

# **The State of Kenya**

## **Effects of Regime Change on the Contentious Repertoire after the 2008 Post-Election Crisis**

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**3997782**

**Utrecht University**

**26 July 2013**



A Thesis submitted to  
the Board of Examiners  
in partial fulfilment of the requirements of the degree of  
Master of Arts in Conflict Studies & Human Rights



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## Abbreviations

CIPEV	Commission of Inquiry on Post Election Violence
CoE	Committee of Experts
CORD	Coalition for Reform and Democracy
DP	Deputy-President
ICC	International Criminal Court
IEBC	Independent Electoral and Boundaries Commission
KADU	Kenya African Democratic Union
KANU	Kenya African National Union
MP	Member of Parliament
MRC	Mombasa Republican Council
ODM	Orange Democratic Movement
PEV	Post Election Violence
POS	Political Opportunity Structure
VP	Vice-President
YK'92	Youth for KANU '92



# I

# Introduction

The post-election violence (PEV) that followed the general- and presidential elections of 27 December 2007 was the most violent episode in Kenya's sixty years of independent history. The crisis started when incumbent President Mwai Kibaki was announced the winner of the elections after his opponent Raila Odinga had held a comfortable lead in most of the polls prior to the elections. Kibaki's victory was announced after a secret balloting that lasted more than a week, and he was sworn in as President during a very quick and low-key ceremony. Both Kenyan and international observers called Kibaki's re-election the product of fraud, and consequently supporters of Raila Odinga started to protest throughout the country. These protests soon turned violent, and after three months of chaos more than 1,100 people were killed and almost half a million lost their homes. The Great Rift Valley, the Western, Central and Coastal provinces, and the country's capital Nairobi experienced the worst of the violence, as all major ethnic groups in Kenya were involved in one way or the other in the killing, maiming and displacing of members of other tribes. Violence was not restricted to civilians, as police-bullets were responsible for about a third of the deaths. The crisis finally ended on 17 April 2008 when the 'Government of National Unity' was formed between rivals Mwai Kibaki and Raila Odinga. Kibaki continued his presidency, while Odinga became the first Kenyan to be named Prime-Minister. This 'Grand coalition cabinet' soothed the tensions, and started a phase of reconciliation and rebuilding in the country.

After the crisis had subsided theories explaining it sprouted like mushrooms, varying from explanations that focused on the insurmountable differences between ethnicities to theories on the role of leading politicians, who allegedly orchestrated the violence to reach some political goal. The first news reports labelled the crisis either as poll violence ('Scores dead in Kenya poll clashes', 2007; Cocks, 2008) or ethnic riots (Wallis and Kanina, 2008). A clear distinction between the elections and the inter-ethnic clashes could not be made, since Kenyan voters continued the habit of voting on a representative of their own ethnicity. Supporters of Raila Odinga, a Luo, clashed with Kibaki's supporters, who are largely Kikuyu.

Contrary to the media, the academic debate focused either on the role of high-ranked individuals or on deprivation. Those who investigated the first angle tried to show how elites manipulated the Kenyan masses into violence. According to Susanne Mueller (2011) politicians ignited the flame of ethnicity during the crisis. Mueller and others (see Osborn, 2008; De Smedt, 2009; Kagwanja, 2009) viewed the inter-tribal violence as a large-scale political contest, purposefully designed by elites to manipulate the masses. The second angle focused on the role of economical and land-deprivation to explain the kind of violence that erupted in Nairobi's slums Kibera and Mathare, and the violence in the Rift Valley Province (Gthnji & Holmquist, 2008; Kanyiga, 2009). Violence largely occurred either in regions where tribal tensions were high due to unequal land distribution, or in regions where monetary inequality was high, and at a first glance the deprivation theory does seem useful. Especially in the Rift Valley provinces land disputes had led to violent attacks before during the Mau Mau rebellion that occurred in the 1950's. When the British handed over sovereignty of their colony to the new government the land that was held by the white settlers was redistributed. In the Great Rift Valley, where the Kalenjin originated from, land was given to Kikuyu instead of back to the Kalenjin. To the envy of many Kalenjin the Kikuyu farmers did very well in this highly fertile region, and land-related raids and robberies have occurred in the Rift Valley ever since. However, as was noted by William Ruto with regards to the post-election violence: 'The issue of the PEV is not land, let nobody cheat you. Kikuyu always sit on the land and the only problem is at the end of 5 years. It is all politics. Land is just an excuse' (Republic of Kenya, 2008: 75). Violence in the Rift Valley was claimed to be land-related, but just like Ruto said, land only became an issue when another election was could be seen at the horizon. An unequal distribution of land cannot by itself explain the election-violence; division of land and income has always been unequal in Kenya, but the Rift Valley and the slums are mostly peaceful, except during elections.

The post-election violence was not only topic of investigation for the media or academia, but also for the Kenyan government. When the dust had settled after the violence and the Grand Coalition Government started governing, a commission led by Justice Philip Waki was charged with investigating the PEV. On 15 October 2008 the "Waki report" was handed over to President Kibaki

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and Prime-Minister Odinga. The commission concluded that the PEV was truly a multi-faceted event, with several causes and consequences. The report showed how the media, the police, and politicians all played an important part in the development of the post-election violence. In more than five hundred pages the report showed how various actors were to blame for the crisis, and that the cocktail of violence could be mixed because all the necessary ingredients were readily available. The Commission urged the Kenyan government to act upon the results provided in the report, so the perpetrators could be punished and justice could be done. To ensure that something would be done with the results of the commission a safety clause was added: When the Commission presented the results to the Kenyan government they also sent a copy of its findings to former UN secretary Kofi Annan. The sealed envelope contained the names of those persons that according to the Commission had played the biggest part in the orchestration of the violence. If and when Kibaki's government failed to heed the prescriptions made by the report, Kofi Annan was to send the envelope to the Prosecutor of the International Criminal Court (ICC). This is exactly what happened: the Kibaki administration proved unwilling and unable to deal with the crimes allegedly committed by some high-ranking officials, which enabled the ICC to intervene in the Kenyan justice system and prosecute those individuals charged with crimes against humanity <sup>1</sup>. As of today, the court has not yet convicted anyone for the violence.

After five years, and another election looming in March 2013, the attention shifted forward when the fear of a repeat of the post-election crisis grew. Most conditions that were established as major causes of the 2007 violence were left unaddressed in the half decade between the two elections. Tensions in the regions hit hardest by the 2007 crisis were higher due to unresolved differences. Land inequality was still an issue, especially in the Tana River Delta where nomads and farmers struggled over access to land and water. Kenya ranks as one of the most unequal countries in the world, with a worse division of income than the Democratic Republic of the Congo and Sierra Leone in 2005, and

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<sup>1</sup> Only three out of six names mentioned by the Waki-report are still under investigation: William Ruto (Current Deputy President of the Republic of Kenya), Joshua Arap Sang (Head of operations at Kass FM in Nairobi), and Uhuru Kenyatta (Current President of the Republic of Kenya). Charges against the three other individuals were dropped because of lack of evidence.

Source: ICC (2013) *Situation in the Republic of Kenya*. Retrieved from [http://www.icc-cpi.int/EN\\_Menus/ICC/Situations%20and%20Cases/Situations/Situation%20ICC%200109/Pages/situation%20index.aspx](http://www.icc-cpi.int/EN_Menus/ICC/Situations%20and%20Cases/Situations/Situation%20ICC%200109/Pages/situation%20index.aspx)

no sign of improvement (indexmundi, 2013). In an advice to the Council on Foreign Relations Joel Barkan stated that “if the past is any guide, a close election is likely to be accompanied by violence between Kikuyus, who will mostly vote for Kenyatta, and Luos, who will mostly vote for Odinga” (Barkan, 2013: 3). If the polls could be trusted the 2013 elections were going to be very close; and because of the high complexity of the elections, the lack an adequate number of trained police, and the ongoing proceedings by the ICC, a violent sequel to the 2007 elections seemed very likely (ibid., p. 2-3).<sup>2</sup> The concerns about the 2013 elections were summed up by Susanne Mueller (2011: 110): ‘Violence may once again be the arbiter, before, during or after the next election if Kenya does not reignite before then. Politicians still are dying to win and violence or the threat of violence continues to be the order of the day’

Surprisingly, large-scale violence remained absent in Kenya during the 2013 election episode. There were two - highly separate - incidents of election related violence: The first occurred on the night from 3 to 4 March - election day - when a clash between the Mombasa Republican Council (MRC) and the police left nineteen people dead, among whom four police officers (Starkey, 2013).<sup>3</sup> The second occurred after the elections, as a protest in Kisumu got out of control and police officers shot and killed two protesters (Mukinda, 2013). However, these two events were very isolated from each other, and were the only instances of violent contention related to the 2013 elections. Despite all odds, Kenya managed to keep a hotly contested election under control. This discrepancy between the violent expectations and the peaceful practice of the 2013 elections will form the core of my research. After the very violent 1992, 1997 and 2007 elections another episode of election related violence was expected. Why were the 2013 elections instead the most peaceful multi-party election since independence?

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<sup>2</sup> During the 2013 elections people had to vote for six different positions on the same ballot, making the balloting-process difficult and confusing. On one ballot, the people in Kenya voted for President, Governors, Senators, National Assembly, Women County Representatives and Country Assembly Representatives. Source: Mars Group Kenya (2013) *KE Election*. Retrieved from <http://election.marsgroupkenya.org>.

<sup>3</sup> The MRC is a secessionist movement that wants to separate the Coastal Province from the rest of the country. According to the MRC the coastal province should be an independent nation, as it differs from the rest of Kenya in their Islamic Swahili background, as opposed to the mostly Christian hinterlands.

## 1.1 Explaining the Absence of Violence

A theory that can help to answer this question is the theory of contentious politics, developed by Charles Tilly (Tilly 1978; 1986; 2003; 2006), Sidney Tarrow (Tarrow, 1995; Tilly & Tarrow, 2007) and Doug McAdam (McAdam, Tilly and Tarrow, 2001). Contentious politics ‘involves interactions in which actors make claims bearing on someone else’s interests or programs, leading to coordinated efforts on behalf of shared interests or programs, in which governments are involved as targets, initiators of claims, or third parties’ (Tilly & Tarrow, 2007: 4). When a person has an asset that is wanted by somebody else, one way to get it is through contention: Making a claim bearing on someone else’s interest. When one of the parties involved is a government the type of contention is called contentious politics.

Contentious politics can take a myriad of different forms. Social movements, demonstrations, strikes, revolutions, and civil wars; they all involve claiming on someone else’s interests, and in these cases one of the parties involved is a government. Electoral violence like the post-election crisis in Kenya can therefore likewise be described as contentious politics. Even though the PEV did not occur between only one claimant-object pair, most of violence committed during the post-election crisis had elements of contentious politics. The police shot and killed protesters, the land disputes arose after the disputed election outcome, and other inter-ethnic struggles were allegedly instigated by top politicians. In other words: every party involved in the post-election crisis made claims on the interests of someone else, thus qualifying as contentious politics.

However, claim-makers do not live, nor do they make their claims, in a social vacuum. Instead, they are limited and guided by the society in which they live. Tilly (2006) showed how the type of regime and the available repertoire of contentious action shape the available types of action for political entrepreneur. For instance, a very strong autocratic regime is likely to suppress all types of contention against the state, peaceful or not, as they undermine the state’s authority. On the other hand, a strong democratic state will allow peaceful forms of contention most of the time, as long as the political actors stay in bounds of the law. Weak democratic states will have more problems dealing

with peaceful contention, since they do not have the capacity to control and guide protests, but are still structured in a way that allows for citizens to exert influence on government. Violence is more likely to erupt in a weak democratic state than in a strong democratic state because of this lack of control. Lastly, weak and undemocratic states can neither control their population, nor allow them any legal influence on governance. In these countries claim-makers are almost forced towards violent contention, since they cannot affect governance in any legal way, and yet the state is not powerful enough to stop its citizens from picking up arms. These societies tend to be the most violent (Tilly, 2006: 81).

The use of violent contention is further influenced by the available repertoire. The repertoire consists of forms of contention that have proven to be successful in a given society in the past. For example, in some countries activists used to chain themselves to fences in front of important buildings - e.g. government buildings, nuclear plants, or oil companies - hoping to slow down or shut down the work of whatever target they had in mind. If chaining to fences lead to the desired results 20 years ago, contemporary protesters might turn to the same methods. In short, if a *performance* was successful for one group of people in the pasts, the chances are great that the next group of people will use this same performance for their own protest. These performances clump together in the contentious repertoire.

## 1.2 Research Question

Research on the post-election crisis is, in my opinion, incomplete without thoroughly discussing the crisis from a contentious politics angle. I expect that the repertoire available to the entrepreneurs of violence, and the regime in place prior to and during the crisis, can help to understand how and why there was a difference in the level of violent contention between the 2007 and the 2013 elections in Kenya. I expect that contentious politics can account for the difference in violent outcome between the 2007 and 2013 elections. I will not analyse the events of the post-election violence themselves, but instead focus on the initial conditions that enabled the violence. Countless others, with access to much more resources than myself have investigated the events of the post-election violence

before me (e.g. Barkan, 2013; Branch, 2011; Branch & Cheeseman 2008; Cheeseman, 2008; De Smedt, 2009; Gthnji & Holmquist, 2008 and 2012; Kagwanja, 2009; Kanyiga, 2009; Mueller, 2008 and 2011; Nmaju, 2009; Okia, 2011; Osborn, 2009; and Rutten & Owuor, 2009).

The ICC, the world's biggest international justice system, is still investigating the events that took place during the crisis. Following the advice made by the Commission of Inquiry on Post Election Violence (CIPEV) six individuals were charged with crimes against humanity. However, charges have been dropped against four of the six individuals, leaving only current President Uhuru Kenyatta and his Deputy-President William Ruto to be prosecuted by the ICC. The Court has been collecting evidence and witness-statements since 2008, but still hasn't reached a verdict on the guilt of either of the two. The post-election violence is more difficult to understand than it seemed to the international media, and individual involvement appeared hard to verify.

Evidently, for an MA student it would not suffice to try and outdo the ICC's efforts. The ICC has significantly more time and resources available to investigate the PEV, and could still not clarify all events that happened during the crisis. Therefore, instead of focusing on the events of the PEV themselves, or the involvement of political actors or groups in the PEV, this thesis' lens will focus on the conditions that enabled political actors to use violence as a political strategy in the first place. This thesis will specifically analyse the effects of regime change on the availability of violent contentious performances. This differentiates this thesis from any past research on the Kenyan post-election violence, which greatly improves the academic significance of this research. Moreover, as it is the goal of this thesis to uncover the initial condition that enabled political actors to use violent forms of contention in Kenya, I hope to reveal the importance of regime-focused research when estimating the risks of violence for upcoming elections in Africa. The question that will guide my research for the remainder of the thesis is therefore the following: *How did changes in democracy and capacity of the Kenyan regime following the 2007/2008 post-election violence affect the availability of a violent repertoire of contention for political actors during the episode of the 2013 general elections?*

In order to answer this question I will establish the working definitions of democracy, capacity, regimes and repertoires in Chapter II, the theoretical chapter of this thesis. Chapter III will



explain the methods used to gather the necessary evidence and information to provide an answer to the research question. In Chapter IV I will discuss the initial conditions that enabled the post-election crisis in Kenya. I will discuss the regime that was in place in Kenya prior to the PEV, and establish the level of democracy and the level of capacity of the Kenyan government. Chapter V deals with the very violent history of contention in Kenya and provides the argument that Kenyan political actors have had access to a large repertoire of violent performances as the 2013 elections were set to begin. Chapter VI will provide an analysis of the most important changes in regime and repertoire after the Grand Coalition had been formed as a result to the post-election violence. More specifically, it will show how if and how changes in the level of democracy and capacity between the 2007- and the 2013 elections affected the availability of violence as a contentious performance. Finally, the conclusion will provide a summary of the most important findings of this thesis and provide suggestions for further research on the Kenyan post-election violence.

# II

# Contentious Politics

The post-election violence involved people making claims on someone else's interests, doing so in coordination with other people who shared the same desire for those claims, with one of the parties involved being a government. This qualifies the events that took place during the crisis as *contentious politics*. In the words of Charles Tilly and Sidney Tarrow contentious politics can be defined as “interactions in which actors make claims bearing on someone else's interests, leading to coordinated efforts on behalf of shared interests or programs, in which governments are involved as targets, initiators of claims, or third parties” (Tilly & Tarrow, 2007: 4).

Contentious politics brings together three features of social life: contention, collective action and politics. The first feature, contention, brings together a subject (the ‘claiming’ party), an object (the receiver of the claim), and the claim itself. A library can urge you to return a book that you have borrowed, claiming the book. A friend may urge you to order a round of drinks for the group, making a claim on your money and on your ‘duty’ to the group. A police officer can put you in jail after you robbed a bank, making a claim on your freedom. These are all very simple examples of parties making claims on an individual, but claim making does not only occur between two persons. Instead of making claims on one person, claims can also be made by and on groups and institutions (Tilly & Tarrow 2007: 4). That is when contention becomes collective.

Collective action occurs when people come together in a coordinated effort in order to reach a certain public good: “goods or services that, once provided, generate benefits that can be enjoyed by all simultaneously” (Balaam & Veseth, 1996: 458). Public goods can be reached through collective action, but it is not easy to coordinate such action. A famous “collective action problem” (Olson, 1965) that has to be dealt with is the problem of the free-rider. John Rawls explains this problem as follows:

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Where the public is large and includes many individuals, there is a temptation for each person to try avoid doing his share. This is because whatever one man does his action will not significantly affect the amount produced. He regards the collective action of others as already given one way or the other. If the public good is produced his enjoyment of it is not decreased by his not making a contribution. If it is not produced his action would not have changed the situation anyway.

John Rawls, [1971] 1999: 236

The problem of the free-rider is that an egoistic individual knows he can reap the fruits of collective action without the need for him personally partake in collective action.<sup>4</sup> The success of collective action – and therefore also of contentious politics – depends largely on strength in numbers. The impact of a protest rally consisting of twenty people is certainly less than that of a rally of 200 people. As Rawls explained, the free-rider lives guilt-free whether or not the collective action succeeds. If the public good is not achieved his own contribution would not have made a difference anyway – since a protest of 200 is just as impressive as a protest of 201 - and when the public good is achieved he did not have to put in any effort and still enjoys the benefits. The problem is that when everyone thinks like a free-rider, no collective action would ever have a chance to succeed. When enough people expect others to make an impact without doing so themselves, in the end no one would choose to partake in collective action. This problem can be dealt with by using proper coordination and facilitation (King, 2007: 117). According to Charles King (2007: 117-118) “it is organizations, not groups, that facilitate collective action ... The really successful organizations are those that are able to convince significant numbers of people that they are their legitimate representative – and to convince potential outsiders of the same thing.”

Free-riding is a problem with all types of collective action, but becomes an even bigger issue when collective action turns violent. The costs of partaking in collective action increase significantly

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<sup>4</sup> When an individual has to decide whether or not to partake in collective action the decision to let other ‘do the dirty work’ is an egoistic act. I do not want to argue that the individual is wrong in any way because it is completely understandable that you want to reap the benefits without paying the costs of collective action. However, since the person is thinking of his own gain rather than that of the group I call him egoistic, similar to Rawls’ free-riding egoist: “Everyone is to act justly except for myself, if I choose not to” (Rawls, 1999: 107)

when it turns violence, because the potential costs can change from giving up time and money to go to a demonstration, to potentially suffering trauma, wounds, or even death in a violent clash between civilians and police – or any other form of violence. Consequently, free-riding becomes a more attractive option during violent contention. Therefore coordination becomes more important during violent contention, and the need for entrepreneurs and organisations to coordinate efforts grows. Tilly states that “political entrepreneurs wield significant influence over the presence, absence, form, loci, and intensity of collective violence” (2003: 34).

The events in Kenya did not only involve claim-making between different groups, but it also involved the government. Here contention become contentious politics: politics becomes part of contention when it is aimed at or used by a government. According to Tilly and Tarrow ‘ordinary’ contention is very different from political contention. The reason why is the presence or absence of a government: “an organisation controlling the principal concentrated means of coercion and exercising priority over all other organizations within the same territory in some regards” (2007: 202). The group that controls the government has advantages over those who do not; governments can resist the rise of competitive centres of power on its territory; and governments control coercive means (ibid., p. 5). Governments need not be a subject or the object of claims, but when they are drawn into contention in one way or another, contention becomes contentious politics.

## 2.1 Political Opportunities

Many political and social scientists share the view that actors do not operate in a social vacuum but are instead the product of their environment, and believe that the environment influences what forms of collective action are used in various settings. This environment is known as ‘political opportunity structure’ (POS). According to Meyer and Minkoff

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the basic premise is that exogenous factors enhance or inhibit prospects for mobilization, for particular sorts of claims to be advanced rather than others, for particular strategies of influence to be exercised, and for movements to affect mainstream institutional politics and policy.

Meyer & Minkoff, 2004: 1458

In other words, the political opportunity structure influences how effective political actors can mobilize for collective action. Which form of contention works is dependent on the available political opportunity structure. Herbert Kitschelt (1986) was one of the first to use political opportunity structure as an explanatory factor for collective action, and according to Kitschelt differences in the political opportunity structure facilitate or constrain the development of collective action (Kitschelt, 1986: 58). In a comparative case study between Sweden, France, the United States, and Germany Kitschelt found that open and responsive political opportunity structures tend to lead to more assimilative strategies, where closed and less responsive political opportunity structures will lead to more confrontational strategies (ibid., p. 67-72). Despite the similarity of the protest movements that Kitschelt investigated the form of collective action was very different for each of the regimes. Ted Robert Gurr's studies mirror these results, as "the domestic political environment substantially determines the kinds of actions chosen by ethnopolitical groups" (Gurr, 1994: 85). Charles King (2007: 117) agrees as well that the political opportunity structure is one of the crucial areas of enquiry for research on collective violence.

The value of political opportunity structures and regimes was not lost on Charles Tilly when he developed his contentious politics framework. During a lengthy and productive academic career Tilly specialised himself in collective action and contentious politics, and he too discovered the great influence political opportunity structures have on the behaviour of political actors (Tilly, 2003; 2006; 2007). Tilly describes political opportunity structures are "features of regimes...that facilitate or inhibit a political actor's collective action" (Tilly & Tarrow, 2007: 203). Therefore it is necessary to understand what Charles Tilly exactly understands as regimes, and how these influence the availability of different forms of contention.

## 2.2 Regimes

Regimes have been defined by Charles Tilly as “transactions among agents of government, polity members, challengers, and subjects” (Tilly, 2003: 30), “repeated, strong interactions among major political actors including a government” (Tilly, 2006: 19) or “regular relations among governments, established political actors, challengers, and outside political actors, including other governments” (Tilly & Tarrow, 2007: 45). Regimes affect contentious action through two different dimensions: Governmental capacity and democracy.

Governmental *capacity* refers to the extent to which purposeful actions by governments effect the distribution of populations, resources and activity on their sovereign territory (Tilly, 2006: 21). Regimes can be divided in high-capacity and low-capacity regimes. When high-capacity governments intervene in the lives of their population, it has a big impact. High-capacity governments can raise taxes, prosecute criminals, and re-distribute income. Low-capacity regimes, on the contrary, may try to influence the lives and behaviour of their population, but they achieve next to nothing (Tilly & Tarrow, 2007: 55). *Democracy* indicates the extent to which persons within the state can legally influence governmental affairs, and be protected against arbitrary governmental action (ibid.). Regimes can be split into democratic or undemocratic regimes. Democratic regimes are open to their electorate, are quick to change laws and successfully protect their populations against arbitrary governmental action. Undemocratic regimes do exactly the opposite: they arbitrarily attack the population and their rights, and the population cannot legally and regularly change the government or its policies through regulated elections. Combining both governmental capacity and democracy, four ideal-types of regimes can be distinguished: High-capacity democratic regimes; high-capacity undemocratic regimes; low-capacity democratic regimes and final; low-capacity undemocratic regimes. But how do these regime types influence the use of violent forms of contention?

### 2.2.1 Capacity

Governmental capacity refers to the extent that a government has an effective control over the population, activities and resources on their sovereign territory. It is not hard to understand how high-capacity regimes will experience less violent contention than its low-capacity counterparts. High-capacity regimes have established a true sovereignty over their territory, meaning that they have the “claim of supreme political authority within a territory” (Thomson, 2000: 141). No government has ever had complete and total control over its population, activities, and resources, although some have tried. Nazi Germany and Stalinist USSR are two examples of regimes that tried to exert control over everything in their territory. However, the only regime to actually come close to complete control so far is a fictional one: George Orwell’s Ingsoc-government of Oceania in his book *1984*. On the opposite end of the spectrum no regime that lacks all control over its territory succeeds to survive for a long time; “Instead, they collapse from internal pressures or adjacent governments overrun them” (Tilly, 2003: 41).

Although no regime had had the ultimate control, or an extended rule with no control at all, high-capacity regimes will in general experience less violence contention than their low-capacity counterparts. Tilly gives five features of the relationship between capacity and violent contention (2003: 42-43): First, high capacity regimes monitor and control a larger proportion of all contentious activity on their territory and are able to intervene in the ones they don’t approve. Second, high-capacity regimes are better suited to monitor the activities of non-governmental violent specialists. Third, because of their high-capacity these regimes increase the potential cost of partaking in collective action. With greater risk the potential for free-riding grows, since less people will be willing to make the necessary sacrifice in order to gain a public good which they would benefit from even if they would not participate at all. Fourth, high-capacity regimes want to control all shares of violent means such as weapons and attack non-governmental concentrations of such means. Finally, high-capacity regimes make widespread demands on their citizens and back those demands with threats of damage to life and property.



Charles Tilly never explained what variables he used to separate high-capacity from low-capacity regimes. The only handles he provides are given in his definition of capacity: the control of a regime over the population, resources, and activity within its territory (Tilly, 2006: 21). This lack of specificity is solved by political scientist Jessica Fortin, as she proposed a number of variables that could be used to measure state capacity: Tax revenue; corruption; infrastructure reform; and property rights (Fortin, 2010: 668).<sup>5</sup> Fortin finds that her variables scored high on both validity and reliability, and her variables of capacity are more useful for comparative research than the definition given by Tilly. In the remainder of this thesis I shall therefore use Fortin's variables when analysing the capacity of the Kenyan regime. I will stick with Tilly in his assumption that high-capacity regimes exert more control over their population than low-capacity regimes, and Fortin's variables allow me to measure state capacity as objectively as possible.

Although Fortin's variables measure state capacity in a valid and reliable way, she neglects to measure one of the most obvious signs of state capacity, the one that actually shows how much the government can enforce decisions on territory: the strength of a regime's police forces. Since capacity is defined by Tilly as the ability of a state to control population, activity and resources on its territory it is necessary to analyse the variable that measures the amount of control a government can exert. High-capacity regimes that control much of the activity, resources, and population on its territory need to have high-capacity police forces. High-capacity undemocratic regimes tend to use the police to repress violent contention, where high-capacity democratic regimes use the police to guide peaceful contention and prevent it from escalating into violence. Regimes with a weak police force cannot sufficiently repress or guide contention, and violence will occur sooner in those regimes. According to Charles Tilly "collective violence rises with the extent that organizations specializing in deployment of coercive means...increase in size, geographic scope, resources, and coherence....Conversely, collective violence rises to the extent that the specialists escape democratic civilian control" (Tilly, 2003: 40-41). Police forces are violent specialists under control of the government, but how weaker

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<sup>5</sup> Fortin also mentions 'contract intensive money' as a variable for measuring state capacity. However, due to lack of data on contract intensive money, and the fact that both private property protection and contract intensive money depend on the extent that a government is able to protect private assets of companies and private persons I will use private property protection instead of contract intensive money. Clague et al. clump together 'security of contract and property' (1999: 7), and I will do the same in my thesis.

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the police forces are the larger the possibility that other specialists of violence – such as gangs – fill in the void left by the inadequate police force. In other words, in regimes where the police forces are underequipped the likelihood of other actors turning to violence is much larger than in regimes where the police forces are strong, and everywhere where they need to be. Following Thomas Hobbes, a high-capacity state's legal monopoly on violence is the only thing that stands between public order and a "continual fear, and danger of violent death", where life of men is "solitary, poor, nasty, brutish, and short" (Hobbes, 1998 :84 in Gaskin (ed.), 1998).

### 2.2.2 Democracy

According to Charles Tilly the level of democracy in a regime is the feature or regimes that influence the type and form of collective action. More specifically, Tilly expects democratic regimes to witness less aggressive and violent contention than non-democratic regimes. He was not the first person to link democracy and levels of violence with each other. In fact, in 1795 Immanuel Kant wrote in *Zum ewigen Frieden – Perpetual Peace* - (Kant [1795] 1970) that in a republic, where the head of state is elected by the citizens of the state, the decision to go to war will be made extremely cautious because of all the costs it brings. Heads of state do not want to lose their heads and will avoid making decision which could cost them their re-election. Kant's republic is very similar to a constitutional democracy, where citizens vote on a head of state that speaks for the people, but also as one of the people. According to Kant a government that is responsive to the wishes of its citizens will think twice before going to war if the citizens are not willing to pay the price for it. Although Kant focused on the peace-keeping qualities of republics in international relations, his logic can be used for internal conflict as well: A government that has to abide by its citizens and can be voted out of office is less likely to wrong the citizens, leading to less arbitrary prosecutions and violent responses to contentious politics.

Not only will a democratic government be less likely to respond to collective action with violent means than an undemocratic government; in democratic regimes citizens will also refrain from using violent dissent. Undemocratic governments tend to repress rather than facilitate peaceful means of political dissent, and according to Martha Crenshaw “repression of peaceful means of political dissent may force opposition movements into the underground and encourage their resort to violence, because they lack alternatives and face persecution from the state” (Crenshaw, 2007: 71). Violent dissent is more likely in undemocratic regimes than it is in democratic regimes, since democracies allow for peaceful dissent and are prepared to address economical, political, and social problems (ibid.). More importantly, the past twenty years have proven “that democracy is the only political system able to heal the rifts of a divided society and help countries settle down after a civil war” (Ottaway, 2007: 603).

## 2.3 Neo-Patrimonialism

As an evolved combination between Weber’s patrimonialism and legal-rational bureaucracy (Weber, 1978), neo-patrimonialism blends personal relations between ruler and ruled with a formal distinction between the public and the private (Erdmann & Engel, 2006: 18). In some states the theoretical, formal, and institutional democracy differs from the practical and unofficial form of government. Beneath a facade of state institutions “many societies that represent themselves under the guise of a modern, Weberian state and seemingly show its formal trappings, do in reality operate in the basis of clientelistic or neo-patrimonial principles” (van Overbeek et al., 2009: 19). This neo-patrimonial politics “reflects the outward features of institutionalized administrative states, while operating along patron-client networks and trajectories rooted in historical patterns of authority and social solidarity” (Omeje, 2008: 71-72), and

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the essence of neo-patrimonialism is the award by public officials of personal favors, both within the state (notably public sector jobs) and in society (for instance, licenses, contracts, and projects). In return for material rewards, clients mobilize political support and refer all decision upward as a mark of deference to patrons.

Bratton & Van de Walle, 1994: 458

Although neo-patrimonialist governance is not an exclusively African form of politics, “the interaction between the “big man” and his extended retinue *defines* African politics, from the highest reaches of the presidential palace to the humblest village assembly” (ibid., p. 459). Kenya is no exception to this rule.

Neo-patrimonialist regimes are characterised by interpersonal relations at the top of the government and patron-client relations where the clients support the patron because of some form of reward. In these relationships the power-holder awards friends, family or tribesmen with jobs in government, lands, or monetary benefits. Consequently, political ascendancy in neo-patrimonial regimes is based on personal relations with the power-holder (Francis, 2008: 10) . For the power-holder there is no real distinction between public and private resources, and behind a facade of legal-bureaucratic rule corruption and self-enrichment form the basis of this type of government. Therefore democracy and neo-patrimonialism do not mix well. A liberal, constitutional democracy cannot survive if state officials are employed based on their personal relations with the power-holder; if the state apparatus uses public funding for their personal gain; or if the president has too much power over parliament (Erdmann & Engel, 2006: 24). Instead, neo-patrimonialist rule will thrive in hybrid regimes: States with a legal-bureaucratic rule, behind which the patrimonialist system of patron-client relations forms a shadow state. These hybrid regimes differ from autocratic states because they are, at least on paper, democratic, and therefore bound to *act* like they respect the constitution and other laws, whereas autocratic rulers are not encumbered by such a legal-bureaucratic framework and can be openly patrimonialist. Therefore neo-patrimonialist relations will often occur in the semi-democratic, post-colonial regimes that are so common on the African continent. When states democratize and

delegate the power from the presidency to parliament, the extent of neo-patrimonialism will decline, as explained by Van de Walle (2007: 9).

The analysis of neo-patrimonialism has to focus on two dimensions of government: the political office and the bureaucratic office. As Erdmann and Engel explain, the first dimension can be analysed using “the well known criteria which allow us to distinguish between autocratic and democratic governance” (Erdmann & Engel 2006: 26). Differentiating between democratic, semi-democratic and authoritarian regimes like explained above is a useful method of analysis for the ‘political office’ in a neo-patrimonialist state, which will therefore be analysed using the well-known measurements of democracy, based on the Polity IV index developed by Ted Robert Gurr, and by the Freedom House’s analysis of worldwide freedom. The ‘bureaucratic office’ can be analysed by looking at the formal rules in the state and comparing the rules with the actual behaviour of the politicians and at how politicians respect, and respond to, the formal rules. It will be analysed by looking at inter-personal relations between top politicians, patron-client relationships, and the level of corruption in the Kenyan government.

## 2.4 Repertoires

The second initial condition that Tilly mentioned as having an influence on the form of contentious collective action is the repertoire. Each form of contentious action, whether it is organising a demonstration, signing a petition, doing a sit-in during ‘Occupy Wall Street’, or suicide-bombing, is called a *performance*. Performances group together into the contentious repertoire: “claim-making routines that apply to the same claimant-object pairs: bosses and workers, peasants and landlords, rival nationalist factions, and many more” (Tilly, 2006: 35). Repertoires are limited sets of performances, and are different for each claimant-object pair, region, and time. The relationship between a black employee and a white boss would be very different in the Southern United States around 1900 than it would be in New York City anno 2013. However, in similar circumstances different pairs within a

regime will have knowledge about the same performances, and in every society the population shares a 'general repertoire'(Tilly, 1978: 151).

Repertoires are claim-making routines, and the result of both historical precedent and modern innovation. As Richard Dawkins stated in his highly esteemed book *The God Delusion*, "more than any other species, we survive by the accumulated experience of previous generations" (Dawkins, 2006: 203). *Homo Sapiens* learned from the past, passing on knowledge from one generation onto another. When a person finds out that eating a certain type of berry is bad for their health, he will pass that knowledge onto his children, who will tell their children, who will tell their children... and so on. His offspring will have a better chance of survival since they will no longer eat the hazardous berries, and continue to live long and prosper. A similar process happens during contentious interactions. Political actors learn from the successes and failures of previous generations, and will consequently try to avoid the mistakes made in the past and copy the successes in the future. Unsuccessful performances will be shunned by future generations, but successful performances will be stored, passed on, and used by future generation. The success of the performances set by previous generations shapes the repertoire for today's political actors. Or, in the words of Tilly "when people make claims they innovate within limits set by the repertoire already established for their place, time, and pair" (Tilly, 2006: 35).

## 2.5 Summary

The point of this chapter has been to explain that regimes and repertoires interact. Recall that high-capacity democratic regimes have the capacity and openness to allow for peaceful protests, petitions and strikes. These performances, which could be highly successful in those regimes that allow them, can actually be forbidden in other regimes. High-capacity undemocratic regimes, with the ability to suppress unwanted forms of contention, will likely have a much lower tolerance towards contentious performances. This is where "regimes meet repertoires" (Tilly 2006: 59-89).

Each regime knows prescribed, tolerated, and forbidden performances. For instance, in a high-capacity democratic regime voting during elections is prescribed, peaceful protests are tolerated, but violent protest is forbidden. In high-capacity undemocratic regimes voting on the current president can be prescribed, voting on his supporters can be tolerated but voting for the opposition can be forbidden. Since more performances will be forbidden in undemocratic regimes, the use of violent contention can be seen as a logical choice for political actors: When most performances are forbidden the risk of penalty is high, regardless of what type of performance one would use. If non-violent contention is forbidden just like violent contention, the risk for using violent forms of contention is similar to the use of non-violent forms. However, the potential payoff for violence will only be much larger, since violence might actually overthrow a government, while non-violent protests will likely achieve nothing. In repressive regimes, the need for a violent repertoire is much higher, but the penalty for using violent contention will be so high that many political actors will fear actually using it. In low-capacity undemocratic regimes where the population lacks tolerated performances to change the regime, violence will become a useful tool. The regime is not capable of repressing violent outbursts, so the penalty for violence will be low while potential payoffs will be big. Thus, the levels of violent contention will differ from regime type to regime type.

In high-capacity democratic regimes a low level of violence is expected, since many prescribed and tolerated performances allow for non-violent contention to work. Furthermore, high-capacity regimes can repress violence, increasing the risk of violent performances. In high-capacity undemocratic regimes as well as low-capacity democratic regimes a 'medium' level of violence can be expected. High-capacity undemocratic regimes will repress violence, but violent performances might be the only way for a political actor to make a claim. Low-capacity democratic regimes might tolerate a great range of contentious performances, but violence will still occur now and then because these regimes are not powerful enough to repress violence when it stirs. Lastly, the highest levels of violence can be expected in low-capacity undemocratic regimes: Those regimes lack the strength to stop violence at the roots, but they do not allow for any other forms of peaceful contention to change the regime. In these regimes, violent contention is a low-cost/high-reward activity, and violent performances will be used often.

The idea that violence contention occurs less often in democracies than in semi-democratic and authoritarian regimes is mirrored by Gurr and Harff (1994). Democratic governments generally have to deal with a nonviolent opposition, as opposed to governments of non-democratic countries where “violence is more likely to be used to quell protest and riots” (Gurr & Harff, 1994: 85). In these other regimes violence begets violence. However, undemocratic regimes that use extreme force – similar to Tilly’s non-democratic high-capacity regime – are less likely to be openly challenged, “either because groups cannot organize open resistance or they fear the consequences of doing so... A curvilinear relationship thus exists between state violence and the extent and level of violence of political action taken by the challengers” (ibid.). Following Gurr and Harff, high capacity regimes, whether or not they are democratic, are very able to resist violent dissent. Especially low-capacity regimes are therefore susceptible to high levels of contentious violence, and worst of are the low-capacity undemocratic regimes: They have neither the capacity nor the legitimacy to prevent contention from turning violent.

In this chapter I have explained how the initial conditions of the contentious repertoire and the capacity and democracy of a regime can affect the likelihood of violent contention, and differ from one regime to the other. The next chapter of this thesis will deal with the methods used to unearth the capacity, democracy and repertoire of the Kenyan state in 2007 and in 2013.



# III

# Method

## 3.1 Epistemology and Ontology

Research on the effects of democratization and capacity development on the availability of violent forms of contention naturally starts from a certain ontological and epistemological perspective. As a political scientist turned sociologist I believe that people are not operating in a social vacuum where decisions are made purely as the result of his own independent thinking, unattached to the society in which one lives. Neither do I believe in the opposite, Marxist approach to research, where the individual is believed to be completely dependent on the structure of society, and every action taken by the individual is predetermined by the place in society one occupies. These perspectives are referred to by Hollis (1994) as respectively Individualism and Structuralism, and as Demmers states “where structuralism sees only the constraining qualities of structures at work, agency-based approaches only have eyes for the individual actor” (2012: 119). Instead of using either a structural or an individual approach to comparative research I will start from the epistemological point of ‘structuration’: The idea that agents and structures influence and change each other. Since this research will focus on the capacity and democracy of the Kenyan regime, and especially on the changes within that regime, I expect that the members of the regime in Kenya – agents – are able to make changes to the structure – capacity and democracy. Vice versa, I also expect that the Kenyan regime influences the availability of violence as a contentious performance.

Ontologically this thesis aims at understanding more than explaining the post-election violence. Especially, this thesis attempts to understand how changes in the regime could have affected the lack of violence during the episode of the 2013 election. I will not develop a causal model stating that x leads to y, but instead I will carefully address how it could have been so that x led to y. This small difference is crucial for understanding the rest of the methodology used for this research.

### 3.2 Research Design

The nature of this research is a comparative one. Using the research strategy of comparative politics I will investigate the structural regime changes in Kenya between 2007 and 2013, in order to establish the crucial variables that have led to the absence of large-scale political violence. This thesis measures changes in democracy, capacity, and repertoire, and all evidence used is contextual, not statistical.

First, to measure democracy I use two indices famous for the validity of their ranking of countries: The Polity IV Index, developed by Ted Robert Gurr, and the Freedom House index. The Polity IV Index ranks states on a scale from -10 to +10, where levels between -10 and -6 stand for very autocratic regimes, -5 to +5 for semi-democratic regimes, and +6 to +10 for very democratic regimes. The Freedom House index ranks countries based on their score on civil liberties and political rights, two variables often associated with liberal democracies. The countries that score highest on the Freedom House Index are in general liberal democracies, while the lowest rankings are reserved for autocratic countries. The original Freedom House ratings rank countries from 1, 'free', to 7, 'not free'. However, in order to make the comparison between the Freedom House data and the Polity IV data a little easier I will reverse the scores of the Freedom House, which means that a score of 7 will mean 'free' while a score of 1 will mean for 'not free' in this thesis.

Since Polity IV and Freedom House data do not specifically address the oft-occurring subsystem of neo-patrimonial politics, I have to rely on other sources in order to see what happens beneath the surface of legal-bureaucratic state institutions. For information on neo-patrimonialist relations I largely rely on newspaper articles from within Kenya, containing information on bribes, inter-personal relations at the top of government, and other forms of patron-client relations beneath the facade of state institutions.

In order to establish the level of capacity in both Kibaki-regimes I will rely on various datasets (World Bank, 2013; United Nations Offices on Drugs and Crime, 2013; Transparency International, 2013; Heritage Foundation, 2013). From these datasets I distil those variables and scores that measure

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state capacity, as defined by Jessica Fortin: Corruption, Infrastructure, Tax Revenue, and Private Property protection. To these variables I will add ‘police capacity’, for a state without a capable police force cannot effectively control the population, resources and activity on its sovereign territory.

Lastly, for information on the contentious repertoire in Kenya I rely heavily on newspaper articles and secondary sources. In these sources I find information on the history of violence as a contentious performance in Kenyan history. As violent contention has been used by and against every President since independence a treasure of information is to be found in the literature.

### 3.3 Limitations and Challenges

Due to the fact that this thesis is the result of a literature study from the Netherlands on the regime in Kenya there are several limitations and challenges I had to overcome before completing my research. First, without travelling to Kenya and interviewing Kenyan politicians the results of this research might appear somewhat superficial and lack the personalised depth much other sociological research may have. Second, as Todd Landman writes “generalizations from single-country studies will always be limited” and therefore the results of this thesis cannot be used to either confirm or dismiss the entire theory of contentious politics. The findings and conclusions of this thesis only apply to the two Kenyan regimes under study.

However, as researches by Theda Skocpol (1979), Herbert Kitschelt (1986), and Bratton and Van de Walle (1997) show, literature based comparative case study researches can reveal valuable insights. The first limitation can be tackled by the use of as many different types of sources as I can find, ranging from newspaper articles to video sources, books, articles, and court rulings. By triangulating as much of the findings of this thesis as possible I hope to overcome the problem of the lack of interviews. Furthermore, although this case study will not allow me to draw any conclusions on the theory of contentious politics, it does help to show how the use of this theoretical framework can be adapted and utilised with investigations on electoral violence in the sub-Saharan African context. If this thesis reveals how democratization and an increase in the capacity of the Kenyan state have

limited the use of violent forms of contention we can try to apply the same framework to other instances of election related violence in new research. Sadly, this does not fall into the scope of this thesis, but in the conclusion I will return to touch upon this subject.

Concluding the methodological section I would like to make one final remark about the limits of this case study. During an internship with AIESEC (which was unrelated to this MA programme) I lived in Kenya for three months, from September to December 2011; living, breathing and enjoying the country and its people. I experienced great inequality while teaching in Mathare slum, Nairobi; I travelled to Kisumu, which is one of the cities in Kenya that experienced the worst of the post-election violence; and had to avoid becoming a victim of petty crime and corruption everywhere I went. More importantly, during this period I decided to apply for this MA program, and on the subject of this thesis. So although this research is carried out from the safety and dullness of the Netherlands, the roots of the thesis definitely grew in Kenya.

# IV

# Regime in 2007

The initial conditions of regime and repertoire shape the type of contentious performance used at a certain time, in a certain place. This chapter will deal with the regime that was in place in Kenya prior to the 2007 elections, which enabled the use of violent contention following the highly disputed election-outcome.. This chapter will provide an overview of the regimes and regime-changes since independence by analysing the changes in democracy and capacity from 1963 – the year the Republic of Kenya became independent from the United Kingdom - to 2007, just before the elections took place that would result in a second Mwai Kibaki victory.

## 4.1 Regime in Kenya - Democracy

When the Republic of Kenya achieved independence from the United Kingdom in 1963, Jomo Kenyatta became the country's first president. One of the last things done by the British government before they handed over control of the country was to install a new constitution. This "Lancaster House constitution" (Githnji & Holmquist, 2012: 57-59) aimed to install an elaborate system of checks and balances that would ensure horizontal and vertical responsibility and control of the government. Horizontal checks and balances would ensure that Montesquieu's separation of powers between an executive, legislative and judicial would be guaranteed, while vertical responsibility would enable control by the citizens of the country, through regular and fair elections. The Lancaster House constitution envisioned a federalist state, with more power for local constituencies than for the central government. This federalist state would enable the checks and balances system necessary in a constitutional democracy, but sadly, the Lancaster House constitution did not last. *Majimboism*, the federal system envisioned by the British (Mueller, 2008: 189), did not live past its infancy. In fact, as

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Gthnji and Holmquist state, “the ink was barely dry on the independence constitution” (2012: 57) when President Kenyatta started to reform it.

Kenya had never been one nation, not prior, not during, and not immediately after colonisation. The system of *majimboism* could have worked in a state where there was a consensus about national unity, but this unity was nowhere to be found in a country that had more than 200 ethnic groups on its territory. Kenyatta, a member of the Kikuyu ethnic group – the largest in Kenya – quickly amended changes to the constitution after he became president, and the idea of a federalist state soon went down the drain (Gthnji & Holmquist, 2012: 57). Instead of a state with checks and balances the first Kenyan African National Union (KANU) governments became highly centralised, with great power delegated to the president. As a result President Kenyatta was able to appoint the cabinet positions, and the most prominent jobs went to members of the Kikuyu community (Bertelsmann Stiftung, 2012: 3). The Kenya African Democratic Union (KADU) challenged the authority of KANU and wanted to recreate the system of *majimbo*. The domination of the Kikuyu community over the others didn't sit well with the other communities, who saw more potential in a federal constitution. Kenyatta did not care much for the opposition, and as a result KADU and other opposition parties were forbidden by Kenyatta. This made Kenya a *de facto* one-party state (Throup, 1993: 373; Branch & Cheeseman, 2008: 6).

In this one-party system led by Kenyatta and KANU Kenya became a prototypical neo-patrimonialist state (Boumaud, 1991: 262). In the words of Richard Sandbrook: “Far from seeking to transform clientelism, Kenyatta has elevated it into his modus operandi of politics by establishing himself as the "Grand Patron" and "Ultimate Arbiter" of factional conflict, whether in central or local political arenas or within organizations” (Sandbrook 1972: 117). Not only Kikuyus benefitted from this system of patronage politics, since leaders of all major ethnic groups except the Luo “were incorporated into this neo-patrimonial system of government, which covered all facets of political and economical activity” (Throup, 1993: 383). This system was viable because of the high commodity prices of Kenya's most important export products such as coffee, tea, and pyrethrum, and a great boost of income through the tourist industry.



Kenyatta passed away in 1978, but before he died he appointed Daniel arap Moi, a Kalenjin who had served as Kenyatta's prime minister until his death, as his successor. The appointment of Moi had much to do with his Kalenjin background; Kenyatta and his ministers believed that a Kalenjin president, controlled by Kikuyu ministers, would in the long run serve Kikuyu interests better than a continued Kikuyu hegemony (Throup, 1993: 380-381). When he came into power in 1978 Moi was viewed by many as a welcome change from his predecessor, since he was young, non-Kikuyu, and he promised political reforms (Gthnji and Holmquist, 2012: 59). His populist style gathered much support in the beginning, but he could not live up to his promises and the high expectations. Under pressure of a weak economic backdrop, gigantic rises in the oil-prices, and limited political resources the successful incorporation of the elites of all the major ethnic groups in the inner circle of politics became untenable. As a result Moi centralized Kenya even more than Kenyatta had done before him and the elitist inner circle that benefitted from public resources shrunk. After a failed *coup d'état* in 1982 Moi amended the constitution which made Kenya now a *de jure* one party state, officially banning all parties other than KANU (Branch & Cheeseman, 2008: 4; Gthnji & Holmquist, 2012: 60).

For ten years Moi held complete control over the government, until "intense donor-pressure" (Hansen, 2008: 2) forced him to allow for multi-party elections in 1992. These elections resulted in large scale state-sponsored violence. In an attempt to keep people from voting for the opposition gangs were hired in the Rift Valley to kill, deter and displace individuals from their home areas, so President Moi could win the necessary votes in the province (Republic of Kenya, 2008: 26) and regain his presidency. The 1997 elections told a similar story of state-sponsored repression and vote manipulation. Finally, after 36 years as the President of the Republic of Kenya Daniel arap Moi handed over his power peacefully when he had to step down because he ended his second term in 2002.<sup>6</sup> For the first time since independence Kenya held free and fair multi-party elections on 27 December 2002.

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<sup>6</sup> When Moi allowed Multi-party elections in 1992 he became subject to the constitution as well. From these elections Moi would have to play by the rules, and after those elections he had two terms: from 1992 to 1997 and from 1997 to 2002.

Source: Kanyongolo, Edge, and Jon Lunn (1998) *Kenya: Post election political violence*, London: Article 19, p. 22.

Mwai Kibaki, a Kikuyu from Nyeri County, soon emerged as one of the leading candidates for presidency when he joined forces with other opposition parties to form the National Rainbow Coalition, or NARC. NARC convincingly beat KANU, the party that had been governing the country since independence and the first transition of power from government to opposition was a fact.<sup>7</sup> Moi's preferred candidate and leader of KANU Uhuru Kenyatta – son of former president *mzee* Jomo Kenyatta – could not convince the electorate. Kibaki's victory was commanding, as more than sixty per cent of the voters elected Kibaki over the other candidates. The grand defeat of KANU was celebrated and the start of Kibaki's presidency was perceived as “the dawning of a new political era” (Anderson, 2003: 331) in Kenya.

As Kenya's first fairly elected president Kibaki seemed destined to change the face of the nation. In fact, during his first term he did indeed break with many of Moi's policies, and “brought back the economy, built infrastructure, collected revenue, and rehabbed schools. Tourists came back, agriculture boomed, and Kenya's exports flourished” (Mutua, 2013). However, the neo-patrimonialism that started during Kenyatta's presidency, and had lessened during Moi's presidency, returned during Kibaki's rule, and after disputes about constitutional reform caused rising tensions within the government the coalition split. As a result of continuing corruption, ethnicized politics, and the split in the coalition Kenya was highly polarized with the 2007 elections coming up (Gthnji & Holmquist, 2012: 64).

### 4.1.1 Development

After having discussed the differences between the three Kenyan presidents prior to 2007, we can provide an overview of the development of democratization. Broadly, at the dawn of the Kenyan state

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<sup>7</sup> According to Samuel Huntington a state classifies as a democracy when free and fair elections have led to two turnovers of power. When a state has proven to be able to deal with multiple regime changes it has shown that pluralism is truly working. As Alex Tomson (2000) points out, a double turnover of power shows that both incumbents and opposition are willing to follow the rules of democracy. However, when Tomson wrote his article only Mauritius, Benin and Madagascar met this double turnover criterion.

- Huntington, Samuel P. (1991) *The Third Wave: Democratization in the Late Twentieth Century*, Oklahoma: University of Oklahoma Press.
- Tomson, Alex (2000) *An Introduction to African Politics*, London & New York: Routledge.

the regime was mostly democratic, with Jomo Kenyatta getting elected into office after the 1963 elections. Soon after he started his first term Kenyatta amended the constitution several times, dismissing the British invention of *majimboism* and centralising the presidential power. In 1969 he made Kenya a *de facto* one-party state, when he forbade other political parties to partake in elections. Before Kenyatta passed away in 1978 he passed on the torch of presidency to Daniel arap Moi. Moi was expected to make changes, due to his young age, populist rhetoric and Kalenjin – versus Kikuyu – heritage. However, he did not change the Kenyan state into a more democratic one; instead, he centralised power even more and after a failed *coup d'état* in 1982 he officially forbade political parties other than his own KANU, making Kenya a *de jure* as well as *de facto* one-party state. In 1992 Moi was forced to allow for multi-party elections, but he repressed the opposition and convincingly won both the 1992 and 1997 presidential elections. Only when his health started to fail him he appointed his successor for the KANU party: Uhuru Kenyatta. Kenyatta and KANU lost the 2002 elections to the opposition, and Mwai Kibaki promised change. The country did indeed become more democratic during his first term, but this had probably more to do with the end of the Moi-era than with the successes of Kibaki's presidency.

The development of democracy is clearly shown in figures A1 and A2 (see Appendix A). Figure A1 represents Kenya's yearly score on the Freedom House 'Democracy Index'. This index, ranging from 1 to 7, measures the 'freedom rating' in a country by combining scores on civil liberties and political rights. Democracy and freedom are closely linked, since without freedom (of movement, of protest, of choice of government) a country can never be truly democratic. A score of 7 fits very democratic countries like Norway, Canada and Australia, while a score of 1 fits very undemocratic countries like Syria, Sudan and Somalia (Freedom House 2013)<sup>8</sup>. The Freedom House project started in 1972, so there are no figures prior to this year. Figure A2 shows the results from the Polity IV project, a project founded by Ted Robert Gurr which focuses on political regime characteristics and transitions. The Polity IV project monitored transitions from 1800 to 2012, so unlike the Freedom House index we can analyse the Polity score from Kenya's independence in 1964.

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<sup>8</sup> I inverted the Freedom House rankings, so that a higher score represents a higher level of democracy; simply to clarify the comparison with the Polity IV index.

Comparing the two figures we can establish a clear development in the level of democracy throughout the history of Kenya since independence. Using the Polity IV index we can establish that after Jomo Kenyatta banned other political parties from contention in 1969 Kenya changed from a semi-democratic country with a score of 0 to an autocratic country with a score of -7. Until Kenyatta's death in 1978 no changes in the Polity score occurred, and Freedom House recorded only a minor variation from 3.5 to 3 and back. When Moi took over power in 1978 we see a small rise in the level of democracy when expectations about this new, fresh face in Kenya politics were high. The high expectations vanished after Moi officially banned all other parties in 1982, which is visible by a drop back to the level of democracy Kenya had during Kenyatta's presidency. According to the Freedom House things got even worse after that, while Polity shows no real change in the following years. However, multi-party elections in 1992 caused a sudden spike in the Freedom House index, changing the level of freedom from 2 to 3.5. This new-found democracy did not last when Moi repressed all opposition, and shortly after Kenya had its worse rankings ever, scoring a 1.5 in 1995. Finally both figures show great improvement in the level of democracy in 2002, when Moi stepped down, the first free and fair elections since independence were held in Kenya, and the opposition led by Mwai Kibaki came into power. In 2007, prior to the elections both indices show a drop in the level of democracy (Polity from 8 to 7, and Freedom House from 6 to 3,5), and the drop in democracy made the use of violent contention a lot more likely after the 2007 elections.

### 4.2 Neo-Patrimonialism 1963-2007

Beneath the institutional democratic layer many African states have another layer of neo-patrimonialist politics (Mills, 2010: 216), and Kenya is no different. When Jomo Kenyatta abandoned multi-party government in favour of a KANU governed one-party state in 1969 he opened the door for interpersonal relations to evolve to a point where almost all the power resided with the president and no distinction between private- and public resources were made. This was evidenced by the fact that

Kenyatta first government had members of all the major ethnic groups in Kenya, but the second term started with only Kikuyu in ministerial positions (Omolo, 2002: 214).<sup>9</sup>

One feature of neo-patrimonialist politics has been clearly evident in Kenya, and that is the close personal relations between the presidents and the vice presidents. Figure A3 represents the various inter-personal relations between the six persons that have held the majority of power from independence to 2007. All these politicians shared various personal relations ranging from family bonds to relationships between Presidents and their VP's. This inner circle of six consists of three presidents – Jomo Kenyatta, Daniel arap Moi and Mwai Kibaki – and three of their VP's – Oginga and Raila Odinga, and Musalia Mudavadi. There have been other VP's, and especially Tom Mboya should be mentioned since he was very influential during the first years of Kenyan independence. What separates this group of politicians from others in Kenya is that each of these individuals has had worked with, or held close personal relations with at least two other Presidents or Vice-Presidents. Furthermore, Mudavadi and both Oginga Odinga and his son Raila have run for president at least once in their careers. This small circle of elite politicians consisted of some of the wealthiest men in the country, and their wealth was not to a small extent achieved through the private use of public resources.

The second feature of neo-patrimonialist politics that was evident were the patron-client relations between the president and his ministers, the ministers and their staff, and politicians and their electorate in general (Brown, 2007: 323). Political ascendancy was largely based on who one knew rather than what one could. The Republic of Kenya might have been a constitutional democracy on paper, but in reality neo-patrimonial government ruled the country. Corruption, as the next section will show, was very high during Kibaki's first term as well.

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<sup>9</sup> Although Vice-President Moi was Kalenjin, not Kikuyu, it is assumed that Moi was a puppet on a string for Kenyatta and thus posed no threat for the Kikuyu hegemony in Kenyan government.

### 4.3 Regime in Kenya – Capacity

Charles Tilly defined capacity as the degree to which actions by the government effects the distribution of populations, resources and activity on their sovereign territory. As stated in the theoretical section of this thesis, high-capacity regimes have a great amount of control and can successfully collect taxes, fight crime and re-distribute income, while low-capacity regimes lack the control to do these things. At the most extreme end of the capacity-spectrum there would be regimes with ultimate control on the one side and regimes with no control at all on the other. The former is the prototypical autocratic state with control over everything and everyone on its sovereign territory, while the latter would not be able to control anything, nor anyone, outside of the governmental circles. No state has been able to exert this kind of extreme control over its population, nor has any state that lacked all control survived for an extended period of time.

So, how can Kenya prior to the PEV be qualified? If Kenya was indeed a low-capacity regime prior to the post-election violence it would confirm Tilly's predictions about the oft-occurring violent contention in low-capacity regimes. In order to answer this question I will take a look at the capacity of the Kenyan regime during Mwai Kibaki's first term as president from 2002 to 2007.

#### 4.3.1 2002-2007

Kibaki inherited the remnants of an autocratic Kenya when he became president in 2002. Moi had governed the country for 24 years, and when the first free and fair multi-party elections were done the first step toward a democratic state had been made. With the transfer of power Kibaki took over control over the Kenyan state, and therewith control over its resources. In order to truly break with the Moi-regime and establish a functioning state apparatus not only the democratic institutions of the state had to change - as it did with the 2002 elections - but the capacity of the Kenyan government as well. As Tilly argued, democratic, high-capacity regimes are less likely to experience regular forms of

violent contention, while undemocratic, low-capacity regimes are very likely to experience regular forms of violent contention.<sup>10</sup>

When Kibaki took over the power in 2002 scores on tax revenue<sup>11</sup>, corruption<sup>12</sup>, infrastructure<sup>13</sup>, and property enforcement<sup>14</sup> (see table 1) were among the lowest in the world, with tax-revenue at a similar level as Zambia and Uruguay, corruption levels comparable to Indonesia and worse than the DRC, Ukraine and Zimbabwe, an infrastructure that ranked among the worst in the world with access to water comparable to Sudan, Mali and Tanzania and a road density similar to Iraq and Guatemala, and protection of private property levelled with countries like Jamaica, Mexico and Saudi Arabia.

Moreover, the police capacity in Kenya was one of the worst in the world. With a capacity of around 100 police officers per 100,000 people, the Kenyan police force was only a third of the strength of the global median of 303.3 per 100,000 (Harrendorf & Smit, 2010: 130).<sup>15</sup> Combining these results into a picture of the capacity of the Kenyan state that Kibaki took over from Moi in 2002, Kenya at that time could only be labelled as a low-capacity state: Corruption and tax revenue ranked

<sup>10</sup> Violent contention can still occur in high-capacity regimes, as the recent conflicts in Libya and Syria showed. In these regimes the pressure-cooker of protests-repression cycles caused tensions to finally erupt in an explosion of violence. This is perfectly in line with Tilly's assumptions: he only states that violent forms of contention will be less likely and occur less in high-capacity regimes than in low-capacity regimes. High-capacity regimes have more control over their population and are therefore able to repress violence before it starts, either through use of the carrot or the stick.

<sup>11</sup> Tax revenue measured as '% of GDP'.

Source: World Bank (2013) 'Public Sector', *World Bank Data Catalog*, <http://data.worldbank.org/indicator/GC.TAX.TOTL.GD.ZS?page=2>.

<sup>12</sup> Corruption measured as 'CPI Score', which relates to 'perceptions of the degree of corruption as seen by business people and risk analysts, and ranges between 10 (highly clean) and 0 (highly corrupt).

Source: Transparency International (2002) *Transparency International Corruption Perceptions Index 2002*, [http://archive.transparency.org/policy\\_research/surveys\\_indices/cpi/2002](http://archive.transparency.org/policy_research/surveys_indices/cpi/2002).

<sup>13</sup> Infrastructure measured as 'Road, density: km/100km<sup>2</sup>', 'Roads, Paved: % of total roads', 'passenger cars per 1,000 population' and 'Improved water source: % of population with access to water'.

Source: World Bank (2013) 'Infrastructure', *World Bank Data Catalog*, <http://data.worldbank.org/topic/infrastructure>.

<sup>14</sup> Property measured as 'degree to which a country's laws protect private property rights and the degree to which its government enforces those laws', with scores between 100 (guaranteed private property protection) and 0 (private protection is outlawed, and all property belongs to the state).

Source: Heritage Foundation (2013) 'Property Rights', *2013 Index of Economic Freedom* <http://www.heritage.org/index/explore?view=by-region-country-year>.

<sup>15</sup> Police Capacity measured as 'Police officers per 100,000 population'. Data from various UNODC and Interpol.

Sources: United Nations Office on Drugs and Crime (UNODC) (2010) 'Criminal Justice System Resources', *Statistics on Criminal Justice*. Retrieved from <http://www.unodc.org/unodc/en/data-and-analysis/statistics/crime.html>.

Interpol (2013b) 'Kenya – The Kenya Police Service', *Member Countries – Africa*. Retrieved from <http://www.interpol.int/Member-countries/Africa/Kenya>.

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among the worst in the world, and the countries who accompany Kenya among these levels like Uruguay, Sudan, Mali and Jamaica can hardly be qualified as high-capacity regimes themselves. Even more, the examples Tilly provided as low-capacity regimes in 2003 were Jamaica, Somalia and Congo (Tilly 2003: 47). All these countries accompany Kenya in the nether-regions of the capacity-scale, so Kenya clearly deserves the label of a low capacity regime in 2002. That that is exactly what Kibaki inherited from his predecessor: a low-capacity regime which according to Charles Tilly could be accompanied with medium- and high levels of violence (ibid., p. 49).

Was Mwai Kibaki, in his first term as president which ended in December 2007, able to transform the Kenyan regime from low to high capacity, thus discouraging the use of violent performances?

Table 1: Capacity in Kenya 2002-2007

<b>KENYA</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>
<b>Tax Revenue:</b> (% of GDP)	17.3	15.8	17.0	18.7	17.4	17.8
<b>Corruption:</b> (perceptions of, ranked 1-10)	1.9	1.9	2.1	2.1	2.2	2.1
<b>Infrastructure:</b>						
<b>Roads, paved:</b> (% of total roads)	14	14	14	14	14	14
<b>Passenger cars:</b> (per 1,000)	-	9	9	9	10	11
<b>Improved Water Source:</b> (% of population w/access to water)	-	53	54	55	56	56
<b>Internet users:</b> (per 100)	-	3	3	3	8	8
<b>Mobile cellular subscriptions:</b> (per 100)	-	5	7	13	20	30
<b>Property Rights Enforcement:</b> (100=every private property is protected, 0= every private property is forbidden)	50.0	50.0	50.0	50.0	50.0	40.0
<b>Police Capacity:</b> (Police officers per 100,000 population)	-	-	-	103.7	99.1	109.4

Sources: World Bank (2013), Transparency International (2013), Heritage Foundation (2013)



It certainly seemed so when Mwai Kibaki started his presidency with a hopeful message of peace and. He vowed to improve Kenya, and in his inauguration speech on 30 December 2002 given in Uhuru Park, Nairobi, (*Uhuru* is Swahili for freedom) he promised to improve the capacity of the Kenyan state:

This is a critical moment in the history of our country. The task ahead is enormous. The expectations are high. The challenges are intimidating. But I know that with your support and cooperation we shall turn all our problems into opportunities.... Corruption will now cease to be a way of life in Kenya.... My government will embark on policies geared to economic reconstruction, employment creation and immediate rehabilitation of the collapsed infrastructure.... my government will use tax revenue transparently, effectively and efficiently.

(BBC, 2002)

In Chapter II of this thesis I explained that capacity would be measured with Jessica Fortin's variables. Strikingly, Kibaki addressed many of these variables in his inauguration speech: Corruption, infrastructure, and tax revenue. The words of Kibaki can be understood as a promise to the Kenyan people that his government would improve the capacity of the Kenyan state. However, as table 1 shows, the capacity of the Kenyan regime hardly changed at all during Kibaki's first term. Tax revenue dropped, rose, and dropped again only to finish at a level 0.5 per cent higher in 2007 than it was in 2002. The level of corruption improved only marginally, but the score of 2.2 out of 10 in 2007 was still bad enough to rank 150<sup>th</sup> out of 179 countries measured by the Corruption Perceptions Index (Transparency International, 2013). With regards to the infrastructure, the only big developments occurred in the level of mobile cellular subscriptions and internet users, but growth in these areas can hardly be attributed to the success of Kibaki's policies, and rather to the development, lower costs, and better availability of these technologies worldwide. The percentages of paved roads, of people with access to water, and of passenger cars per capita developed very marginally, or not at all. The protection of private property remained unchanged for the first four years of Kibaki's rule, only to worsen in 2007 from a score of 50.0 to 40.0, and the police capacity was still well under the recommended level

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In order to comprehend these results better it might be useful to compare the numbers of Kenya with those Jamaica, a country repeatedly categorized as a low-capacity regime by Charles Tilly (Tilly, 2003: 47 and 2006:27; Tilly and Tarrow, 2007:55). The results for Jamaica in the same time span are included in table 2 and Jamaica evidently scored higher on all variables - except for property rights protection, which hovered around the same level as Kenya. The Jamaican government had a higher tax revenue; corruption – although still bad – was better than in Kenya; and Jamaica had a way better infrastructure, with 73 per cent of all roads paved as opposed to Kenya's 14 per cent, water access to 93 per cent of the population, more than ten times as many passenger cars per 1,000 persons, and internet users and cellular phone subscriptions respectively doubling and tripling the Kenyan levels.

Table 2: Capacity in Jamaica 2002-2007

<b>JAMAICA</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>
<b>Tax Revenue:</b> (% of GDP)	-	24.5	25.1	25.3	26.1	27.0
<b>Corruption:</b> (perceptions of, 10= no corruption. 1=only corruption)	4.0	3.8	3.3	3.6	3.7	3.3
<b>Infrastructure:</b>						
<b>Roads, paved:</b> (% of total roads)	-	73	73	73	73	73
<b>Passenger cars:</b> (per 1,000)	-	120	136	135	140	-
<b>Improved Water Source:</b> (% of population w/access to water)	-	93	93	93	93	93
<b>Internet users:</b> (per 100)	-	8	10	13	16	21
<b>Mobile cellular subscriptions:</b> (per 100)	-	60	69	74	84	99
<b>Property Rights Enforcement:</b> (100=every private property is protected, 0= every private property is forbidden)	50.0	50.0	50.0	50.0	50.0	50.0

Sources: World Bank (2013), Transparency International (2013), Heritage Foundation (2013)

#### 4.4 Results

Wrapping up this chapter I can now answer the question: How democratic and capable was the Kenyan state prior to the 2007 PEV?

As Kibaki's victory over Uhuru Kenyatta in the 2002 election showed the Kenyan population can legally influence governmental affairs through voting. However, the regimes of President Jomo Kenyatta and President Daniel arap Moi failed to protect their population from arbitrary governmental actions, and Mwai Kibaki could neither guarantee the safety of his citizens. So even though the Kenyan population could vote and influence politics indirectly through elections, the candidates themselves are still part of a small inner circle of elites and politics does not change radically through the electoral process. Beneath the facade of democratic state institutions Kenya has been a neo-patrimonialist system of interpersonal patron-client relationships. As long as the neo-patrimonial subsystem is not replaced with another, more democratic and transparent system of checks and balances Kenya will not be a democracy in more than ink. In 2007, Kenya was a semi-democratic regime, with democratic state institutions in place and the possibility to regularly change leadership elections, but in reality still governed through 'big man' politics.

Furthermore, comparing the capacity of the Kenyan regime with a known low-capacity regime – Jamaica (Tilly, 2003; 2006) – it cannot be denied that Kenya was a low-capacity regime as well as a semi-democratic one. Kenya scored worse on almost every variable, and corruption was among the worst in the world. As Tilly stated, violent contentious performances are most likely to occur in low-capacity undemocratic regime, closely followed by low-capacity democratic regimes: “we should expect overall levels of violence to be higher in low-capacity regimes, whether undemocratic or democratic” (2003: 52). In 2007 Kenya classified as a low-capacity semi-democratic regime, and therefore according to Tilly highly susceptible to violent forms of contention. We are well aware of the catastrophic aftermath of the 2007 elections in Kenya, and the analysis of this chapter has shown how the regime in Kenya enabled, and certainly not discouraged, the use of violent performances during the post-election violence.

# V

# Repertoire of Violence

Regime type influences what contentious performances can and will be used in a society, but in order to know what performances can be expected in a regime it is not enough to look at democracy and capacity alone. Contentious performances in one low-capacity democratic regime can vary greatly from the next, but generally violent contention will occur more often in low-capacity regimes. What specific performances will be used is influenced by another factor, and an important predictor for the types of contention that can be used in a certain regime is that regime's history of contention. In the words of Charles Tilly (2006: 34): "Although systematic differences in the forms of contentious politics by regime do exist, each specific form lives embedded in the history of its regime". Past forms of contention are kept in a collective memory within a regime, and these performances become the trusted instruments in the toolbox for contention.

The toolbox of contentious performances is described as the repertoire of contention, and it varies from time to time and from place to place (Tilly, 2006: 35). When certain performances have proven to be effective in the past they are adopted into the contentious repertoire, and when they are not effective anymore these performances will be discarded – although discarded performances might be effective at a later time and therefore will never truly disappear out of the repertoire. Past performances can and will be copied, adopted, and modified by contemporary and future generations of political actors, and these performances together constitute the repertoire of collective action.

In the upcoming section I will delve into the Kenyan repertoire of collective action and show how a very violent repertoire set the stage for the eruption of violence that followed Kibaki's controversial re-election in 2007. Without claiming that some ethnic groups are inherently more violent than others, thus venturing into the foggy swamps of primordialist theories, I will investigate the past violence used by and against Kenya's major ethnic groups. This is necessary to understand how and why during the post-election crisis all major ethnic groups became involved in violence against each other (Nmaju, 2009: 83). Remember that contentious politics is defined as "interactions in

which actors make claims bearing on someone else's interests, leading to coordinated efforts on behalf of shared interests or programs, in which governments are involved as targets, initiators of claims, or third parties" (Tilly & Tarrow, 2007: 4), and that when I mention violent contention I mean violent contentious politics, and not any other types of contention. Only violence in which the government of Kenya is either the claim-maker, the object of claims or a third party will be discussed; other violent struggles fall outside the scope of this research. In order to establish the repertoire of collective action in Kenya I provide an overview of the main contentious episodes that were caused by or affected all the major ethnic groups in Kenya. Each of the groups has experienced its share of violent contentious politics which has been well document by others before me. I wish only to provide a succinct summary of violent contention in Kenya, and to establish the available repertoire for political actors in 2007.

### 5.1 Pre-Independence and Kenyatta's Presidency

Years of colonization by the British, during which they governed their colony through an intricate system of divide-and-rule politics which favoured some ethnic groups over others and deliberately instigated violence between those rival groups, "brought about or escalated inter-community conflict" (Hansen, 2009: 2). White settlers forcibly removed Kikuyu peasants from the White Homelands, one of the most fertile areas in the country. After years of building resentment Kikuyu farmers rose in protest against the British settlers, and this protest soon spread throughout the country. Between 1952 and 1960 the Mau Mau rebellion plunged the colony in the worst conflict in its history. The heavy resistance, 'dirty tactics', and organised nature of the Mau Mau caused the British to respond with "eleven battalions, 21,000 police, air force heavy bombers and thousands of African auxiliaries" (Meredith, 2006: 79) in order to contain the uprising. The heavy suppression of the Mau Mau rebellion was seen as a necessary evil by the British, who regarded "Mau Mau as a sinister tribal cult affecting a largely primitive and superstitious people" (ibid.). Mau Mau fighters were Kikuyu, but they committed severe violence against members of their own ethnic group who did not support them.

The Emergency cost more than 13,000 lives, of which less than ten per cent came from the coloniser (Branch, 2007: 292), and the heavy cost it took to protect only a few British colonisers made the Empire rethink their colonial strategy. Soon after the Emergency Kenya became an independent country, and Jomo Kenyatta who was falsely accused and imprisoned by the British on account of being one of the leaders of the rebellion became the first president of the country.<sup>16</sup> The path to independence was impeded with violence.

In 1964 Kenya became an independent country and the Kikuyu Jomo Kenyatta became its first president, yet independence and the end of the Mau Mau rebellion did not end the use of violent contention. Despite the fact that he is seen as the first great leader of the country, Kenyatta is believed to be responsible for the murder of at least three political opponents: Pio Gamma Pinto, Tom Mboya, and former Mau Mau Josiah Kariuki (Republic of Kenya, 2008: 24; Branch, 2011). President Kenyatta presided over a government that was responsible for various human rights violations, such as “killings, torture, collective punishment and denial of basic needs...arbitrary detention of political opponents and activists; and illegal and irregular acquisition of land by the highest government officials and their political allies” (Truth and Justice Reconciliation Commission, 2013: vii).

## 5.2 A Return to Multi-Party Elections

When Moi became president in 1978 state-sponsored violence took a turn for the worse. Faced with a bad economy and a coup attempt in 1982 Moi institutionalised the use of violence against his perceived and real opponents, including arbitrary detentions and routine torture (Republic of Kenya,

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<sup>16</sup> For detailed information on the Mau Mau and the Emergency:

Anderson, David (2005) *Histories of the Hanged: The Dirty War in Kenya and the End of Empire*, London: Weidenfeld & Nicholson.

Green, Maia (1990) ‘Mau Mau Oathing Rituals and Political Ideology in Kenya: A Re-Analysis’, *Africa: Journal of the International African Institute*, 60(1): 69-87.

Kennedy, Dane (1992) ‘Constructing the Colonial Myth of Mau Mau’, *The International Journal of African Historical Studies*, 25(2): 241-260.

Lonsdale, John (1990a) ‘Constructing Mau Mau’, *Transactions of the Royal Historical Society*, 40: 239-26.

Lonsdale, John (1990b) ‘Mau Maus of the Mind: Making Mau Mau and Remaking Kenya’, *The Journal of African History*, 31(3): 393-421.

Sabar-Friedman (1995) ‘The Mau Mau Myth: Kenyan Political Discourse in Search of Democracy’, *Cahiers d’Études Africaines*, 35(137): 101-131.

2008: 24; Branch, 2011: 162). As a result of this increased violence and the continuation of neo-patrimonialist politics his political opponents became increasingly frustrated with the Moi regime. In 1992 Moi was forced by international donor-pressure to allow for multi-party elections, the first since Kenyatta banned KADU in 1968 (Branch, 2011:196). Moi warned the people of Kenya that a change from one-party to multi party politics would result in an outbreak of tribal violence (Africa Watch, 1992: 1). As Moi predicted, violence did indeed erupt with the return to multi-party politics, but far from being spontaneous outbursts of inter-ethnic hatred that Moi suggested would occur, the violence was provoked by Moi's own government. The Kalenjin Moi did not plan on losing his presidency, so in order to secure an electoral victory he sent hundreds of young men armed with bows and arrows to "attack farms inhabited by Kikuyus, Luhyas, or Luos, all communities associated with the political opposition"(ibid., p. 2).

The attacks had a fourfold aim: First, to prove Moi's point about the danger of multi-party elections. Second, to deter members of non-Kalenjin tribes from voting for the opposition. Third, because of the violence many non-Kalenjin were forced from their homes and farms, opening up valuable farmland for Moi's supporters, and finally Kalenjin and Maasai politicians vowed for a return to the politics of *Majimboism*, which would have granted political power in the Rift Valley Province to only these two ethnic groups (ibid., p. 124). For President Moi, the "violence offered a way of pushing out supporters of rival candidates from entire provinces" and "he hoped that voters would exact retribution on the opposition for bringing unnecessary suffering to the country, and so allowed ethnic violence to take hold" (Branch, 2011: 199). The governmental repression lasted well past Moi's re-election in December 1992, and ultimately cost the lives of more than 1,300 people, and a displacement of over 300,000 (Africa Watch, 1992: 123).

The second multi-party elections under Moi's supervision were held in 1997. Once again Moi faced a popular opposition in multi-party elections, and once again Moi did not plan to lose. Moi succeeded to stay in office once again, and the violence that had scarred the 1992 elections remained mostly absent prior and during the 1997 elections. However, merely two months after the Moi's re-election was announced violence 'broke out' in the Rift Valley, largely resembling the patterns of the



1992 election violence: Kalenjin KANU supporters attacked Kikuyu in an attempt to remove them from the fertile lands (Kanyongolo & Lunn, 1998: 1). However, there was one major difference between the 1992 and the 1997 violence: the Mungiki.

### 5.3 Mungiki

Established in 1985, the *Mungiki* ('multitude' in Kikuyu) described themselves as "neo-Mau Mau" (Atieno, 2007: 528). Members could be recognised by their dreadlocks, similar to those worn by the Mau Mau forty years before them. As young descendents of Mau Mau rebellion fighters, the Mungiki emerged from the slopes of Mount Kenya, but when Moi's mobs threatened the livelihood of so many Kikuyus in the rest of Kenya the Mungiki spread throughout the country in an attempt to provide protection for members of their tribe (Katumanga, 2005: 513). Discouraged Kikuyu joined the organisation as it tried to push for reforms of the autocratic Moi regime (Servant, 2007: 522-523), although they never organised as a political party. However, as the Mungiki became large enough to exert control over their territory they turned to a violent, mafia-like style of extortion, threats and 'protection' to ensure the livelihood of its members. In a special episode of his famous television show *Ross Kemp On Gangs*, Ross Kemp visited the Mungiki in the slums of Nairobi and he asked some of their leaders about alleged decapitations, flailed skulls, and dismembered bodies (A Kenya Special, 2008). The accusations were strongly denied by the Mungiki, who instead blamed the government for the mutilations and killings.

Debate on whether the Mungiki are an ultra-violent mafia or a necessary sub-governance in the slums of Nairobi is still a hot topic for debate. In the Kibera and Mathare slums of Nairobi the Mungiki provided jobs for the poor, created a system of law and order in the slums, and provided some form of social security (A Kenya Special, 2008). In the slums the government lacks the capacity or the will to provide these services, and the Mungiki fill the gap left by the government. Furthermore, as the Mungiki adhere to traditional African morals and customs they are fervently against the use of drugs and alcohol, and do not allow members of their organisation to use these substances (Mungiki:

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Dangerous subversives?, 1998). As of today there is still no consensus on whether the Mungiki are a violent, mob-like gang that threaten, torture and murder people into submission, or if they are a proud, African organisation which protects the poor against the negligence of the state.

However, one way or the other the Mungiki are connected to the use of violence as contentious performances: either as subjects or objects. Violence involving the Mungiki was abundant in the early 2000's, ranging from attacks by Mungiki on police stations (Ochieng, 2000), attacks by Mungiki on a church and a school (Okoko, 2000), Mungiki stripping, whipping and humiliating women (Makokha, 2000), and revenge attacks against Mungiki (BBC, 2000). Especially notorious are the beheadings attributed to Mungiki fighters, which was a common practice among the Mau Mau that the Mungiki allegedly emulated. If anything, the violence surrounding the Mungiki shows once more that the use of force is a very useful and valid strategy in the Kenyan political context. The police, Mungiki gang-members, people in the slums of Nairobi; all are accused of committing violence against each other.

So, in contrast to the 1992/1993 violence, when many Kikuyu were surprised by the violence and were left largely defenceless, the spread of the Mungiki organised and armed local youths in an attempt to defend the Kikuyu villages. This worked, but at a large cost: "34 Kikuyus and 48 Kalenjins were killed during these initial attacks and over 200 houses were burnt down. Hundreds of people from both communities were displaced by the fighting, and many of them fled to temporary 'camps'" (ibid., p. 6). Two months after the violence the number of deaths ascended to 127. Although the bulk of the violence 1992 and 1997 was caused by his own supporters, Moi's prediction came true: A return to multi-party politics would indeed be accompanied with a return of inter-tribal clashes. During his presidency, Moi's government was found responsible for human rights violations, including massacres, torture and ill-treatment of prisoners, assassinations, and unlawful detentions (Truth and Justice Reconciliation Commission, 2013: vii).

When Mwai Kibaki took over in 2002 many hoped his presidency would make a change for the better. Sadly, according to the Truth and Justice Reconciliation Commission Kibaki's government

was still responsible for various human rights violations between 2002 and 2008, including “unlawful detentions, torture and ill-treatment; assassinations and extra judicial killings; and economic crimes and grand corruption” ( Truth and Justice Reconciliation Commission 2013: vii).

#### 5.4 The Repertoire in 2007

Violent political contention has taken on many forms in Kenya: extrajudicial killing, torture and instigating election violence caused or ordered by the Presidency; guerrilla warfare by the Mau Mau; extortion by the Mungiki; and overall threats, corruption, and allegations of all these things between all the parties involved. Kenya gained independence after a guerrilla warfare that made the coloniser realise that it would take too much resources to protect their people. Fifty years later Kenyan politics was as violent as ever, and this history of violence has led to a “remarkable normalization of violence within Kenyan political life” (Cheeseman, 2008: 170). The continued the use of violent performances had clumped together to form an especially violent repertoire of contention in Kenya.

The normalization of violence in an extraordinarily violent repertoire of contention, coupled with the low-capacity semi-democratic state, combined the right ingredients for the violent cocktail potpourri that became the 2007/2008 post-election crisis. The Kenyan state was too patrimonialistic to be truly democratic and a small inner circle controlled all the state’s assets. The capacity of the Kenyan state was remarkably low, as the levels of corruption, tax revenue, and the strength of the police force were among the worst in the world. Lastly, the contentious repertoire was extremely violent. So when protests against Kibaki’s re-election started throughout the country and Odinga supporters started attacking Kikuyu, it was a logical consequence of the regime and repertoire in Kenyan in 2007.

The following chapter will unearth the changes that were made in capacity and democracy between the 2007 and the 2013 elections. If the capacity grew and the democracy improved, this could have a positive effect on the evaporation of violence from the contentious repertoire in Kenya.

# VI

# Regime development 2007-2013

## 6.1 Introduction

President Mwai Kibaki was not allowed to run in the 2013 elections, since he had served the legal maximum of two terms. Prime-minister Raila Odinga would give the Kenyan voter's another chance to vote on him to be the country's president, after he had lost elections twice before. Odinga hoped he would emerge victorious on his third try, trusting old adage 'three time's a charm'. Odinga and his most important opponents met during Kenya's first ever presidential debate, hosted on 12 February 2013 on KTN. The debate featured Raila Odinga, Musalia Mudavadi, Martha Karua, Peter Kenneth, Jame ole Kiyapi, Mohamed Abduba Dida, Paul Muite, and lastly the most disputed candidate, and Raila's most important challenger: Uhuru Kenyatta.

As the son of former president Jomo Kenyatta Uhuru was one of Kenya's wealthiest men, and at a young age already experienced in Kenyan politics. After he lost the 2002 elections when he was Moi's appointed apprentice, Uhuru tried again to become president of the country. However, there was a dark cloud hanging over Uhuru's candidacy, since the ICC had pressed charges against Kenyatta, charging him with crimes against humanity committed during the post-election crisis, including the instigation of murder, deportation, and rape (International Criminal Court, 2013). Despite these allegations many Kenyans wanted Kenyatta – and his running mate and co-inductee William Ruto – to run for president in 2013 (Poll Finds Citizens Want Uhuru and Ruto to Vie, 2012). Only three weeks before the 4 March 2013 elections the High Court gave Kenyatta and Ruto the green light to run in the presidential elections despite their indictment to the ICC (Legal and Judicial Affairs; Court Gives Hague Suspects Green Light to Run in Polls, 2013).

Despite his alleged involvement in the post-election crisis support for Uhuru grew quickly. As figure B1 (Appendix B) shows, two years prior to the elections Uhuru trailed Odinga as the favourite presidential candidate by some twenty per cent, but one and a half year later, in September 2012,

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Odinga's lead in the polls had shrunk to only six per cent. The last poll before the March 2013 elections showed that Uhuru had passed Odinga as the favourite to win the elections, although by a minimal margin. In order to avoid a second round of voting either one of the candidates needed to win more than fifty per cent of the vote, a tough task given how close the two opponents were. Although the polls predicted a victory for Uhuru, the elections were going to be very close.

In the meanwhile, there were grave concerns about the electoral process in Kenya. The precedent of every multi-party election since 1992 had shown that Kenyan elections and violence are a common combination, and the process of voting is usually accompanied by extortion and bribes (Kenya for Peace with Truth and Justice, 2012: 12). With election day fast approaching the Independent Electoral and Boundaries Commission (IEBC) had to acknowledge that the new vote tallying system was not up to speed, as the system they installed would count not only the valid but also the non-valid votes cast (Ngirachu & Ongiri, 2013). Amid fears of a repeat of the 2007/2008 crisis "Kenya cannot afford to have results marked by the many errors and contestations that accompanied the 2007 presidential elections" (Kenya for Peace with Truth and Justice, 2012: 17). Amidst high nerves and high tensions the vote tallying began on 4 March 2013.

The General Elections were the most intricate and complex elections ever in Kenya, as voters had to cast their votes on candidates for six different functions – among them president, deputy president, and female representative – and votes had to be cast for all six categories for a ballot to be valid (Brownswell, 2013; Marsgroupkenya, 2013). During the vote-counting process everything seemed to go wrong. Through the breakdown of this new system of vote-transmission the results came in much slower than expected (Gettleman, 2013b). A bug cost every rejected vote to be multiplied by eight, leading to "338,593 rejected votes out of a total of 5,653,852 votes cast" (Nation Reporter, 2013). A lack of electricity caused laptops used at some polling station to run out of power. Eventually, the high-tech voting system that was put in place to prevent vote-rigging and restore faith in the electoral process in Kenya fell short of its goals and had to be replaced by old-fashioned paper ballots (Gatehouse, 2013). The vote count that should have taken only 48 hours lasted almost an entire week, and when Uhuru Kenyatta was finally announced as the winner of the elections it was with a

margin of 50,07 per cent of the vote: only 8,100 votes above the threshold needed to avoid a second round (Raila Odinga files Kenya election appeal, 2013).

Raila Odinga was far from pleased, as it must have felt like the presidency was snatched away from him for the second straight time. Although Odinga only received 43 per cent of the vote, the extremely small 0,07 per cent margin Kenyatta had to avoid a second round seemed to convenient to be trusted, and Odinga's camp felt the elections were rigged once again. Raila refused to accept Uhuru's victory without a fight, so he went to the Supreme Court to plead his case. According to Odinga "the IEBC neglected, refused, or failed to act", and his lawyers spoke of "allegations of vote manipulation, as well as problems with the registration of voters and an electronic vote counting mechanism" (Raila Odinga files Kenya election appeal, 2013). Based on the chaos that accompanied the tallying process he had reason to complain. However, the last time Odinga contested an election outcome it plunged the country into chaos, and led to the greatest crisis in Kenyan history.

The Supreme Court had to find out if votes went missing, if the problems were rigged by Kenyatta's people, or if instead Kenyatta had won the elections in a free and fair way. Three weeks after the election results had come in the Supreme Court had assessed the charges, and ruled that

the evidence, in our opinion, *does not disclose any profound irregularity* in the management of the electoral process, nor does it gravely impeach the *mode of participation* in the electoral process by any of the candidates who offered himself or herself before the voting public. It is *not evident*, on the facts of this case, that the candidate declared as the President-elect had not obtained the basic vote-threshold justifying his being declared as such.

*Raila Odinga & 5 others v Independent Electoral and Boundaries Commission & 3 others*, Petition  
5, 3 & 4 § 306, 2013

The Supreme Court found no evidence that Uhuru's victory was the result of fraud and decided that Uhuru Kenyatta's election was free, fair, transparent and credible (Ogemba, 2013). Finally, a full month after the elections on 9 April 2013, Uhuru Kenyatta was sworn in as the Fourth President of the Republic of Kenya.

Despite the problems that accompanied the elections the process was largely peaceful. The only incidents on election day took place as the Mombasa Independent Council attacked police officers in Mombasa town, and after the elections protests in Kisumu got out of hand when the police used live round and killed two protesters. Still, compared with the mayhem that many expected after the last elections which was exacerbated with the rising tensions prior to the elections, the faulty tallying process, the extremely tight outcome and the consequential Supreme Court's ruling, the 2013 elections were the most peaceful chapter in the electoral history of Kenya. So why did these elections remain so peaceful despite the extreme likelihood of violent contention? Did Kenya improve its democracy and capacity, thus discouraging the use of violent contention? In order to find out I will analyse the democratization and improvements in capacity between 2007 and 2013.

## 6.2 Democracy 2007-2013

Mwai Kibaki's second term as president began with his disputed re-election that set in motion the events of the post-election crisis. In an attempt to reconcile the country a new government was forged: The Grand Coalition, with Kibaki as the nation's president and Raila Odinga as his prime-minister, a newly invented position specifically for this coalition. After the PEV Kenya needed a government that was strong, stable and able to survive for the entire term. If Kenyan political history was any precedent this was going to be a tough task, since rapid shifts in alliances occurred more often than not.

Kibaki's first term had been scarred after an attempt to revise the constitution, a relic that had outlived both Kenyatta's and Moi's presidencies. The first constitution of Kenya was implemented as the Republic of Kenya became an independent state in 1963. The constitution that should have been the bedrock of the new nation instead "served principally as a tool that presidents Jomo Kenyatta and Daniel arap Moi and their party, the Kenya African National Union (KANU), could use to consolidate and expand their powers" (Kramon & Posner, 2011: 2). With various amendments through the decades Kenyatta and Moi were able to create a highly centralized public administration with the concentration



of power in the hands of the president and a one-party, neo-patrimonial political system (Cottrell & Ghai, 2007: 3). It was not until international donors pressured Moi to open up the country with multi-party elections in 1992 that the process of constitutional reform really started. The struggle to create a new constitution lasted for two decades and an national referendum in November 2005 showed that the Kenyan voter would not accept just any constitutional reform proposal. Kenyan voters overwhelmingly rejected Kibaki's proposal for the new constitution, and its dismissal was as much a sign of distrust in the Kibaki government as discontent with the proposal itself:

the exercise turned into a popular vote of confidence in the government as a whole, and was probably a reflections as much of frustration with that government and especially its record on corruption – for by this time it was becoming clear that the Kibaki government is just as adept at this as its predecessor.

Cottrell & Ghai, 2007: 16

After the failed constitutional reform, and his disputed re-election in 2007 that plunged the country into chaos, Mwai Kibaki needed a successful second term in order to save his legacy. The Grand Coalition Government provided an opportunity for Kibaki to reconstruct his image, and with support of Raila Odinga he wanted to created a new constitutional reform proposal. A good design was needed to convince the Kenyan voter, and the Committee of Experts (CoE) was charged with writing a coordinated constitution, by pulling together elements of three previous constitutional reform drafts (Kramon & Posner, 2011: 6). The new constitution, which would change Kenya from a unicameral to a bicameral democratic state with a Senate to check decisions of Parliament and President, was approved by parliament of 1 April 2010. In a national referendum on 4 August 2010 66,9 per cent of the 9,1 million voters voted in support of the new constitution, showing massive support for the change in government (Otieno, 2010). On 27 August the new constitution was promulgated, and a new era in Kenyan politics could finally begin.

With the new constitution in place, had Kenya finally managed to cross the bridge from semi-democracy to democracy?

Tilly and Tarrow asserted that a state has to have the following elements in order to be seen as a democracy: “broad, relatively equal political participation combined with binding consultation of political participants on governmental personnel, resources, and policy plus protection of political participants from arbitrary action by governmental agents” (2007: 66). The constitutional reforms addressed all these elements: It shifted the balance of power from the president to the parliament (Kramon & Posner 2011: 12), put control over state resources in the hands of the new Senate (Republic of Kenya, 2010: 60), agreed on the protection of basic human rights – including the protection against arbitrary governmental action and of other political rights (ibid., p. 32-36). Furthermore, an independent anti-corruption commission was created in an attempt to combat the endemic corruption in the government (ibid., p. 51), and political parties were no longer allowed to affiliate with ethnicity but instead are now required to have a national character, and to promote and uphold national unity (ibid., p. 57). These changes in the constitution brought forth a democracy, at least on paper. Figure B2 (Appendix B) shows that democratization did not stay theoretical, but had a practical effect in the level of democracy in Kenya.

Remember how ‘Polity Score’ ranks states on a scale from -10 to +10, where levels between -10 and -6 stand for very autocratic regimes, -5 to +5 for semi-democratic regimes, and +6 to +10 for very democratic regimes. The ‘Freedom Rating’ measures civil liberties and political rights, and ranks states from 1 – least free – to 7 – most free. The scores mirror the change in democracy set in motion by the new constitution, as both indexes show a rise in 2010. The polity score rose from 7 to 8, putting Kenya in the same territory as countries like Australia, Belgium, Brazil, Indonesia and South Korea. Although the Freedom House score is not quite as positive as the Polity IV score, it still shows that after the constitutional reforms Kenya scored a 4.5 instead of a 4, a slight improvement albeit far removed on the freedom scores from the countries mentioned above. In the Freedom House rankings Kenya remains closer to countries like Bolivia, Haiti and Tanzania (Freedom House, 2010). Even more so, in 2013 Kenya experienced a drop in Freedom Rating from 4,5 to 4. According to the report, “Kenya’s civil liberties rating declined... due to increased ethnic and religious tensions and incidents of violence throughout the country in advance of 2013 elections, driven in part by the heavy-handed

counterterrorism efforts of the police and security services” (Freedom House, 2013). However, as I mentioned above, both indices fail to account for patrimonial realities beneath the legal-bureaucratic state institutions.

### 6.3 ‘Big Man’ Politics

Beneath the slight improvement in democracy that showed on the surface, the Grand Coalition was not able to change its neo-patrimonial colours. The election of Uhuru Kenyatta provided a clear illustration of how neo-patrimonial politics continued after the post-election violence. It is interesting to show how more dense the web of inter-personal relations at the top of Kenyan politics got with the elections of President Uhuru Kenyatta and Deputy President William Ruto. The original sextet of former presidents Kenyatta, Moi and Kibaki, and both Odinga’s and Mudavadi, became an octet with the new president and deputy president. Both Uhuru and Ruto were not new to this elite group of men, as shown by figure B3 (Appendix B). Uhuru is the son of *Mzee* Jomo Kenyatta; he has been minister for local government for Moi, minister of trade and finance for Kibaki; he joined the Orange Coalition of Raila Odinga to oppose constitutional reforms in 2005; and Mudavadi and Moi both supported Uhuru during the 2002 and 2013 elections. William Ruto had been part of Youth for KANU ’92 (YK’92) that supported the presidency of Daniel arap Moi in 1992; he was part of the Orange Coalition; backed Raila Odinga during the 2007 elections; was the minister of agriculture under President Kibaki, and became Uhuru’s running mate and Deputy President. This widened circle of Presidents and VP’s/DP’s made the web of neo-patrimonial politics more dense, and instead of allowing a fresh breath of air into the most powerful group of individuals in Kenyan politics the ranks became even more closed. The relations at the top of the Kenyan government remained highly personal, and power was still not shared outside of the inner-circle.

Patron-client relations did not change much during the government of the Grand Coalition as well. The new government wanted to remove the corrupt and patrimonial aspects from the state-

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structure and democratize Kenya, but ironically, “with 40 cabinet ministers, the Grand Coalition government has been described as the most wasteful since Kenya’s independence” (Amadi, 2009: 36). This becomes even more apparent when MP’s voted in a legislation in 2010 that would raise their salaries with more than a third extra, making them some of the highest paid MP’s in the world. The British Guardian compared the figures of Kenyan MP’s with their colleagues in the UK, France, Sweden, Italy, the US and Australia: all high-capacity democratic states (Rice, 2010). Salaries in those countries lay between £4,260 a month and £6,205 a month, with US congressmen receiving £9,621 a month. The 40 Kenyan MP’s? They now received a salary of £9,700 a month, which is even more striking when compared to the monthly minimum wage in Kenya: £50 a month in cities and £25 for farmers (ibid.). Politicians rewarded themselves with extra finances, and they were more busy with their own self-enrichment than with the checking and balancing the Kenyan government.

The Kibaki government clearly could – or would – not solve the structural democratic deficit in the country. Neo-patrimonialism is a problem for Kenya, and not one that will be solved any time soon:

In these circumstances, it is not far-fetched to say that the main remedy to the problem lays in the structure of the government. So long as this remains unchanged, it is unlikely that neo-patrimonialism will reduce in Kenya in the foreseeable future.

Amadi, 2009: 37

## 6.4 Capacity

The Grand Coalition started its government of Kenya in April 2008, and had inherited a low-capacity country devastated by internal conflict. In order to improve upon the previous governments, and prevent a re-emergence of inter-ethnic violence in the future, not only changes in democracy needed to be made. If Kenya stayed a low-capacity democratic regime –instead of high-capacity democratic - it would still be susceptible to medium levels of violence (Tilly, 2003: 52). In low-

capacity regimes – which Kenya was prior to the post-election crisis – Tilly expects “widespread spiralling of initially nonviolent conflicts into violence – because government agents do not serve as effective third-party enforcers of agreements, much less as inhibitors of escalation” (ibid.). Were Kenya to change from low-capacity to high-capacity the likelihood of contentious violence would strongly diminish, as in high-capacity democratic regimes low levels of violent contention and only highly selective deployed violence by governmental agents can be expected (ibid.). Democratization would not solve the issue of violent contention by itself, but needed to be accompanied by a growth in capacity if Kenya wanted to be rid of violent contention once and for all.

So how did the capacity in Kenya develop during the government of the Grand Coalition? In order to know if Kenya has indeed completed the transformation from low- to high-capacity regime we compare the figures of Kenya with a low-capacity regime and a high-capacity regime. The low-capacity example will be Jamaica once again, since we already know how Kenya stacked up against that familiar low-capacity regime in 2007. The high-capacity regime that Kenya would need to emulate is Australia, one of the high-capacity democratic regimes according to Tilly (2003).

When analysing the three states (see Table 3, Table 4, and Table 5) a few things stand out. First, Jamaica collects a higher percentage of its GDP as tax income than both Kenya and Australia, thus scoring higher than the high-capacity regime. This could probably be explained by the higher GDP in Australia, which enables the Australian government to collect a lower percentage of the income but still reach a high overall level of tax-income. Except for ‘tax revenue’ and ‘roads, paved’ Australia scored the highest of the three countries in every other category, as should be expected from a high-capacity democratic regime. Corruption was very low; every person in Australia had access to clean water; cellular subscriptions per hundred persons were over one hundred, indicating that many people had more than one subscription; property rights enforcement was higher than in Jamaica and Kenya; and Australia had around 250 police officers per 100,000 people. In other words, measured in my variables of capacity Australia truly was a high-capacity regime between 2007 and 2013.

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The comparison between Australia and Kenya is definitively a crooked one, but even compared with Jamaica Kenya still looks poor. Kenya scores lowest in all categories: tax revenue; level of corruption; quality of the infrastructure; property rights enforcement; and police capacity. At all fronts Kenya scored worse than Jamaica in 2007, and continued to do so in 2013. Clearly Kenya cannot be defined as a high-capacity regime, and even medium-capacity is way out of its reach. During Kibaki's second term the corruption and infrastructure hardly improved at all, and private property protection and police capacity actually worsened. The Kenyan police force has the reputation of being one of the most undermanned in the world, and the number of police officers per 100,000 people even worsened during the Grand Coalition. Even worse, the Kenyan Police Forces was not only severely underequipped to deal with the magnitude of the post-election violence, but much of the violence was actually contributed to the police forces (Okia, 2011). During the PEV 405 people were killed by gunshot wounds, which accounted for 35.7 per cent of all casualties during the crisis (Republic of Kenya, 2008: 311). Let me repeat: more than a third of all deaths related to the PEV died from gunshot wounds (continues at p. 73).

Table 3: Capacity scores in high-capacity democratic Australia, 2007-2013.

<b>AUSTRALIA</b>	2007	2008	2009	2010	2011	2012	2013
<b>Tax Revenue:</b> (% of GDP)	24.2	24.3	22.2	20.7	20.6	-	-
<b>Corruption:</b> (perceptions of, ranked 1-10)	8.6	8.7	8.7	8.7	8.8	8.5	-
<b>Infrastructure:</b>							
<b>Roads, paved:</b> (% of total roads)	41.6	41.6	41.6	43.5	-	-	-
<b>Passenger cars:</b> (per 1,000)	544	551	556	556	-	-	-
<b>Improved Water Source:</b> (% of population w/access to water)	100	100	100	100	-	-	-
<b>Internet users:</b> (per 100)	69.5	71.7	74.2	76.0	79.0	-	-
<b>Mobile cellular subscriptions:</b> (per 100)	101	103	101	101	108	-	-
<b>Property Rights Enforcement:</b> (100=every private property is protected, 0= every private property is forbidden)	90.0	90.0	90.0	90.0	90.0	90.0	90.0
<b>Police Capacity:</b> (Police officers per 100,000 population)	240.4	243.6	247.4	260.5	-	-	-

Sources: World Bank (2013), Transparency International (2013), Heritage Foundation (2013), UNODC (2010)

Table 4: Capacity scores in low-capacity democratic Jamaica, 2007-2013

<b>JAMAICA</b>	2007	2008	2009	2010	2011	2012	2013
<b>Tax Revenue:</b> (% of GDP)	27.0	27.3	27.1	26.5	25.6	-	-
<b>Corruption:</b> (perceptions of, ranked 1-10)	3.3	3.1	3.0	3.3	3.3	3.8	-
<b>Infrastructure:</b>							
<b>Roads, paved:</b> (% of total roads)	73,3	73,3	73,3	73,3	-	-	-
<b>Passenger cars:</b> (per 1,000)	140	140	146	144	-	-	-
<b>Improved Water Source:</b> (% of population w/access to water)	93	93	93	93	-	-	-
<b>Internet users (per 100):</b>	21.1	23.6	24.3	27.7	31.5	-	-
<b>Mobile cellular subscriptions:</b> (per 100)	99	100	108	116	108	-	-
<b>Property Rights Enforcement:</b> (100=every private property is protected, 0= every private property is forbidden)	65.5	65.7	65.2	65.5	65.7	65.1	66.8
<b>Police Capacity</b> (Police officers per 100,000 population)	-	-	-	450.0	-	-	295.6

Sources: World Bank (2013), Transparency International (2013), Heritage Foundation (2013), UNODC (2013), Interpol (2013a).

Table 5: Capacity scores in low-capacity Kenya 2007-2013

<b>KENYA</b>	2007	2008	2009	2010	2011	2012	2013
<b>Tax Revenue:</b> (% of GDP)	17.8	18.8	18.8	19.5	19.9	-	-
<b>Corruption:</b> (perceptions of, ranked 1-10)	2.1	2.1	2.2	2.1	2.2	2.7	-
<b>Infrastructure:</b>							
<b>Roads, paved:</b> (% of total roads)	14	14.6	14.3	14.3	-	-	-
<b>Passenger cars:</b> (per 1,000)	11	12	13	14	-	-	-
<b>Improved Water Source:</b> (% of population w/access to water)	56	57	58	59	-	-	-
<b>Internet users:</b> (per 100)	8	8.7	10.0	14.0	28.0	-	-
<b>Mobile cellular subscriptions:</b> (per 100)	30	42	49	62	67	-	-
<b>Property Rights Enforcement:</b> (100=every private property is protected, 0= every private property is forbidden)	40.0	35.0	30.0	30.0	30.0	30.0	30.0
<b>Police Capacity</b> (Police officers per 100,000 population)	109.4	117.2	104.2	-	-	-	79.5

Sources: World Bank (2013), Transparency International (2013), Heritage Foundation (2013), UNODC (2010), Interpol (2013b)

Notes: World Bank and Transparency International have no available data after 2011

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This figure is massive and disturbing, especially since

it is the view of the Commission that since no evidence to the contrary was ever shown, police were responsible for all cases of shooting. The Commission concludes that the disparity in percentage terms of the number of those shot, as a fraction of the total deaths in each province, may have a correlation with the preparedness the police had to use ammunition on people. Evidently, this varied from province to province, with Western province exhibiting the most robust use of ammunition, followed by Nyanza. It appears that police in different provinces did not respond uniformly with regard to the use of force, even when faced with similar situations.

Republic of Kenya, 2008: 311

Other accusations against the police during the crisis ranged from failing to respond to distress calls, to robbery, maiming, raping, and taunting Kikuyu with the phrase *kazi iendelee* – Swahili for “let the work continue” (ibid., p. 56). Kikuyu were called ‘bean’ (*maharagwe*), ‘enemy’ (*bunyot*), and ‘wild grass’ (*sangara*) that needed to be cut down (ibid., p. 63).

Not only did the Kenyan police contribute to the PEV, the police has been a problematic institution in daily life as well. The Kenyan Police Service is often ranked as the most corrupt institution in Kenya (Okia, 2011: 268). I experienced it myself during my time in Nairobi in the fall of 2011. *Matatus* are 14-passenger mini-buses, but all over the country the *matatus* are crammed to the brim with people – my personal record was with twenty-one others – and seatbelts are nowhere to be found in most of them. However, once we were driving past Nyayo-Stadium in Nairobi and a police-officer pulled us over, ordered everyone to get out of the vehicle and we were summoned to move away toward another *matatu* station. The driver had to stay and received a fine on account of the missing seatbelts. After paying the police officer a bribe the driver could continue his daily routine.

Combining the results on capacity we cannot state that the Kenyan state succeeded to increase its capacity between 2007 and 2013. In fact, Kenya is nowhere near the high capacity needed in order



to create a stable and truly liberal democracy. Kenya thus continues to be a low-capacity state, very susceptible to high- to medium levels of violence.

## 6.5 Findings

When the new constitution was implemented in August 2010 Kenya finally took a step forward from the dogmatic and autocratic rule of Jomo Kenyatta and Daniel arap Moi. With this new constitution came a renewed sense of national pride, and the desire to create a peaceful Kenyan state. Changes as these do not happen overnight, but the acceptance by all parties of the new constitution and the peaceful referendum that voted it in, changed Kenya for the better. Following Tilly and Tarrow, when “breadth, equality, consultation, and protection join in the same regime, they provide a favourable environment for social movement activity. In general, they guarantee a more open political opportunity structure than their opposites” (Tilly & Tarrow, 2007: 66). Or, as Tilly wrote in 2003, “broadening of political participation, extension and equalization of political rights, regularization of nonviolent means for making claims, and increasing readiness of third parties to intervene against violent resolution of disputes over claims all dampen the process that generate violent contention” (Tilly 2003: 44).

Democratic reforms seemed apparent, but beneath the democratic state institutions the Kenyan government remained a neo-patrimonialist institution, awarding friends, family and relatives over capable candidates, with corruption still the *modus operandi* in much of the daily life. Despite the constitutional reforms that seemed to democratize Kenya, the country in fact remained a semi-democratic country at best. The capacity of the Kenyan government remained very low between 2007 and 2013, and despite slight improvements corruption, infrastructure, property protection, and police capacity still ranked among the worst in the world. The regime that had let the disputed re-election of Mwai Kibaki turn the country in a mosh-pit of inter-ethnic violence, did not change for the better during the Grand Coalition Government. As chapter IV showed, the 2007 regime was – at best – a

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semi-democratic, low-capacity regime. Despite the constitutional reform that promised to decentralize the government and to open up the state's resources to the Senate, the reform did not attack the neo-patrimonial shadow state beneath the institutional facade of democratic state institutions. Therefore, when Kibaki's regime came to an end with the March 2013 elections, the final score on the regime remained unchanged: Kenya was still a semi-democratic, low-capacity state.

I repeatedly discussed how semi- or undemocratic, low-capacity regimes are highly susceptible to violent forms of contention. Kibaki could not change the regime type, and the violent repertoire of contention that followed from the precedent of the 1992, 1997, 2002 and 2007 elections seemed to predict another violent outburst during the 2013 elections. But, except for an attack by the Mombasa Republican Council - a secessionist group that wants to change the coast province in an independent state – that killed six police officers on election day (Gettleman, 2013a), and protests in Kisumu that spiralled out of control and left two protesters dead and twenty-four injured (Kenya; Poll Verdict Gets Mixed Reaction, 2013), the episode of the 2013 elections remained mostly peaceful. There clearly was a change in the repertoire, which went from violent to non-violent within a time-span of five years. However, changes in the levels of democracy or capacity cannot account for this change, so the hypothesis I had about the importance of the initial conditions proposed by Tilly in the prevention of election-violence has proven false.

# VII

## Conclusion

When president Moi was forced to organize multi-party elections in 1992 he warned that a return to multi-party politics would lead to large scale inter-tribal violence. In 1992 the first multi-party elections in Kenyan history were held amidst large-scale, government instigated violence between Kalenjin and Kikuyu. In 1997 the elections witnessed similar large-scale inter-ethnic violence as before, but this time the Kikuyu were prepared and fought back. Consequently, casualties were high for both ethnic groups. In 2007 the general elections led to the bloodiest crisis in Kenya's history, as more than 1,100 people lost their lives and more than 300,000 people had to flee their homes. Although the violence that accompanied the 1992 and 1997 elections was allegedly instigated by Moi, who did not want to give up the presidency, his prediction came true. Every multi-party election in Kenya since 1992 was accompanied by some form of violent contention, so when the 2013 elections were set to begin the entire country held its breath amidst fears of new election-violence.

The sigh of relief was therefore great when the 2013 elections passed without any major violent incidents. Many assessments prior to the elections predicted another outbreak of large-scale violence, and were happily surprised to find out they were wrong. This thesis focused on the discrepancy between the history of violence and the violent expectations for the 2013 elections, and the contrastingly peaceful process that happened instead. In an attempt to analyse the how and why of the lack of violence during the 2013 elections I turned to the theory of contentious politics. More specifically I wanted to investigate the changes in democracy and capacity between 2007 and 2013, which according to Charles Tilly could have a great influence on the repertoire of violence. Tilly's assumption, which I followed, was that low-capacity regimes are generally more susceptible to violent contentious performances than high-capacity regimes, and that undemocratic regimes are more likely to experience violent conflict than democratic regimes. The Kenyan government had not been able to prevent the violent contention of the post-election crisis in 2007/2008, and in my opinion this could to a large extent be explained by the low-capacity and semi-democracy of the Kenyan regime. The state of the Kenyan democracy, which was tainted with patrimonial politics behind a facade of legal-

bureaucratic state institutions, was another indicator that the post-election violence was almost unavoidable in 2007. So, when the 2013 elections passed without the anticipated violence I wanted to find out if and how democratization and an improvement in capacity had affected the lack of violence. My research question was therefore the following:

*How did changes in democracy and capacity of the Kenyan regime following the 2007/2008 post-election violence affect the availability of a violent repertoire of contention for political actors during the episode of the 2013 general elections?*

Despite my expectations that the Kenyan state had changed for the better through improvements such as the new constitution in 2010, a coalition government between two former adversaries, and improvements in the infrastructure, the levels of democracy and capacity did not improve as much as I expected.

The democratic aspect of the Kenyan regime underwent plastic surgery with the new constitution that was voted in by a convincing majority in a national referendum in 2010. This new constitution vowed to address several problems with the Kenyan state: corruption would be dealt with, presidential power would be decreased in favour of a new Senate, and Kenya would become a true liberal democracy. Directly following the promulgation of the new constitution it seemed as though Kenya had indeed become a democratic state. However, neo-patrimonial politics continued as if nothing changed, and MP salaries rose to the highest levels in the world. Kenya did not become much more democratic between the 2007 and 2013 elections, so the lack of violence during the contentious episode of the 2013 elections cannot be explained by an improvement in democracy.

Improvement in capacity has been a similar story: In 2007 Kenya was one of the lowest-capacity regimes in the world, and Kenya scored lower than Jamaica on every indicator. Charles Tilly repeatedly mentioned Jamaica as a low-capacity regime, so Kenya definitively was one. It would appear that when one hits rock-bottom there is no way but up, but the Grand Coalition between Kibaki and Odinga could not fulfil its promises, and the capacity of the Kenyan regime did not improve as

## The State of Kenya

much as it could have. The only real improvement it saw was in tax revenue, but all other variables increased only marginally.

Summarizing the results of this thesis, the regime in Kenya prior to the 2007 elections was low-capacity and semi-democratic. The regime in Kenya prior to the 2013 elections was equally low-capacity and semi-democratic. In other words, improvements in capacity and democracy could not have affected the availability of violent performances for political actors during the 2013. The absence of violence in 2013 has been the result of other factors, and further research will have to identify what caused the least violent multi-party elections in Kenya since 1992. Ending this thesis, I would like to make one suggestion, which is related to democratization but did not fit in this thesis.

I expect that the importance of Raila Odinga's role should not be underestimated. His defeat in 2007 set in motion the events of the post-election crisis, but when he was defeated in 2013 no violence occurred. One of the reasons for the absence of violence could be the fact that Odinga vowed to respect the Supreme Court's ruling. I would like to end this thesis with the statement Odinga made before he went to the Supreme Court to protest Kenyatta's victory, and which could have had a major influence on the absence of violent contention following Kenyatta's disputed victory.

*Any violence now could destroy this nation forever. That would not serve anyone's interest. Please therefore look upon each other as brothers and sisters, whose national bond should not be broken.*

Raila Odinga, 2013

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# Appendices

## Appendix A: Figures IV

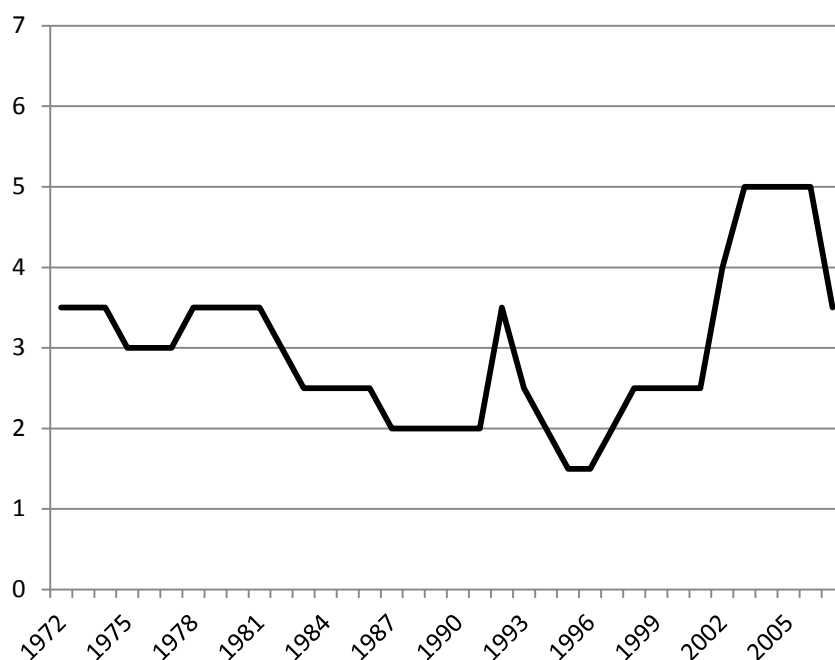


Figure A1: Freedom House Ratings for Kenya, 1972-2007

*Source:* Freedom House (2013)

*Note:* I inverted the original Freedom House Ratings, so as to better compare the picture with the Polity IV score. A score of 1 means 'unfree', while a score of 7 means 'free'

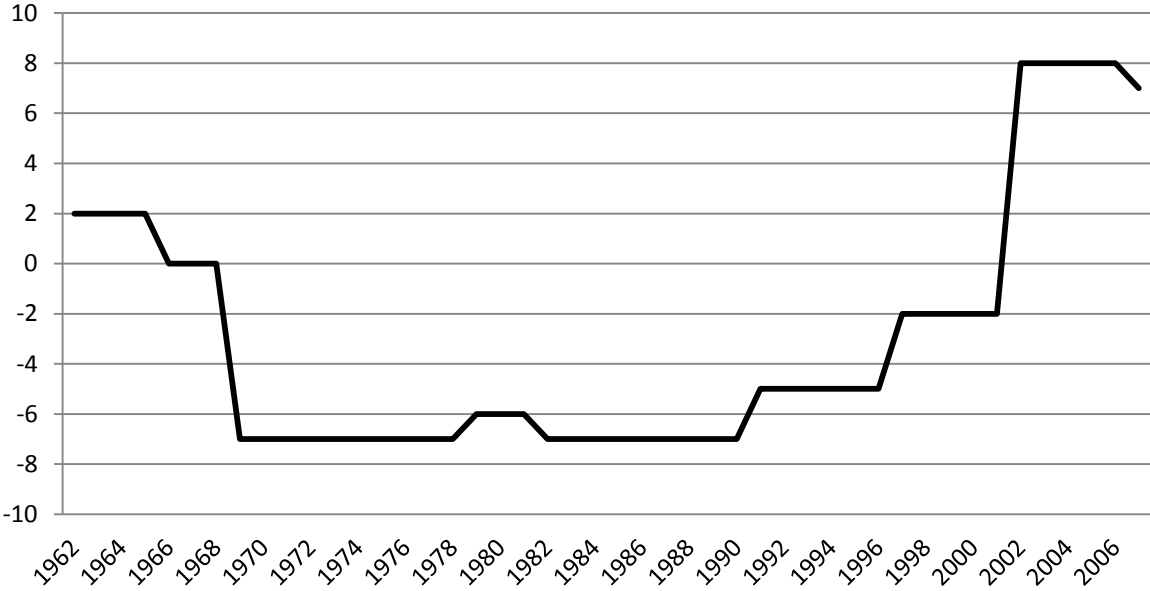


Figure A2: Polity IV Ratings for Kenya, 1962-2010

Source: Polity IV (2011)



<i>Legend</i>	
President:	<b><u>Kenyatta</u></b>
Family of:	↔
Minister for:	⋯→
VP/ DP for:	⋯→
Supported with elections/ coalition:	- - ->
Other forms of political support:	- · - ->
Banned/ opposed :	- - ->

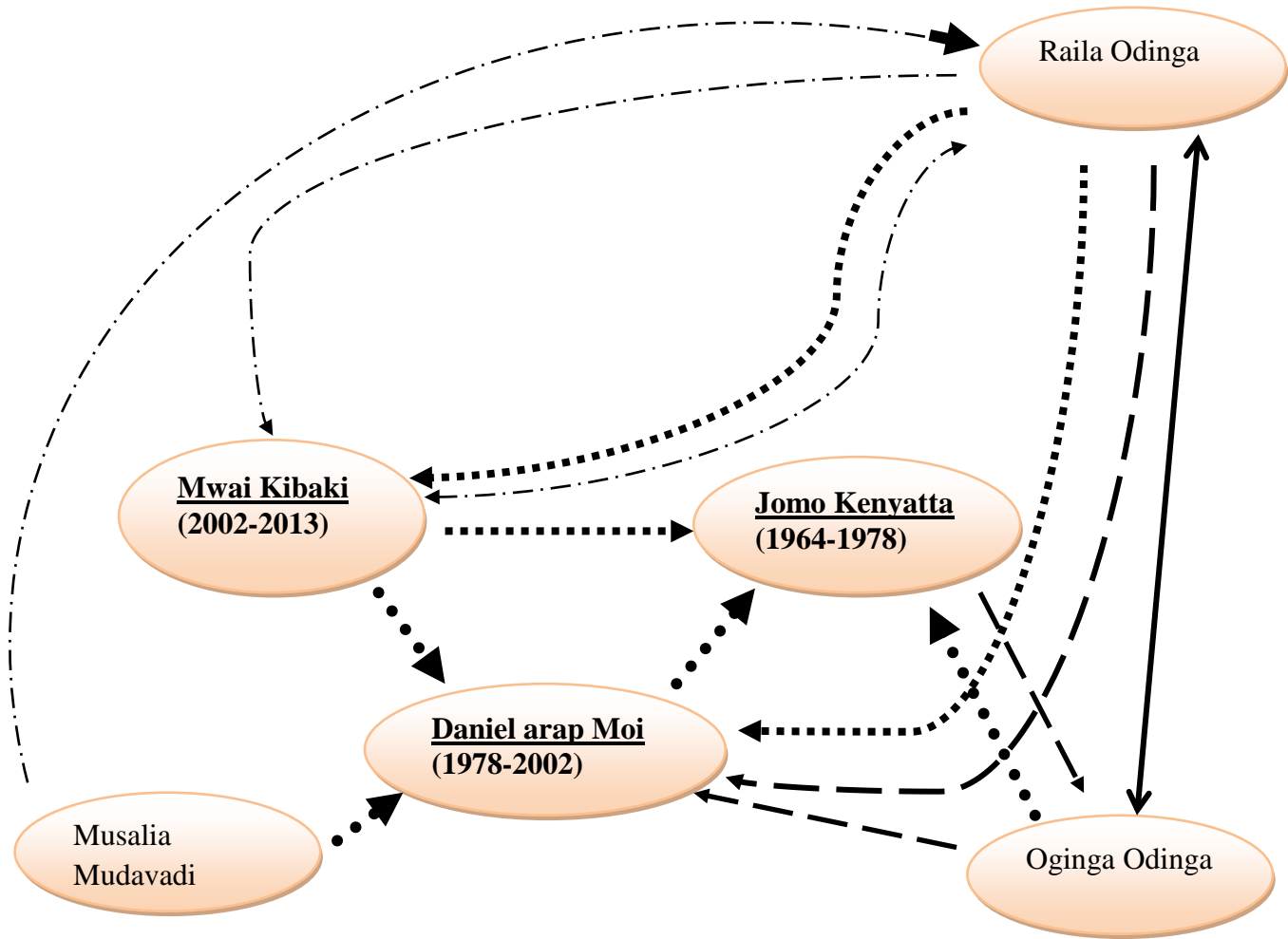


Figure A3: Inter-personal relations in Kenyan government (1963-2007)

## Appendix B: Figures VI

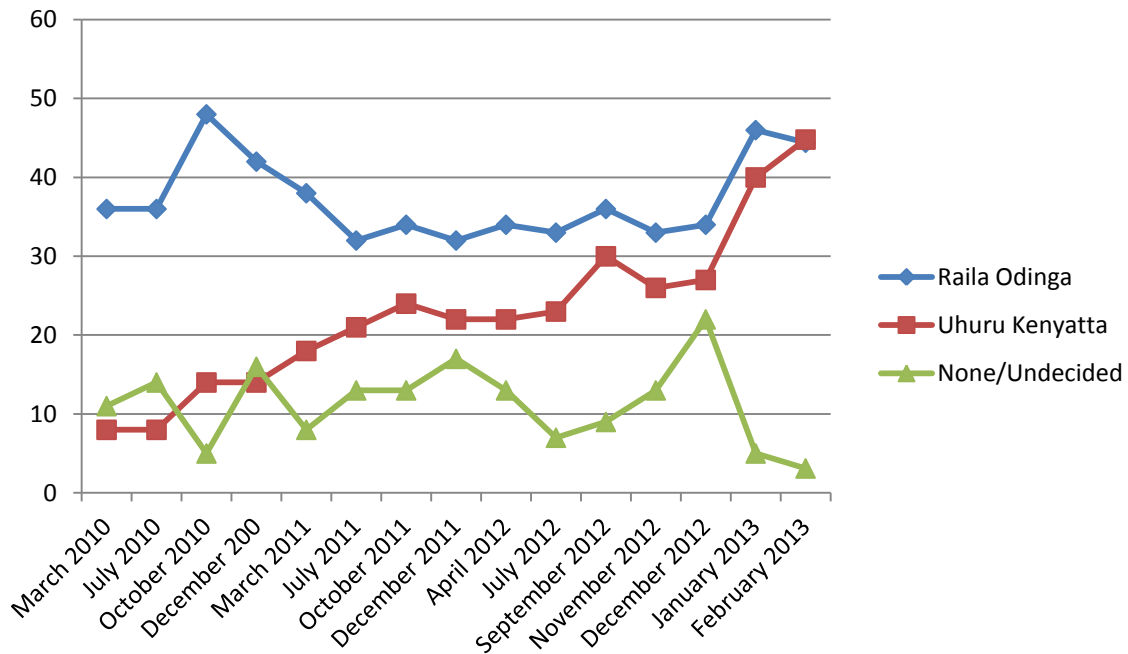


Figure B1: 2013 Presidential Candidate Polls

Source: Ipsos/synovate

Note: The figure is based on two Ipsos Synovate Kenya surveys: the Political Barometer Survey, release date 14 December 2012; and Post-Election Analysis, Release Date 15 March 2013.

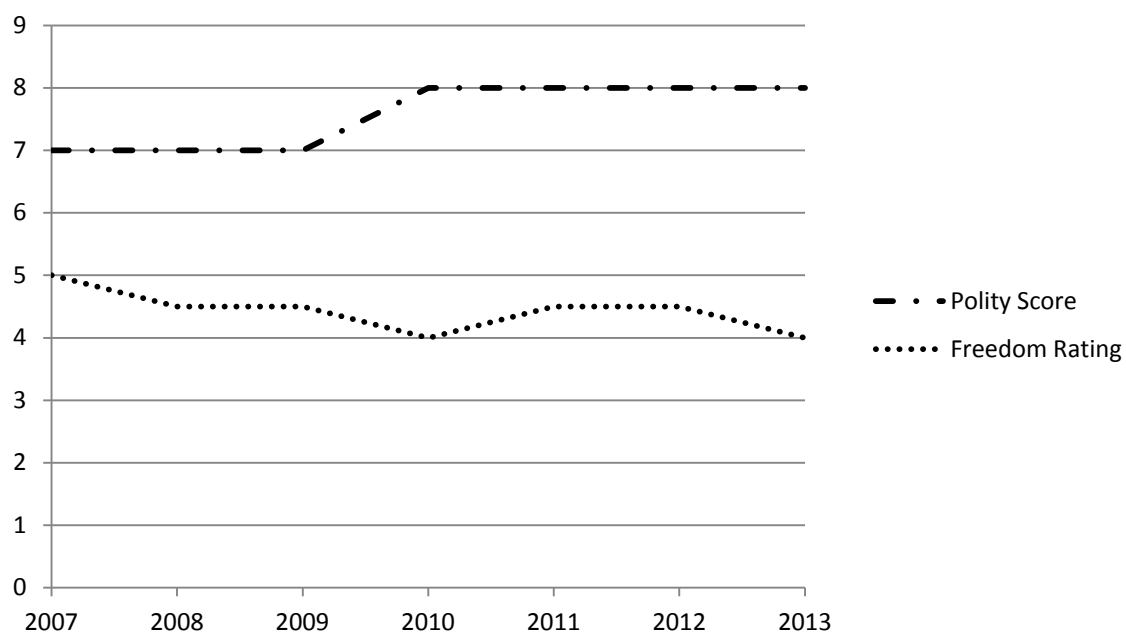


Figure B2: Democracy in Kenya 2007-2013

*Source:* Polity IV (2013) and Freedom House (2013)

Notes: For sake of clarity the Freedom House scores are inverted, where 1 stands for 'completely un-free' and 7 for 'completely free'. The inversion of scores clarifies the comparison to the Polity score.

Figure B3: Inter-personal relations in Kenyan government (1963-2013)

Legend	
President:	<u><b>Kenyatta</b></u>
Family of:	↔
Minister for:	⋯→
VP/ DP for:	⋯→
Supported with elections/ coalition:	- - ->
Other forms of political support:	- · - ->
Banned/ opposed :	- - ->

