been modest. The 2010 constitution contained a number of provisions designed to encourage broad-based parties that appeal beyond their core ethno-regional constituencies. Notably, the presidential winner is now required to garner at least 50% of the national vote (previously a plurality was sufficient) and to win at least half the votes in 25% of Kenya's 47 counties (previously the winner was required to gain at least 25% of the vote in five of Kenya's eight Provinces). Yet, if the 2013 election is any guide, such provisions will not fundamentally alter the basic zero-sum nature of politics. In the 2013 election most Kikuyus and Kalenjins supported the coalition headed by Uhuru Kenyatta and William Ruto while most Luos and Kambas lined up behind the coalition headed by Odinga and his running mate Kalonzo Musyoka.⁵ These voter alignments gave the race an "us-against-them" quality in which opposing ethnic groupings once again squared off in competition for power. Given that politicians benefit from the tendency by voters to engage in ethnic bloc voting, it is unlikely that additional institutional reforms –

⁵ Survey data from a poll conducted by the author shortly before the 2013 election showed that 94% of Kikuyus and 90% of Kalenjins preferred Kenyatta to Odinga while 96% of Luos and 85% of Kambas preferred Odinga. Data come from a nationally-representative poll (excluding Northeastern Province) with a sample of 829 respondents conducted between February 12 and March 3, 2013.

such as the alternative vote or other preference-based systems – will be adopted. Moreover, little action had been taken by political leaders to reduce the use of hate speech during campaigns. Despite the creation of the National Cohesion and Integration Commission, which is charged with monitoring and bringing cases against those who engage in hate speech, and the inclusion of Article 49, which makes hate speech and incitement illegal, in the new constitution, monitoring and enforcement of campaign improprieties remains weak (*Institute for War and Peace Reporting*, 7/11/2013). Again, given that members of the political elite may well have run afoul of such laws in the past, these actors are unlikely to push for more comprehensive reform. And while reform would have been unlikely in the absence of power-sharing institutions, this instance again shows that the power-sharing institutions did not mitigate elite resistance.

In sum, while the power-sharing agreement in Kenya played a critical role in interrupting the spiral of post-election violence, it did little to encourage political leaders to address deeper sources of conflict. These conclusions are reflected in public opinion data. In a national survey conducted in February 2013, just before the agreement's expiration, 73% of respondents approved of the power-sharing agreement, with 86% of respondents agreeing that "the power-sharing agreement helped Kenya avoid additional violence."⁶ Smaller shares of respondents, however, agreed that the agreement helped to rebuild trust between ethnic communities (56%) or to resolve long-standing tensions between ethnic groups (61%). And only 39% agreed that power-sharing should be used in the future when there are disputes about the outcome of a presidential election,

⁶ Data come a public opinion survey (N=829) carried out February 12 and March 8, 2013. The survey was nationally representative but excluded Northeastern Province because of security concerns.

suggesting that while many Kenyans view the agreement as an appropriate stop-gap measure, most prefer that power-sharing not become routine.

4. Potential for Future Conflict

While the power-sharing agreement restored stability in Kenya, potential for future conflict remains. First and foremost, long-standing grievances over land distribution, inequalities in wealth, and perceived historical injustices have not been addressed. The election of Uhuru Kenyatta – son of Kenya’s first President Jomo Kenyatta – as President and William Ruto as Deputy President in the 2013 election suggest that there will be little support in coming years for examining improprieties in government land dealing or undertaking substantial reform to address grievances over access. The Kenyatta family is thought to have been among the largest beneficiary of government land distribution schemes after independence, possibly owning as much half a million acres (*East African Standard*, 10/1/2004). Likewise, while Ruto is of more modest parentage, he is thought to have benefited from land grabbing in the Rift Valley and was recently ordered by the High Court to hand over a 100-acre farm that he is thought to have obtained illegally during the 2008 post-election violence (*IOL News*, 6/28/2013).

Equally troubling is the culture of impunity that has long existed in Kenya, whereby perpetrators of violence are not held to account for their actions. The periodic cycle of violence during elections now spans several election rounds, dating back to 1991. Many of the same politicians have been repeatedly implicated in the violence. For these actors, violence and polarization are useful electoral strategies. The failure to

punish political leaders who encourage violence means that they will have little incentive to refrain from such behavior in the future.

Finally, elections continue to serve as flashpoints for inter-communal tensions. As noted, constitutional provisions designed to alter the zero-sum nature of electoral competition have done little to change the basic dynamics of party politics. Tensions in the Rift Valley, a major hotspot in the 2008 post-election violence, were muted in the 2013 election as a result of the political alliance between Kenyatta (a Kikuyu) and Ruto (a Kalenjin). And Kenyatta's victory may help to allay fears of marginalization among Kalenjin voters in the short term. Yet, the alliance does nothing to diminish similar fears among other groups, like the Luo and Kamba, that supported Odinga in large numbers in 2013.

Despite the cause for concern, the new constitution offers some grounds for optimism. As noted, several institutional changes in the 2010 constitution may help to mitigate the divisive nature of political competition by devolving power to county governments, strengthening the role of the legislature, and enhancing individual and group rights. Needless to say, such ambitious constitutional provisions will only be meaningful if implemented fully in coming years.

5. Conclusion

The central conclusion of this chapter is that power-sharing in the form of a grand coalition can be a useful remedy for inter-communal violence in some contexts. In the Kenyan case, few viable alternatives existed. While the opposition, believing that it had rightly won the presidential election, preferred an immediate re-run of the election, it is

unlikely that PNU leaders would have accepted this option. Moreover, the escalation of violence convinced key international actors – Kofi Annan and leading donor countries – to prioritize ending the violence over concerns about the election outcome (Lindenmayer and Kaye 2009; Brown 2009). Yet, while power-sharing may not have been anyone's preferred outcome *ex ante*, in the context of Kenya's worsening crisis it provided an attractive alternative. While important debates remain about whether power-sharing is a useful institutional option in civil war settings, in Kenya power-sharing had an immediate and positive effect, interrupting the escalating spiral of communal violence that followed the 2007 election. It did so by coopting opposition leaders into the government and signaling to opposition supporters that their communities would be represented.

Second, the Kenyan experience demonstrates that power-sharing – in the form of a grand coalition – is unlikely to create incentives for political leaders to address the root causes of conflict where doing so would threaten their own interests. In this regard, expectations for power-sharing should be tempered: while it may serve as a useful remedy in episodes of violence, it is unlikely to alter elite incentives and encourage reform.

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Table 1. Provisions of the Power-Sharing Agreement

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