THE LEGACY OF POWER SHARING IN KENYA: LITERATURE CHALLENGES AND RESEARCH AGENDA'S INVISIBILITIES

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Introduction

Kenyan political elites signed a power-sharing agreement in February 2008 in the wake of the violent hostilities that swept the country following the irregularities of the hotly contested December 2007 general elections which left behind over a 1,000 dead and more than 600,000 IDPs in just over two months. Since the agreement was struck, a Government of National Unity composed of the two main contenders was put in place to halt the violence and set in motion a reform agenda to address the structural causes of violence. During its five-year run, the power sharing agreement was able to put forward a new Constitution (approved by popular referendum in August 2010) and held the next electoral process (in March 2013) by and large peacefully. Even though born in the realm of political science striving for political engineering in divided and multi-ethnic societies via democratic proportional inclusiveness, power sharing arrangements have been recurrent in the African continent since the end of the Cold War,[1] particularly as a conflict resolution mechanism included in peace agreements. However, in both the democratic theory and the conflict resolution strands of research, literature on power sharing is almost exclusively derived from an elite-based and/or institutionally-driven analysis, neglecting bottom-up approaches and dynamics and failing to deliver a more comprehensive analysis on the impact of power sharing. Additionally, the lack of dialogue between sub-dimensions of the studies on power sharing has provided for yet little knowledge of its medium- and long-term consequences. Highlighting the findings of fieldwork done in Kenya during the March 2013 elections, this chapter intends to shed light on the dynamics of power-sharing agreement in Kenya. It argues that the aforementioned lack of dialogue between research and analytical agendas has been responsible for 'blind spots' in the literature that have been neglecting potentially influential actors and dynamics that could further the understanding of the limitations and potential consequences of power sharing arrangements. This chapter maps inconsistencies between the literature on power sharing theory and the practice of Kenyan power-sharing experience, using a diagnosis of the shortcomings of power-sharing literature to demonstrate the need for

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[1] According to LeVan (2011) between 1990 and 2008, 22 African countries had a total number of 64 power sharing arrangements concerning violent conflict scenarios or violent political crises. According to Mehler (2009b) between 1999 and 2009 17 African countries had power sharing arrangements, including four in the Horn of Africa: Djibouti, Kenya, Somalia and Sudan.

new research agendas that can complement the accumulated yet contradictory dominant research agendas.

Powersharing: an introduction to the debates

> "[...] consociational democracy means government by elite cartel designed to turn a democracy with a fragmented political culture into a stable democracy."
> (Lijphart, 1969: 216)

Power sharing literature emerged in the late 1960s as a normative attempt to provide stable democracies to divided societies through accommodation and inclusion of political elites as well as incentives for moderation and cooperation. Mostly through the academic work of Arend Lijphart (e.g. 1969; 1977; 2008), consociational or power sharing[2] theory suggests four characteristics − a grand coalition, group autonomy, proportionality and minority veto − which can take different forms and adapt to the different scenarios accordingly. Due to its malleable applicability, these four features of consociational theory can take different forms and are not to be equally recommended to societies trying to implement power sharing models of democracy, nor is it imperative that the four features have to be present. As O'Flynn and Russell noted,

> "In principle power sharing enables conflicting groups to remedy longstanding patterns of antagonism and discrimination, and to build a more just and stable society for all. Institutionally, there is an indeterminate number of ways in which democratic power sharing can be realised." (O'Flynn and Russell, 2005:1)

The power sharing advocates' main argument is based on the assumption that in heterogeneous societies (particularly in fragmented and polarised ones) simple majority rule or, as Lijphart (2008:12) notes, "bare-majority models of democracy" − e.g. winner-takes-all; First-Past-The-Post [FPTP] − can produce a scenario of "tyranny of the majority", i.e., where some segments of society face the risk of permanent exclusion from the political game. The dangers of such exclusion in ethnically divided societies are reinforced by the necessity for mutual security (Dahl, 1973) among political elites and their communities, particularly during electoral periods. Accordingly, as elections are the primary forum of inter-group competition, there is a need to guarantee a level of protection of essential rights so that a group's electoral defeat does not represent a threat to its own survival, thus discouraging divided societies with majoritarian models of democracy to perceive electoral competition as a winner-takes-all (and loser-gives-all) zero-sum competition for control of the state and its resources, and where the stakes of political access can to certain groups represent their political, economic, cultural and even physical survival.[3]

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[2] "In my writings after 1969, I started using the term 'power sharing' democracy more and more often as a synonym for consociational democracy." Lijphart (2008:6).

[3] "Absent Dahl's pre-requisite of mutual security, elections are perceived by groups in conflict as a zero-sum game; it is a winner-take-all contest. Often, an election is perceived as an opportune moment for politicians to manipulate ethnicity in order to retain power, as in Kenya and Ghana in recent years. In many divided societies, electoral competition is a contest for the ownership of the state. Minorities, particularly, equate democracy not with freedom or

Drawing from a consensus on the disadvantages of bare-majoritarian models of democracy and the political conditions in which violence in divided societies occurs, power-sharing studies have been engineering alternative models for political systems and institutions that can, through the promotion of the broadest possible majorities in the decision-making process, manage the destructive potential of inter-communal divisions through the formulation of an inclusive peaceful and democratic institutional framework. In the consociational model for example,[4] there can be a combination of inclusive government such as a grand coalition (elite accommodation), group autonomy (for example, federalism), proportional representation (including allocation of resources and civil service appointments), and mutual veto. Consociationalists argue that, through the broadening of participating actors in decision-making process, the consociationalist proposal can provide a peaceful and stable democracy by promoting the broadest majority (or even consensus) possible, thus enabling more accurate representation and in particular better representation and protection of minority interests. It is in this last regard that power sharing theory can be an alternative model of deepening democracy in divided societies, as it seeks the inclusion of segments of society that face the risk of permanent alienation from the decision-making process.[5]

Power sharing agreements have been recurrent in the African continent (see for e.g., Mehler, 2009b; LeVan, 2011). However, classic consociational theory has been mainly concerned with other contexts rather than violent conflict settlements from which power sharing has been more frequently adopted, nor has Lijphart's work – with the exception of the South African case – focused on the specificities of African framework concerning power-sharing dynamics and models. Concomitantly, power-sharing literature has been emerging since the turn of the century through the lenses and goals of conflict resolution and in particular the sustainability of power sharing as a conflict resolution mechanism. This renewed interest has also brought new analyses that, in turn, have put forward contradicting results that question the validity of the arguments of classical power sharing literature and its proponents. In effect, several authors (e.g. Jarstad and Sisk, 2008); Mehler, 2009a; 2009b; Noel, 2005; Spears, 2000; O'Flynn and Russell, 2005; Roeder and Rothchild, 2005) have argued that, contrary to classical power sharing

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participation but with the structured dominance of adversarial majority groups. Permanent minorities such as Tamils in Sri Lanka, Catholics in Northern Ireland, and whites in South Africa have feared the consequences of electoral competition, especially when the expected consequence of majority victory is discrimination against them. For minority groups, losing an election is a matter of not simply losing office but of losing the means for protecting the survival of the group." (Sisk, 1996: 31).

[4] The debates on power sharing have produced a vast literature and different approaches, the consociational being accompanied since the eighties by an 'integrative' or 'structuralist' approach (Horowitz, 1985) and by a 'power dividing' approach by Roeder and Rothchild (2005).

[5] Nonetheless, such inclusion does not mean that power sharing can only succeed or even be exclusive to democratic regimes or institutionally democratic frameworks. Milton Esman demonstrates the case of the accommodation of non-Muslim communities in the Ottoman Empire which had been given degrees of autonomy, self-determination and self-management. In the same way, some autocratic post-colonial African regimes informally balanced the cabinet to include different groups in such a manner that (access to) power and its resources would be proportionally allocated and distributed. Rothchild names these executives "hegemonic exchange regimes" where a portion of state power and resources are proportionally shared between certain groups in order to manage a degree of accommodation and balance, and simultaneously controlling democratic freedoms. See Esman (1986) and Rothchild (1986; 1995).

literature, power sharing may, in fact: i) fuel extremist, radical and anti-democratic behaviour; ii) inhibit the transition of conflict-management to conflict-resolution; iii) smother internal diversity and its acknowledgment for the sake of community identities and collective concerns; iv) show difficulties in recognising and dealing with cross-cutting identities; v) leave insufficient space for individual autonomy; vi) damage the relationship of transparency and accountability; vii) foster the conditions for government deadlocks; viii) increase the economic inefficiency of government; ix) reverse democratisation efforts in Africa in the last twenty years centred on state-building and political liberalisation, thus prioritising peace before process; and x) lack democratic legitimacy and ownership of the process. In short, in spite of the power sharing debate being far from a consensus in academic circles, its embrace by policy-makers has shown "a huge gap between the generalising theory and the political practice" (Finkeldey, 2011: 12).

Moreover, despite distinct focus and conclusions, both strands of research share a common methodological focus: they derive their analysis and conclusions almost exclusively from elite-based or institutionally-driven (e.g. Noel, 2005; Norris, 2008) perspectives, and contradicting results are perhaps the inevitable reflection of the lack of dialogue between the two strands. Jarstad points out:

> "[...] in the conflict-management discourse, power-sharing is seen as a mechanism to manage the uncertainty in a peace process – if need be, as a substitute for elections – while research based on democratic theory treats power-sharing as a mechanism to foster moderation and to improve the quality of democracy. This means that researchers of both schools advocate power sharing for war-shattered societies, albeit for different reasons. However, the lack of integration between the two discourses means that there is limited knowledge of the long-term consequences of power sharing in societies emerging from war." (Jarstad, 2008:111)

Some authors have hinted at this lack of integration and dialogue between different schools of thought and sub-dimensions of political studies: Spears (2005) highlights the resistance of political elites in engaging in power-sharing negotiations and implementing power-sharing arrangements in post-conflict scenarios, alluding to the fact that conditions of anarchy that accompany civil war and state collapse may, more often than not, require solutions that are prior to power sharing, including solutions that may even exclude power sharing. Debates regarding issues such as contemporary violent conflicts in Africa, peace-building and state-building interventions, failed states and security predicaments have been largely neglected in power sharing literature.[6]

Other authors have emphasised the need to analyse power sharing beyond the conflict mitigation dimension (LeVan, 2011) and call for power sharing to be regarded as a *process* (Mehler, 2009b) rather than an event, citing the example of Burundi as a case study of the impact of twenty-years of trial-error experiments in power-sharing arrangements as a tool for political liberalisation, democratisation and conflict resolution (see Vandeginste, 2009).

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[6] An introduction to these debates: Zartman (1995), Ayoob (1995), Holsti (1996), Kaldor (1999) and Herbst (2000).

Despite having what some authors consider "an unimpressive record", power sharing is still a centrepiece of many African peace initiatives (Spears, 2005). Such was the case of the example illustrated in this chapter: Kenya had a severe, violent post-electoral crisis, where in two months a country previously considered a beacon of stability in the Horn of Africa region suddenly found itself in the brink of civil war and the idea of turning into a failed state was looming.[7] A power-sharing agreement was struck roughly two months after the elections in which the main candidates formed a grand coalition know as the Government of National Unity to halt the violence, and outlined a reform agenda to deal with the structural roots of violence and move the country towards reconciliation.Regardless of the position of power-sharing advocates and opponents, one fundamental question has yet remained unanswered, as Blessing-Miles Tendi pointed out:

> "It's easy for you and me and many others to sit there, deliberate and criticise power sharing but there's a big elephant in the room: had there been no power sharing in Zimbabwe and Kenya, flawed as it is, what other option did we have?" (Tendi *apud* The Guardian, 2010)

Power sharing in Kenya

Independent since 1963, Kenya is a multi-ethnic state with over 40 ethnic groups and a history of tribalist politics under a 23 year-old *de facto* one-party system (and a *de jure* one-party system just before the failed coup d'état of 1982 up until 1992) that has taken its toll over the almost 50 years since gaining independence. The one-party system was an historical legacy that many African countries shared after liberation from European colonial shackles, and in Kenya KANU[8] – the party in power from independence up until 2002 – was the political party that helped shaped the transition from an early stage of multi-party democracy in the country to the one-party system. The first glimpses of the one-party state can be found right after independence: following a dispute between KANU and opposing party KADU[9] over the constitutional federal or quasi-federal elements included in the constitution, Kenya moved towards a more unitary, centralised system of governance. Following its defeat, KADU was dissolved and its elements joined KANU. In 1966 Oginga Odinga, one of the "founding fathers" of Kenya's independence, formed the KPU[10] but within 3 years it had been banned and Odinga arrested, turning Kenya into a *de facto* one-party state by 1969. According to Widner (1992: 1-2), "KANU existed only as a loosely knit grouping of politicians" in the early years of its existence and "tolerated some internal criticism and debate over its platform, albeit to a diminishing degree". It was only during the rule of Jomo Kenyatta's successor Danial Arap Moi that the relationship between party, government and state began to change significantly, with KANU acquiring a "far stronger role in the pursuit of political order, and its boundaries began to merge with

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7 "We do not believe Kenya is a failed state. However, it is chastening to think that the situation over the first months of 2008 closely resembled the fluid and potentially uncontrollable situation typical of collapsing states." (Branch and Cheeseman, 2008:16).
8 Kenya African National Union.
9 Kenya African Democratic Union.
10 Kenya People's Union.

those of the Office of the President". Political parties born out of the implementation of multi-party democracy in 1992 continued showing the same trend of weak organisations, generally held together around their leader, with the sole purpose of providing an electoral vehicle towards political dominance and, with the exception of a few very recent cases, mobilising their constituencies along ethnic lines and manipulation of ethnic identities.

Therefore, it may be quite ambiguous to uphold Kenya as a beacon of stability in the Horn of Africa. Although this epithet may have provided for relative distinction (and status) of Kenya among its neighbours, it has simultaneously turned a blind eye on Kenya's troublesome socio-political fabric. Historical trends such as the adversarial nature of the Kenyan bare-majoritarian political system entrenched into a zero-sum political game towards the control of state and its resources have been accompanied by political elite fragmentation and manipulation of collective ethnic identities for mobilisation particularly during elections, fostering narratives of exclusion and prejudice that pitted various ethnic groups against each other (Mbugua, 2008). Such long-standing grievances have created a polarised society with recurrent episodes of violence that have emerged episodically throughout Kenya's post-colonial period, but more frequently after the implementation of a multi-party democracy in 1992 (Atuobi, 2008). However, the 2007 post-electoral violence came as a surprise to many. Kenya had relatively small episodes of violence in the 1992 and 1997 elections, and violence was almost unheard of in the transition from Arap Moi's 24-year rule in 2002. Contrary to 2007, electoral outcomes were accepted without significant contestation, even if claims of electoral fraud did surface. In 1992 and 1997 the opposition to Moi-led KANU was highly divided and none of the candidates individually had a fighting chance, a condition that was not present in 2002 where a major coalition was formed between numerous ethnic political parties to dispute the elections against Moi's appointed successor Uhuru Kenyatta (Ng'weno, 2007). In 2007 the conditions had changed: a too-close-to-call contested election with numerous evidence of electoral fraud threw the country into the greatest violence the country had seen since the Mau-Mau uprising, and exposed Kenya's structural difficulties.

The roots of conflict

The outbreak of the post-election violence in 2007-2008 was the most violent crisis that had hit Kenya since the Mau-Mau uprising. From the date of the general election on 27 December 2007 and signing of the power sharing agreement to 28 February 2008, Kenya was on the brink of civil war. In only two months, over a thousand people were killed and about 350,000 were forced to move around in search of refuge (Karabo, 2008). Subsequent reports point to almost 1,500 deaths and nearly 700,000 people internally displaced due to post-election violence (CIPEV, 2008; Lynch, 2012).

Although a consensus exists on the triggering and proximate causes of the violence that struck the country regarding the too-close-to-call contested presidential election and evidence of electoral rigging

and fraud, it would be negligent to dismiss the structural causes in Kenyan politics that make it a political violence-prone country. Among the structural elements that have generated and fuelled conflict in Kenya, three dimensions must be highlighted: 1) Natural resources, in particular tensions over land issues and management of natural resources leading to politicisation of territorial administration and pastoralist conflicts; 2) Political dimensions such as the exacerbated centrality of an all-powerful presidential system leading to centrifugal disputes over state control, a culture of corruption and impunity extensible to political institutions and the perception of the state as a predatory actor; from the historical legacy of political elites' manipulation of collective (ethnic) identities and episodic outbreaks of political violence (particularly in electoral periods); 3) Sociological and economic dimensions of long-standing economic and political grievances based on polarised narratives of third-parties' greed or jealousy; the proliferation of small arms and light weapons since the 1990s as a response to the environment of regional political instability; from poverty and deep economic inequalities and marginalization to unemployment and criminality.[11] The 2007-2008 post-electoral violence in Kenya can only be understood by combining its immediate causes and the explosive cocktail of complex historical political processes.

The 2007 elections

The 2007 presidential elections were hotly contested by two main candidates. On one side, the incumbent President Mwai Kibaki, a Kikuyu from Central Province, as a leader of PNU.[12] and on the other side, Raila Odinga, a Luo from Nyanza Province, representing ODM.[13] In 2002, Kibaki had won a landslide victory against Danial Arap Moi's chosen successor, Uhuru Kenyatta, effectively ending 24 years of Moi's rule. His victory was a product of a combined effort of a coalition of multi-ethnic political parties and leaders – NARC[14] – that, contrary to the 1992 and 1997 elections, managed to overcome its divisions and run on one electoral ticket. Kibaki had come to power with the promise of ending tribalism, granting a constitutional reform process in support of devolution of power, economic progress and ending the culture of corruption and impunity in the country. Shortly after the transition, Kibaki backtracked on a pre-electoral commitment to create a Prime Minister's position destined for his second in command in NARC, Raila Odinga. To many of Odinga supporters, this was seen as a betrayal and re-enactment of the early years of Kenya's independence, when the first President Jomo Kenyatta (father of Uhuru Kenyatta) did the same with Raila Odinga's father, Oginga Odinga. Additionally, in 2005 Kibaki once again went back on his electoral promises on decentralisation and devolution of power and put forward a Constitutional Reform draft favouring a unitary state with the powers of the Presidency untouched. This process was highly contentious, pitting different ethnic groups against each other and also marked the creation of the Orange Democratic Movement as an opponent to this constitutional proposal, winning it in referendum and

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11 See, for example: Mbugua (2008), CIPEV (2008), KCSC (2010).
12 Party of National Unity.
13 Orange Democratic Movement.
14 National Alliance Rainbow Coalition.

marking the definitive breakup between Kibaki and previous NARC supporters from various ethnic groups. After the referendum defeat, Kibaki got rid of supporters of the Orange Democratic Movement in the Cabinet and appointed several trusted names, largely from the President's own ethnic background, to replace them. This decision favoured the perception of ethnic bias that Kibaki had promised to end, and later on as numerous corruption scandals became public Kibaki's image was one of failing to deliver the promises he had waved at Kenyans. And even though Kenya from 2002 onwards did make significant progress in terms of infrastructure, economic growth, education and political freedoms under Kibaki's leadership, by 2007 ethnic communities were already highly polarised and current and historical political narratives of grievances and resentments were pervasive.[15]

The 2007 electoral campaigns were marred by divisive ethnic rhetoric, ethnic prejudices and stereotypes, oftentimes dehumanising and demonising the "other" group, political mobilisation through ethnic manipulation of collective identities, and filled with historical narratives of long-standing grievances. As the election date neared, both candidates alleged the only possible scenario not involving their own victory would be a clear sign of massive electoral fraud (Wrong, 2009). A combination of divisive and exclusionary hate speech mixed with both main candidates refusing to accept a scenario of defeat, a history of social, political and economic resentments and massive evidence of electoral fraud and vote rigging in a too-close-to-call contested election made for the perfect storm for the inter-communal violence that was about to ensue.

The outbreak of violence of such proportions was a drastic reminder that, even though Kenya might have seemed an "oasis" of stability in the region, its history of exclusion and divisiveness had been boiling under Moi's rule and had not been overcome with the establishment of a majoritarian democracy, but instead consolidation of democracy still remained fragile:

> "All actors accept the value of democratic institutions and rules in principle. The KANU party's acceptance of defeat in 2002 indicated significant progress in terms of the internalization of democratic norms. Yet the behavior of all major political players in the aftermath of the 2007 elections indicates that commitment to democracy is linked to the question of whether or not all major ethnic groups are involved in the victorious party. That condition existed in 2002 but not in 2007." (Bertelsmann Stiftung, 2009:10)

A Government of National Unity?

After a failed mediation attempt by the then African Union Chairman and Ghanaian President John Kufuor in the first days of January 2008, a second mediation attempt led by Kofi Annan began to take shape (*Associated Press*, 2008). An agreement was struck on February 2008, between the government/PNU and ODM, contemplating a power-sharing coalition between Kibaki, maintaining his role as President and Raila Odinga as Prime Minister, a position that was included in the Bomas draft of the

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[15] See for example: Horowitz (2009), and Ng'weno (2007)

constitution, which Kibaki had rejected for his own version. The agreement (KNDR, 2008) had four main objectives, know as Agendas One, Two, Three and Four: 1) immediate action to stop violence and restore fundamental rights and liberties; 2) immediate measures to address the humanitarian crisis, promote reconciliation, healing and restoration; 3) resolving the political crisis from the disputed presidential electoral results as well as the ensuing violence in the country; and 4) tackling the long-term issues and solutions, such as: constitutional, legal and institutional reform; poverty, inequity, unemployment, regional imbalances, land reform; transparency, accountability and impunity; national cohesion and unity .

However, the Cabinet that came out of the power-sharing agreement soon displayed the various findings that recent power-sharing literature had warned about: by including former enemies (or, in the case of Kenya, bitter rivals at least) in joint government, the institutionalisation of conflict led to numerous government gridlocks and infighting became commonplace. The scenario of a highly expensive dysfunctional (or even non-functioning) executive with nearly one hundred ministers and deputies gave the impression that the so-called Government of National Unity was a gross exaggeration:

> "[...] Kenya does not have a functioning executive at all, just an unholy alliance of fierce rivals. A schedule of constitutional, electoral, judicial, security, land and economic reforms was laid out in the original agreement between the two parties. A domestic tribunal to judge those responsible for the post-election mayhem was supposed to be set up and a truth commission established. Yet more than a year later the ODM and PNU have failed to agree on any of these issues." (Economist, 2009)

With the severe undermining of vertical relationships of transparency and accountability and with power-sharing having little popular democratic ownership, Kenya seemed to have rolled back in its history to the one party-state era. Additionally, power sharing was evidently becoming more and more similar to a 'marriage of convenience', as reflected by the numerous quarrels within the cabinet that, though generally short-lived and often accompanied by divisive and inflamed rhetoric, protracted government paralysis due to its successive accumulation in sequencing events. These quarrels and bickering effectively introduced uncertainty as to how long this arrangement would last.

However, the dynamics of unity government in Kenya did seemingly change in 2010, moving away from the divisive and inoperative stage towards a more conciliatory engagement. This transition is first noted in the celebrations of the second anniversary of the National Accord signed in 2008 (Woods, 2010). Cheeseman and Tendi's (2010) concept of the 'politics of collusion' offers a presumable explanation for the more cooperative dynamics of power sharing in Kenya. A context of a flawed election and severe post-electoral violence between opposing sides that were both perpetrators and victims fostered a narrative of conflict of shared responsibility, combined with a history of inter-elite accommodation during the one-party state era (from 1969 to 1992). However, the *transition* from centrifugal to centripetal forces in the Kenyan grand coalition is still largely unexplained in the power-sharing literature. Hanson offered some clues, having noted that:

> "[...] Just days before Kenyans went to the polls to vote on a new constitution, not only were pollsters predicting a victory for the "Yes" campaign, former political foes President Mwai Kibaki and Prime Minister Raila Odinga held a rally together in Kisumu in support of the constitution. Kisumu is a stronghold of Luos, Raila Odinga's ethnic group. Kibaki would have been persona non grata in Kisumu in 2008. Of course, Kibaki and Odinga had their own personal motivations for working together on the "Yes" campaign. Kibaki wants to ensure his political legacy, and Odinga is maneuvering in advance of the 2012 presidential elections." (Hanson, 2010)

From 2010 onwards Kenya's power-sharing government seemed to confirm the arguments of power-sharing supporters, as the Kenyan constitution review process was underway, and several reform agendas soon ensued. In August 2010 a major accomplishment for the country was reached when a new constitution was approved by popular referendum approved by 68,5 per cent of the voters with a total voter turnout of 72 per cent,[16] effectively ending twenty years of failed attempts at constitutional reform. The constitutional debate was a highly contentious one even before Kenya gained its independence in 1963 (Ng'weno, 2007) and it had been the watershed moment that instigated the split of NARC's broad-majority coalition in 2005 setting the tone (as well as the campaign agenda) for the upcoming elections. The debate has been centred between those who favour decentralisation and devolution of power with reduced powers of the Office of the President in order to accommodate and include most significant groups and those who favour Kenya as a unitary state (with cross-cutting divisiveness on an hypothetical position of Prime Minister but no consensus on the nuances of its role and power). Even in late 2012, uncertainty in the full implementation of the Constitution reflected the degree of how contentious it still is today. Threats of secession were made by some MP's after a proposal in Parliament not to implement an upper house (the Senate) following the 2013 elections as established under the 2010 Constitution (Nyassy and Jenje, 2012).

Kenya's Constitution also includes several recommendations put forward by classical power-sharing theory and, to some extent, it has institutionalised power sharing through decentralisation and devolution (Nyamjom, 2011) of power to the local level, established a Bill of Rights, reduced the powers of the Presidency (Sihanya, 2011) and returned to the bicameral system – which had been established in the first Kenyan Constitution but was never implemented – (Kirui and Murkomen, 2011), and significantly increased the level of checks and balances throughout the various organs of government. Most importantly, it renewed the confidence of Kenyan citizens in the government institutions and the perception of institutions' independence and national representativeness instead of instruments of inter-communal agendas (Kivuva, 2011).

However, towards the preparation for the upcoming elections some structural conflict drivers remained unresolved, chiefly: land reform, resettlement of internally displaced people (IDPs), poverty, inequality, youth unemployment, manipulation of ethnic identities as a primary tool for political

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[16] African Elections Database: http://africanelections.tripod.com/ke_detail.html#2010_Constitutional_Referendum.

mobilisation, corruption and impunity. The ICC[17] involvement[18] regarding the 2007 post-electoral violence, while enjoying a wide popular support in the first years of the grand coalition, turned into an object of electoral dispute. Uhuru Kenyatta and William Ruto, both indicted for crimes against humanity, teamed up to run on the presidential ticket under the Jubilee/TNA.[19] Kenyatta and Ruto had been on opposing sides in 2007 and 2008, and their alliance was allegedly a form of demonstrating reconciliation among two major ethnic groups (the Kikuyu and the Kalenjin) while at the same time accusing the incumbent Prime Minister and again presidential candidate Raila Odinga (now under CORD – Coalition for Reform and Democracy) of conspiring against those two groups with international actors.

The victory of the Jubilee Alliance on the March 2013 elections also showed a significant improvement. With a tightly contested vote (with Jubilee avoiding a run-off by less than 1 per cent) and yet again evidence of voting irregularities (Gettleman, 2013), the losing party and Kenyans turned to the courts instead of guns. However, it may not represent a trend nor the overcoming of the drivers of conflict but instead a belief in the credibility (though fragile) of the institutions created or reformed under the new Constitution. However, many challenges still remain unresolved. The use of negative ethnicity is still a centrepiece of electoral tactics (reflected by the fact that two out of eight tickets for the Presidency gathered over 90 per cent of the vote), land reform and security sector reform have been practically untouched since 2008, unemployment – particularly among youth – and inequality are still highly pervasive and Kenya has now a President (and a Vice-President) that politicised the ICC for electoral gains while publicly alleging they will respect the verdict coming from the Hague.

Conclusion: The invisibilities of the power-sharing discourse - drawing new agendas for research

In the vast power-sharing literature, research and analytical agendas have been driven and heavily reliant on an institutional and elite-led perspective, either more recently focused on the mitigation of conflict or, in the classical theory approach, on the normative political engineering dimension of a permanent democratic institutional framework based on inclusive accommodation of political elites. Somewhat incomprehensibly, both these two dominant strands and discourses of the power-sharing

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17 International Criminal Court.
18 "In the aftermath of the crisis, a Commission of Inquiry into Post-Election Violence (CIPEV) [...] was established to investigate the facts and circumstances of the election violence. Among its major recommendations was creation of a Kenyan special tribunal to try the accused organisers. Mindful of the history of political impunity, it recommended that if the government failed to establish the tribunal, the Panel of Eminent African Personalities that under Kofi Annan's chairmanship mediated the political crisis should hand over a sealed envelope containing the names of those who allegedly bore the greatest responsibility for the violence to the ICC for investigation and prosecution. President Mwai Kibaki and Prime Minister Raila Odinga signed an agreement for implementation of CIPEV's recommendations on 16 December 2008, and parliament adopted its report on 27 January 2009. A bill to establish a special tribunal was introduced twice in parliament but on both occasions failed to pass. Not even last-minute lobbying by the president and prime minister convinced parliamentarians. Annan consequently transmitted the sealed envelope and the evidence gathered by Waki to the ICC chief prosecutor, Luis Moreno-Ocampo, on 9 July 2009. Four months later, on 5 November 2009, the prosecutor announced he intended to request authorisation to proceed with an investigation to determine who bore greatest responsibility for crimes committed during the post-election violence." (ICG, 2012: 1)
19 The National Alliance.

debate are still encapsulated within each other. Furthermore, it has shown a lack of connection and dialogue with other analogous debates – such as contemporary armed conflicts, frequently correlated with issues of governance and state formation and evolution and respective structural imbalances, the debate on the processes of construction of identities and societal dynamics, political psychology, game theory and so forth. Such gaps have precluded power-sharing studies from a holistic and in depth perspective of the reality power sharing shapes but also the long-term consequences of its enforcement – particularly in Africa where it has been a very significant trend in the post-Cold War era.

Additionally, it is rather surprising that with the recent renewed interest in power-sharing studies in academia, the influence of the nature and typology of political parties in African nations on power-sharing agreements, dynamics, and outcomes are generally overlooked.[20] Even when political parties are arguably considered one of the main actors if not indeed the centrepiece within any given political system, power-sharing studies tend to shift their focus from a small group of elites to national institutions, without much regard for bottom-up processes, the influence of the diversified nature of political parties in shaping power-sharing dynamics (can such different political parties, for example, in Kenya and Zimbabwe be explanatory factors for influencing different outcomes?)[21] or tensions between state institutions, elites, political parties and segments of society. This might partially shed some light on the reason why power-sharing theory offers little help in explaining the conundrum of dominant power-sharing discourses reaching contradictory conclusions: by not giving adequate focus on power sharing itself as a multi-dimensional process (Mehler, 2009b) that can go through different phases (Roeder and Rothchild, 2005). Classic power sharing has focused chiefly on designing a more *permanent,* though not irrevocably static, institutional framework for inclusive political accommodation for different segments of a divided society. Recent literature on conflict mitigation has mostly focused on power sharing as a *temporary* mechanism in peace settlements serving a security imperative (even if with potential hazards for the democratisation process in the long run). So far, little attention has been paid to power sharing as a *dynamic process* that can travel back and forth, include different actors and shape the processes that power-sharing literature has focused on, as previously mentioned.

The *transition* from centrifugal to centripetal forces in the Kenyan grand coalition is still largely unexplained in the literature, and hence many questions still remain unanswered: How did the Government of National Unity go from gridlock and bickering to setting institutional reform? Was it just a matter of letting time heal? Did the legacy of intra-elite cooperation of the "politics of collusion" Cheeseman and Tendi (2010) enunciated gradually take over the more radicalised stances? Did the balance of the power-sharing regime change? Did external pressure from the ICC – or indeed, other international actors and if so, who? – foster a resolve for Kenyan elites to engage in reform? Or was it

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[20] With the notable exception of the research papers on power dynamics in Zimbabwe by Matiszak (2009) and the comparative analysis of Kenya and Zimbabwe by Cheeseman and Tendi (2010).
[21] On types of political parties, please see Gunther and Diamond (2003).

pressure from the bottom-up civil society organisations? Or a combination of all of the above? Or is there more to it? Power-sharing literature, in all its contradicting conclusions, does not give many hints as to the mutation the Kenyan grand coalition seemed to have been through, from highly polarised government gridlock early on to its more proactive reformist engagement in the latter days.

The Kenyan case concerning transitional steps between power sharing as a temporary mechanism for conflict mitigation in an initial stage towards power sharing as a method of a more permanent democratic conduct and framework – as included in the new Constitution of Kenya – seems to favour Roeder and Rothchild's alternative formula for power dividing as a tool for sustainable peace and democracy. The power-dividing prescription argues that a consociational approach is useful to accommodate elites to hold on to a peace agreement in the immediate aftermath of violent conflict and thus should be considered mostly as a mere short-term mechanism towards consolidation of the peace agreement. Subsequently, a second step advocates for a power-dividing approach by fostering civil liberties, multiple crosscutting majorities and checks and balances:

> "divided-powers democracies allocate state power between government and civil society with strong, enforceable civil liberties that take many responsibilities out of the hands of the government. They distribute those responsibilities left to government among separate, independent organs that represent alternative, crosscutting majorities. For the most important issues that divide ethnic groups, but must be decided by a government common to all ethnic groups, power-dividing institutions balance one decision-making center against another so as to check each majority." (Roeder and Rothchild, 2005:15)

Taking into account the developments of the Kenyan experience, starting from the 2008 peace settlement, to the institutions created for the numerous reforms, towards the approval of the new Constitution in 2010 onwards, the transitional process of power sharing in Kenya seems to fit Roeder and Rothchild's power-dividing predicament. Moreover, it highlights and reinforces the need to comprehend and include different actors and dynamics that classical power-sharing (consociational) theory by and large omits.

The construction of discourse involves the exercise of power. It is an act of selection and legitimisation, as well as omission and marginalisation. While power-sharing critics underline the lack of democratic ownership in some power-sharing arrangements and the undermining of vertical relationships of accountability and transparency as well as placing the short-term peace imperative over the medium to long-term process of democracy promotion through state-building and its institutions, academic literature and media reports on the Kenyan study case have systematically disregarded the fact that many institutions created within the power-sharing agenda encompassed numerous civil society organisations in their own decision-making agendas.[22] The discourse on the power-sharing agreement in Kenya has been almost exclusively analysed through intra-elite accommodation. However, much of Kenya's progress has

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[22] A fact that became evident with several interviews I pursued in my fieldwork in Kenya during the 2013 elections.

been due to success in implementing these institutional structures, which largely benefitted from the inclusion of civil society organisations and enjoyed relative independence from political tampering by the grand coalition executive. Narratively, power sharing is presented as being accomplished due to pressure from the international community and a mediation effort from an African Union Panel of Eminent African Personalities led by Koffi Annan. What is referred to seldom or not at all is that Kenyan civil society organisations had been engaging with international donors from an early stage of the conflict to lobby for an international mediation effort for peaceful resolution of the violence that was afflicting the country, and were subsequently engaged in the mediation talks and in fact continued to be so for the duration of the power-sharing period and its newly-created institutions and platforms. Institutions such as Kenya National Dialogue and Reconciliation, which encompassed civil society organisations to push for what would later became known as Agenda Four of the Power Sharing Agreement concerning the structural causes of the Kenyan conflict, the Kenya National Cohesion and Integration initiative of the Uwiano Platform for Peace, an early warning and response mechanism during the run up to the 2010 national referendum, established as a partnership between government security organisations and several civil society organisations and the United Nations, as well as the Kenya Constitutional Review Commission or the Commission for the Implementation of the Constitution for the constitutional reform process that was immensely participatory over the most central and divisive political issue in Kenya in the last ten years:

> "The media are behaving as if Mwai Kibaki and Raila Odinga won and William Ruto and John Njue lost. The media's obsession with politicians, as so clearly manifested in their coverage of the referendum campaign, has obscured the hard work of civil society. The ideas and the struggle for reform were initiated and sustained by civil society while politicians were making their deals to stop reform. In the recent review process, the media ignored civil society's admirable efforts to educate the people on constitutional issues. It is unlikely that the new constitution will be implemented meaningfully without the continued engagement of civil society." (Ghai and Ghai, 2010)

Additionally, other initiatives originated solely within Kenyan grassroots movements to promote and reinforce accountability and transparency and had such an impact that they were used in several other countries for election monitoring and disaster management (Carvalho, 2013). Social media platforms such as Ushahidi and Uchaguzi were created, helping to collect and disseminate virtually live eyewitness testimonies of violence, hate speech, corruption and several other illegal activities during the post-electoral violence (Ushahidi) and the period of the Constitution Referendum (Uchaguzi)[23].

Although Kenya's vibrant civil society has become highly regarded and a somewhat consensual description of Kenyan politics in international and African political studies, it would be of great value to explore if the praxis and dynamics of cooperation and collaboration between civil society organisations and various national and state level: 1) existed in Kenya prior the power-sharing arrangement; 2) if those

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[23] See also Kalan (2013) and Chan (s.a.).

dynamics changed between 2008-2013 and 3) what implications and consequences they may have for the future.

Whilst civil society's real influence and power may be the subject of dispute, it seems evident its engagement not only provided legitimacy to a grand coalition executive that no Kenyan citizen voted for, but also enhanced the accountability and the transparency in Kenya's democracy and may have provided the missing tool for the country to move forward by actively engaging in the reform processes, from grassroots-sponsored peace-building to the implementation of power-sharing institutions under the power-sharing agenda as well as the new democratic institutional framework under the 2010 Constitution. Power-sharing literature, both in the promotion of democracy and in the peace and conflict studies research agendas, has by and large disregarded or overlooked these dynamics. By so doing, not only has it produced an analytical loophole, but it has also made several non-elite actors invisible by reproducing a parcelled, hegemonic and elite-centred discourse and reality.

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