

**‘COUNTING VOTES AND BODIES,’ ELECTION-RELATED CONFLICTS IN
AFRICA: A COMPARATIVE STUDY OF GHANA AND KENYA.**

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By

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ABSTRACT

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Since joining the 'third wave' of democracy in the 1990s, African countries have focused on elections. Some leaders conduct elections to legitimize their authoritarian rule. Many of Africa's transitional democracies are associated with flawed elections and violent conflicts. The literature on electoral conflict places little emphasis on election governance. It is my assumption that the high rate of non-credible elections in Africa can be associated with election management that has exacerbated societal cleavages. *Is an effective and independent election management body a necessary prerequisite for election results to be credible? Are credible elections correlated with lower levels of conflicts?* Kenya and Ghana, with their parallel experience with electoral conflicts, are compared to determine if the level of effectiveness of an electoral commission is strongly correlated with the conduct of credible elections and consequently a reduced propensity for election-related conflicts.

Key words: election-related violence, elections, election management bodies, conflict, democracy, Sub-Saharan Africa.

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LIST OF ACRONYMS

AFRC	Armed Forces Revolutionary Council
AU	African Union
AYA	Anlo Youth Association
ACP	Action Congress Party
AASND	Abagussi Association of South Nyanza District
APP	African People's Party
AG	Attorney General
BPU	Baluhya Political Union
CIA	Central Intelligence Agency
COG	Commonwealth Observer Group
CSO	Civil Society Organization
CDR	Committees for the Defense of the Revolution
CPP	Convention People's Party
CODEO	Coalition of Domestic Election Observers
CHRAJ	Commission on Human Rights and Administrative Justice
CIPEV	Committee of Inquiry into Election Violence
DCE	District Chief Executive
DP	Democratic Party
ECK	Electoral Commission of Kenya

EC	Electoral Commission
EU	European Union
EAA	East African Association
EOM	Election Observer Mission
EMB	Election Management Body
EGLE	Every Ghanaian Living Everywhere
FORD	Forum for the Restoration of Democracy
FPTP	First Past The Post
GBA	Ghana Bar Association
GNU	Government of National Unity
GLSS	Ghana Living Standards Survey
GNAT	Ghana National Association of Teachers
GSGDA	Ghana Shared Growth and Development Agenda
GEMA	Gikuyu, Embu, Meru, Akamba
GPRSP	Ghana Poverty Reduction Strategy Paper
GSS	Ghana Statistical Service
HIPC	Highly Indebted Poor Country
ICC	International Criminal Court
IMF	International Monetary Fund
IPAC	Inter-Party Advisory Council
IPPG	Inter-Parliamentary Party Group
IFES	International Federation of Electoral Systems
INEC	Interim National Electoral Commission

IIEC	Interim Independent Electoral Commission
IDEA	International Institute for Democracy and Electoral Assistance
IEA	Institute of Economic Affairs
IEBC	Independent Electoral and Boundaries Commission
KCA	Kikuyu Central Association
KPA	Kalenjin Political Alliance
KPP	Kenya People's Party
KANU	Kenyan African National Union
KADU	Kenyan African Democratic Union
KNCHR	Kenyan National Commission on Human Rights
KEDOF	Kenya Elections Domestic Observation Forum
KNDR	Kenya National Dialogue and Reconciliation
Kshs	Kenyan Shillings
KAMATUSA	Kalenjin, Masai, Turkana and Samburu Alliance
LU	Luhya Union
LDP	Liberal Democratic Party
MA	Masai United Front Alliance
MAP	Muslim Association Party
MUF	Mwambao Union Front
MFJ	Movement for Freedom and Justice
MADU	Mombasa African Democratic Union
NAL	National Alliance of Liberals
NCP	National Convention Party

NDC	National Democratic Congress
NGO	Non-Governmental Organization
NIP	National Independence Party
NLC	National Liberation Council
NLM	National Liberation Movement
NPP	New Patriotic Party
NPP*	Northern People's Party
NAK	National Alliance (Party) of Kenya
NRC	National Redemption Council
NDI	National Democratic Institute
NDP	National Democratic Party
NPC	Nairobi People's Convention
NADC	Nairobi African District Council
NCPC	National Convention Planning Committee
NCEC	National Convention Executive Council
NCCE	National Commission on Civic Education
NARC	National Rainbow Coalition
NAPEA	National Assembly and Presidential Elections Act
NEDEO	Network of Domestic Election Observers
ODM	Orange Democratic Movement
OMR	Optical Mark Readers
OSIEA	Open Society Institute, East Africa Initiative
OSIWA	Open Society Institute, West Africa Initiative

PDC	People's Defense Committee
PPF	Popular Front Party
PHP	People's Heritage Party
PNC	People's National Convention
PNDC	Provisional National Defense Council
PNP	People's National Party
PP	Progress Party
PNC	People's National Convention
PNU	Party of National Unity
RO	Returning Officers
RVPC	Rift Valley People's Congress
SADA	Savanna Accelerated Development Authority
SMC	Supreme Military Council
TC	Togoland Congress
THA	Taita Hills Association
TADU	Taita African Democratic Union
UP	United Party
UNC	United National Convention
UMA	Ukambani Member's Association
UGCC	United Gold Coast Convention
UNDP	United Nations Development Programme
UNIGOV	Union Government
WDC	Workers' Defense Committee

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CHAPTER 1: INTRODUCTION

1.0. Introduction

After nearly three decades of statehood and independence from colonialism, African states joined the “third wave” of democratization in the 1990s (beginning with Benin in 1998) by transforming most of the authoritarian regimes into democracies, or at least starting the process of democratizing. Elections are the bedrock events of any democracy; they are also the political activities most open to manipulation (Reynolds, 2005). Democratization confronts political actors with the strategic dilemma of establishing democracy as a system of organized uncertainty. Adam Przeworski states that “competitive elections are the quintessential manifestation of organized uncertainty in a democracy” (Przeworski, 1991, p.14). The history of democratization in Sub-Saharan Africa has demonstrated that competitive elections are double-edged swords, producing change, rebirth, renewal and power alternation, but they can exacerbate ethnic conflicts and contribute to political polarization, social disequilibrium and civil wars. According to Dorina Bekoe, studies indicate that violence associated with Africa’s elections affects between 19 and 25 percent of elections (Bekoe, 2010).

In some countries interest in the conduct of elections gained momentum as a form of legitimizing the rule of autocratic leaders gaining international recognition and support from western donors. By the end of 2010, a large proportion, 32 out of the 48 (66. 7 percent) countries in Sub-Saharan Africa were nurturing transitions to democratic rule; Freedom House classified

23 of them as being partially free and 9 free (Freedom House Report, 2011). Yet some elections that are conducted to establish and eventually consolidate many of these nascent democracies have been characterized by fraud, disputed results and violent conflicts. According to Robert Pastor (1999), a survey conducted on elections between 1998 and 1999 showed that Africa had the highest number of disputed election results. Twenty-eight percent (28 percent) of disputed results and 41 percent of African elections were described as flawed by international and local election observers (Pastor, 1999).

Democracy promoters have hyped the need for elections as the most important event to show that a country is democratizing to the extent that countries that do not have the minimum systems in place to conduct credible elections are encouraged to do so. The results have often been disastrous, a situation which Paul Collier describes as “democracy in dangerous places” (Collier, 2009, p. 1). Collier states that among the ‘bottom billion’ (people living in developing countries), the great political sea change, superficially, has looked like the spread of democracy, but was actually the spread of elections. That is, developing countries’ adoption of electoral democracy (without efforts to establish liberal democratic institutions and structures) makes the democratization process superficial as many elections are described as shams. He argues that when elections become a zero-sum game without strict adherence to the rules of conduct of elections, the contestants are driven to extremes. The result, Collier contends, is not democracy but “*Democracy*” (Collier, 2009, p.16). Collier’s call for all parties in the election process to be subjected to the rules of conduct is a fundamental duty of Election Management Bodies (EMBs) whose mandate is rule making, rule application, and rule adjudication of the electoral process. He stresses that if this role is not played properly the election results are disputed by contending parties, leading to chaos and violence (Collier, 2009).

The International Foundation for Electoral Systems (IFES) maintains that an electoral process is an alternative to violence as it provides a means of achieving governance. Elections are very important activities of the democratic process, meant to replace other forms of the selection of leaders and representatives or to decide on important national political issues by the populace (Fischer, 2002). Successive US administrations have justified various policies intended to promote democracy abroad by arguing that democracy promotes peace. The democratic peace theory states that democracies rarely, if ever, go to war with one another (Kant, 1957). Why should ballots create occasions for bullets in some countries during and after elections, when democracy promoters and scholars have so strongly suggested that democracy promotes peace?

Contrary to the generally accepted view that democracy eventually promotes peace, Edward D. Mansfield and Jack Snyder (2007), Michael Mann (2005), Paul Collier (2009), and Lars-Erik Cederman, Simon Hug and Andreas Wenger (2007) argue that in transitional states, open political space in the early stages of democratization leads to intense competition between old and new elites. The scholars argue that while the old autocratic power structures are in decline, the new democratic institutions are still too weak to effectively regulate mass political competition. The unhealthy interaction between mass political participation and underdeveloped institutions can lead to war.

According to Staffan Darnolf, some EMBs that are mandated to be the referees overseeing the competition for power and position fail to proactively assess, detect, deter and mitigate election fraud (Darnolf, 2011). EMBs constitute the organizational anchor that secures the procedural legitimacy for the substantive uncertainty inherent in competitive elections (Przeworski, 1991). Mozaffar (2002) maintains that EMBs are now increasingly viewed as the linchpin of effective electoral governance in new as well as established democracies.

The establishment of election governance institutions has increased as many African countries transition to democracy. López-Pintor (2000) identifies three categories of EMBs in new democracies in Africa. Those directly managed by governments represented 8 percent; independent election commissions were 53 percent and government-cum-ad hoc electoral authority joint management (under the auspices of the ministry of interior that administers daily and decentralized activities of the election process) represented 39 percent. This follows the global trend of the models of election management bodies---of 214 EMBs, 55 percent are independent commissions, 26 percent solely government managed and 15 percent mixed models (IDEA, 2006)

Despite the aforementioned trend of increased election governance institutions and election fraud globally, some African countries like Ghana, Botswana, Cape Verde, and Benin are progressing steadily on the path to establish democratic rule through the conduct of credible elections, but others, such as Zimbabwe, Kenya, Nigeria, and Côte d'Ivoire, with similar demographic, ethnic, socio-economic and political characteristics are associated with flawed elections (Lindberg, 2009).

1.1. The Research

As a result of the increasing incidence of election-related violence in African countries, the question is asked: *Is an effective and independent election management body a necessary prerequisite for free, fair and credible elections? Are credible elections correlated with lower levels of conflicts?* Several sub-questions that readily come to mind include: Can a legitimate EMB, which is legally and operationally insulated from the manipulation of state functionaries, administer elections as a neutral entity to produce credible results? What difference will a well-

resourced EMB with a comprehensive voter education and fraud management plan make? What influence can an effective dispute resolution plan, professional EMB staff and law enforcement team have on the outcome of elections? Finally, how does the performance of EMBs impact the political environment, particularly the legitimacy and credibility of election results and the reaction of losing contestants after elections? These questions are important because, as Shaheen Mozaffar and Andreas Schedler (2002) contend, disagreements and disputes over election results in developed democracies usually fall within the accepted standard “margin of error,” but in some African countries election results are flawed due to manipulations and fraud.¹ These disputes over election results combine with other factors to increase tension and finally degenerate into full scale communal conflicts as in Kenya, Zimbabwe and Côte d’Ivoire. The study is important because according to Jørgen Elklit and Andrews Reynolds as well as Robert Pastor, electoral governance is given little attention in the study of political democratization, particularly for transitional democracies (Elklit and Reynolds, 2000; Pastor, 1999).

The study seeks to investigate the role of election management bodies in the conduct of elections and whether they contribute in any significant ways to reducing election-related conflicts in Africa. Taking a most similar case design, and analyzing the series of presidential elections conducted in Ghana and Kenya from 1991 to 2008, the study identifies factors that might have helped Ghana to avoid large scale election related communal violence and Kenya sliding into election-related communal violence. The two will be compared and contrasted.

The study seeks to test a sub class of Edward D. Mansfield and Jack Snyder’s “preconditions” theory about emerging democracies. Mansfield and Snyder theorize that certain

¹Mozaffar and Schedler (2002) argue that democratic elections entail the largest peacetime mobilization of the national population in a short time span and require the coordination of hundreds of individuals engaged in many different activities which are almost always affected by errors at various stages of the process. These inaccuracies define the margin of error in all elections.

economic, political, socio-cultural and institutional conditions must exist for a country to avoid or reduce the threat of war during transition to democracy (Mansfield and Snyder, 2007). The theory advances the argument that emerging democracies (with incomplete democratization) are more likely than others states to go to war because they lack the institutional infrastructure needed to manage the turbulent processes of increased political participation, especially in settings where unresolved issues of national identity can be exploited for antidemocratic purposes. The objective of this study is to test a subclass of the theory on weak institutional infrastructure, using the role of EMBs as institutions mandated to oversee elections, a critical component of the democratization process. The study assesses and analyzes the performance of EMBs and their contribution to the success or failure of conducting credible elections in the two countries. The study further ascertains the correlation (if any) between the level of credible elections outcomes and election-related violence.

Purpose of the Research

The purpose of the research is to identify weaknesses related to election management that may contribute to election related-violent conflicts. Scholars have given little attention to the contribution of EMBs to the conduct of credible elections and election-related violence (Alston, 2010).² According to Elklit and Reynolds (2005) and Mozaffar (2002), the importance of EMBs has been neglected or taken for granted for a long time because elections in established democracies tend to be routine events, usually producing results within a narrow, but fully acceptable margin of error.³ This research will contribute to filling the gap by helping to

² According to a report on election-related violence and killings submitted to the UN Human Rights Council Fourteenth session, there is limited academic research on election-related violence (Alston, 2010).

³ Elklit and Reynolds (2005) describe the limited research in the field of election administration as a large empty space within academia and policy analysis that needs to be filled. Mozaffar (2002) describes the situation as a neglected variable.

diagnose the complex problems of weak election management and election-related violence in the two countries from 1991 to 2008.

Organization of the Study

The first chapter of this thesis provides an introduction, literature review and description of the methodology to be utilized. The second chapter is devoted to the development of democracy, election management and challenges facing the EMB in Ghana. The third chapter does the same for Kenya. Chapter four is devoted to comparing the performances of EMBs in the two countries and provides an analysis of findings, recommendations and suggestions for future research.

1.2. Literature Review

The literature on election related-conflicts in Africa focuses on political, cultural, economic and social factors that contribute to or exacerbate violence before, during and after elections. Some scholars have conducted studies on the role of institutions in the conduct of elections, but a critical component of the institutional framework, election governance, has only recently begun to gain the attention of scholars and policy makers. According to Rafael Lopez-Pintor, electoral management is a relatively new field of study, especially as it relates to democratization in new democracies (Lopez-Pintor, 2000). Many countries' adoption of democratic rule has been accompanied by disputes over election results with some countries sliding into communal violent conflicts. Analysts from International Foundation for Electoral Systems (IFES), the International Institute for Democracy and Electoral Assistance (IDEA), Freedom House, and Democracy Watch are concerned that the increased propensity for influencing election results undermines the whole democratic process. Some of the major causes

of electoral disputes and violence are ethnic cleavages, poverty, manipulation of elections, fraudulent polls and negative propaganda.

Some politicians rely on ethnic loyalty to win power. Ethnic riots are used as a particularly brutal and effective form of campaign, designed by politicians to solidify ethnic majorities and diminish the importance of other politically relevant identities especially in marginal constituencies and among pivotal groups of undecided voters in the run up to elections (Gurr, 2000).

The Nature of Elections

Does democracy bring peace? The answer to this question has been the center of scholarly debates for many years. The ‘democratic peace’ theory has evolved over the years, but basically holds that liberal democracies never or rarely go to war with each other. In his work, “Perpetual Peace,” Immanuel Kant postulates that peace is a reasonable outcome of the interaction of states with a republican form of government. He believes that the republican constitution gives a favorable prospect for the desired consequence---perpetual peace. According to Kant, “if the consent of citizens is required in order to decide that war should be declared nothing is more natural than that they should be very cautious in commencing such a poor game, decreeing for themselves all the calamities of war” (Kant, 1957, pp 94-95). Some scholars prefer to talk about the ‘liberal peace theory’ instead of democratic peace, saying that this formulation is more relevant and easier to define in empirical analyses. They agree with Kant and argue that liberal states would not feel threatened by the universalistic outlook of other liberal republics since they already share a similar form of government and consequently gravitate towards peace even under provocative circumstances.⁴

⁴ John M. Owen, *Liberal Peace, Liberal War*, Ithaca, Cornell University Press, 1997 and Michael Doyle, *Ways of War and Peace: Realism, Liberalism, and Socialism*, New York, Norton & Company, 1997.

Democratic peace theorists explain this using regime type. They assert that the checks and balances that define a democracy constrain the autonomy of its leader to take decisions involving the use of force. This constraint, the proponents argue, delays the dispatch and deployment of combat troops abroad even in international crises, which creates a window of opportunity that diplomats can exploit to settle conflicts of interests without recourse to arms. Those who oppose the theory, for example Sebastian Roberto, argue that beside the fact that there are plenty of historical exceptions to this rule, like the Philippine-American War and the Irish War of Independence, one of the ambiguities associated with the theory is the definition of a democratic state. Some nations have forms of democracy without the substance. For example, where institutions are weak and elections are the only indicators of a government being described as a democracy cannot be compared to consolidated democracies such as the US. According to Christopher Layne (2003), the institutional constraint and the checks and balances argument advanced by the democratic peace theorists is weak and does not provide compelling evidence and an explanation for the absence of war between democratic and non-democratic states.⁵

Contributing to the debate on the democratic peace theory, Mansfield and Snyder (2007) as well as Collier (2009) postulate that states in the early stages of transition to democracy are more likely than other states to become involved in war. They explain that subsequent attempts at democratization become more expensive after first attempt to democratize fails. They maintain that as an authoritarian faction gains the upper hand, it develops mechanisms and tricks of subduing prodemocracy forces, thereby curtailing any attempts at democratization. The preconditions required to establish democracy become degraded and it takes more efforts and resources to get started all over again during a second attempt at democratization. Ted Gurr adds

⁵ Cited in Rosato (2003). “The flawed logic of the democratic peace theory” argues that even if the theory is accepted, it does not imply that peace is the key characteristic of a democracy.

that the process of transition creates threatening uncertainties for some groups and opens up a range of transitory political opportunities for ethnic entrepreneurs (Gurr, 2000). Mann (2005); Cederman, Hug, Wenger (2007) and Collier (2009) agree with the position that the transitional stages to democracy are turbulent and can lead to violence. They advocate a gradual approach to establishing democracy in divided and weak states. Collier stresses that incomplete democratization increases the danger of war when political institutions are especially weak and elites are motivated to employ strategies of exclusionary nationalism in the effort to survive.

David C. Rapoport and Leonard Weinberg (2001) take the argument further, by theorizing that, by their nature, elections are divisive because competition rhetoric must emphasize party differences to attract votes. In the process, utterances exaggerate the potential stakes of contending parties, thereby threatening the success of the process. The stakes are even higher in multicultural states where political patronage is common.

Causes of Electoral Conflicts in Africa

Analysts identify a variety of causal factors for conflict during and after elections in transitional democracies. Many contributors to the discussion on the causes of election-related conflicts associate violence with the negative influence of ethnicity, religious differences, political propaganda and machinations by political elites, incumbent leaders' manipulation of polls and the weaknesses of the electoral system.

Scholars are divided as to whether ethnic diversity per se constitutes a recipe for communal violence. A number of scholars argue that ethnic cleavages are significantly associated with voting behavior and the structure of party systems in Africa (Horowitz, 1991, 1993; Mozaffar et al., 2003; Norris and Mattes, 2003; Posner, 2005 cited in Mozaffar et al., 2003). These scholars contend that as politicians seek to win power, they exploit existing fault

lines among diverse ethnic groups for votes. This, they argue, increases antagonism and prepares the ground for violence at the least provocation. Dorina A. Bekoe (2010) asserts that electoral violence, especially when recurrent, seems indicative of more widespread systemic grievances. Tensions over land rights, employment and ethnic marginalization are three common sources of recurring electoral violence. Bekoe concludes that these areas intersect and are frequently manipulated by politicians. The conventional wisdom is that ethnic voting and ethnic parties exacerbate groups divisions rather than accommodating and mitigating them.

Horowitz (1985) and Collier (2009) posit that, because the stakes of winning and losing are very high, elections may deepen communal frictions. Steven I. Wilkinson (2009, cited in Mozaffar and Schedler (2002) contends that elites may seek to create conflict in order to demobilize the supporters of their potential opponents.⁶ Collier (2009) observes that when elections are superficial (that is corrupt, flawed, and ethnic) they become a matter of extreme importance such that contestants are prepared to adopt any means possible to win. If they are not subjected to the rules of conduct, the contestants are driven to extremes. Therefore, Collier emphasizes how important it is for EMBs to subject parties to the rule of democratic elections.

On the other hand, Stephen Sideman and David Lanoue (2005) assert that elections may serve to reduce extreme forms of dissent, as individuals and groups focus their efforts on getting their representatives elected by traversing societal cleavages to canvas for votes. They argue that elections may lead to restraint as groups try to avoid antagonizing potential voters and build coalition partners. Sideman and Lanoue maintain that while ethnic conflicts obviously requires the existence of at least two or three competing groups in a country, any significantly greater fragmentation beyond that point reduces the likelihood of ethnic strife because larger groups are,

⁶ Sideman and Lanoue (2005) and Wilkinson (2009) argue that in multiethnic democracies like India, ethnic riots are best thought of as a particularly brutal and effective form of campaign expenditure designed by politicians to solidify ethnic majorities and diminish the importance of other politically relevant identities.

by definition, better equipped to engage in larger protests. Therefore communal conflict is greatest among groups that are relatively large, both in real and relative terms. The exception, however, is that, in countries where specific ethnic groups are perpetually sidelined and discriminated against by other ethnic groups in government, they may resort to violence notwithstanding their relative size and strength.

Other scholars maintain that the problem of ethnicity in African politics is not as engrained as it is purported to be. Shaheen Mozaffar and Andreas Schedler (2002) assert that there is evidence of trans-ethnic party support for political parties and leaders. They cite a study on Ghana's 1992 elections (Oquaye, 1995), Mali's 1992 elections (Vengroff, 1993 and 1994) and Senegal's experience with a series of competitive elections (Vengroff and Creevey, 1997; Villalon, 1994) that show patterns of trans-ethnic voting.⁷ According to Mark I. Lichbach (1994) and Stephen M. Saideman (2004), attributing election-related violence in Africa solely to ethnic cleavages is limiting; instead they call for an in-depth study of the problem.

Leaders of African countries and losing political parties have been blamed for most of the conflicts associated with elections in their countries for several reasons. According to Andreas Schedler (2006), elections are tools of democratization or tools of manipulation employed by authoritarian governments to maintain leaders in power. Beth E. Whitaker (2005), Bakarr A. Bah (2010), and Carl Le Van (2009) assert that leadership failure, incumbents' manipulation of the electoral system to hold on to power and uncompromising, defeated party leaders contribute to election-related violent conflicts in Africa. They argue that leaders, particularly incumbents, manipulate electoral laws to exclude sections of the community which leads to violent conflicts that threaten the security of states. Carl Le Van (2009) cites the cases of *Ivoirité* (a policy introduced to identify *indigenes* from *non-indigenes* of Côte d'Ivoire as a discriminatory political

⁷ Cited in Mozaffar and Schedler (2002)

tool) which was used to disqualify Alassane Ouattara as a presidential candidate in the 1998 and 2000 elections. A similar case is the failed attempt by rival politicians to disqualify candidate Frederick Chiluba of Zambia on the grounds of his citizenship status in 1996.

Political parties, as perhaps the most influential group in the electoral process, have their share of the blame for electoral violence. In this study, political parties refer to all accredited political groups which contest elections in a country for political post or office. Political parties' role in fomenting violence during elections needs to be put in context. When elections are called, politicians and their supporters attempt to influence policy by competing directly for the votes of the constituents in campaigns. Some activities of political parties directly or indirectly cause conflict before, during and after elections. These may include fraud, intimidation, gerrymandering, vote rigging and illegal interference with the process of an election. A political party is an organization formed with specific ideology and programs with the aim of capturing power to rule a state or an organized entity (Mozaffar and Scarritt, 2005). To keep these practices in check, EMBs must have fraud detection and prevention mechanisms.

The Role of Electoral Institutions

According to Rafael Lopez-Pintor (2000), effective management of electoral systems requires institutions that are inclusive, sustainable, just and independent, particularly, electoral management bodies that have the legitimacy to enforce rules and assure fairness with the cooperation of political parties and citizens. Gurr (1993), Pastor (1999), and Reynolds (2005) identify weaknesses in electoral systems, administration and dispute resolution mechanisms as the main causes of election-related disputes and violent conflicts. They stress the need for effective electoral systems to reduce the rate of occurrence of conflicts in transitional

democracies. Samuel Huntington (1991) shares the same opinion when he states that the gap between high levels of political participation and poorly integrated institutions is one of the key problems of political development in transitional democracies. Ted Gurr observes that the ‘third wave’ of democratization has coincided with an increase in the number of ethnic conflicts (Gurr, 1993). In multi-ethnic societies, the interaction of institutions and ethnic loyalties play important roles in shaping the attitudes of voters. Daniel N. Posner (2007) asserts that the competitiveness of the party system affects whether ethnic groups are mobilize along language or tribal lines.⁸

According to the African Union’s (AU) “Panel of the Wise” report on elections (2010), the problems related to elections in Africa are due to weaknesses in the governance of elections, the rules of orderly political competition, and lack of impartial judiciaries to interpret and adjudicate electoral disputes. Can effective EMBs administer the election process so that election results become credible and accepted by majority of the electorate and parties to neutralize the ethnicity factor and thereby avoid the violent communal conflicts associated with democratization?

Rapoport and Weinberg (2001) and others have identified the failure of institutions and the design of elections as the major causes of election-related disputes and violence (Fischer, 2002). Citing recent examples of defective elections in Haiti, Kenya and Georgia, Edward P. Joseph (2008) concludes that, in each of these ‘election-challenged’ countries, the election management body (EMB) was deficient. Andrew Reynolds (2009), shares the same opinion when he affirms that the electoral system or how the votes cast are actually translated into seats has a huge impact

⁸ Posner (2007) argues that changes in institutional structure often trigger the activation of ethnic differences. Particularly a shift from a one party or nonparty state to multiparty democracy makes voters inclined to support politicians from their own ethnic groups over others and, because politicians know that voters will do this, it creates incentives for politicians to couch their electoral appeals in ethnic terms.

not just on inclusion and exclusion, but also on the tone of the entire political system. He stresses the need for states to put in place the necessary systems before conducting elections.

Mansfield and Snyder agree that states should get it right from the beginning. They explain that it is difficult to make amends if the foundation for democracy is weak. They explain that once a country starts on an illiberal trajectory, ideas are unleashed and institutions are established that tend to continue propelling it along that trajectory (Mansfield and Snyder, 1995). Therefore, having a good start to the democratization process is very important. Mansfield and Snyder (1995) as well as Collier (2009) contend that weak and fragile states should be prepared before they conduct elections. These scholars advocate for gradual establishment and development of democratic systems and structures such as well functioning bureaucracy, an independent judiciary, professional law enforcement agencies, and an active civil society to effectively participate in the democratization process. Otherwise, Collier cautions, it is not worth conducting elections at all. Mansfield and Snyder argue that this is so important because when elections are held in an institutional wasteland, political competition typically coalesces around and reinforces the ethnic and sectarian divisions in traditional societies (Mansfield and Snyder, 1995).

Pastor (1999) supports this point when he states that administrative irregularities contribute to the rejection of election results and consequently conflict in many countries. He notes that electoral mismanagement, whether deliberate or due to incompetence, is at the heart of the overwhelming majority of disputed elections all over the world. According to Pastor, of the 387 elections held in emerging democracies worldwide from 1989 and 1999, all party petitions, protests, and boycotts were rooted in administrative irregularities. Therefore, effective election

management may help steer new democracies through this quagmire where ballots provoke bullets.

In sum, Africa presents appropriate grounds for the testing of Mansfield and Snyder's theory on how weak institutions can cause war or violence in emerging democracies. The scholarship on election-related conflicts tend to focus on economic, political, socio-cultural and other aspects of institutional arrangements such as regime type and electoral system to the neglect of the role of EMBs. Although there is increased interest in the work of EMBs of late, as highlighted by new studies on election governance, the role and performance of EMBs is not yet developed (a situation Mozaffar describes as a 'neglected variable' in the process of democratization in new democracies) (Mozaffar and Schedler, 2002). Many African countries, with weak state systems and economic bases as well as multiethnic societies characterized by cleavages, are prone to violence during elections. If EMBs are to offer some hope for managing these conflicts, then they have to be good referees.

1.3. Methodology and Presentation

In order to evaluate the effect of EMBs on election-related violence, this study uses process-tracing to establish a causal chain and causal mechanism between the independent variable and the dependent variable. Two countries (Ghana and Kenya) are selected for the study based on their EMBs' relative performances in conducting national elections. The study identifies possible causal factors or pathways of the differences in the performance of EMBs and how their performance contributes to exacerbating or preventing violent communal conflicts during electoral seasons.

Chapters 2 and 3 discuss the historical background and development of election governance in the two countries; each contains a brief on the development of multi-party systems and political party interactions with other political actors and their influence on elections and electoral violence. The study also includes a brief comparison of a two-dimensional analysis of (the relatively better and worse performing countries) and how EMBs' performance relates to the trend of election-related violence in those countries.

The study measures the effects of the performance of EMBs in the aftermath of elections. It also explores the relationship between EMBs' performance and the level of communal conflicts experienced as a consequence of the elections. The dependent variable is election-related violent conflicts and the independent variable is the performance or output of EMBs.

Election-related conflict is defined in this study as a political act or acts of aggression aimed at subverting, controlling or disrupting the electoral process for purposes of winning political competition for power or to settle scores with people from an opposing party before, during and after elections (Omotola, 2008).⁹ The term election-related violent conflict, the dependent variable in this study, will be used interchangeably with electoral violence, election-related violence, communal violence and communal conflict is defined as violent conflict that involves large numbers of people (50 or more people) as a result of disagreements and dissatisfaction over election results or any part of the electoral process. Election-related violence is contextually understood to mean any violent action against people, property or the electoral process intended to influence the electoral process or harm perceived opponents (Omotola, 2008). The study is limited to measuring acts of physical violence perpetrated before, during and after elections only. The study focuses on manifestations of violence such as assault, death

⁹Olawale (2008).

threats, killings, bombings, looting, arson, destruction of and damage to property, abductions, and fighting among political parties or other organized stakeholders in the electoral process.

An election is the formal decision-making process by which a population chooses an individual or group of people to hold public office or decide on major political issues. It is the usual mechanism through which representative democracy operates. An ideal electoral cycle would have the following key elements: a legal framework, electoral planning and organized implementation, civic training and education, official voter registration, election campaigning, voting, certified verification of election results, and post-election processes. These processes are supposed to be administered by Election Management Bodies (EMBs). EMBs are lead agencies set up by law to oversee elections in any country. According to Mozaffar and Schedler (2002), Elklit and Reynolds (2005) and IDEA (2006), EMBs are institutions vested with the responsibility to organize, supervise, and adjudicate or facilitate the adjudication of election-related disputes. They are supposed to be politically neutral and unbiased against any actor in the election process.

Some EMBs have permanent staff and chief executive officers, which is common in states with fixed electoral calendars and permanent professional staff like Ghana's electoral commission. Other EMBs that do not have fixed electoral calendars and elections are called by governments as and when it is deemed necessary. Countries like Benin and Niger have ad hoc electoral commissions set up when elections are due and are often dissolved after elections (IDEA, 2006). The compositions of EMBs vary according to country but in general terms comprise personnel of electoral commissions and other bodies to ensure the smooth conduct of elections. In this study, EMBs and the term electoral governance are used interchangeably,

recognizing the fact that EMBs are a part of the whole system of governance of the election process.

The performance of EMBs affects the general atmosphere in a country during and after elections. The assumption of this study is that acts of communal violence targeted at opponents, state institutions or EMBs during and after elections occur as a protest to show dissatisfaction, dissent or disapproval of part or the whole election process. This is particularly the case when violence appears to be the only means of seeking redress or justice. According to Gurr (2000), the tendency towards violence is inversely related to a group's (ethnic group, political party, religious and other sectarian bodies) security and interest. This is because groups which resort to violent acts are very much aware of the negative consequences such as injury, death and legal action by state security apparatus. Perpetrators of violence may be denied their legitimate demands because their acts may be seen as setting bad precedents for seeking redress. Given that violent conflict is very costly, groups in democracies will try to work through the system before they become dissatisfied and engage in serious dissent and violent behavior. The hypothesis to be tested therefore is that *election-related violence is more likely in countries with weak elections administration and dispute management systems*. It is difficult to measure the effectiveness of elections objectively, especially when some EMB leaders are implicated or perceived to be partisan in their judgment of election results (Omotola, 2008). This study assesses the strength of the legal framework (legal instruments, administrative, operational and logistics arrangements and the legitimacy of their leaders) that set up EMBs in the conduct of elections by analyzing variety of documents mandating EMBs to operate. This assessment is performed according to the Elklit and Reynolds (2005) scale, which measures election effectiveness. The main elements are grouped into three main categories: rule- making, rule implementation and rule adjudication

(Mozaffar, 2002).¹⁰ Key components of International Institute for Democracy and Electoral Assistance (IDEA)'s framework for election management design are also adopted to enhance the measurability of the variables (IDEA, 2006).

Other major stakeholders and factors involved in the electoral process such as political parties, their organization, campaign activities and the role or influence of government and other state functionaries are examined. The economic conditions of the state (as measured by economic indicators like GDP and per capita income) and the ethnic demographic patterns vis-à-vis party mobilization and party alliances are also treated as controlled variables. The effect of local and international election observers and monitors on the conduct of elections is also monitored as a control variable.

Operationalization

The study adopts the most similar design to measure the performance the EMBs in Ghana and Kenya. According to Guy (1989) the most similar systems design is a comparative design, because it is the design that attempts to manipulate the independent variables through case selection to control extraneous variance by the same means.

In contrast, a most different system design compares contrasting cases in order to show the robustness of a relationship between dependent and independent variables. The most similar design assumes that by demonstrating that the observed relationships hold in a range of contrasting settings the argument of the research is better supported. The assumption is that extraneous variance questions are dealt with by the selection of the cases. If a relationship between an independent variable X and a dependent variable Y is discovered, then the factors

¹⁰ Elklit and Reynolds (2005) have identified 11 elements for measuring the effectiveness of elections: legal framework, election management, constituency and polling demarcation, voter education, voter registration, designing ballot papers and registration of candidates, campaign regulations, polling, counting and tabulation of votes, resolving complaints/verification/certification of results and post-election procedure.

that are held constant through the selection of cases cannot be said to be alternative sources of that relationship (Guy, 1989).

Tables will be used to illustrate the similarities and differences between election management in Ghana and Kenya. The primary focus of the study is a comparative study of the ECs of the two countries. The main sub-variables measured for EMB effectiveness, autonomy, neutrality and legitimacy will be weighted according to their contribution towards the attainment of credible elections results or the propensity for creating dissent, disputes and violence.

Methodology

The study utilizes a longitudinal analysis of each case from 1991 to 2008 to observe changes over the conduct of more than two national elections. It also assesses interstate EMBs' performances by adopting process-tracing combined with the congruence method to measure the effectiveness of elections supervised by the EMBs. Alexander L. and Andrew Bennett contend that in comparative case studies, a combination of process-tracing and the congruence method reduces the problem of under determination (George and Bennett, 2005).¹¹ According to Andreas Dür, process-tracing helps to identify the intervening causal process and allows for the consideration of many different rival explanation of political phenomenon.¹² This is very important because the study focuses on two distinct and different states with one independent variable, election-related violence. Furthermore, the study deals with a complex political phenomenon that is difficult to objectively measure, especially when assessing the legitimacy, credibility and performance of EMBs that depends largely on people's perceptions and

¹¹ George and Bennett (2005) explain under-determination as dealing with many variables to determine the effect in a study when relatively smaller numbers can have the same effect.

¹² Andreas Dür (2008) explains that process tracing help identifies the causal chain and causal mechanism between an independent variable (variables) and the outcome of the dependent variable. It allows for consideration of many different rival explanation of political phenomenon attributable to the power of influence which is crucial in elections campaigns and incumbent leaders' control of state resources.

judgments of the electoral process and its impact on election-related violence (Elklit, 2000; Elklit and Svensson 1997; Mozaffar and Schedler, 2002).¹³ Using the congruence method, the study identifies the causal effect of other intervening variables that are not the focus of this study but which help measure the influence of EMBs' performance on the electoral process, and by extension, its impact on election-related violence.

The study utilizes many approaches to gather information from secondary sources, including election database websites such as the African Elections Database on Ghana and Kenya and data sets developed by scholars, library archives, articles and journals in the print media, updates and diaries on important election activities by national election commissions and think tanks. The study analyzes data on election-related violent conflicts using statistically appropriate tools to show the correlation between election management and election-related violent conflicts.

¹³ According to Elklit (2000), Elklit and Svensson (1997) and Mozaffar and Schedler (2002), determining whether an election is free and fair is a complicated exercise because of the need to consider pre-election day, election day, and postelection day issues; there are also difficulties in knowing how much weight to apply to each, and the multiple dimensions involved in each.

CHAPTER 2 : GHANA: POLITICS AND ELECTION MANAGEMENT

2.0. Ghana: Background and Political History

Formed from the merger of the British colony of the Gold Coast and the Togoland trust territory, present day Ghana became the first sub-Saharan country in colonial Africa to gain its independence from the British in 1957. Ghana endured a series of coup d'états before the last military ruler, Flt. Lt. Jerry John Rawlings, led the process of drafting and approving a constitution that restored multiparty politics and ushered the country into the Fourth Republic in 1993. The Gold Coast had operated as a quasi-democracy during the pre-independence period of self-rule. It had only limited experience with democracy and the introduction of national elections to elect leaders and representatives to national decision making bodies from 1951-1957 and during the post-independence period (1957-1960) before succumbing to one-party dictatorship under Kwame Nkrumah in 1964. Ghana attempted two brief renewals of civilian rule from October 1969 to January 1972 and September 1979 to December 1981. These periods were interrupted by military coups and regimes starting with the National Liberation Council (NLC) from February 1966-October 1969; the National Redemption/Supreme Military Council (NRC/SMC I & II) from January 1972-June 1979; the Armed Forces Revolutionary Council (AFRC) from June-September 1979, and the Provisional National Defense Council (PNDC) from December 1981-January 1993 (Ayee, 1998). However, Ghana has since developed politically to become a beacon of democracy in Africa. This chapter discusses the political history of Ghana with a special focus on election management and the challenges of multi-party

democracy in an ethnically diverse society. It also examines political party activities and their influence on the electoral process as well as democratic consolidation and emerging patterns of democratic development in Ghana.

Figure 2.1: Chronology of Ruling Administrations in Ghana (1957-2012)

March 1957–June 1960: Westminster Constitution (Nkrumah– parliamentary civilian government)

July 1960–December 1964: First Republic (Nkrumah-presidential civilian government).

January 1964–February 1966: First Republic (Nkrumah-One-party presidential civilian government).

February 1966–October 1969: National Liberation Council (NLC) (Ankrah, and Afrifa-military rule).

October 1969–January 1972: Second Republic (Busia/Akufo-Addo-parliamentary civilian government).

January 1972–October 1975: National Redemption Council (NRC) (Acheampong-military rule).

October 1975–July 1978: Supreme Military Council I (SMC I) (Acheampong-military rule).

July 1978–June 1979: Supreme Military Council II (SMC II) (Akuffo-military rule).

June 1979–September 1979: Armed Forces Revolutionary Council (AFRC) (Rawlings-military rule).

September 1979–December 1981: Third Republic (Limann - presidential civilian government).

January 1982–December 1992: Provisional National Defense Council (PNDC) (Rawlings-military rule).

January 1993-June 2012: Fourth Republic (Rawlings, Kuffour, and Atta-Mills-presidential civilian governments).

Source: AfriMAP and Open Society Initiative for West Africa (2007).

2.1. Historical Overview

Historically, a large proportion of what we today know as Ghana was controlled by a number of empires. The empire of Ashanti, which was one of the most advanced states in sub-Saharan Africa in the eighteenth to nineteenth centuries, controlled about two-thirds of the territory before succumbing to colonial expansionist wars. Other smaller but prominent states included Ewe states in the present day Volta region and Gonja, Mumprusi and Dagbomba in the northern sector of the territory. These were states ruled by dynasties with built in democratic mechanisms for the selection and removal of leaders as well as participatory decision making process and traditions. The Ashanti, for example, had elaborate succession procedures and conflict resolution mechanisms that are still respected and adhered to in the Ashanti kingdom in modern times. These states were gradually merged into one state, the Gold Coast, by the British colonial administration prior to Ghana's independence. Leaders of the new state adopted the name of one of the earliest West African medieval empires, Ghana, which reigned between the 4th and 9th centuries (McLaughlin and Owusu-Ansah, 1994). Upon independence, Ghana embarked on a checkered history of alternating civilian and military rule.

In the pre-independence period, the electoral process was characterized by ad hoc and limiting measures and provisions. Voters were bound to meet certain tax requirements. Adult suffrage was limited to certain categories of people based on economic and social status. Since independence in 1957, all adult citizens (including women) of sound mind have had the right to vote. The minimum voting age was 21 years until 1979. It has since been changed to 18 years. The principles of political equality and secret voting have been applied since independence (Krennerich, 2003). The election management body in Ghana has grown from one that is controlled by government to a fully developed, independent and autonomous system with

substantial powers and checks and balances that has enjoyed growing confidence and trust in its execution of elections over the years.

2.2. Overview of Ethnicity and Conflicts in Ghana's Political History

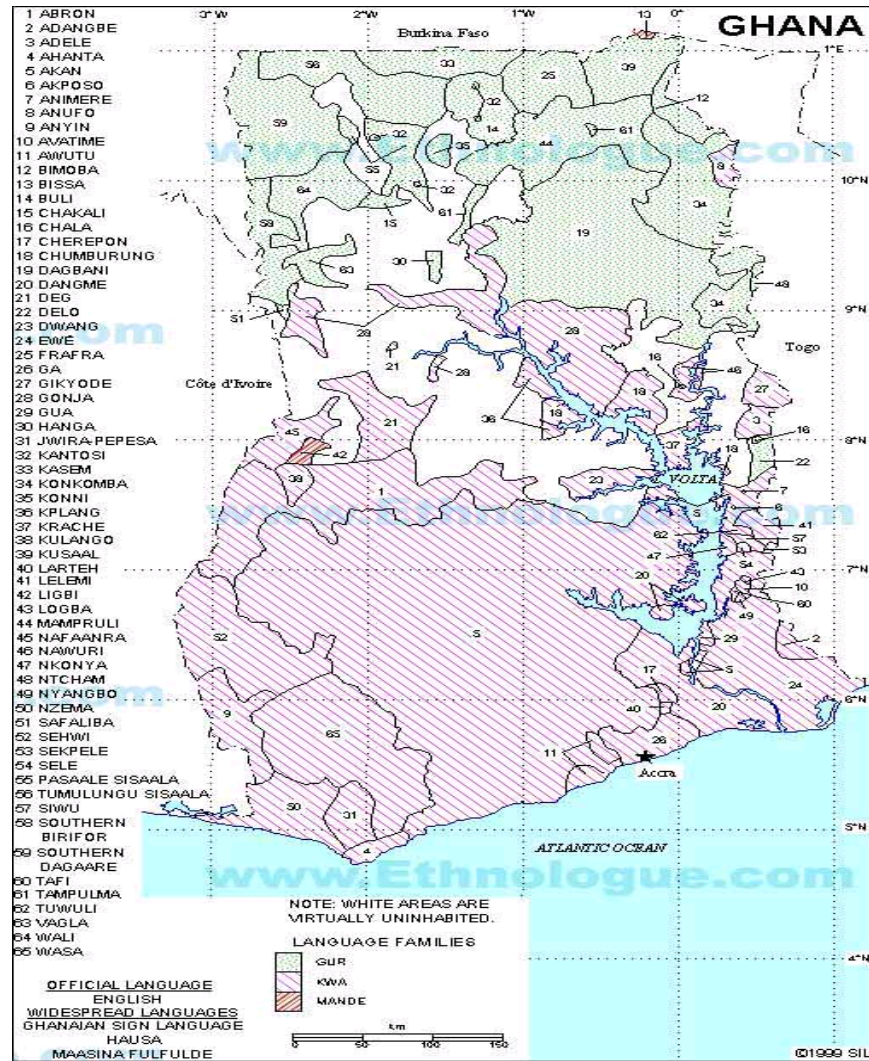
Ghana, like most countries in Africa is a multi-ethnic, multi-religious and multi-cultural society. According to the 2010 Population and Housing Census Interim report, Ghana's population is twenty four million (Ghana Statistical Service (GSS), 2011). This population is a vast mosaic of large and small ethnic groups. For a clearer understanding of the political development in Ghana, one needs to understand the basics of ethnic classification, ethno-regionalism, social and economic cleavages and how they interact to form complex networks of socio-political dynamics for the capture of power and resources. One characteristic of Ghana's political system is that parties and voters are mobilized along political traditions (the Danquah-Busia and Nkrumah) as well as issues. In contemporary Ghanaian politics, most political parties formed after the overthrow of the first and subsequent republics have laid claim to the basic orientations of one or the other of the two political traditions that are also the major competing parties during the pre-independence period. The Nkrumahists dominated the politics of Ghana from 1951 to 1966 and they produced the 1979-1982 Limann's PNP government. The Danquah/Busia tradition produced the Busia/Akufo-Addo PP administration of 1969 to 1972, and Kuffour's NPP from 2001-2008. Even though the NDC at times also claims some connection to the Nkrumahist tradition, the Rawlings/Atta-Mills' NDC government of 1993-2000 and 2008-2012 respectively is seen as a third force in Ghana's politics. It is widely believed that a Rawlings tradition (a belief in and the pursuit of social democratic ideals) has now been

established in Ghanaian politics. It draws its support from each of the older established parties (Gyimah-Boadi, 2009).

The Nkrumahist tradition is perceived in the Ghanaian popular imagination as ethnically and socially inclusive, broad-based, populist and left-wing. The Danquah-Busia tradition in Ghanaian politics has always been associated with liberal economic thinking and the business sector in society (Lindberg and Morrison, 2005). It is perceived as elitist, ethnically exclusive (predominantly Ashanti and Akyem sub-groups of the Akan), liberal-democratic and right-wing (Whitefield, 2009). Less emphasis is placed on considerations of identity except the Ashanti and Ewe, who have demonstrated their bias in the form of bloc voting for their home region parties or candidates. According to Whitefield (2009), voters and political elites are mobilized around two political traditions which provide ideological orientation and the body of stories associated with the party's history and political styles for the parties in Ghana. This is demonstrated by the de facto two-party system (NPP and NDC which have won over 90 percent of votes in national elections in the Fourth Republic) in which both parties have strong political support in almost all regions and party identification is based on cross-cutting cleavages of which ethnicity is only one (Whitefield, 2009).

It is estimated that there are about ninety-two distinct ethnic groups in Ghana. These groups are often classified into a few large (linguistic) groups, namely, Akan, representing 49.1 percent of the population, Mole Dagbani (16.5 percent), Ewe (12.7 percent) and the Ga Adangbe (8.0 percent). The other groups are the Guan (3.9 percent), Gurma (4.4 percent), Grusi (2.8 percent), Mande–Busanga (1.1 percent) and other non specified groups (1.5 percent) (GSS, 2000).

FIGURE 2.2: Ethnologic Map of Ghana



Source: <http://www.ghanaweb.com/GhanaHomePage/tribes/map.php>.

Although no part of Ghana is ethnically homogeneous, an overriding feature of the country's ethnic geopolitics is the north-south divide and the dominance of the southern half of Ghana in general and in particular by the Akan group. This segment of Ghanaian society has enjoyed relative economic and political dominance in both the colonial and post-colonial times. This divide has created ethno-regional inequalities and resentments that have developed in Ghana since colonial times when infrastructural development and projects have been

concentrated in the south and left the north relatively underdeveloped (Asante and Gyimah-Boadi, 2004). The Ghana Living Standard Survey (GLSS) report (2008) identifies the three Northern Regions as the poorest in the country.

Easy geographical mobility and people moving to seek economic opportunities have contributed to large numbers of various ethnic groups settling throughout the country without destroying or weakening their ethnic bonds. The effects of ethnic rivalries and the uneven distribution of social and economic services during the pre-colonial, colonial and post-independence periods on different groups and regions of the country have all contributed to inequalities. Some of these inequalities have persisted to date (Asante and Gyimah-Boadi, 2004). Some of the tensions within and between various ethnic groups over resources and political power in Ghana, to a large extent, are modern conflicts with roots in colonial structures, state politics and laws (Jönsson, 2007).

Local conflicts reflect keen competition over scarce resources and power, especially land and traditional rulership. In Ghana, land ownership, traditional systems of land administration and succession disputes over chieftaincy are major sources of conflict within and among ethnic groups. There is lingering fear and suspicion of Ashanti political dominance in Ghana emanating from pre-colonial Ashanti conquest and domination over the majority of their southern counterparts. This rivalry created tensions between Ashanti on the one hand, and other groups, particularly the Fanti, on the other. Bonos and Ashantis have feuded persistently over whether or not Brong-Ahafo is a vassal state of the Ashanti kingdom. There have been instances where Akan settler-farmers and their hosts in Akan cocoa growing areas have clashed over settler rights versus landlord claims (similar to the situation in Cote d' Ivoire that created a citizenship crisis and eventually exploded into full-scale civil war). Other conflicts, like the one between the

Nkonya and Alavanyo, Peki and Tsito in the Volta region, are consequences of cleavages and other inequalities in Ghana (Jönsson, 2007).

The northern half of the country is not spared the challenges of these cleavages and inequalities. Several years of relegation of certain ethnic groups, so-called ‘minority’ groups to ‘second class citizens’ in the traditional and political administration of the regions by ‘majority’ groups, and attempts to by-pass some of the ‘gates’ (royal factions) in the system of rotation in succession to chiefly thrones have led to many ethnic conflicts in the north (Jönsson, 2007).¹⁴ These ethnic divides and inequalities resulted in the eruptions of twenty-two bloody inter and intra ethnic conflicts in the Northern Region over a period of 22 years (from 1980 to 2002) (Jönsson, 2007). Among them was the ‘Guinea-Fowl War’ of the 1990s which threatened national security.¹⁵ The security threats posed by these conflicts have fueled the unproven fear that ceding too much political, administrative and financial control to the local communities and districts would encourage centrifugal forces of separatism, secessionism, and irredentism, that can impede national integration and undermine the ability of central government to protect the interests of minorities in the districts and local communities (Asante and Gyimah-Boadi, 2004). This perception has served as a powerful disincentive for effective decentralization in Ghana.

2.3. Challenges of Multiparty Elections and Democracy in Ghana

Ghana has a checked history of alternating multiparty system with no party or one party system. Ghana experienced multiparty rule at independence in 1957 and attempted two brief

¹⁴ Majority groups have elaborate systems of traditional administration such as chieftaincy while the many smaller groups are acephalous (lacking a centralized traditional administration). Acephalous societies were placed under a ruling class during colonial rule (Jönsson, 2007).

¹⁵ The ‘Guinea-Fowl War’ got its name from the incident that finally sparked the violence, an argument over the sale of a black guinea-fowl between a Konkomba and a Nanumba man (both northern ethnic groups). The dispute, in Nakpayili market in Nanumba land, sparked a bloody conflict in the 1990s (Jönsson, 2007).

renewals of civilian rule from October 1969 to January 1972 and September 1979 to December 1981. These periods were interwoven with one party rule and several military regimes up to 1992. The third attempt that started in 1992 has been sustained to date (June 2012). These periods of multiparty system were characterized by pockets of ethnic voting patterns, conflicts over resources usage and control and inequalities in Ghanaian society. Strategic attempts made by successive governments to contain and neutralize potential dangers of these divides and differences have been challenging to leaders in Ghana.

2.3.1. Socio-Economic Inequalities in Ghana

Like most African societies, inequality in Ghana, is associated with factors such as geography (especially when examining the differences between the poor north and the prosperous south, and the rural-urban divide), ethnicity, gender, disability and class. Others are a combined effect of differential resource endowment, history, public policy and subjective factors such as attitudes and prejudices (Ghana Human Development Report 1997). The spatial distribution of the two major foreign religions, Islam and Christianity, largely coincides with the division of the country into the northern half and the southern half respectively. These inequalities are potential fault-lines for social cleavages and differences. These factors have influenced to some extent, the outcome of elections as some electorates become tools for politicians who exploit voters to their advantage resulting in social polarization and deepened division among groups (Asante and Gyimah-Boadi, 2004).

2.3.2. Ethnicity and Voting Patterns in Ghana

Despite regional ethnic heterogeneity and constitutional provisions barring the formation of political parties along ethnic and regional lines since independence, it would be disingenuous to ignore the ethnic undercurrents in the electoral politics of Ghana especially in the Fourth Republic. The two main parties---NDC and the NPP--- are largely perceived as Ewe and Asante/Akan-based, respectively (Gyimah-Boadi and Asante 2006). The Ashanti-Ewe rivalry is one of the major political divides in Ghana. It has persisted and grown into an Ashanti-Ewe bias, which has been translated to bloc voting patterns. While other regions vote based on issues, the Volta and Ashanti regions concentrate their votes on their home-based parties and candidates (Asante and Gyimah-Boadi 2004).

2.3.3. Managing Diversity for Democratic Consolidation in Ghanaian Politics

Governments since independence have enacted legislative instruments to guarantee associational and other political rights to achieve national integration. They have adopted policies and programs aimed at building cohesion in the Ghanaian society.¹⁶ These policies have help to neutralize the negative effect of ethnic, religious, cultural and political cleavages and inequalities. The policies have also helped to regulate political competition and conflicts in the public sector (Asante and Gyimah-Boadi, 2004).

2.4. Political Development and Election Management in Pre-Independent Ghana

As resistance to colonialism deepened and grew more sophisticated in urban settlements, the first political party, the United Gold Coast Convention (UGCC) led by Joseph Baokye

¹⁶ Article 35, section 1 of the 1969 Constitution; Article 42, section 5 and 55 of the 1979 Constitution and section 4 of the 1992 Constitution all are geared towards achieving national integration and unity.

Danquah was formed in 1947. Differences between the leaders of the UGCC and its secretary-general, Kwame Nkrumah, led to the formation of another political party, the Convention People Party (CPP) in 1949. While the UGCC's strategy was to achieve independence gradually in the shortest possible time, the more radical and charismatic, Kwame Nkrumah wanted independence for Ghana "now" (immediately). Nkrumah broke away from the UGCC and formed the CPP in June 1949. These two parties form the basis of two major political traditions in Ghana (Danquah-Busia and Nkrumah) (Asante and Gyimah-Boadi, 2004).

Pre-independence elections, particularly those of 1954 witnessed the formation of more political parties along regional and ethnic lines. For example, the Northern People's Party (NPP*) was formed to cater for the interest of the people of the Northern and Upper Regions and the Muslim Association Party (MAP) was formed primarily to cater for the interests of Muslims living in the Zongo (Muslim quarters) of the main towns in the country. Others are the Togoland Congress (TC) and the Anlo Youth Association (AYA) formed in the Volta region to pursue ethnic and regional interests (Asante and Gyimah-Boadi, 2004). Lessons from these sectarian parties such as violent attack on opponents, pursuit of sectarian rather than national interests and the fragmentation of the Ghanaian society along ethnic and regional lines helped to shape the legal framework for political party development and management.

2.4.1. Political Parties and their Influence on the Political Process in the Gold Coast

Political parties dominate the electoral process in shaping the discourse of campaigns, the selection of candidates, and mobilizing citizens to vote. They also link citizen preferences to the choice of representatives, with strong congruence between voter and party positions which are

then translated in the formation of coalition governments and their policies (Dalton, Farrell and McAllister, 2011).

Since independence, Ghana's party system has undergone several transformations through military interventions and bans on party activities. Leading members of the defunct political parties and prodemocracy civic groups like the Catholic Bishops Conference, the media, the Ghana Bar Association, the Trade Union Congress and other NGOs agitated for a return to democracy. Views and interests of regional and ethnic-based political parties, Ashanti nationalism and differences over ideology, and the appropriate type of governing system for independent Ghana set the stage for antagonism between the emerging political traditions of the Danquah-Busia and Nkrumah. The antagonism led to series of conflicts, particularly in Kumasi and its environs, which is the stronghold of the main opposition party, the UGCC. Brutal street clashes between supporters of political parties in pre and post-independence elections in the 1950s have given way today to debates on radio and television shows, especially in the Fourth Republic (Asante and Gyimah-Boadi, 2004). A variety of political developments from within and outside the Gold Coast led to clashes between the colonial administration and Ghanaian populace. However, the spread of liberal ideas, increasing literacy, growing awareness of political developments in other parts of the world, and the continuous agitation for better living conditions by Ghanaian veterans of World War II contributed immensely to creating an intense political environment that pitched Ghanaian political elites and the masses against the colonial administration. Street protests and industrial strikes led to violence, loss of life and property. For example, the civil disturbances of February 28, 1948 and succeeding days, led to 29 deaths and

237 injuries in Accra, Kumasi, Koforidua, Nsawam and Akuse (Bennion, 1962).¹⁷ A British colonial investigative commission under the chairmanship of Aiken Watson (a British lawyer) found that political, social and economic factors were responsible for the disturbances. The Watson Commission's recommendations led to the colonial administration adopting policies and reforms towards self-rule in subsequent years (Bennion, 1962).

The British colonial rulers gradually handed power to Ghanaians under the leadership of the first democratically-elected prime minister and later president of Ghana, Kwame Nkrumah. During the pre- independence power struggle Nkrumah's Convention People's Party (CPP) assumed the mantle of government of the colonial state by winning the pre-independence parliamentary elections of 1951 (22,780 votes out of 23,122) representing 98.5 percent of votes cast; in 1954, the CPP won 79 out of 104 seats; and in 1956, the CPP won 71 of the 104 seats. The UGCC later merged with other opposition parties to form the United Party (UP). The first obvious reason for the CPP's victory was its slogan 'self-government now' and especially the way it fired the imagination of the public with a clear vision for independence and prosperity.¹⁸ The CPP was socialist oriented and sought to develop Ghana through state owned enterprises and industrial ventures. The other reasons are the positive achievements of the CPP government in its first term of office (1951-54), (such as increasing number of Africans in higher positions in government and the start of massive infrastructural development), its better organization, and the popularity and charisma of Nkrumah (Asante and Gyimah-Boadi, 2004).

¹⁷ The February 28, 1948 Christiansburg cross-road shooting incident refers to a civil protest when unarmed ex-service men of WWII who marched peacefully to the seat of government to present a petition for better living conditions were shot at by the colonial security forces. Three of the veterans were killed (Bennion, 1962).

¹⁸ The declared aim of the CPP was 'to achieve full self-government now' for the people of Ghana, to end all forms of oppression and establish a democratic government, to secure and maintain complete unity of the entire country, to promote a trade union movement and achieve better working conditions, to work for proper reconstruction of a better Ghana, and to achieve a united and self governing West Africa (Asante and Gyimah-Boadi, 2004).

Three months after the abysmal performance of the opposition parties in the 1954 elections, an Ashanti-based political party, the National Liberation Movement (NLM) was formed with the stated aim of safeguarding Ashanti national identity and reversing a trend that threatened its traditional institutions with extinction (according to its leader, Baffour Osei Akoto, a royal of the Ashanti monarchy). The NLM was ideologically inclined to liberal and capitalist ideas such as wealth creation through encouraging the growth of private enterprises. The emergence of the NLM as a successor of the UGCC affected the subsequent political history of Ghana in two ways. It opened an era of violence, arson and anarchy as supporters of the two rival political parties (NLM and CPP resorted to attack on each other) which reigned in Kumasi and its immediate environs for about three years. It also raised questions as to what kind of constitution independent Ghana should have and whether there should be any fresh elections before independence. While the NLM insisted on a federal constitution, the CPP advocated for a unitary one (Asante and Gyimah-Boadi, 2004). To capture political power at the national level, the NLM struck an alliance with Akyem Abuakwa (Akan leaders of the UGCC, J.B. Danquah and William Ofori-Atta) and other ethnic and regional parties, such as the Anlo Youth Organization (AYO) in the Volta region and the Northern People's Party (NPP) (Asante and Gyimah-Boadi, 2004).

In 1956, voters of British Togoland (a neighboring territory under British trusteeship) voted for unification (58 percent in favor and 42 percent against) with the Gold Coast in the plebiscite of May 9, 1956 (Krennerich, 2003). The formation of modern Ghana was then complete. The Nkrumah government's motion for independence was approved by the colonial administration and a select committee was set up by the General Assembly to draw the constitution of 1957. The committee sought the advice of a British constitutional expert, Sir

Fredrick Bourne, who assisted the committee to include in the constitution a component of devolution to regional levels through the establishment of regional administrations with some levels of autonomy (Bennion, 1962). The constitution established a unitary government and a unicameral legislature with the British queen as head of state, represented by a governor-general. Executive power was vested in the prime minister and a cabinet of ministers who were made responsible to the unicameral legislature (Krennerich, 2003). The Gold Coast was ready to claim its independence.

Before the formal declaration of independence, antagonism started developing in the various regions based on sectional interests. Despite the overwhelming percentage votes cast in the plebiscite of May 1956 in favor of union with the Gold Coast, some people of southern Togoland were still in open rebellion and even boycotted the independence celebrations because they were not in favor of union with Ghana which effectively separated them from their relations in Togoland. In Accra, tensions between the CPP and the Ga people grew worse and led to the formation of the Ga Shifimokpee (the Ga Stand-Fast Association) in 1957 which later joined forces with the opposition groups. A constitutional crisis emerged when the opposition boycotted the Assembly and sent a delegation to London to press their case for a federal form of government. The British government succeeded in persuading the two parties who finally agreed that regional safeguards be included in the Independence constitution of 1957 to create regional assemblies with some administrative autonomy (Asante and Gyimah-Boadi, 2004).

To deal with the mounting ethnic tensions, the Nkrumah-led CPP government introduced a number of what were widely perceived as harsh and radical political measures. Prominent among them were the Avoidance of Discrimination Act of 1957, which forbade the formation of political parties along ethnic, religious and regional lines and the Emergency Powers Act of

1958. The latter empowered Nkrumah to separate the Brong-Ahafo area (which had voted massively for the CPP in the 1956 elections) from the Ashanti region and created it as a separate region with its own House of Chiefs. He also recognized a host of chiefs who were pro-CPP in Ashanti as paramount chiefs. These changes contributed to some recurrent tensions between Ashantis and Bonos (Asante and Gyimah-Boadi, 2004). Despite these interventions, ethnic and regional divides, particularly that between the Ashanti and Ewe, were to deepen after the overthrow of the First Republic.

2.4.2. Elections and Election Management in Pre-Independent Ghana

The first nationwide parliamentary elections of the Gold Coast were held in 1951. The leader of the CPP, Kwame Nkrumah, who was in prison custody for leading a nationwide boycott of European goods to press home the demand for independence, was released from prison custody by the Governor, Sir Charles Noble Arden-Clark, to head a new African government. In March 1952, Kwame Nkrumah was designated prime minister and he appointed an all-African cabinet responsible to the General Assembly. The prime minister submitted proposals for a new constitution in June 1953 (Krennerich 2003). In April 1954 a new constitution was introduced making the Gold Coast virtually self-governing. General elections were conducted in June 1954 and 1956 in response to a pledge by the British secretary of state for the colonies, that, if the newly elected legislature, by a reasonable majority, passed a resolution calling for independence, a firm date for independence would be announced (Bennion, 1962). The General Assembly passed a resolution asking for immediate independence and Ghana attained independence on March 6, 1957.

Elections were managed by a ministry of the colonial government. The 1951 provincial and the 1954 and 1956 general elections were managed by the colonial administration. The government machinery managed the election process. Although the colonizers were suspected of being in favor of continuous British control of the Gold Coast, the colonial administration was seen as a neutral entity because the colonial leaders were not candidates in the elections. Therefore the process created a relatively congenial electoral environment that fostered effective competition among the African political parties. This, however, gave way to suspicion and mistrust after Ghana became a republic and the EMB was managed by Ghanaians because of executive control of the electoral process (Debrah, Asante and Gyimah-Boadi, 2010). The president had the powers to hire and fire the chief justice who was the head of the electoral commission. Nkrumah on December 11, 1963 dismissed Arku Korsah as the Chief Justice (and overseer of elections) for acquitting persons accused of bomb attack on President Nkrumah's convoy at Kulungugu village in northern Ghana for lack of evidence (Bennion, 1962).

2.5. Political Development and Election Management in the First Republic (1960–1966)

Ghana inaugurated its First Republic, with Kwame Nkrumah as the first elected president on July 1, 1960. The office of the governor-general and the post of the prime minister were abolished in favor of a powerful executive president. President Nkrumah and the CPP regime established a socialist one-party state, which was officially approved by a national referendum in 1964. While supporters of the CPP and people in government viewed the referendum as free and fair, sections of the Ghanaian society, particularly the opposition parties described it as a rigged referendum (Krennerich, 2003). The CPP candidates for the 1965 parliamentary elections were declared elected without elections being held because an act of parliament had made Ghana a

one party state and the CPP the only party legally accepted to contest elections in Ghana.¹⁹ There was to be only one candidate for president. No other parties (most of which were regional, ethnic or religious based had already been outlawed by the 1957 Constitution) and no non-CPP candidates came forward to challenge the party slate in the general elections of 1965. Dissent within the CPP had been suppressed to engender national unity. The parliamentary mandate was extended for another five years without elections (Krennerich, 2003). The CPP government enacted legislations and adopted policies to neutralize sectarianism and ensure national unity and integration.²⁰ Prominent among them was the Seven-Year Development Program of 1963 which was aimed at restructuring the Ghanaian economy as well as tackle inequalities in the society.

2.5.1. Political Parties and their Influence on the Political Process in the First Republic

After the passage of the Avoidance of Discrimination Act of 1957, all the opposition parties (NLM, NPP, MAP, AYA, and the Ga Shifimokpee) formed the United Party (UP) in 1957 under the leadership of Kofi Abrefa Busia. However, the unity forged between the NLM in Ashanti and the AYO in the Volta region was short-lived due to the killing of Colonel E.K. Kotoka, an Ewe and a leading member of the National Liberation Council (NLC) in 1967 during an attempted coup by Akan junior soldiers. The 1966 coup was in pursuit of the promotion of the ethnic interests manifested in the formation of the UP. Therefore, the killing of Kotoka by Akan junior officers and the subsequent takeover of the military government and the NLC leadership by Major A. A. Afrifa, an Akan, marked the beginning of the parting of the ways between the

¹⁹ All 198 candidates were selected by the CPP Central Committee and were subsequently declared elected without the scheduled election taking place (African Database on Elections, 2011).

²⁰ The General Assembly during the CPP government passed the Avoidance of Discrimination Act of 1957 and the Preventive Detention Act of 1958 to check sectarian tendencies and to detain offenders without trial for substantial periods of time (Asante and Gyimah-Boadi, 2004). Also the 1961 Education Act to address the problem of inequality, especially the historically disadvantaged regions of the north led to the introduction of the Northern Scholarship Scheme to avail students from that part of Ghana secondary education. Many highly educated Ghanaians from the north have benefited from the scheme (Ghana Human Development Report 1997).

Akans, particularly the Ashanti and the Ewe. By the time the NLC handed over power in October 1969 to civilian rule, the military regime had split into Ashanti and Ewe factions (Asante and Gyimah-Boadi, 2004).

In the face of repression, internal mismanagement and economic problems, the Nkrumah administration gradually lost the popular support that it had carefully nurtured during the independence struggle (Krennerich, 2003). Dissatisfaction, coupled with President Nkrumah's overtures to the Union of Soviet Socialist Republics (USSR) communist bloc; his vocal attack on neocolonialism; and his support for a Pan African agenda for a total liberation of the African continent (epitomized by his famous declaration on the eve of Ghana's independence, that "the independence of Ghana is meaningless unless it is linked up with the total liberation of the African continent"), made him a target of the West (McLaughlin and Owusu-Ansah, 1994). He was perceived as an obstacle and a growing threat to the interests of the West in Africa. As a result, on February 24, 1966, a CIA-supported military coup d'état led by senior military officers toppled the CPP government and suspended the constitution, thus, terminating the democratically-elected government (which had become authoritarian) of the First Republic of Ghana (Blum, 1995). The National Assembly was dissolved and political parties proscribed.

The National Liberation Council Regime (1966-1969)

The coup leader made up military and police officers established a ruling junta called the National Liberation Council (NLC). It legislated by decree and was led by General E. K. Ankrah (who was succeeded by Brigadier Akwesi Amankwaa Afrifa). It should be noted that ethnic sentiments and divides that characterized the 1954 period up to independence had been either suppressed or some sections of the nation appeased by the devolution of power to the regional assemblies. The NLC made efforts to maintain a regionally and ethnically balanced junta by

constituting the NLC members to reflect the interests of the major ethnic groups and regions in the country. Its members hailed from the Akan, Mole Dagbani, Ga and Ewe groups. Instead of appealing to identity politics, the coup makers justified their actions by denouncing the dictatorial and corrupt character of the Nkrumah's administration, and promised to restore democratic rule as soon as possible (Krennerich, 2003). The NLC kept its promise, constituted a Consultative Assembly that drew the 1969 Constitution and conducted national elections on August 29, 1969 that were won by Kofi Abrefa Busia's Progress Party (PP). The PP won 53.88 percent of popular votes and 109 seats. The National Alliance of Liberals (NAL) won 30.81 percent and 29 of the 140 parliamentary seats (African Election Database on Ghana, 2012).

2.5.2. Elections and Election Management in the First Republic and After (1960-69)

After independence, Nkrumah's government shifted to the independent, sole electoral commissioner model to make the electoral commission independent of state control. Under this model, the power to manage elections was transferred from the government ministry to an independent election authority headed by a sole commissioner. However, executive controls over the electoral commissioner in the First Republic undermined the attainment of credible elections. Under the 1960 Republican Constitution, the chief justice (whose appointment was determined and controlled by the president of the Republic) had oversight responsibility over elections. Ultimately, the power to determine the finality of an election outcome lay with the president. The major weakness of this system is that the executive had absolute control of its operations and therefore not neutral. By 1964, when a single-party rule was inaugurated, the electoral commissioner had lost his sense of impartiality, independence and neutrality on electoral matters (Debrah, Asante and Gyimah-Boadi, 2010). His job as the overseer of election was rendered

redundant as competition had almost died out under a one party state. The chief justice's allegiance was by default to the ruling party. There were no significant reforms during the one party rule and the early years of the military regime that followed it, except a few amendments to improve the electoral process. Counting of votes and the declaration of results aroused suspicion among contending political parties. A major source of the suspicion was the counting of ballot papers after voting had ended at the constituency centers. There were fears of ballot boxes being stuffed or swapped in the course of transporting them from the polling stations to the constituency counting centers. The use of opaque ballot boxes to conduct elections in enclosed rooms also fueled countless allegations and rumors about ballot boxes being stuffed with ballots by some voters who carried extra ballot papers in their pockets into the voting room or by party officials and agents during the transportation of the boxes between polling stations to counting and collation centers (Electoral Commission, 1993).

2.6. Political Development and Election Management in the Second Republic (1969–1972)

On September 30, 1969 Ghana officially returned to civilian rule. The constitution of the Second Republic provided for a unicameral parliamentary system with a president as a ceremonial head of state. Busia was named the head of government (prime minister) with Edward Akuffo Addo (also of the PP) as head of state (Debrah, Asante and Gyimah-Boadi, 2010). The PP government policies focused on reviving the national economy and developing the rural areas. These entailed the adoption of IMF and World Bank-led policies of strict monetary control and adherence to budgetary estimates, as well as levying additional taxes for

the revenue required for rural development. All these austerity measures culminated in the adoption of drastic and unpalatable policies.²¹

2.6.1. Political Parties and their Influence on the Political Process in the Second Republic

Despite the ban on sectarian political parties and government policies to stem divisive tendencies in Ghanaian politics, the ethnic background of the leaders of the two leading parties in the 1969 elections had a significant impact on the voting patterns. The National Alliance of Liberals (NAL) led by K.A. Gbedemah (an Ewe) won all the seats in the Volta region except Nkwanta and Kete Krachi (Akan-speaking enclaves in the Volta region) but did not win any seat in the mainly Akan areas of the Ashanti, Brong-Ahafo, Western and Central regions. In contrast, the Progress Party (PP) led by K.A. Busia (a Bono) won all the seats in Ashanti, Brong-Ahafo and Central regions and a majority of seats in the two other Akan (Western and Eastern) regions but won only two seats in the Volta region (Asante and Gyimah-Boadi, 2004). Thus, the PP won 105 of the 140 seats in parliament, while NAL won 29 seats, and 6 went to three minor parties and one independent candidate (African elections databank on Ghana, 2012).

To deal with inequalities in the Ghanaian society, the PP government initiated policies and programs such as the 1970/71 One-Year Development Plan aimed at providing basic essential services such as the supply of potable water, health and sanitary facilities to deprived communities. However, the absence of Ewes in Busia's cabinet and the disqualification of K.A.

²¹ In an attempt to promote a balanced budget in the economy, the PP government adopted bitter and unpalatable policies such as the devaluation of the cedi; retrenchment in the public service, particularly in the state-owned enterprises; withdrawal of some elite and employment-related privileges; disbanding the Trades Union Congress; implementing the Aliens Compliance Order (which forced out of the country several thousands of African migrants); and the dismissal of 568 senior officers from the civil and public service, some of whom successfully challenged the legality of their dismissal (Asante and Gyimah-Boadi, 2004).

Gbedemah (an Ewe) and leader of the NAL, the main opposition party to the PP, has been cited as a weak point in national integration by the Busia administration. Furthermore, the removal of the most senior Ewe officers in the armed forces and the dismissal of 568 mostly Ewe public servants, further deepened the Ashanti-Ewe rivalries (Asante and Gyimah-Boadi, 2004).

The National Redemption and Supreme Military Councils Regime (1972-1979)

The Second Republic was short lived. Once again, the military overthrew the civilian rule on January 13, 1972 after only 28 months in office, accusing it of corruption and mismanagement. The coup happened at a time of falling living standards, high rates of inflation, rising budget deficits, drops in foreign exchange revenue, rising unemployment, and increasing indebtedness (Sulimani, 2007). Lower external demand and prices for Ghana's raw materials versus the higher prices for imported goods (fuel, food, and medical supplies) created serious structural imbalances in Ghana's economy. By the early 1980s it was evident that Ghana's economic growth and political development had nose-dived (Sulimani, 2007). As was the case before, the coup leaders suspended the 1969 Second Republican Constitution, dissolved parliament and proscribed all political parties. It was not possible for the PP government to solve all Ghana's economic problems in less than thirty months of being in office in an era of world economic crises caused by world fuel price hikes and a general economic slowdown. Busia had promoted Ignatius Kutu Acheampong to the high office of army commander partly as an Akan colleague whom he could rely on. Therefore Acheampong's overthrow of Busia's government is seen as a betrayal of the trust that Busia bestowed on him (Asante and Gyimah-Boadi, 2004).

Acheampong assumed the position of head of state and chairman of the National Redemption Council (NRC) that also ruled by decree. Initially, the NRC did not outline any plan for a return to democratic rule; rather it sought to institutionalize military rule. The Ashanti-Ewe

rivalry in the NLC and Busia's PP governments informed the politics of the next military administration. According to Rothchild (1978), the NRC and Supreme Military Council (SMC), in addition to trying to reflect ethnic and regional balance, attempted to foster de-politicization through 'no party' government. Towards this goal, the NRC/SMC formed a 'Union Government' (UNIGOV), composed of elected civilians and appointed military members. This project that sought to position the SMC between the Nkrumah and Danquah-Busia traditions was presented as an alternative to authoritarian rule under the military and multi-party civilian rule (Chazan, 1979). The plan for UNIGOV was approved in a referendum in March 1978 with 60.11 percent 'Yes' votes to 39.89 percent 'No' votes (African Election Database on Ghana, 2012).

The NRC's plan to win northern votes in the referendum on the UNIGOV by appeasing the chiefly ethnic groups with lands in the Northern and Upper Regions of Ghana undermined its efforts of neutralizing cleavages and divides in Ghana. The military regime set up a committee (the Alhassan Committee) in 1978 to determine in whose custody the Northern and Upper Regions' lands should be entrusted. The committee recommended that the lands be entrusted to the four chiefly ethnic groups in the north.²² The Alhassan committee was skewed in favor of the 'majority groups' (Jönsson, 2007).²³ Entrusting all the lands to the care of only four chiefly groups---the Mamprusi, Dagomba, Gonja and Nanumba--- created groups of 'landlords' and 'landless subjects.' The consequences of this alienation of some ethnic groups was to be felt in

²² The Northern and Upper Regions' lands were taken by the colonial administration (and subsequently the government of Ghana) on the attainment of independence until 1978 when they reverted to traditional authorities (Jönsson, 2007).

²³ The committee on ownership of land and position of tenants in Northern and Upper Regions, popularly known as the Alhassan Committee, was established under I.R. Alhassan, a Dagomba. The committee was dominated by the majority ethnic groups (six of the 12 members came from the majority groups in the Northern Region, two from Upper Region and four from southern Ghana. None came from the 13 northern minority groups or those from the Upper Region) (Jönsson, 2007).

the 1980s and 1990s which caused series of ethnic conflicts over land and chieftaincy as discussed below.

Popular opposition increased in the wake of continued economic hardship. Between 1974 and 1981, for example, GDP dropped by 15 percent and cocoa exports, the leading source of foreign exchange, shrank by more than 40 percent (Gyimah-Boadi, 1996). In response to political pressure for further change, particularly within the ruling SMC, Acheampong was forced to resign on July 5, 1978. He was replaced by Lt-Gen. Frederick W. K. Akuffo and the SMC was reorganized into an explicitly transitional regime with the promise to hand over political power to a civilian government to be elected on July 1, 1979. But the SMC was overthrown in another coup d'état in June 1979 (Krennerich, 2003). Ashanti-Ewe rivalry surged with the return to multi-party democracy, manifested in bloc voting in favor of their home region parties in national elections as parties play the ethnic card during campaigns (Arthur, 2009).

The Armed Forces Revolutionary Council Regime (June-September 1979)

Dissatisfaction with the management of the economy, corruption by the senior military rulers, discontent in the military over unsatisfactory conditions of service of the junior ranks and the economic hardship in the country emboldened junior non-commissioned military officers to overthrow the SMC regime on June 4, 1979. An Armed Forces Revolutionary Council (AFRC) was formed under the chairmanship of Jerry John Rawlings (an Ewe). The AFRC members were junior military officers who cut across the regional and political divide in the country. Their ideology was socialist oriented. Its aim was to clean Ghana of corruption and cultural decay before returning the country to civilian administration. They launched a three-month 'House Cleaning Exercise' in which top leaders of the ousted regime were arrested and executed by firing squad for corrupt practices. Among the casualties were three former heads of state, A.A.

Afrifa, I.K. Acheampong and F.W.K Akuffo, all from the Akan ethnic group. The military junta also clamped down on smuggling, hoarding and other social vices with the stated aim of purging the Ghanaian society of corruption and cultural deterioration. The AFRC handed over power to a civilian government in September 1979 (Gyimah-Boadi, 1999).

2.6.2. Elections and Election Management in the Second Republic and After (1969-1979)

Under the Second Republic, the NRC/SMC and AFRC regimes, two national elections were held: the UNIGOV referendum and the 1979 elections that ushered in the Third Republic. Minimal electoral reforms were implemented by the EC during the Second Republic. However, for the first time, party agents were allowed to be present at the polling stations during the counting of votes as official representatives of their parties to observe the process. The party agents were not given copies of the results declaration sheets which constituted the official report covering the election at the polling station because the EC feared that the party agents might tamper with the figures and create confusion. Although a legitimate concern because technology and communication were not well developed, given party agents photocopies of the results would have enhanced transparency and built confidence in the work of the EC by the voting public. Another important reform was the increase of constituencies from 104 to 140 (Osei-Kwame and Taylor, 1984).

The practice whereby elections were managed by a government ministry continued after independence until 1969 when a constitutional commission of 1968 recommended the establishment of a sole electoral commissioner with legal autonomy to manage the electoral

process in Ghana.²⁴ The 1969 elections were supervised by the first sole electoral commissioner, V.C.R.A.C. Crabbe who was appointed by the prime minister (K.A. Busia). The commissioner worked with public officers whom he recruited or co-opted to conduct the elections. He was solely responsible for the process and the outcome of the elections. The sole electoral commission model was an improvement over the government run EMB. It had deficiencies such as not being neutral because the president hired and could fire him as well as manipulate the results in his favor (Debrah, Asante and Gyimah-Boadi, 2010).

In the 1969 elections, competition was depressed by the official banning of the CPP and any of its identifiable remnants. No party was allowed to use the name, symbol and artifacts of the banned CPP. The NLC did lift the banned on political campaigning three months before the election day but there was not enough time for new political parties to effectively mobilize voters. Still political pundits and election watchers described the elections as free and fair. The opposition parties, however, accused Commissioner Crabbe of colluding with the Progress Party to ensure Busia's victory. They alleged that the commission had been used to procure electioneering equipment for Busia's Progress Party and that most of the polling station election returning officers were former workers of the Centre for Civic Education (that was headed by K. A. Busia) (Crabbe, 1975 as cited in Gyimah-Boadi, 1996).

To address problems associated with the counting of votes, more reforms took place during the SMC military regime. During the 1978 UNIGOV referendum, the SMC-appointed commissioner, Justice I. K. Abban, introduced the counting of votes at the polling stations immediately after the close of poll before transporting the ballot boxes to collation centers. This

²⁴ The NLC's commission on electoral and local government reform under the chairmanship of J. B. Siriboe was set up to recommend electoral procedures for the establishment of an independent electoral commission to be responsible for the conduct of elections. An electoral commission with Justice V.C.R.A.C. Crabbe as the interim electoral commissioner was thus set up (Gyimah-Boadi, 1991).

reform reduced the risk of stuffing ballot boxes and swapping of the content of boxes. The reform also contributed to the referendum being described by observers and analysts as free and fair (Gyimah-Boadi, 1996). Chazan and Le Vine (1979) assert that the courage exhibited by the commissioner halted the SMC's plot to impose UNIGOV on Ghanaians. The electoral commission was steadfast and resolute in dealing with malpractices and election-related grievances. Although the sole electoral commissioners were not spared the criticisms that they were being controlled by the executive and therefore not neutral and impartial, they generally conducted the 1969, 1978 and 1979 elections that were widely perceived to be free and fair (Ayee, 1998). In 1979 Commissioner Justice Kingsley-Nyinah demonstrated neutrality and impartiality throughout the conduct of the 1979 elections that elected President Limann (Debrah, Asante and Gyimah-Boadi, 2010). The AFRC maintained the election timetable set by the SMC, a new constitution was crafted and multi-party elections were held in July 1979, just two months after taking over power to implement its "House Cleaning Exercise." The Constitution of the Third Republic was drawn up by a constituent assembly appointed by the SMC. It came into effect in 1979 and provided for a presidential system and a unicameral parliament (Krennerich, 2003).

2.7. Political Development and Election Management in the Third Republic (1979–1982)

Ghana once again returned to civilian rule on September 24, 1979 with the inauguration of the president-elect, Hilla Limann of the People's National Party (PNP). The PNP won 62 percent of valid votes cast and 71 seats; Victor Owusu led the Popular Front Party (PFP), which won 38 percent of the votes and 42 seats; the United National Convention (UNC) won 13 seats and the Action Congress Party (ACP) 10 seats. The election went into a runoff after none of the

ten presidential candidates were able to obtain more than 50 percent of the votes in the first round. Hilla Limann was a Sissala (a sub-group of the Mole-Dagbani group) from the Upper Region and the first president of Ghana to hail from the north (Arthur, 2009).

The PNP government (the political heir of Nkrumah's CPP) faced a colossal task of revamping Ghana's economy. It established the constitutional institutions such as an independent judiciary headed by a Supreme Court, which protected individual rights, and other autonomous institutions like the electoral commissioner and the ombudsman (a government appointee who investigates complaints by private persons against the government). The PNP government generally respected democracy and individual human rights but failed to halt the continuing decline in the economy (The Ghana Guide, 2010). Ghana had been under military rule since 1972; freedom of speech, press and association had been severely curtailed and the economy had been mismanaged for most of the period. But the brief period of the AFRC raised the hope of Ghanaians that wrong-doing in public life and acts that negatively affected the governance of Ghana would not go unpunished (The Ghana Guide, 2010).

2.7.1. Political Parties and their Influence on the Political Process in the Third Republic

In practice, however, the PNP administration was under the observation of officers associated with the former AFRC, many of whom were retired by the Limann government (Krennerich, 2003). Ghana's economy continued to decline due to mismanagement, corruption and an unfavorable world economic order (under which developed countries determined the price of primary commodities) as well as Ghana's continued overreliance on primary products for export. The support base of the civilian government eroded as the new administration

struggled to stabilize the economy amidst internal wrangling for power within the ruling PNP (Krennerich, 2003). As a result of the continuous downward spiral of the country under successive military regimes and the Limann administration's failure to arrest the situation, Jerry John Rawlings burst onto the political scene again by leading another coup on December 31, 1981, this time referred to as the 31st December Revolution. As was the case in previous coup d'états, the democratic structures and the Third Republican constitution were scrubbed.

2.7.2. Election Management and Electoral Reforms in the Third Republic (1979-1981)

The Limann administration did not supervise any elections, but the practice of appointing a sole electoral commissioner to oversee elections continued from the Second into the Third Republic. The government did not run its full tenure of four years due to the coup in December 1981 and no significant electoral reforms could take place (Ghana at a Glance, 2012)

2.8. Political Development and Electoral Reforms during the PNDC Regime (1982-1992)

Rawlings again became head of state and chairman of the military-cum-civilian seven-member Provisional National Defense Council (PNDC), which claimed full executive and legislative powers. The initial seven members (made up of four military personnel and three civilians) came from among the northern ethnic groups, the Akan, Ewe and Ga. The expanded membership later followed a similar pattern. The PNDC's aim was to preside over political and economic reforms (Gyimah-Boadi, 1999).

The PNDC set out to implement far-reaching reforms that aimed to put the country back on the path to democracy and development. To develop and implement the strategy for democratic restoration, the PNDC set up a National Commission for Democracy. It also

decentralized government by setting up regional administrative structures and elected district assemblies to bring governance closer to the people. It launched a form of ‘grass-roots participatory democracy’ couched in radical populist rhetoric with the theme “Power to the People.” The regime started to reform state institutions and created mass organizations; it also banned political parties from operating and silenced political opposition, especially the PFP and the CPP, through systematic repression like media censorship of political parties with the stated aim of entrenching the December 31 Revolution (Gyimah-Boadi, 1999). The PNDC claimed to represent the working class and the masses across all political divides in Ghana for whom the message “Power to the People” resonated.

The political system introduced by the PNDC regime began with strict central control from the national headquarters. The government superimposed a centralized and controlled administration over a non-party decentralized system, starting with district level elections in 1988/89 aimed at mobilizing rural support for the regime for national reconstruction. The ‘Power to the People’ concept was hailed by some Ghanaians who saw it as a model of decentralization in Africa. Local level elections continued to be held every six years (1998/99, 2004, 2010) there elections with marked improvement in the conduct of subsequent elections. However, according to Oquaye (1995), the PNDC strengthened its grip on power without any plans to revert to democratic rule.

Meanwhile the PNDC signed onto a program of economic recovery that was heavily supported and dictated by the Bretton Woods institutions, the World Bank and the International Monetary Fund (IMF). By the mid-1980s, Ghana had become Africa's showcase example of structural adjustment but with disastrous economic and social consequences like the retrenchment of workers, increasing poverty levels and the end to subsidies and other safety nets.

The country's GDP grew at rates of 6 to 7 percent annually from 1984 to 1988--the highest in sub-Saharan Africa, at the time. These considerable economic accomplishments, however, began to stall in the early 1990s, which created added economic hardship and dissatisfaction with military rule (Hutchful, 1997).

Under increasing foreign and domestic pressure from donors, who by the late 1980s had started warning that aid to developing countries would be tied to democratization and good governance, the PNDC revised its policy and considered an eventual return to democratic rule.²⁵ However, the pressure by opposition parties and civil society groups for a more participatory government resulted in an accelerated return to democratic governance in 1992. A new constitution was drafted by a consultative assembly and approved by a “Yes” vote of 92.59 percent to 7.59 percent “No” votes in a referendum held on April 28, 1992. The Fourth Republic was inaugurated on January 7, 1993 (Oquaye, 1995).

2.8.1. Civil Society’s Influence on the Political Process during the PNDC Regime

A share of the credit must go to civil society for the great improvements made in the electoral system since PNDC regime. Prominent persons and organizations used public forums and the media to put pressure on the PNDC government to return Ghana to democratic rule.²⁶ Examples include Adu Boahen (chairman of the Movement for Freedom and Justice (MFJ)), the Christian Council, the Conference of Catholic Bishops, Institute of Economic Affairs (IEA), and

²⁵ An external factor which pushed the government to conduct the elections was linked to the ‘good governance’ principle adopted by the World Bank and the West. This principle (regular, free and fair elections and strengthening of democratic institutions) was to become one of the determinants of aid for some developing countries. In its November 1989 report entitled “Sub-Saharan Africa: From Crisis to Sustainable Growth,” the World Bank had decried a ‘crisis of governance’ and warned that marked improvement in governance would become a condition for aid in the future (Oquaye, 1995).

²⁶ Albert Adu-Boahen’s memorable speech at the Danquah memorial lectures in 1988 contributed to breaking the “culture of silence” (suppressed freedom of speech as a result of fear of intimidation and harassment by the military regime) that was imposed on the Ghanaian polity by the PNDC regime. The PNDC eventually lifted the ban on multiparty activities, which led to several political parties emerging on the political scene since 1992 (Fobih, 2010).

the Ghana Bar Association (GBA). Others are the Ghana Legal Literacy and Resource Foundation and domestic poll-watching bodies like Ghana Alert (led by veteran journalist Ben Epton), the Network of Domestic Election Observers (NEDEO) (led by Joseph Kingsley-Nyinah, a retired Appeals Court judge and later EC chairman). The Coalition of Domestic Election Observers (CODEO) also played significant role in influencing the outcome of elections. International election observers such as the National Democratic Institute (NDI), the Commonwealth, EU and AU observer groups, the Charter Foundation and the International Federation of Electoral Systems (IFES) undertook a series of activities such as voter education, election monitoring and funding support to the EC.²⁷

2.8.2. Election Management and Electoral Reforms during the PNDC Regime (1982-1992)

Bogged down by frequent military coups and counter coup d'états since 1966, repeated attempts to install liberal democracy suffered serious setbacks until 1988. Ironically, the most comprehensive and far-reaching reforms of the electoral process in Ghana started under a military dictatorship, during the PNDC regime, particularly between 1988 and 1993. To kick start the reform of elections management in Ghana, the PNDC established institutions to oversee the reforms. One such institution was the National Commission for Democracy (NCD), which evolved from the electoral commission of the Third Republic. The NCD was composed of judges and experienced public and civil servants and headed by a member of the PNDC, Justice D. F. Annan (Debrah, Asante and Gyimah-Boadi, 2010). In 1984 the NCD started a public discourse

²⁷ The NEDEO comprised prominent national organizations such as the Christian Council, the Catholic Secretariat, the Federation of Muslim Councils, the Ahmadiyya Muslim Mission, the Ghana National Association of Teachers (GNAT), and the National Union of Ghana Students. The MFJ was formed by organizations opposed to the PNDC military rule with the stated objective of restoring multiparty democracy and the rule of law in Ghana (Ghana Home Page News Archives, 2012).

on the future form of democratic government for the country. The NCD published its “Blue Book” on the creation of district political authorities and the conduct of elections which culminated in the district elections of 1988/89 and the subsequent establishment of 110 district assemblies. An Interim National Electoral Commission (INEC) was also established by the PNDC to oversee a referendum over the constitution and the 1992 national elections. These reforms marked a significant step in the transition to democracy, which led to the presidential and parliamentary elections in November and December 1992 (Ghana Home Page News Archives, 2012). To set the stage for elections at the national level, the first comprehensive voters register was compiled in 1987. Although it was described as flawed and bloated, the registrar was a first step to streamline the voting system (Oquaye, 1995). One major strategic reform by the PNDC that has shaped the electoral system in Ghana was contained within the new national constitution of 1992. This set the stage for a major transformation of the electoral commission of Ghana. For the first time in Ghana, in the 1992 general elections, the presiding officers of polling stations declared the results publicly at the polling stations and gave a signed copy of the results to each party agent to send to the candidate or party while other copies were sent to the constituency counting center where collation of the results from all polling stations within the constituency were done (Debrah, Asante and Gyimah-Boadi, 2010).

The fact that this new Chapter in Ghana’s political history was led by Rawlings, a critic of Western style democracy, has generated debate among political pundits. Until the early 1990s, Rawlings had divorced democracy from a system of registering voters and getting them to vote every four years.²⁸ Not only had he shown a preference for populist institutions such as

²⁸ According a write up on the PNDC, Rawlings strongly believed that party politics had hitherto produced two forms of abuse of power—the “corrupt dictatorship” of the Kofi Abrefa Busia regime (1969-72) and the “arrogant dictatorship” of the Nkrumah (1957-66) and Limann (1979-1981) governments (Ghana Home Page News Archives, 2012).

Committees for Defense of the Revolution (CDRs), but also, as late as 1990, he spoke against party politics.²⁹ To him, Western institutions and practices such as elections negated democracy because he did not trust that elections could produce the right leaders for Ghana (Oquaye, 1995). If Rawlings did not believe in multi-party politics and he could not accept an alternative to his revolutionary process, why did he initiate action to draft the 1992 constitution, conduct the 1992 elections and lead the transition to civilian rule in 1993? According to Oquaye (1995), the answer is that Rawlings was willing to shift positions in diverse ways as long as he continued to hold on to power. This notwithstanding, Rawlings is credited for being an adroit reformist. He responded quickly to the advice of his overseas public relations consultants in London on the probable changes in the West's policy towards African dictators (due to the end of the Cold War and the trend towards political liberalization on the African continent itself) (Oquaye, 1995).

Rawlings formally announced Ghana's return to constitutional rule on May 10, 1991, four days before the crucial donors' conference in Paris from May 14-15, 1991 (Oquaye, 1995). This could be seen in a positive light as a show of patriotism and functional leadership. After all, Rawlings could have ignored the warning of the donors and advisers as other African leaders like Gaddafi and Mugabe and bear the consequences of untold hardship to the citizenry.

The ban on political party activities was lifted on May 18, 1992, followed by presidential elections in November of the same year. Rawlings, who ran in the election as the leader and presidential candidate of the NDC party, won the elections by 58.4 percent (against the 34.4 percent won by Albert Adu Boahen of the NPP). Whilst international elections observers like the Commonwealth Observer Group (COG) described the election as free and fair, there were serious irregularities and lapses in voter-registration figures and malpractices at the polling

²⁹ Speech read at Kotoka International Airport before attending the ECOWAS Summit in Lagos (Oquaye, 1995).

stations.³⁰ The voters registers used in the 1992 general elections were alleged to have contained a number of technical errors (including a larger than statistically possible number of registered voters) caused by double entries due to human and technical errors. There were also software problems and the electoral commission could not remove the names of voters who had expired since 1987 (Electoral Commission, 2012).³¹ Consequently, the major opposition political parties withdrew from the parliamentary elections (Ayee, 2002).³² The NDC won 189 of the 200 seats in the largely uncontested parliamentary elections of December 1992. The Every Ghanaian Living Everywhere (EGLE) party won 1 seat, independent candidates won 2 seats and the National Convention Party (NCP) won 8 seats. The EGLE and NCP merged with the NDC and Kow Nkensin Arkaah, leader of NCP, became the vice president. As in the Third Republic, the Fourth Republican constitution provided for a presidential system of government with a unicameral parliament. The NDC continued with its policy of reforms and national reconstruction through decentralizing power to the district levels and beyond. Despite the lack of parliamentary representation, opposition parties played a constructive role outside parliament through the use of a growing media and the general public's increasing awareness of democratic practices such as tolerance of opposing views, regular elections being institutionalized and building institutions of state to drive the course of democracy (Ayee, 2002).

³⁰ International election monitoring teams from the Organization of African Unity, the Commonwealth of Nations, and the Carter Center also endorsed the results of the presidential election, although with reservations in some cases. The national House of Chiefs also stated that the elections were free and fair (Ghana Home Page News Archives, 2012) .

³¹ The voter registration figures indicated that 9.2 million voters were registered in Ghana. This figure is suspect because Ghana's population was approximately 17 million, many of whom (nearly 50 percent) were under the age of eighteen (Gyimah-Boadi, 1999).

³² The New Patriotic Party (NPP), People's National Convention (PNC), National Independent Party (NIP) and the People's Heritage Party (PHP) disputed the results and withdrew from the parliamentary election scheduled for December 1992. The evidence of rigging was compiled by the NPP in 'The Stolen Verdict: Ghana, November 1992 Presidential Election' (Accra: New Patriotic Party, 1993). The book was endorsed by the Nkrumahist parties (Ayee, 2002).

2.9. Political Development and Electoral Reforms in the Fourth Republic (1993 - June 2012).

The president-elect, Jerry John Rawlings was sworn into office as the first president of the Fourth Republic on January 7, 1993. The NDC supervised the 1996 and 2000 elections. It continued the reforms started by the PNDC but initially faced criticism of running a one-party government which lacked the benefit of strong opposition up to 1996. In accordance with the 1992 constitution, a permanent, neutral and autonomous electoral commission was established.

On December 7, 1996 Ghanaians again went to the polls to choose a president and legislators. Once again the incumbent president, Rawlings, won the election with a wide margin of 57.4 percent and 133 of the 200 parliamentary seats. Kuffour and his party, the NPP, won 39.6 percent and 60 parliamentary seats while Edward Mahama's PNC won 3 percent of votes (Ayee, 1998). The 1996 presidential and parliamentary elections were more competitive than the 1992 elections because the EC did a better job of voter registration (an entirely new voter register was compiled for the 1996 elections) that was devoid of the problems associated with the 1992 voters' register. The EC also educated the public as well as political parties on the voting procedure. Election observers described the 1996 elections as fairer and freer.³³ One factor that certainly contributed to the competitiveness of the elections was that the two main opposition parties, the People's Convention Party (the CPP was renamed PCP because of a ban on the use of old parties' names at the time) and the NPP formed 'the Great Alliance' to contest the election. This alliance has been described as a marriage of convenience because the two political traditions have different ideological inclinations and have been staunch opponents in Ghana's

³³ International observer groups for the 1996 elections included the Commonwealth Observer Group, the European Union, the US-based National Democratic Institute (NDI) and the Organization of African Unity. All issued reports describing the elections as free and fair (Gyimah-Boadi, 1999).

politics. As was anticipated by political pundits and observers, ‘the Great Alliance’ could not put up a unified opposition to the NDC at the polls due to squabbles and differences between party operatives at the national and constituency levels. Rawlings’ re-election ushered him into a second four-year term in office as president of Ghana from January 7, 1997 to January 6, 2000. This marked an era in the political history of Ghana because, for the first time, an elected government had completed its term of office and was re-elected in competitive elections (Electoral Commission of Ghana, 2011).

In the third presidential and parliamentary elections of the Fourth Republic, held on December 7, 2000, Rawlings was constitutionally barred from contesting the elections. Instead of seeking to amend the constitution to allow a third term as many others have done elsewhere, Rawlings nominated his vice president, John Evans Atta-Mills, as the presidential candidate for the NDC. The 2000 elections were held at a time of widespread disenchantment with the ruling NDC government, particularly in urban areas where problems such as increasing employment, inflation and, a depreciating currency had become burdensome. Furthermore, reports in the media of corruption among government functionaries reduced the chances of the NDC retaining power (Aye, 2002). In the 2000 elections, none of the seven candidates for president won a clear majority of more than 50 percent of the valid votes cast (as stipulated by the 1992 Constitution). Therefore a runoff took place on December 28, 2000 between the two parties that won the largest number of votes, the NPP (48.4 percent) and the NDC (44.8 percent). John Agyekum Kuffour of the NPP won with 56.9 percent of valid vote cast against 43.1 percent votes for John Evans Atta-Mills of the NDC. Kuffour was sworn in as the second president of the Fourth Republic on January 7, 2001 marking another historic journey in Ghana’s march towards democracy. This was the first time in Ghana that an elected president has handed over the mantle

of administration to another elected president of an opposition party. Upon taking power, the NPP administration embarked on an economic stabilization and growth program and led Ghana to adopt the Highly Indebted Poor Country (HIPC) debt cancellation program of the West to reduce Ghana's foreign debt burden and reduce poverty. Substantial amounts of Ghana's income that would have gone into servicing and repaying foreign debts were channeled into poverty reduction programs. As of 2001, Ghana's economic growth was on course to becoming a low medium income nation with an annual GDP rate (PPP) of 3.97 percent rising steadily to 8.07 percent in 2008 (Ghana Living Standard Survey (GSS), 2009). President Kuffour won a second four-year term with 52.45 percent of the votes (Atta-Mills won 44.64 percent) in the December 2004 presidential elections. The NPP won 128 and the NDC 94 of the 230 parliamentary seats. During the rule of the NPP, many of the reforms adopted over the years were consolidated and deepened. Confidence-building reforms such as shifting from opaque to transparent ballot boxes, to voters casting their votes in small enclosures placed in the full view of the public (rather than in a completely enclosed structure) were institutionalized. Having served two four-year terms in office, John Kuffour was constitutionally barred from contesting the 2008 elections (Aryee, 2002).

On December 7, 2008, the fifth elections of the Fourth Republic took place but did not produce an outright winner. A runoff was conducted on December 28, and a third round of elections were held a week later in the Tain district (that could not vote during the runoff due to logistical problems) to determine the winner of the closest and most competitive elections in Ghana's history. John Evans Atta-Mills of the NDC (presidential candidate for the NDC in 2000, 2004 and 2008) won the elections by a very narrow margin. He won 50.23 percent and Nana Addo Dankwa Akufo-Addo of the NPP won 49.77 percent of vote (Electoral Commission,

2009). The NDC won 114 and the NPP 107 of the 230 parliamentary seats while the rest went to independent candidates. The Atta-Mills/NDC administration continued with the NPP's economic growth agenda. The NDC's Better Ghana Agenda program (dubbed "The Ghana Shared Growth and Development Agenda") has reduced inflation to a single-digit figure (8 percent in March 2012) and produced a GDP growth rate of 13 percent in 2011 (Ghana Statistical Service, 2012).

The sixth successive presidential and parliamentary elections are scheduled to take place on December 7, 2012 (Electoral Commission of Ghana, 2011). The electoral process in Ghana has improved drastically over time, gaining the trust and confidence of the populace as evidenced by the acceptance of the results of five consecutive elections by the public and opposition political parties since 1992. Democratic institutions such as the electoral commission, the judiciary and the Commission on Human Rights and Administrative Justice (CHRAJ) are being strengthened through legislative reforms, restructuring, and public sector reforms. These bodies are gradually institutionalizing democratic values and practices such as the tolerance of opposing views, participation in public decision making, and the conduct of regular elections (Whitefield, 2009).

Vital to this evolutionary process is the decentralization of power to regional, district, local and unit levels across the country. As of March 2012, there were 212 District Assemblies (170 old districts and 42 newly created ones). The districts are administered by assemblies made up of elected and appointed members. The district chief (DCE) executives who head the assemblies are appointed by the president and approved by a two-thirds majority vote of the Assembly (Ministry of Local Government, 2011). The approval of the DCE by the Assembly members is to ensure that participatory processes of selecting the district mayors are followed as well as to foster accountability of local government officials to the citizenry. Decentralization

has been taking root and public participation in local governance is gaining momentum. There is a high degree of public interest in participating in local decision making processes at the assembly and local council levels. The progress in democratization is attributable to a neutral EC that has consistently reviewed and reformed its systems and procedures. This adaptability has enabled the EC to conduct consistently credible elections over the years (Fall, et al., 2011).

2.9.1. Ghana's Electoral Commission of 1993

The transition to the Fourth Republic suffered many setbacks because of a public perception of government's manipulation and interference in the work of the hurriedly appointed INEC (Gyimah-Boadi, 2009). The INEC managed the 1992 constitutional referendum and the presidential and parliamentary elections of 1992. The INEC, like almost all of its predecessors, was viewed by politicians, especially those from opposition parties, with suspicion. They feared and denounced the manipulation of elections through the ruling parties' control of the INEC. The major political parties that participated in the November 1992 presidential election, including the NPP, PNC, PHP and even the NDC, complained of deficiencies, challenged the results and subsequently the three parties boycotted the presidential elections of December 1992. These challenges informed the drafters of the 1992 Constitution to provide for a neutral and independent Election Management Board. The drastic changes were timely because Ghanaians were tired of military rule. Credit goes to the PNDC, particularly Justice D. F. Annan (member of the PNDC, a renowned judge and chairman of the NCD), leaders of the EC, particularly Chairman Afar Djan for being consistent, impartial and ready to learn from their experiences. They have galvanized the support and energy of civil society groups and political parties to gradually develop and build credibility in the work of the EC (Fall, et al., 2011).

The Electoral Commission was established by the 1992 Constitution, in Articles 43, 44, 45 and 46, and the 1993 Electoral Commission Act 451, clause 125.³⁴ The constitution specifies the composition, selection, duration of term, conditions of service as well as the salaries of EC members (Article 451). The Constitution also establishes the core functions of the commission, the composition of its mandated entities, financing and auditing of its operations (Electoral Commission, 2011).

The EC is composed of seven members, including a chairperson, two deputy chairpersons and four other members appointed by the president in consultation with the Council of State, an advisory body. The EC manages its staff almost entirely on its own discretion in accordance with Act 451, section 8 of the constitution. The commission recruits and appoints its officers autonomously, on competitive bases in consultation with the Public Service Commission through objective criteria. Almost all vacancies are published in the media. Qualified applicants are shortlisted and interviewed. The best qualified candidates get the job, purely on merit and not by any political considerations (Debrah, Asante and Gyimah-Boadi, 2010). This process is a marked improvement over the previous practices of recruiting EC members. The right persons have been recruited to enhance the quality of the work of the EC.

The EC has a notably wide mandate, with powers that extend beyond the strict organization of elections, to monitoring the activities of political parties, including party registration, policing their activities and auditing their accounts Fall et al., 2011. The commission is organized into two divisions: the Operations Division made up of four departments (the

³⁴ The constitutional provisions for the holding of elections are contained in Chapter 7 (Articles 42–54) of the 1992 Constitution and supported by the Electoral Commission Act of 1993 (Act 451) at the national level and the Local Government Act of 1993 (Act 462), for district and local elections. Article 51 of the 1992 Constitution and Section 12 of Act 451 empower the Electoral Commission to ‘make regulations for the effective performance of its functions, under the Constitution and any other law; in particular, registration of voters and the conduct of public elections and referenda, including providing for voting by proxy’ (Afrimap and Open Society of West Africa, 2007).

Elections, Training, Research, and Monitoring and Evaluation departments) and the Division of Finance and Administration (Human Resources and General Services, Finance and Information Technology departments). See Appendix 1.

Despite the significant strides Ghana has made towards consolidating democratic processes, it faces legal, constitutional, operational and capacity constraints and challenges. Some political pundits and analysts view the appointment of the EC chair and the two deputies by the president without the involvement of political parties and other interest groups as not sufficiently far-reaching. There is no requirement for the president to obtain the consent or consultation with a body like the parliament which reflects the political configuration of the country. The president is only required to seek a non-binding opinion of the Council of State, whose members are mostly appointees of the head of state Fall et al., 2011. This does not build confidence in the legitimacy of the process, or the EC itself. The robustness of this arrangement to withstand partisan political machination is yet to be tested because as of 2012 the first set of leaders of the EC (the chairman and his deputies) were still in office (since they were appointed in 1992).

Other Reforms in the Fourth Republic

Once in office, the Rawlings government appointed the leaders of the new electoral commission with Kwadjo Afari Djan as the first chairman. Afari Djan is credited with setting up of the EC and working tirelessly to develop it to an enviable status as one of the best election management bodies on the African continent Fall et al., 2011. Another important reform was the establishment of a national Commission for Civic Education (NCCE) by an act of parliament (Act 452) in July 1993 to educate the electorates. It has branches in all regions and districts of the country. They lead voter education campaigns during general and local elections by working

closely with civil society groups to achieve national coverage (AfriMAP and Open Society Initiative for West Africa, 2007). The NCCE has a broad mandate with regard to political participation.³⁵

To improve the trust, confidence and working relationships between the commission and registered political parties as well as to enhance transparency in its operations, the EC instituted the Inter-Party Advisory Committee (IPAC) in 1994. IPAC has provided and still provides an innovative mechanism for the EC to meet representatives of political parties and other stakeholders that support the electoral process. Other important issues discussed include election preparations, confidence building measures like the issue of photo identity cards, provision of transparent ballot boxes and determining dates for presidential and parliamentary elections to avoid the Band-wagon Syndrome.³⁶ IPAC also advocated the need to involve the political parties in all stages of the political process. The EC developed a code of conduct for political parties to improve relations between the parties and the behavior of political parties' members during elections (Debrah, Asante and Gyimah-Boadi, 2010).

The IPAC consists of representatives of the various political parties and the EC with representatives of development partners invited to participate in meetings. Its principal function is to serve as a channel of information between the EC and the parties and to build consensus on contested electoral issues. This participatory and consensus-building mechanism has been sustained and replicated in monthly meetings at the regional and district levels. The IPAC code covers the campaigns, activities undertaken outside the campaigns, elections, mode of

³⁵ The NCCE is mandated to create and sustain awareness of the principles and objectives of the Constitution; to educate and encourage the public to defend the Constitution; and to formulate, implement and oversee programs intended to inculcate in Ghanaians awareness of their civic responsibilities and an appreciation of their rights and obligations as free people (Electoral Commission, 2012).

³⁶ The 1992 election in which parliamentary and presidential elections were held on different days was affected by the Bandwagon Syndrome in which the outcome of the presidential elections prejudices voters' choices in the parliamentary elections. In subsequent elections, both presidential and parliamentary elections were held the same day (Electoral Commission, 2012).

application, implementation and dispute resolution mechanisms. The grievance investigation team is made up of political parties, the EC and NGOs such as IEA at the national, regional and district levels. IPAC's conflict resolution committee has the power of sanction in the form of reprimands. The code also includes the right of victims to bring a criminal or civil action before ordinary courts (Fall et al., 2011). It has drastically improved the electoral process.³⁷

In the 1996 presidential and parliamentary elections, transparent ballot boxes were introduced with donor support to forestall allegations and suspicion of ballot boxes being stuffed. According to the EC, the transparency of the voting process led to higher voter turnout, which shot up from 56.2 percent in 1992 to 78.2 percent in 1996 (Electoral Commission, 2012). Since the mid 1990s, the EC has consistently reviewed and updated the electoral register as well as the electoral process. A compilation of a credible electoral roll to replace the bloated 1987 register took place in 1995 with the active collaboration and participation of the political parties. The new voters register greatly enhanced the credibility of the 1996 elections (Electoral Commission, 1999).³⁸ Moreover, the transparency in the collation and declaration of elections results has improved over the years. It has boosted public confidence in the electoral process.³⁹

³⁷ A major achievement of IPAC is the development of a code of ethics for political parties which regulates inter-party relationships and the behaviour of the parties during political contests. The formation of a Media Watch Committee to monitor the reporting of all election-related issues in the local media for accuracy and to maintain the integrity of the EC is another success story. IPAC has contributed to constant review of the training and remuneration of poll workers in order to enhance their competence and ensure their commitment to duty (Debrah, Asante and Gyimah-Boadi, 2010).

³⁸ In order to allay the fears which the anomalies in the existing electoral roll had generated in certain sections of the voting public, the EC ensured that about eighty thousand party agents observed the 1995 registration exercise. The party agents were trained together with the EC's registration officials. This obviously gave the party agents a lot of insight into the registration process, a knowledge which they could share with their party colleagues. The political parties subsequently accepted the new registers without any complaints and upon request they were each supplied with a set of the newly compiled registers. This fulfilled a crucial requirement in the organization of free and fair elections and eliminated the source of a major dispute that had undermined the credibility of the 1992 presidential and parliamentary elections (Electoral Commission, 2012).

³⁹ After the collation of results, the total votes obtained by each candidate is recorded on a constituency results declaration form duly signed by the polling station returning officer and countersigned by agents of the candidates or political parties, with each agent given a copy. The results are then announced by the returning officer and the winner declared for parliamentary contests. A copy of the results is posted in a conspicuous place at the counting

The EC uses technology to enhance its effectiveness. In 1995 the introduction of optical mark readers (OMR) into the voter registration system in connection with data capturing improved the 1995 voter registration exercise significantly. It has also installed a Local Area Network (LAN) and Wide Area Network (WAN) at its head office linking all computers located on the premises to regional and district offices for quick and effective communication and transmitting of election results (Electoral Commission, 1999).

Another important step to strengthen the electoral process even further has taken place. The EC made a huge improvement in the electoral process when it completed the compilation of a biometric voters' register, which took place from March 24 to May 12, 2012. The objective of the biometric voters' register is to eliminate multiple voting, delete 'ghost' names from the register and other irregularities associated with the voters registers (Electoral Commission, 2012).

In sum, the performance of the electoral commission has gradually improved over time, due largely to the quality of the staff (especially its leadership) as well as the support and positive attitude of the other key players in the electoral process such as political parties, the media, state institutions and civil society organizations (CSOs).

2.9.2. Political Parties and their Influence on the Electoral Process in the Fourth Republic

Elections in Ghana since 1996 have been competitive because the NDC and NPP serve as credible opposition parties to government. The parties mobilize voters and political elites around the two political traditions (Nkrumah and Danquah-Busia). The Ashanti, Bono and Ahafo and

centre and the returning officer transmits the final results to the commission through the district officer and the regional director (Debrah, Asante and Gyimah-Boadi, 2010).

Akyem (Akan sub-groups) tend to gravitate towards the Danquah-Busia tradition. The believers of the Nkrumah tradition cut across all ethnic groups. Rawlings' tradition is most favored by the Ewe, but has large following across all ethnic divides. These political traditions cut across social cleavages such as ethnicity, region, urban/rural and social status. Both the NPP and NDC parties have established institutional networks in all the regions of the country, except the Volta and Ashanti Regions, with bloc voting pattern (electorates vote amass for their home region or party). Despite these strongholds, the outcomes of elections are determined by swing regions such as the Central, Western, Greater Accra and Brong Ahafo Regions which contain a large number of floating voters who are not party loyalists and may switch their vote based on government's performance (Arthur, 2009).

Representatives of political parties are involved at every step of the voting process on election day, and this has helped to increase transparency and instill trust within political parties in the process.⁴⁰ All the 18 registered political parties in Ghana (as of 2012), are led by executives dominated by men, except the CPP whose leader is a woman (the daughter of the first president of Ghana). Positions generally occupied by women are treasurer and women's wing leadership positions (Fobih, 2010).

⁴⁰ On election day, each political party has an agent at every polling station that is certified by the commission. These party agents observe the whole voting process, drawing attention to any irregularities. They also stand next to the returning officer who supervises the counting of votes at the polling station in the full view of the public who must help to agree on whether ballots are valid or marked improperly. Where there is a disagreement between any two party agents, election officials and other party polling agents (who have been trained how to detect spoiled ballots) have the final say. The spoiled ballot is determined in the full view of the public and serious disagreements referred to the law courts (Electoral Commission, 2011).

2.9.3. Election Management and Electoral Reforms in the Fourth Republic (1993-2012)

Several attempts at establishing democratic rule after the various military interventions were accompanied by the development of legal and constitutional provisions aimed at regulating political parties' activities. Ghana's return to civilian rule with the Fourth Republic produced the most progressive legal institutions to entrench democracy in Ghana. These are Article 55 and 56 of the 1992 Constitution together with the Political Parties Law (PNDC Law 281) of 1992. The 1992 Constitution grants every citizen of Ghana of voting age the right to form or join a political party. Most significantly, the constitution outlaws the formation of sectarian political parties (to foster national integration).⁴¹ Other provisions seek to ensure that all presidential and parliamentary candidates are treated equally in the use of state resources such as air time and space on the state-owned radio, television and print media (Electoral Commission, 1992).

Electoral Malpractices and Ethnicity in the Fourth Republic

Critical to the electoral process is the behavior of political parties during and after voting day. Electoral malpractices, violence and other election-related irregularities have been associated with political parties as they work to secure political power. In the Fourth Republic, several covert and overt irregularities have been cited that are linked to one political party or the other. In the 2004 elections for example, *The Daily Dispatch* newspaper reported that a total of 10,259 votes were inflated in 122 polling stations in five regions (Greater Accra, Western,

⁴¹ All parties must be registered with the EC; at least one of the founding members should be resident and registered as a voter in each of the districts of Ghana; a party must have branches in all the ten regions of Ghana; it should be organized in not less than two-thirds of the districts in each region. Furthermore, a party's name, emblem, color, motto or any other symbol must not have any ethnic, regional or religious connotation nor give the appearance that its activities are confined only to a part of Ghana; only a citizen of Ghana can contribute to the funds of a political party.

Central, Ashanti and Volta). These irregularities were masterminded by the two dominant parties, NPP and NDC. Similarly, in the 2008 elections in Akwatia and Asutifi South constituencies, ballot boxes were tampered with at some polling stations on voting day while other boxes were stolen in a coordinated ‘robbery.’ The EC declined to declare election results in affected constituencies. The irregularities were investigated by the courts, which ordered fresh parliamentary elections in Akwatia constituency (won by the opposition party (NPP) parliamentary candidate) (Epson, 2011). The two parties indulge in violent acts more in their strong-holds (NPP in Ashanti and NDC in the Volta and Northern Regions). In all the elections held in the Fourth Republic, the NDC won by a landslide in the Volta Region (94.5 percent in 1992; 93.2 percent in 1996; 88.47 percent in 2000; 83.8 percent in 2004 and 82.88 percent in 2008). The NPP similarly, won the most votes in its home region (61 percent in 1992; 65 percent in 1996; 74.6 percent in 2000; 74.6 percent in 2004 and 72.4 percent in the 2008 presidential elections (Arthur, 2009). Contributing to the discussion on the voting pattern of these two dominant parties, Gyimah-Boadi has noted that:

The importance of ethnicity was perhaps best demonstrated in the 2000 presidential elections. Atta-Mills’ placards and billboards in the Central Region carried the slogan *Adze wo fie a oye*, the Fanti expression of “It is better to have your own” by implication, Atta-Mills was urging voters to support him simply because he was from their ethnic group. After losing the first round of the 2000 elections, the NDC reprimanded the traditional rulers and the people of the Central and Western regions for failing to vote for their “native son,” and urged them to do so in the runoff (Gyimah-Boadi, 2001:63).

The Ashantis and Ewes have displayed the least flexibility in their voting behavior. The pattern of voting among broadly suggests that the country is polarized along ethnic and political

party lines. The consequence is that electoral contests have often increased tensions between the two groups but has so far not caused any large-scale violent conflicts (Arthur, 2009).

The electoral significance of ethnicity and cleavages goes beyond Ewe and Ashanti rivalry (Arthur, 2009). Within regions in the northern part of Ghana, electoral politics is based, to some extent, on conflicts between chiefly and acephalous tribes. Examples include tensions between the Kusasi and the Mamprusi in the Bawku area of the Upper East Region that claimed more than 50 lives during the 2000 elections (Arthur, 2009). The Dagbon Crisis, an intra-ethnic lineage dispute between the Abudu and Andani royal families, which culminated in the killing of the King of Dagbon (the Ya-Na) in 2002, is linked to national party struggles. The Abudu faction is said to support the NPP, and the Andani faction the NDC. The Andani faction accused the NPP of complicity in the killing of the Ya-Na. The NPP lost almost all the seats it had won in Dagbon traditional area in 2000 to the opposition NDC in the 2004 and 2008 elections. The loss was partly due to the political slant and the perception that top members of the NPP government who are Dagombas were behind the escalation of the crisis and the murder of the Dagomba king and his elders.⁴² These ministers resigned their posts to facilitate investigation into the conflict in 2002 (Arthur, 2009).

The NPP and NDC governments, in an attempt to reduce high levels of poverty in the northern sector of Ghana, have initiated special development programs. One such example is the Northern Development Authority started by the NPP and renamed the Savannah Accelerated Development Authority (SADA) by the NDC. SADA is aimed at bridging the gap between the poor north and the well-endowed south (Asante and Gyimah-Boadi, 2004). All three presidents

⁴² Ministers who are Dagombas in the NPP government who resigned as a result of the Yendi crises were: Malik Al-Hassan Yakubu, (the MP for Yendi and the Minister for Interior), Major-General (rtd.) Joshua Hamidu (National Security Adviser), Major Sulemana Tali (National Security Council member) and Prince Imoru Andani (Northern Regional minister) (Arthur, 2009).

(Rawlings, Kuffour and Atta-Mills) have adopted policies with the aim of eliminating inequalities in Ghanaian society.⁴³

2.10. Consolidating Democracy in Ghana: Lessons and Prospects

The legal reforms, operational design and arrangement and the powers bestowed on it make Ghana's EC powerful and truly independent of the state and governmental apparatus. The permanent nature of the commission ensures growth, institutional learning and consolidation. Top brass of the EC are able to work without fear of government and other state control. For example, the chair and the two vice-chairs cannot be relieved of their posts (unless they commit serious offenses) to the extent that the law places the EC chair on the same terms and conditions of service as the judges of the Courts of Appeal and the two vice chairs on the same level as those of the High Courts. The conditions for putting an end to the tenure of commissioners and retirement age are clearly defined by law. This job security for the EC staff has helped Ghana to consolidate democratic processes and made the commissioners more independent from those who selected them because the renewal of their mandates does not depend on political power (Fall et al., 2011).

Interparty dialogue and forums, civil society groups and the growing confidence of the Ghanaian populace in the electoral process provide hope for consolidated democracy in Ghana. Political analysts and observers argue that Ghana's democratic political system survived the closeness and intensity of the 2008 elections because it has developed stabilizing characteristics--an independent EC and transparent electoral processes, the growth of democratic practices

⁴³ Ghana Vision 2020 under Jerry John Rawlings (1992-2000) aimed at reducing poverty and enhancing economic growth. The Ghana Growth and Poverty Reduction Strategy (GPRS I and II) and the Highly Indebted Poor Countries Initiative (HIPC) of John Kuffour (2001-2008) and the Atta-Mills' Better Ghana Agenda, "The Ghana Shared Growth and Development Agenda" (GSGDA) (2010-2013) are programs meant to address imbalances in the Ghanaian economy and social life between religious, ethnic and regional groups (Asante and Gyimah-Boadi, 2004).

among the political elite alongside the creation of norms and institutions that mold elite behavior, and the institutionalization of political parties (Whitefield, 2009).⁴⁴ According to Whitefield (2009) the highly competitive elections since 1996 are the result of a *de facto* two-party system where voters and political elites are mobilized not on communal divides but around two political traditions (Nkrumah and Danquah-Busia) which provide the parties' vision, founding mythologies (the body of stories associated with the culture of the party) and political styles adopted by the parties.

Ghana's experience holds out the possibility that parties in Africa do not have to be based strictly on identity to be institutionalized. However, they will need an issue-based party culture that cuts across region and ethnicity to provide the anchor upon which political elites gravitate to neutralize ethnic politicization and promote the consolidation of political parties. This is prominent in a two-party system where both parties have strong political support in almost all regions and parties' identification is based on cross-cutting cleavages of which ethnicity is only one (Whitefield, 2009). In addition, Rawlings stepping down after he reached the constitutional limit of two terms as president in 2000 without attempting to change the constitution marked an important step towards democratization in Ghana. The peaceful change of power in 2001 and 2008 showed it is possible and that parties can lose power through the ballot box and regain power again in later elections.

The changeover of power between the two dominant parties in Ghana as a result of successful elections confirms that Ghana has passed Huntington's "two turnover test."

⁴⁴ Despite heated political tensions and violent acts between the NPP and NDC supporters, the 2008 elections tested the strength of Ghana's electoral commission. A winner emerged with a very slim margin after three rounds of voting. The EC emerged stronger and reliable. The achievement also demonstrates the political maturity of the Ghanaian public and political leaders. The defeat of the NPP is probably the narrowest for a ruling party that did not degenerate into violent conflict in the history of elections in Africa (Whitefield, 2009).

Huntington (1991) theorized that when a nation transitions from an "emergent democracy" to a "stable democracy," it must undergo two democratic and peaceful turnovers to confirm that it has gone passed the stage of democratic reversal associated with emerging democracies before it moves the stage of a stable democracy. Similarly, Przeworski, et al (1996) postulate that three consecutive multiparty elections is the minimum requirement to show that the 'alternation rule' (peaceful change of power from one administration to the other) is being institutionalized.

Vibrant civil society's vigilance and participation in the electoral process has contributed greatly to the success of elections, particularly in the 2008 elections. Civil society interventions, along with media vigilance, helped to keep campaigns issue-based and peaceful.⁴⁵ The IPAC has ensured that political parties and donors make input into electoral reforms by inviting them to participate in IPAC meetings as well as make financial support to the EC to implement reforms, help to manage the electoral process and bring forward their concerns for general discussion (Boafo-Arthur, 2006).

The electoral process in Ghana is not perfect, and the highly competitive 2008 elections exposed its weaknesses. However, in general, electoral procedures were followed and the process was transparent enough to invoke trust from all parties and the electorate. The foundation of norms and institutions, slowly built since 1992, has molded the behaviour of the political elite (Gyimah-Boadi, 2009). Thus, meaningful reforms aimed at building institutions and structures have reduced the incentives for state capture and partisan abuse. The result is an emerging trend in democratic rule in Ghana that has the potential to withstanding any electoral shocks if sustained. Therefore, strategic planning meant to create a secure atmosphere for

⁴⁵ Institute of Economic Affairs (IEA) held live televised presidential and vice-presidential debates. It also drafted and submitted to parliament a presidential transition bill which has been passed into law to streamline the handing over of power from one government to another after elections. The Association of Ghanaian Industries held meetings with all the presidential candidates to discuss economic policies. The CODEO and international agencies help to create an enabling atmosphere for peaceful elections in Ghana (Gyimah-Boadi, 2009).

campaigning, polling, and post-election activities has been the hallmark of elections in the Fourth Republic (Gyimah-Boadi, 2009).

2.11. Emerging Patterns of Democratic Development in Ghana

The vision of political parties and their leaders to maintain a united and cohesive Ghanaian society has, to a large extent been achieved, as Ghana continues to make uninterrupted strides towards democratization since 1992. As Sideman and Lanoue (2005) postulate, politicians and the electorate appear to have come to the realization that becoming electorally viable requires the political parties vying for political power to strike alliances with other parties and ethnic groups, thereby fostering the inclusion in government of smaller parties and ethnic groups. The pattern since independence, and particularly in the Fourth Republic, has been one of seeking balance and inclusion of all interest groups in Ghana to secure votes to win power and to be able to preside over a united country. Political parties have therefore carefully played their cards in such a way as to ensure balance and national integration by selecting political leaders from a variety of ethnic and social classes in the country. There is a conscious effort on the part of the political parties to present ethnically mixed presidential slates in elections. This trend of cross ethno-regional and party alliances has become prominent in presidential campaigns since the year 2000. Each of the parties has ensured that its presidential ticket reflects an ethno-regional balance, so that if the presidential candidate is from the southern part of Ghana, the running mate is chosen from the northern part and vice-versa.⁴⁶ This balancing act has

⁴⁶ Candidate Atta-Mills of the NDC, an Akan-Fante, in 2000 appointed a northerner, Martin Amidu from the Upper East Region while Akan-Ashanti candidate Kuffour of the NPP chose a northern Muslim, Alhaji Aliu Mahama as his running mate. In 2004 President Kuffour maintained his vice president Aliu Mahama while candidate Atta-Mills chose Alhaji Mohamed Mumuni, a northern Muslim, as his running mate. This balancing practice was maintained in 2008 and the December 2012 elections as Mahamadu Bayumia, a northern Muslim partnered with NPP presidential candidate Nana Akuffo-Addo, an Akan-Akim. Atta-Mills has also maintained his 2008 running mate and current

contributed largely to neutralize the effect of ethnicity and cleavages in the voting patterns in presidential elections in Ghana (Asante and Gyimah-Boadi, 2004).

The balancing arrangement is not limited to national level activities only. However, the regional impact on electoral outcomes in Ghana is very difficult to gauge mainly because some regions are largely coterminous with ethnic groups or sub-groups of ethnic groups while others are not. Unlike some African countries, this geographic pattern does not seem to indicate the pattern of voting except in two regions--- the Ashanti and Volta (referred to as the “World Bank”) of NPP and NDC, respectively (Asante and Gyimah-Boadi, 2004). Even in these two regions voters are gradually shedding their practice of bloc voting for their home candidates or parties as evidenced by the downward trend of the number of votes obtained by NPP and NDC parties in Ashanti and Volta regions as discussed earlier. Although regional patterns of voting could contain hidden ethnic dimensions, the trajectory of electoral politics in Ghana shows that by and large, ethnicity is not a variable that determines the outcome of national elections (Asante and Gyimah-Boadi, 2004). This is unique in Africa.

Another trend in Ghana’s democratization process is that political leaders are elected to public positions by contesting on political party tickets more than contesting as independent candidates. A limited number of independent candidates are elected to Ghana’s parliament. The 1956 elections produced two independent candidates representing 1.9 percent of the vote; one candidate in 1969 (0.7 percent) and two candidates in 1992 (1 percent). The 2000 elections produced four independent candidates (2 percent); one candidate in 2004 (0.4 percent); and four candidates in 2008 (1.7 percent). No independent presidential candidate has ever been elected president in Ghana (Krennerich 2003; Whitefield, 2009). Political parties are therefore very

vice president, John Mahama, a northern Christian, as his running mate for the 2012 elections (Asante and Gyimah-Boadi, 2004).

important in Ghana's democratization process and both state and non-state institutions need to invest in the development and management of viable political parties.

The lack of homogeneity among the regions of the country is seen by some political pundits as a blessing for Ghana. It has made it more difficult for politicians to make ethnic considerations a prominent feature in elections. Ethnicity manifests only a moderate salience in Ghana. Political and constitutional arrangements in Ghana have succeeded in muting ethnic cleavages. According to Arthur (2009), ethnicity is not that important in the Ghanaian context, since interpersonal relationships such as marriage ties, friendship, and school mates ("old boys") cut across ethnic groups in almost random fashion, neutralizing ethnicity's potential political impact and drawing various groups into a network of reciprocal obligations.

The efforts of succeeding political leaders to strengthen democratic institutions such as the Electoral Commission, the Commission on Human Rights and Administrative Justice (CHRAJ) and the growing checks and balances among the three branches of government (executive, parliament and judiciary) has led to sustained progress in building a stable democracy in Ghana. The trust and confidence reposed in the Electoral Commission has enabled the EC to shape the electoral landscape by building confidence in elections as the most acceptable approach to choosing political leaders. This success is crucial to democratic consolidation (Debrah, Asante and Gyimah-Boadi, 2010).

Thus, since the brutal and antagonistic rivalry between the CPP and UGCC/UP ideological groups during the pre-independence elections campaign in the 1950s, Ghana has developed a 'home grown' election management body that makes Ghana a beacon of hope for democracy in Africa. Ghana, a country with economic, social and political characteristics similar to many other African countries undergoing democratic transitions, has achieved major successes

in conducting many elections because it has developed and sustained a credible, effective and neutral election management body that has helped to neutralize the destabilizing societal cleavages that have ravaged other countries like Kenya and Cote d' Ivoire.

CHAPTER 3 : KENYA : POLITICS AND ELECTION MANAGEMENT

3.0. Kenya: Background and Political History

Having had economic relations with Arabs, Asians and Europeans, Kenya was colonized by the British during the partitioning of Africa by European powers in the last quarter of the 19th century. Like the Gold Coast, the British introduced a quasi-democracy in Kenya during the pre-independence era. This continued after independence under Jomo Kenyatta. Kenya gained independence from the British in 1963. It is an ethnically diverse society with ethnic tensions and violent eruptions during national elections. This notwithstanding, Kenya has had stable governments since becoming a republic in 1964 under three long serving presidents---Jomo Kenyatta of the Kenya African National Union (KANU) from 1964-1978, Daniel Arap Moi (also of KANU) from 1978-2002 and Mwai Kibaki of the National Rainbow Coalition (NARC) from 2002-2007 and the Party of National Unity (PNU) from 2007-2012. After a brief democratic transition after independence, one-party rule, dictatorship, suppression of political opposition and adoption of divisive tactics characterized the governance of Kenya. How all these played together to sustain the relative stability of government in Kenya are dealt with later in the chapter. The election management body in Kenya has not developed much since independence, except for occasional amendments by successive governments which have influenced the electoral process (Ajulu, 2002). This chapter discusses the political history of Kenya with a special focus on election management and the challenges of multiparty democracy. It also examines political party activities and their influence on the electoral process as well as democratic challenges and patterns of democratic development in Kenya.

Figure 3.1: Chronology of Ruling Administrations in Kenya (1963-2012)

December 1963-December 1964: Westminster Constitution (Kenya- parliamentary civilian government)
December 1964–August 1978: Republic (Kenya- presidential civilian government)
August 1978-January 1993: Republic (Moi- one party presidential civilian government)
January 1993- January 2003: Republic (Moi-multiparty presidential civilian government)
January 2003-May 2012: Republic (Kibaki-multiparty presidential civilian government)

Source: Hartmann (2011).

3.1. Historical Overview

Kenya as a country never existed; it was created by the colonialists. Many communities in Kenya lived in harmony except for sporadic, small-scale clashes. Each had their unique system of governance (Chemaswet, n.d). In the pre-colonial period all groups in Kenya were acephalous in nature except the Wanga of Western Kenya who had a centralized system with the Nabongo king as their leader and the Arab-led autonomous city states at the coastal trading centers (Chemaswet, n.d). The British declared Kenya a protectorate (a British sphere of influence) in 1895 and it officially became a British colony in 1920. The main reason for colonizing Kenya was to control the source of the strategic Nile River and British interest in the upper Nile region, particularly Egypt and the Suez Canal. The colonialists tried to work with existing community leaders by elevating them to the status of chiefs and paramount chiefs (Chemaswet, n.d). They replaced those leaders who disobeyed British orders with indigenous persons who were ready to collaborate with them to grab the best lands. These newly created

paramount chiefs cooperated with the colonialists to grab lands from indigenes (Chemaswet, n.d).

Kenya's friendly geographical environment (highlands with favorable weather conditions and relatively little threat of malaria) attracted many European settlers from Britain in the early part of the 18th century. The settlers, who the British government gave land on highly concessional terms to establish plantations, gradually gained control of very fertile lands from Kiu (in Machakos) to Fort Ternan (Kericho) and declared the area as "White Highlands." Only Europeans were allowed to settle in the reserved area. This led to massive alienation of Africans, with many of them being pushed to infertile lands with its attendant problems of squatters in white settled areas, racial segregation and forced labor in European plantations (Mwaruvie, 2010). The alienation and displacement of Africans from their ancestral lands became the basis for African nationalism. Many political associations were formed in the early part of the 20th century to resist imperialism. They fought until independence was achieved in 1963.

In the pre-independence period, the electoral process in Kenya was characterized by ad hoc and limiting measures and provisions. Voters were bound to meet certain tax requirements.⁴⁷ Adult suffrage was limited to certain categories of people based on economic and social status. Since independence in 1963, all adult citizens (including women) of sound mind have had the right to vote (Ajulu, 2002). The election management body in Kenya has had a checked history of being influenced and controlled by governments for political interest and expediency. This development has not enabled the EMB to fully develop into an independent and autonomous system that can win the confidence and trust of the electorate, despite conducting regular elections to change governments since independence in 1963.

⁴⁷ In 1957 a limited franchise was allowed by the colonialists. Educational qualifications and an income of not less than Kenyan shilling (Kshs) 2400 per annum among others were prerequisites for men and women to vote. The age for voting was later reduced from 21 to 18 years (Ajulu, 2002).

3.2. Overview of Ethnicity and Conflicts in Kenya's Political History

Kenya is a multi-ethnic, multi-religious and multi-cultural society. Swahili/Kiswahili (a fusion of the language of the Shirazi (Persian and Arabian) traders and emigrants with the coastal Bantu in the 9th century) is culturally important to Kenyan history. Swahili is widely spoken as a national language in Kenya and other neighboring countries in the East Africa region. Although Kiswahili is widely spoken, it has failed to bond Kenyans as people belonging to one culture and speaking a common language. Rather various ethnic groups maintain their identity and belonging to their ethnic and religious groups (Mwaruvie, 2010).

The political history of Kenya is influenced by the negative use of ethnicity, ethnic classification, ethno-regionalism, social and economic cleavages, political party alliances and coalitions which combine to determine who controls power in that country (Oucho, 2002). Each of these ethnic groups or tribes has its own unique values, language and cultural practices. Thus, most Kenyans belong to specific ethnic and religious groups that they identify with, first and foremost. One characteristic of Kenya's political system is that parties and voters are mobilized along ethnic and regional lines (Oucho, 2002). The Kenyan African Union (KANU) dominated the politics of Kenya from 1963 to 2002 under Presidents Jomo Kenyatta and Daniel Arap Moi. Political alliances and coalitions like the National Rainbow Coalition (NARC), the Party of National Unity (PNU) and the Orange Democratic Movement (ODM) have dominated the politics in Kenya since 2002 (IFES Final Report, 2008).

Kenya's population of 43,013,341 is made up of three major linguistic groups (the Bantu, Nilotes and Cushites) subdivided into 42 tribes and sub-groups as well as a minority Arabs, Asians and Europeans (Kenya Population Census, 2009). The religious composition of the

population is estimated as follows: Protestant 45 percent, Roman Catholic 33 percent, Muslim 10 percent, indigenous beliefs 10 percent, others 2 percent (CIA World Fact Book, 2012).

Kenya's Bantu people live mainly in the coastal, central, eastern and western regions of the country. They form about 70 percent of the entire population but they occupy less than 30 percent of the Kenyan land (Kenya Population Census, 2009). The Kikuyu (the largest ethnic group in Kenya) represent 22 percent of the entire Kenyan population. They have long been very influential in Kenyan politics, dominating organized resistance to colonial rule. Presidents Jomo Kenyatta and Mwai Kibaki are Kikuyus. The Luhya, also known as the Abaluhya (14 percent), is the second largest tribe living in Kenya's Western Province. The Abaluhya tribe comprises 17 sub-tribes, each speaking a different dialect. The most dominant Abaluhya sub-tribes are the Bukusu, Maragoli, Banyore, Gisu, Idakho, Isukha, Kabras, Khayo, Kisa, Manyala, Marachi, Saamia, Tachoni, Tiriki, Tura, Wanga and Watsotso. The Kamba (11 percent) is the fifth largest ethnic group in Kenya. They are renowned for their exceptional wood carving skills (Oucho, 2002). Three other large Bantu sub-groups are the Kisii (6 percent) and Meru (6 percent) of the Kenyan population. The rest of the Bantu ethnic groups constitute less than 1 percent of Kenya's population (Kenyan Population Census, 2009).

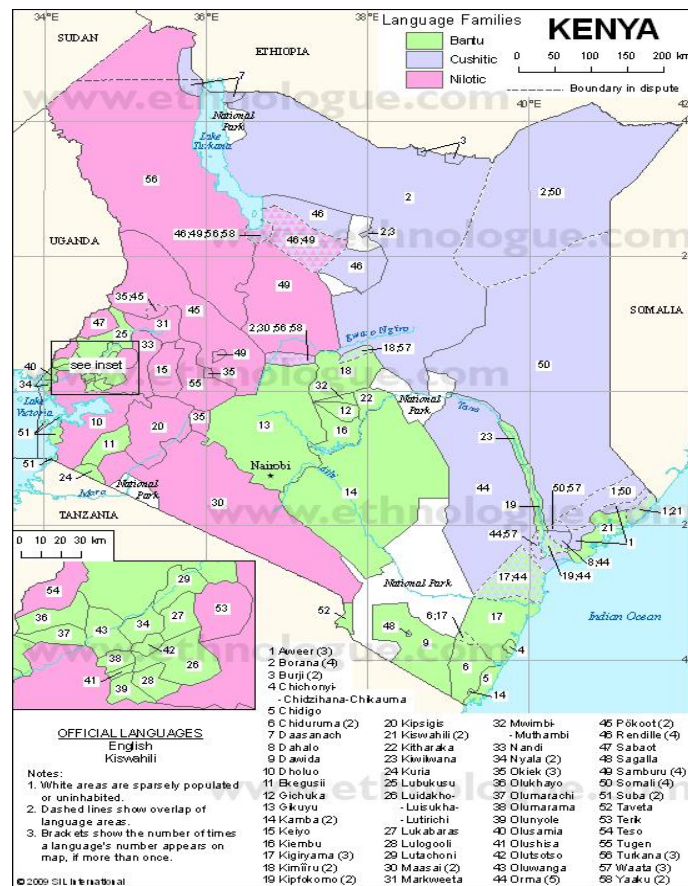
The most significant tribes of the Nilotes are the Luo (13 percent), Kalenjin (12 percent), Maasai (2 percent), Turkana (1percent), and Samburu (0.50). They represent approximately 18 percent of Kenya's population. The Nilotes are traditionally pastoralists and fishermen. They reside in Kenya's broad Rift-Valley region, around Lake Victoria. The Luo live on the shores of Lake Victoria and are Kenya's third largest ethnic group. They are influential in Kenyan politics and have produced many of the staunch political opposition leaders. The Kalenjin are prominent

in Kenyan politics. President Arap Moi, the longest serving president of Kenya, comes from the Kalenjin tribe. They have also produced many prominent long distance athletes (Oucho, 2002).

The Cushitic people represent less than 1 percent of Kenyan population. They live in the arid and semi-arid eastern and northeastern parts of Kenya. Most of them are nomadic pastoralists who own large herds of camels, sheep, cattle and goats. The Asians are mostly descendants of Indian railway workers brought to Kenya in the 19th century. The Europeans are largely British and they own large pieces of land in the Rift Valley Province (Ajulu, 2002).

Figure 3.2. is a map showing regional distribution of ethnic groups in Kenya.

Figure 3.2: Ethnologic Map of Kenya



Source: <http://www.ethnologue.com/maps/ken_eth.jpg>.

Many conflicts in pre-independence Kenya were nationalistic in nature and directed at preventing or stopping European domination of African lands. Another source of conflict in Kenya has been the internal migration system, which has pitted migrant settlers and squatters on the one hand, against the indigenous people on the other, precipitating intermittent conflicts in opposition strong-holds such as the Rift Valley region (Ajulu, 2002).

3.3. Challenges of Multiparty Elections and Democracy in Kenya

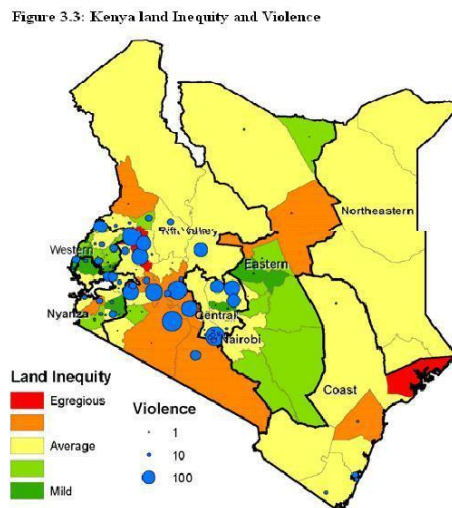
Since attaining independence in 1963, Kenya has had a fairly limited experience with competitive multi-party politics. The first experiment with political pluralism was from 1963 to the “Little General Election” in 1966. The second began in 1991 and includes the multiparty elections of 1992, 1997, 2002 and 2007. In both periods, cleavages and violence have characterized political competition.

3.3.1. Socio-Economic Inequalities in Kenya

Like most African societies, inequality in Kenya is associated with such factors as the effects of colonial policies and control over resources such as land and conflicts between the landed and landless. Inequality is seen in landlessness, gender status, youth unemployment, the widening gap between extremely wealthy and extremely poor citizens, and the marginalization of some ethnic communities (Ndungu, 2008). These inequalities are potential fault-lines for social cleavages and differences that have influenced heavily the outcome of elections as politicians mobilize voters along ethnic lines and fan ethnic sentiments and divides. As a result of this history, Kenya is one of the most unequal societies in the world. The inequalities have contributed to the eruption of direct and indirect state violence to maintain political control

during colonialism and after independence. Violence has also been initiated by non-state actors as a form of resistance to these historical developments (Ajulu, 2002).⁴⁸ Figure 3.3, map of land inequity and violence in Kenya.

Figure 3.3: Kenya Land Inequity and Violence



Source: Kniss, Michael (2010), p. 17).

Kenya's geographical mobility, especially of people in search of economic prospects, followed a similar trend to Ghana. Many emigrants moved to areas that the British had acquired land to work on the plantations. Pre-colonial, colonial and post-colonial government policies have contributed to an uneven distribution of resources. This trend has contributed to large numbers of various ethnic groups settling throughout the country without destroying their ethnic bonds which has led to overcrowding and conflicts (Ajulu, 2002).

⁴⁸ Examples of state violence include colonial cruelties, the Mau Mau rebellion in the 1950s, post-colonial assassinations of some top politicians such as Tom Mboya, ethnic cleansing, crime, militia and police violence (Ajulu, 2002). According to the Waki Commission (2008), officials failed to act on intelligence regarding potential violence; failed to respond adequately to violence; and police lacked discipline and impartiality, and used unjustified force in responding to post-election demonstrations and violence. Police were responsible for 405 deaths (35.7 per cent of the total) (Alston, 2010).

3.3.2. Ethnicity and Voting Patterns in Kenya

Since political organizations channel, aggregate, and express political demands, they play an important role in the management as well as escalation of conflict in societies divided along cultural, linguistic, religious and regional lines. Political parties are thus intimately linked to the rise and fall of conflicts in ethnically plural societies (Reilly, 2006). Kenya's experience with election-related violent conflicts follows this trend. Like many other countries in Africa, Kenya's challenges are that elections are inherently problematic because of the pressures for politicization of identity issues and the failure of the Election Management Bodies to conduct transparent, free and fair elections (Reilly, 2006). It is often easier for campaigning parties to attract voter support by appealing to ethnic allegiances than issues of ideology. Aspiring politicians have a strong incentive to mobilize followers along ethnic lines, and unscrupulous leaders who 'play the ethnic card' are rewarded with electoral success as was evidenced during the long reign of President Arap Moi (Ajulu, 2002).⁴⁹

There has rarely been a level-playing field for political parties, presidential candidates and other candidates contesting elections at different levels in Kenya. Governments' failure to provide an even-playing field is aggravated by political parties themselves by refusing entry of their rivals in their strongholds. Therefore, during campaigns, Kenya is practically divided into party zones. The major determinant of who controls what zone is the ethnic identity of the candidate or leaders of the political party.⁵⁰ Governments in Kenya have so far failed to adopt

⁴⁹ A case in point was in early 1993 (soon after the 1992 elections) when President Moi publicly commended Nicholas Biwott, one of the alleged perpetrators (named by both the all-party group and the task force commissions of inquiry into the 1992 election violence) for having ensured that KANU gained ground in the Rift Valley Province. Biwott was subsequently appointed as a minister in the president's office (Ajulu, 2002).

⁵⁰ The Rift Valley was a KANU zone in the Moi years. The Forum for the Restoration of Democracy in Kenya (FORD-K) (a splinter group) FORD-Asili and the Democratic Party of Kenya (DP) in 1992 and in 1997 controlled

policies to mitigate the effect of this phenomenon but have rather encouraged these divisive tendencies. Nukuri (1997) states that conflicts and violence in Kenya are based upon and organized by elites, and extended outward into society as supporters are recruited and rewarded for the basic benefit of their patrons. Rok Ajulu supports this statement and concludes that: Ethnicity has thus become the medium through which class politics is mediated. Ethnic clashes, which have characterized much of the period of multiparty politics, are not tribal conflicts in the primordial sense; rather, these constitute politically organized conflicts orchestrated to achieve short and long-term political, and ultimately economic, advantages (Ajulu, 2002, p.1).

3.3.3. Managing Diversity for Democratic Consolidation in Kenyan Politics

Successive governments led by Jomo Kenyatta, Daniel Arap Moi, and Mwai Kibaki failed to address comprehensively the problems of inequality and the marginalization of some ethnic communities (Ajulu, 2002). All governments since independence have entrenched certain biases and prejudices of the past, particularly during the Kenyatta and Moi periods. Those entrusted with high political positions encouraged tribalism and the use of ethnic identities to foster patron–client relations for the purpose of retaining political power. The general public, civil society organizations and the donor community urged the governments to redress the trend. Instead, successive Kenyan governments made unfulfilled promises and established commissions to investigate particular issues of national importance without implementing the findings of these commissions (not even President Kibaki and his coalition government---from whom more is expected because he rode on the back of change to power ---has made the necessary changes) (Commonwealth Secretariat, 2008).

Central Province. Nyanza was a FORD-K zone in 1992 and a National Democratic Party (NDP) zone in 1997 (Oucho, 2002).

3.4. Political Development and Election Management in Pre-Independent Kenya

From a very early stage of colonial experience, Kenyans organized themselves in different forms to count their economic and political exclusion and fight for their rights. At first, they took traditional forms like tribal associations. Later, trade unions grew up and focused mainly on trying to protect and extend the rights of African wage-earners. However, these unions also provided an opportunity for the first generation of anti-colonialist leaders to share ideas on wider issues and gain experience of grassroots mobilization. The first indigenous political groupings were organized along ethnic lines but did not restrict themselves to ethnic issues. They dealt with economic and political issues such as land ownership and resistance against British rule. The Nandi ethnic group started the struggle against growing foreign domination of economic and political lives of Kenyans in the late 1890s. The struggle gathered momentum in other regions from the early 1900s (Mwaruvie, 2010). Tribal associations were formed after initial nationalist movements like the East African Association (EAA), which was banned by the colonialists who adopted divide-and rule tactics by encouraging and fanning tribalism and tribal sentiments among the various ethnic groups, purposefully to weaken their front.⁵¹ The tribal associations' nationalist agenda of stopping foreign domination of their territories received a boost from WWII veterans who had convinced themselves that the British, with whom they have fought side-by side in the war, were not superior after all. Many of these soldiers began to

⁵¹ Kenya's first political organization, the East African Association (EAA), formed in 1919, was a truly pan-tribal political organization. Its leadership was composed of the different ethnic groups, Kikuyu, Luo, Kamba, Luhya, and some Ugandans. Following the Nairobi riots of 1922, which were led by the EAA, the arrest and deportation of three of its Kikuyu leaders (Harry Thuku, Waiganjo Ndotono and George Mugekenyi), the colonial government resolved not to encourage nation-wide African political activity. Rather, the policy was to encourage tribal associations. The subsequent period thus witnessed the proliferation of many tribal bodies (Ajulu, 2002). This was to keep Kenyans divided and weak to prolong colonialism.

organize and form stronger movements.⁵² Later some cross-ethnic associations also sprang up. They included the Kavirondo Tax Payer Association in Nyanza, the Kalenjin, Masai, Turkana and Samburu Alliance (KAMATUSA) and Western Kalenjin Congress among others which addressed labor related grievances. The leaders of some of these nationalist groups such as Masinde Muliro, Daniel Arap Moi, Ronald Ngala, Jomo Kenyatta, Oginga Odinga and Tom Mboya later formed the core of political parties' leaders to fight for independence (Ajulu, 2002).

Rok Ajulu postulates that it is colonial capitalist penetration in Kenya and the different responses to the colonialists' economic programs by the major ethnic groups that best explains the context in which politicization of inequalities and ethnic cleavages have come to dominate Kenyan politics (Ajulu, 2002). In the central province of Kenya, among the Kikuyu ethnic group, capitalist penetration by the colonizers resulted in proletarianization on a large scale and, at the same time, engendered a concentration of a landed and propertied class (mostly Kikuyus). It was the landed and landless who were to confront each other during the fight for independence in the 1950s (Ajulu, 2002). The Luo responded to the modern economy as suppliers of labour as railway works in Kisumu and Mombasa partly due to the minimal agricultural potential of Nyanza, lack of infrastructure, and markets for wage goods. Among the Luhya in the Western Province, the colonial administration led to proletarianization and peasant commodity production. Ultimately, all these factors led to a landed propertied class on the one hand, and, on the other, proletarianized landless owners of patches of land (Ajulu, 2002).

In 1944 the first national African organization, the Kenya African Union (KAU) was formed with strong support from the Kikuyu, with members from other ethnic groups. Another

⁵² The Kikuyu for instance, formed the Kikuyu Central Association (KCA), the Akamba formed the Ukambani Members Association (UMA), the Luhya formed the Luhya Union (LU), the Luo formed the Young Kavirondo Association (YKA), the Kalenjin formed the Kalenjin Political Alliance (KPA), the coastal tribes formed the Mwambao Union Front (MUF), and Taita formed the Taita Hills Association (THA). Consequently, a common political voice was not possible for a long time (Nyukuri, 1997).

prominent group was the Mau Mau resistance movement which launched a nationalist campaign aimed at claiming back Kenyan lands and to seek political independence from Britain (Ajulu, 2002). Some Kenyan collaborators of the colonialists embarked on a propaganda that divided the front of Kenyans. Some Kenyans, especially the Home Guards, fought alongside the colonial forces against the Mau Mau forces.⁵³ The colonialists took advantage of the situation to divide the front of nationalist movements even further (Ajulu, 2002).⁵⁴ The British authorities reacted brutally, killing an estimated 13,500 Africans and detained 100,000 in detention camps during the uprising. The British declared a state of emergency in October 1952 and banned the Mau Mau and KAU in 1953. The ban was lifted when the attacks on the British stopped (Ajulu, 2002). The resistance and nationalism (in the form of protests and violent acts) against foreign control of African lands grew until Kenya attained independence (Human Right Watch, 1993).

The period leading up to the first independence elections in 1963 saw a proliferation of regional and ethnic based political organizations which were to constitute the most effective recipe for the politicization of ethnic cleavages in Kenya. During this crucial period of imminent transfer of state-power into the hands of indigenous classes after the colonial state removed barriers to the formation of national political organizations in 1959, ethnic identities appear to have been constructed as instruments of negotiating access to that power. The result was a disharmony created between two forces: broader nationalists whose traditions of anti-colonial

⁵³ The colonial regime co-opted a layer of rich peasants composed of land-owning, educated Christians. These “loyalist” Kenyans included Kikuyu landowners who were deeply hostile to the landless Kikuyu masses and supported the British in suppressing them. The division and tension within the nationalists has led to the uprising being regarded in some academic circles as an intra-Kikuyu civil war (International Communist League, 2011).

⁵⁴ Pre-independence ethnic and regional based organizations include the Mombasa African Democratic Union (MADU), the Taita African Democratic Union (TADU), the Abagussi Association of South Nyanza District (AASND), the Masai United Front Alliance (MA), the Kalenjin People’s Alliance (KPA), Nairobi People Convention (NPC), Nairobi African District Council (NADC), the Rift Valley People’s Congress (RVPC), Kenya Peoples Party (KPP), the Baluhya Political Union (BPU) and Akamba Peoples Party, later named African Peoples Party (APP) (Ajulu, 2002).

resistance could be traced back to the second decade of the 20th century versus the political elite that had emerged in the post-Mau Mau. This period contributed to widening cleavages in Kenya which persists today (Commonwealth Secretariat, 2008).

3.4.1. Political Parties and Their Influence on the Political Process in Pre-Independent Kenya

Although African political parties remained banned after the Mau Mau uprising, nationalist leaders continued to agitate for independence. The nationalist movements (through protests and other forms of political dissent) pushed for independence from the British from the mid-1950s. As resistance to colonialism deepened and grew more sophisticated in urban settlements, particularly after WWII the first cross-ethnic political movements were formed. The Kenya African National Union (KANU) under Jomo Kenyatta and the Kenya African Democratic Union (KADU) led by Ronald Ngala were the first such groups to champion the fight for independence. KANU, which had its stronghold in the largest ethnic groups, the Kikuyu (of Central Province) theoretically had its stated objective of becoming a center-left ideological party but never developed along that line as ethnicity has become the medium through which class politics is mediated (Ajulu, 2002). Its platform called for immediate independence, a centralized, unitary state and a republican government. The KADU which was dominated by the Luo (from Nyanza) also aimed to become generally more conservative. It favored a federal system of government and a capitalist economic system with minimal state interference (Githu, 1998). The KADU, concerned about the prospect of Kikuyu domination and the strong white settler community who had substantial control over the colonial state, pressed for *majimboism*

(federalism based on ethnicity). It was envisaged that regional assemblies would be semi-autonomous (Ajulu, 2002).

In 1961, the British government began the Lancaster House constitutional process.⁵⁵ KANU and KADU began to operate legally and that paved the way for the first general elections in Kenya in which African political parties freely competed for power. With overwhelming support from the two largest ethnic groups in Kenya, the Kikuyu and the Luo, a large following in the urban centers and relatively better organization, KANU won the 1963 elections despite the colonialist maneuvers to let KADU, which was more sympathetic to the colonialist course, to win. However, in protest at the continued detention of its leader, Jomo Kenyatta, by the colonial administration, KANU refused to take office until after KANU and KADU forged an agreement to incorporate federalism in the independence constitution. The British government influenced the negotiation process in favor of federalism which the colonialists believed would protect the interests of white settlers in Kenya. In June 1963 Kenya was granted internal self-rule and it attained independence on December 12, 1963 (Ajulu, 2002). Federalism was, however, short-lived because the Kenyatta administration was bent on frustrating what was seen as an “imposed” constitutional dispensation. KADU merged with KANU at the beginning of 1964 (Holmquist and Githinji, 2009). Nonetheless, the violent conflicts, triggered by differences over *majimboism* and unfair distribution of resources in the Rift Valley Province, for example, have become hot spots for election-related violence in Kenya (Ajulu, 2002).⁵⁶

⁵⁵ The Lancaster House Conferences were designed by the British Empire to prepare its colonies for independence between 1953 and 1979. The first such meeting in 1960, resulted in an interim constitution that failed to grant any substantial autonomy to Kenya. The second conference in 1962 negotiated a framework for self government while the third and final conference in 1963 resulted in the drafting and adoption of Kenya's first independent constitution by the British Parliament perceived by many Kenyans as an imposed constitution (Ajulu, 2002).

⁵⁶ KADU with its allies lunched *majimboism* under the slogan “Regionalism or Civil War” when William Murgor, then parliamentary secretary to the defense and internal security in the transitional government, invited his Kalenjin tribesmen to sharpen their spears and wait for the sound of his whistle to begin the war to drive non-Kalenjins out of the Rift Valley. Moi, then chairman of KADU, vowed to shed his blood to ensure that regionalism was written in the

The history of the Kenya land settlement programme is riddled with politics, economics, intrigue and the deliberate twist of facts. The colonialists tagged “African Trust Lands” also known as “reserves” as the Kamba reserve, Luo reserve and the Kikuyu reserve, giving it a divisive slant, cultivating an image of ‘the paternal protector of the weaker African interest,’ and personalizing the state (Oucho, 2002). The colonial governor’s decision as the father of the nation (rather than through effective democratic structures) was made to look like policies were meant to serve the poor Kenyans when, in effect, it was to satisfy colonial objectives of feeding its home country industries with raw materials from the colony. This paternal style was to be continued by politicians after independence.

In Kenya ethnic vote mobilization widened existing rifts and created more in the society. Three years after independence the Luo-Kikuyu alliance fell apart. Kenyatta and his Kikuyu elite took over the state; the Luo, led by Oginga Odinga (Raila Odinga's father) formed an opposition party, the Kenya People’s Union (KPU), that was eventually quashed. Kenyatta established a one-party state in 1969 and tossed the opposition, including Odinga, into detention. The Kikuyu then enjoyed many of the country's spoils throughout Kenyatta's reign. Kenyatta reneged on his promise to revert all British-confiscated lands to the local communities when Kenya attained independence. Instead, his former home guards from Central Kenya, with the support of the Kenyatta government, hatched an elaborate scheme to buy land from the British and allocate it to themselves and their henchmen (“Kikuyu mafia”). KANU leaders consolidated land in the Central Province and displaced many people into the Rift Valley (Chemaswet, n.d).⁵⁷ Ajulu

independence constitution (Ajulu, 2002). Thus, from 1961, ethnic clashes swept through the Rift Valley Province as the Kikuyu, Luhya and other ethnic groups, which had lived in the area for years, were labeled foreigners, their houses burnt, and the majority of them were rendered refugees. The main divide was the majority Kikuyu against the other tribes (Ajulu, 2002).

⁵⁷ This was allocated only to Kikuyus. The Luos were also rewarded for supporting KANU by transferring 650,000 acres of Nandi land to Luo Nyanza. Another 850,000 acres of Nandi and Koony land was chipped off and annexed

(2002) asserts that to strengthen the hold of the Kikuyu tribe on the governance of Kenya , Kenyatta's government organized and orchestrated an oath taking campaign to mobilize the Kikuyu peasantry, the urban committed supporters, and its professional classes behind the Kenyatta regime, arguing that the entire Kikuyu ethnic group was under threat. Kikuyu therefore had to take the oath in readiness to defend the House of Mumbi, the eponymous founder of the Kikuyu tribe. This development bred ethnic resentments among other tribes against the Kikuyu (Ajulu, 2002).

Several decades after independence, the British colonial legacy still impacts significantly Kenya's governance system. Administrative boundaries created along ethnic boundaries by the British have remained largely the same in Kenya to present. Apart from Nairobi and the Rift Valley Provinces, all the other six provinces hold one dominant ethnic group or culturally similar groups (Oucho, 2002). These ethnic-based regional boundaries, unresolved land acquisition, land ownership problems, conflict-prone migrant and labor system and the failure of governments to drastically reform an imperial constitution has stifled efforts to entrench democracy in Kenya (Oucho, 2002). These factors have influenced the eruption of conflicts in Kenya during elections.

3.4.2. Elections and Election Management in Pre-Independent Kenya

The election management body in Kenya has not been reviewed and reformed regularly until 2010 due to continuity in government and the conservative nature of successive governments, (Hartmann, 2011). The quasi-democracy introduced by the colonialists was characterized by national elections to elect leaders and representatives to national decision making bodies.

to the Western Province to form part of Bungoma. The Kalenjin and Maasai tribes felt shortchanged (Chemaswet, n.d).

The KAU pushed for reforms and greater African participation. Some constitutional changes in 1951 increased the African representatives (appointed) from 4 to 5. The colonial administration introduced the first restrictive elections for African representatives to the legislative council in 1957 and the Lennox Boyd Constitution increased the number of elected African members to 14 (to equal European representation in the legislature) (Githu, 1998). The restrictions and governmental control of the election process could not have made those elections free and fair. In the 1961 Legislative Council elections, KANU won 19 and KADU 11 of the 30 elective seats. Twenty seats were reserved for communal interests (10 for Europeans, 8 for Asians, and 2 for Arabs). Another 12 were filled by special members (to cater for the interest of the other sectors of Kenyan society) bringing the total number of legislative council members to 65. The Legislative Assembly elections of 18 to 26 May 1963 were the first that were held under the conditions of universal, direct and equal suffrage (right to vote in elections). KANU won the elections with 83 seats, representing 66.9 percent of the 124-member House of Representatives. Other political parties together won the rest of the 41 seats (African Election Database on Kenya, 2012). Kenya, at independence, inherited the electoral management body in which civil servants oversaw elections under a director of elections. Before 1992, elections were conducted under the supervisor of elections, an officer in the Attorney General's chambers appointed by the president which does not make him/her neutral and non-partisan (Institute for Education in Democracy, 1998). This system oversaw several elections in Kenya until the Electoral Commission of Kenya (ECK) was established in 1991. The president's appointed election supervisor was open to abuse and the impulses of the executive branch (IFES Final Report, 2008). Kenya has first past the post electoral system where the candidate who receives the highest votes is declared a winner. The pre-independence elections of 1957 and 1963 were managed by the colonial administration that

did not contest the elections for power but had a stake in protecting its political and economic interests (power and landed properties for whites in Kenya). Therefore, there was a relatively congenial electoral environment that fostered competition among the African political parties, despite suspicion of manipulation of the process by the colonialists to favor parties who sympathized with their course. The elections were seen by the colonialists and some contestants as relatively free and fair (Ajulu, 2002).

3.5. Political Development and Election Management in Post-Independent Kenya (1963-1978)

Following its victory at the polls, KANU was invited to form the first autonomous government on June 1, 1963 with Jomo Kenyatta as prime minister and Queen Elizabeth II of England as the head of state represented by the governor-general. Like most former British colonies, Kenya, adopted the Westminster system of government at independence. Kenya became a republic on December 12, 1964 and changed to a presidential system of government with Jomo Kenyatta (a Kikuyu), as president and Oginga Odinga (a Luo), as vice-president. With a large majority in the legislative assembly, KANU overcame resistance by convincing the opposition to accepting a merger of KADU with KANU with the stated aim of ensuring national unity. Kenyatta dismantled the federal system and created a unitary government in 1964. Kenya has presidential system of government to date (Throup, 1993).

The KANU-KADU coalition fell apart in 1966 when Oginga Odinga resigned his post as the vice president due to differences between him and KANU leaders. Daniel Arap Moi (a Kalenjin), was appointed vice-president (Nyström, 2003). Odinga broke away from KANU and formed the Kenyan People Union (KPU) which got the support of 29 members of parliament

(Ajulu, 2002). In 1967, the Senate and House of Representatives were merged to form the National Assembly. The executive powers of the regional assemblies were abolished by 1968. The multiparty system did not survive for long as a consequence. KANU responded to the KPU defections by passing a constitutional amendment that forced the defectors to seek re-election in what became known in Kenyan political parlance as the “little general elections.” The opposition leaders were constantly harassed and often imprisoned. Kenya was becoming an authoritarian regime because under a one party system, Moi could legislate as he wished and he used the opportunity to silence opposition by putting down dissent to his authority (Ajulu, 2002).⁵⁸

The “little general elections” were held in 1968 and the KPU won 9 out of 29 seats. All 9 seats were from Odinga’s ethnic group in the Nyanza areas. The KPU was tagged as a Luo-based party and banned in 1969. Odinga was arrested and detained after Luo youth rioted following the assassination of Tom Mboya, a Luo, and the secretary-general of KANU. Its objective of building a strong opposition to check government excesses was defeated. Kenya had become a *de facto* single-party state by 1969, supposedly, to create a governing coalition that represented all sections of Kenyan society (Commonwealth Secretariat, 2006). Rather, both Kenyatta and Moi exploited the situation to serve their ethnic groups and cronies.

Kenyatta politicized patterns of economic accumulation such as land and other resources which raised the stakes in the contest for political power. Corruption became the order of the day. Under this kleptocracy, however, came some economic gains (Kagwanja, 2003). Kenya’s economy recorded some growth under Jomo Kenyatta. Kenya’s thriving tourist industry was established and coffee and tea production was expanded. With extensive investments in

⁵⁸ In 1969, shortly before the next general elections, the KPU was banned and its leaders detained leaving individuals like Martin Shikuku, Jean-Marie Seroney, J .M. Kariuki, and a few prominent dissidents like Oginga Odinga (Ajulu, 2002).

infrastructure, and the expansion of education, the economy grew at a rate of 5 to 8 percent in almost every year from 1963 to 1978. Kenyatta concentrated most of the country's prosperity among the members of his ethnic group, the Kikuyu (Barkan, 2004). President Kenyatta died in office in 1978 and was constitutionally succeeded by Vice-President Arap Moi on 22 August 1978. The succession led to changes in the political and electoral system of Kenya (Commonwealth Secretariat, 2006).

3.5.1. Political Parties and their Influence on the Political Process in Kenya (1963-1978)

After independence, President Jomo Kenyatta took advantage of his control of power to settle his kinsmen. He invoked the constitutional provision that allowed Kenyans to settle anywhere in the country and the colonial land ordinances.⁵⁹ The land settlement programme involved resettlement of people and land acquisition through political patronage as well as land-buying companies (Oucho, 2002). It was adopted to settle the poor and landless people first and foremost and then those who have the capital and were willing to buy lands. This provided an opportunity for temporary emigrant squatters in the Rift Valley Province to stake claims to land that belonged to other groups, particularly the Kalenjin and the Maasai. Coastal land was similarly acquired without due regard to the rightful claimants such as the Mijikenda (Oucho, 2002). In reality, Kenyatta's land settlement program was meant to compensate the landless Kikuyu who had fought for Kenya's independence under the banner of the Mau Mau. The program resulted in defining three types of settlers: the poor, unemployed landless persons; the middle-income group with some capital who occupied larger landholdings; and the rich, most

⁵⁹ The "land question" originated during the 1930s when the Kenya Land Commission (1932-33), otherwise known as the Carter Land Commission made recommendations that planted seeds of discord among Kenyans. The rejection of the notion that Africans had any land rights in the former "White Highlands" set the stage for the Resident Labour Ordinance of 1937, which defined squatters as laborers. The ordinance directed that the disaffected Kikuyu be awarded 21, 000 acres (8,500 hectares) of land and £2,000 as compensation for loss of land (Oucho, 2002).

privileged persons capable of buying more land (Oucho, 2002). The settlement was regionally biased and settlers remained in their provinces except those from the Western and Central Provinces who crossed over to the Rift Valley Province mostly as laborers. The immigrants in the Rift Valley Province have been victims of political attacks, looting, arson and destruction of property anytime politically motivated violence erupted (Oucho, 2002).

3.5.2. Elections and Election Management in Post-Independence Kenya (1963-1978)

Kenya has had two major constitutional reforms since gaining independence. In 1969, the independence constitution was replaced with a new text that entrenched amendments already made to the system of government contemplated by the independence constitution. These amendments were meant to strengthen the executive branch of government and foster national unity. Election management was affected as a result. Kenya has held ten elections in the 44 year period from 1963-2007; it had one alternation in power, with power passing from party to another in that period (Oucho, 2002). Although multiparty competition was suspended in 1966, national elections were held regularly. In the single party state, national assembly elections were held in 1969 and 1974. Kenyatta was reelected unopposed by the National Assembly. Parliamentary elections remained open contests that allowed for those who did not challenge KANU and Kenyatta's monopoly of power (Hartmann, 2011). The ruling party's primaries became the key stage in the electoral process and a major determinant of who was elected to parliament. Semi-competitive elections in single-member constituencies were thus transformed into a series of local referendums on the ability of individual leaders to secure state resources for their ethnic followers. Electoral politics provided a mechanism by which the regime could facilitate the appointment of individual leaders into and out of positions of power, deal with local

discontent, and thus endowed the regime with a considerable degree of political legitimacy and support as it touted the country's democratic credentials as one of the few in Africa that leaders are elected through the ballot box (Hartmann, 2003). Citizen voting age was pegged at 21 and later revised to 18 years. The national parliament until 1966 consisted of two houses: the House of Representatives with 117 elected members to serve five years (eligible for re-election), and the Senate which was made up of 41 members, representing each district and Nairobi city. They were elected for a six-year term. One-third of the House was to seek renewal of their mandate from the electorates every two years (World History Archives, 2012). Candidates for both chambers had to be at least 21 years old, be able to speak and read English as well as meet certain tax requirements. Aspiring senators were required to show a record of residency in their respective constituency for at least five years. The membership of the Assembly has increased over the years from 158 to 222 by 2007 (World History Archives, 2012).

Since independence, all parliamentary elections have taken place in single-member constituencies under the plurality formula and the president has been elected for a period of five years. Parliamentary and presidential elections were held with a single ballot, and for the presidential elections, an absolute majority system has been applied. To win the elections, a presidential candidate had to win himself a seat in Parliament and the parliamentary candidates supporting him had to win at least 50 percent of the seats in the National Assembly (Hartmann, 2011). This 2010 constitution changed this to allow for a run-off.

In Kenya, the position of the supervisor of elections was retained after independence until 1992 when it was abolished per Constitutional Amendment Number 17 of 1990 (Okello, 2006). Executive controls over the electoral commissioner in Kenya under Kenyatta undermined the credibility of elections. The president appointed and could fire the supervisor of elections.

Ultimately, the power to determine the finality of an election outcome lay with the president. Therefore the system was not neutral as the executive had absolute control over its operations (Hartmann, 2011).

3.6. Political Development and Election Management in Kenya (1978-1991)

Daniel Arap Moi succeeded Kenyatta who died in office in 1978. Moi ruled Kenya from 1978-2002. President Arap Moi, a Kalenjin, set off to stamp his authority on KANU and the country after taking office in 1978. After having successfully won over open Luo and Kikuyu political resistance, Moi began the formalization of the single-party regime through constitutional amendment.⁶⁰ As he gained a firm grip of leadership, his government changed the constitution in June 1982 to make Kenya a one party state. Moi began to rebuild the former KADU ethno-political alliance to counterbalance the political and economic influence of the Kikuyu. He reallocated vast resources to the hitherto neglected peripheral regions, but strengthened the control of KANU over the political process while the political space for opposition to his government's policies reduced through constitutional amendments that gave the president more power (Barkan, 2004).⁶¹ Increasing international pressures, culminating in an aid freeze in 1991 by major donors like the US and International Monetary (IMF) which stopped grants and loans to Kenya.⁶²

⁶⁰ Moi's government foiled an attempted coup by the Air Force in 1982. He dismissed an influential Kikuyu minister, Njonjo in 1983 for his alleged sabotage of the government and silenced other position members (Barkan, 2004).

⁶¹ Moi reduced the freedom of intra-party lobbies and those by lawyers and religious groups as well as farmers' associations which had maintained a relatively autonomous status in the Kenyatta era (Nyukuri, 1997).

⁶² The changed international climate at the end of the Cold War proved decisive. The United States, Kenya's Cold War era ally who had been silent on Moi's stewardship throughout the 1980s became increasingly critical of Kenya's record of economic management, corruption, and human rights. Sharing these concerns, international donors suspended \$250 million in aid to Kenya in November 1991. Within a month, Kenya's constitution was amended to permit the return to multiparty politics (Barkan, 2004)

Kenyatta's policies had contributed to allowing the Kikuyu (who formed the core of Kenya's nationalist movement), to dominate the civil service and the private sector during the 1960s and 1970s. Moi sought to redress this imbalance by adopting a set of redistributive policies that unfortunately were not any better than Kenyatta's own.⁶³ The Kikuyus' fortunes took a turn for the worse under President Moi. Western Kenya enjoyed the economic benefits of state largess until Moi was voted out of office in 2002, at which point the pendulum again swung back to the Kikuyu, led by the incoming President Kibaki (Ouko, 2002). Moi's policies favored his own ethnic group, the Kalenjin and other disadvantaged tribes in the Rift Valley. These policies were initially hailed as proactive measures to fairly distribute Kenyan's resources but they triggered a failed coup attempt in 1982 after which President Moi became increasingly repressive and demanded absolute loyalty to his rule. He adopted divide and rule tactics and rewarded acquiescent members of the legislature with ministerial positions and punished dissenting members by expelling them from the ruling party. Elections were often rigged, the press and civil society were suppressed, and opponents were jailed. Human rights violations, including torture, became increasingly common (Barkan, 2004). Barkan sums up the state of Kenyan economy under Moi as follows:

By the end of the 1980s, Kenya had become a classic example of "big man" rule in Africa. Moi turned Kenya into a kleptocracy under which KANU leaders looted with impunity. Corruption became the principal mechanism for regime maintenance. Not surprisingly, the economy declined. From 1990 through 2002, annual per capita income in Kenya fell from \$271 to \$239 and poverty rose from 48 to 56 percent. Basic

⁶³Just as Kenyatta rewarded his henchmen, so did Moi. He razed part of the forests and allocated it to some Kikuyu, Embu, Meru and Akamba people who were his henchmen, including some of his own Kalenjins. Most of these acts were done in the name of resettling squatters and the landless. Ten forest areas were taken by Moi and Kenyatta. This practice of illegal allocations of land was to increase dramatically during the late 1980s and throughout the 1990s. Land was granted for political reasons or plundered by a few people at the expense of the public (Human Rights Watch, 2008).

social services and infrastructure, particularly roads, decayed or collapsed. The civil service, the legislature, and the judiciary became impotent, little more than rubber stamps for Moi's repressive policies (Barkan, 2004 p. 89).

Moi was worse than Kenyatta. While the latter achieved some economic growth, Moi presided over a declining economy and prevented critical reforms that could turn round the fortunes of the country. However, during the early 1990s, international factors such as the end of the Cold War and the West's policies towards Africa, coupled with internal pressure for multiparty democracy, forced Moi and KANU to recognize the inevitable and to restore the right to form alternative political parties. This development paved the way for multiparty elections in December 1992.

3.6.1. Political Parties and Their Influence on the Political Process in Kenya

Kenya made second attempt at multiparty democracy in 1991 with the abolition of one-party rule. The re-introduction of pluralism in Kenya significantly altered electoral politics and the contours of the political system, but failed to weaken the dominance of President Moi and KANU until the early 2000s. Returning to multiparty politics saw the formation of many political parties such as the Forum for Restoration of Democracy-Kenya (FORD-Kenya, led by Odinga) and FORD-Asili (led by ex-cabinet minister Kenneth Matiba, and the Democratic Party). Subsequently, other splinter FORD groups were formed. A total of eight political parties contested the 1992 elections yet Moi's divide-and-rule strategy of fomenting trouble and sponsoring vigilantes to perpetuate violence in opposition strongholds, controlling and manipulating the election process and setting up opponents against each other. As a result, the opposition was not strong enough to wrestle power from KANU (Commonwealth Secretariat, 2006).

Moi dissolved parliament ahead of a meeting of MPs, which was to deliberate on the draft constitution before the 2002 elections. Effectively, Moi had blown the last chance that Kenya could have had a constitution before the 2002 elections. However, it did not play out in KANU's favor. Moi and KANU lost the elections to a promising opposition which had been key advocates of constitutional and institutional reforms (World History Archives, 2012).

In the face of deteriorating socio-economic conditions and growing discontent among the Kikuyu-dominated elite over corruption and mismanagement and the grossly rigged and widely boycotted elections of 1988, it was clear that the power base of the government had begun to decline. This circumstance opened up the space for effective electoral politics in Kenya (Barkan, 2004). By 1990, foreign donors had joined the opposition to criticize the dictatorial regime, repression against the opposition and the government's human rights record.⁶⁴ Moi's grip on power started to slip and political momentum gradually shifted to the opposition. President Moi constituted a KANU review commission and held a conference in December 1990 that cancelled the restrictions such as non-secret ballot (queue-voting) and the expulsion of dissenting party members from KANU which had been forced upon the party since the mid-1980s (Nyukuri, 1997). These reforms never stopped the growing mobilization of civil society and opposition groups. Moi's government tried to suppress demonstrations in Nairobi but failed. As Moi's resistance to the call for multiparty democracy became steadfast, so did civil society and the opposition groups. These advocates for multiparty democracy adopt strategies to put pressure on the government to initiate reforms. The reformists networked within the Ufungamano Initiative to organize and push for a legislative framework to govern the process and for further

⁶⁴ Moi's attempt in the 1992 elections to drive out of the Rift Valley Province, (an opposition stronghold) those voters who were unlikely to vote for him, particularly the Kikuyu, led to clashes that claimed the lives of up to 1,500 people and 300,000 were displaced in the Rift Valley and Coast Provinces (Human Rights Watch, 1993). Election-related violence in 1997 and 2002 confirmed the lack of government commitment to deal with criminal behaviour and/or connived with such acts (Alston, 2010).

constitutional amendments under the Inter Party Parliamentary Group (IPPG).⁶⁵ The IPPG rewrote the country's constitution in 1997 (World History Archives, 2012). President Moi dissolved parliament ahead of a meeting of MPs, which was to deliberate on the draft Constitution before the 2002 elections. Effectively, Moi had blown the last chance that Kenya could have had a constitution before the 2002 elections. Moi eventually succumbed to the will of the people in December 1991 by revoking Article 2(a) of the Kenyan Republican Constitution and reluctantly agreed to move to multiparty politics.⁶⁶ Hopeful about the brighter chances of a Kikuyu candidate to win the elections, Moi appointed Uhuru Kenyatta as the presidential candidate against the will of many stalwarts in the party.⁶⁷ KANU could no longer legislate as Moi pleased with a narrow parliamentary majority after the 1997 elections. A coalition of politicians led by Mwai Kibaki began to assert its independence and openly defy Moi. The gradual process to unseat KANU's dominance of Kenyan politics was in sight as the tide began to turn. After losing the 1992 and 1997 elections, Kibaki made gains and finished second in 1997 (Electoral Commission of Kenya, 1998).

3.6.2. Elections and Election Management in Kenya (1978-1991)

Under Moi, elections continued to be held and as was the case with his predecessor, Moi and the 158-member National Assembly were reelected unopposed in 1979, 1983 and 1988 because he was the sole candidate for presidency. The presidential office and the regional administrations increasingly controlled and manipulated elections. Moi supervised six elections:

⁶⁵ The "Ufungamano Initiative" was a church-led coalition consisting of over 52 religious and secular groups who opposed parliament's control of constitutional reform from 1919-2005 (Human Rights Watch, 2008)

⁶⁶ President Moi predicted that Kenya was going to slide into violence and chaos under multiparty democracy. He made this a self-fulfilling prophecy by consistently adopting divide-and-rule tactics to keep the opposition weaker and instigated violence in regions that supported the opposition parties (Barkan and Ng'ethe, 1998).

⁶⁷ A parliamentary act in December 1991 repealed the one-party system provisions of the constitution and effectively established a multiparty system.

three National Assembly elections under single party rule in 1979, 1983 and 1988 and presidential and parliamentary under multiparty system. As the sole party, KANU introduced open primary elections, the notorious “*mlolongo*” (the queue-voting system) to select official KANU candidates to contest the 1988 elections. On the day of the primaries, KANU members were made to demonstrate their support for a specific candidate within their constituency by lining up behind him/her or the image. A candidate with more than 70 percent of voters present queued behind him/her was assigned the parliamentary seat right away. In 1988 this was the case in 65 out of 188 constituencies. There were reports of rigging as voters were harassed to join the queues of favorite candidates of KANU as well as double counting of voters which brought dissatisfaction with the one-party system to new heights. Throup (1998) described the 1988 elections as the most rigged elections in Kenyan’s history. The public expression of dissatisfaction and demand for change led to the Saba Saba riots of July 7, 1990.⁶⁸ The protests were violently broken up by the police, and many demonstrators were killed. Consequently, KANU established a review committee to gather Kenyans’ opinions in preparation to reform the party. KANU finally abolished the system of queue-voting in December 1990 (OSIEA, 2006).

3.7. Political Development and Electoral Reforms in Kenya (1992-2002)

Since returning to multiparty elections Kenya has conducted four presidential elections -- in 1992, 1997, 2002 and 2007. During these periods, ethnicity has emerged as the single most important factor in political competition. Although party mergers and coalitions in 2002 and 2007 ended the dominance of KANU, it is yet to neutralize the forces of ethnicity in the voting

⁶⁸ The Saba Saba riots of July 1990 were public protests against persistent refusal of the Moi government to grant pro-democracy groups led by former MPs Matiba and Rubia license to hold political rallies to advocate for multiparty democracy in Kenya. The security forces broke up the crowd gathered at the Kamakujin grounds in Nairobi, arrested and charged over 1000 and killed over 30 people (Diepeveen, 2010).

behavior in Kenya. Political parties are organized along ethnic identities and state power is aggressively contested on the basis of mobilized ethnicity. There are no identifiable established traditions or ideological patterns associated with political parties in Kenya (Ajulu, 2002). The establishment of the electoral commission of Kenya was to sanitize the electoral process and reduce government control of the process.

3.7.1. The 1992 Electoral Commission of Kenya (ECK)

The Electoral Commission was created by the Constitution, which also sets out its powers and responsibilities. It has been in existence since the first independence Constitution in 1963. It was, however, unknown to Kenyans until in 1991 when the late Justice Mr. Chesoni and his team of commissioners were appointed to prepare the country for the 1992 general elections (Kivuitu, 2001). The Constitution specifies the composition, selection, duration of term and conditions of service. The Constitution also establishes the core functions of the commission, the composition of its mandated entities and financing of its operations (Kivuitu, 2001). The ECK is composed of 21 commissioners (members) and a chairman appointed by the president. The ECK manages its staff almost entirely on its own as stipulated by the Constitution. The commission recruits and appoints its officers autonomously in consultation with the Public Service Commission and other relevant bodies (Constitution of Kenya, 1991). The ECK has wide discretionary powers to determine the electoral delimitation of parliamentary constituencies and make periodic reviews of electoral boundaries.

Administratively the ECK has a secretary and a deputy and heads of departments for finance, supplies, public relations and computer and cartography. During general elections, however, the ECK can employ temporary staff to assist them. At the district level, District

Election Coordinators (DECs) are in charge of such functions as the ECK may specify. Basically the DECs provide support services to the returning officers (ROs) during elections. They are registration officers as well and they oversee the revision of voters' registers in their respective districts (Kivuitu, 2001).

Other Electoral Reforms

Other legal frameworks that enhance the role of the Electoral Commission of Kenya (ECK) include: the National Assembly and Presidential Elections Act (NAPEA) (the Constitution of Kenya, section 41); the National Assembly and Presidential Elections Act (Chapter 7 of the Laws of Kenya); the Election Offences Act (Chapter 66 of the Laws of Kenya); and the Local Government Act (Chapter 265 of the Laws of Kenya). These legal instruments empower the ECK as the sole agency responsible for the conduct of elections in Kenya. The ECK as a public body was created in 1991 under section 41 of the Constitution to manage and conduct elections (Kivuitu, 2001). Appendix 2 provides details on the ECK.

3.7.2. Political Parties and Their Influence on the Political Process in Kenya (1992-2002)

Having served two terms after 1992, President Moi was constitutionally barred from any further term in office, and he accordingly stood down and nominated Uhuru Kenyatta (son of the first president of Kenya) as the presidential candidate for the KANU party in 2002 (Commonwealth Secretariat, 2008). This sparked discontent among top ministers in KANU and those who questioned Moi's arbitrary nomination were sacked from the government.⁶⁹ Raila

⁶⁹ Leading KANU politicians opposed to Kenyatta's nomination as presidential candidate formed a faction within KANU known as the Rainbow Alliance. President Moi responded by removing Vice-President George Saitoti from office for publicly expressing his intention to seek nomination as a presidential candidate for the ruling party and for openly criticizing Moi's arbitrary nomination of Uhuru Kenyatta as his successor (Barkan, 2004).

Odinga, who had sought the presidential nomination to KANU, felt discriminated against when Moi designated Uhuru Kenyatta as presidential candidate for the KANU party. He subsequently left the coalition government. Dissent activities increased in KANU and on October 14, 2002 when Kenyatta was officially confirmed as the presidential candidate, influential politicians took over the Liberal Democratic Party (LDP).⁷⁰ Two days later, as many as 30 KANU MPs led by Secretary-General, Raila Odinga publicly crossed the parliamentary floor and took seats on the opposition benches. This action sparked a steady stream of defections from the ruling party, including cabinet ministers. Kenyatta's nomination also led to violent protests at rallies addressed by President Moi. At least two people were reportedly killed (Commonwealth Secretariat, 2008).

The opposition had learned from its mistakes in the 1992 and 1997 elections and they worked hard to put together an effective coalition. The campaign for the 2002 elections effectively began soon after the 1997 general elections when Kenya witnessed a significant realignment of political forces, with the major parties seeking to strengthen their respective ethno-political support bases ahead of the 2002 polls (Commonwealth Secretariat, 2008). The opposition succeeded in forming and holding together a coalition known as the National Rainbow Coalition (NARC).⁷¹ In a bid to strengthen KANU and appease dissenting KANU members, President Moi in a cabinet reshuffle in June 2001, appointed the Luo opposition politician, Raila Odinga as the energy minister (Commonwealth Secretariat, 2008). Yet the government rejected amendments to the independent anti-corruption watchdog bill in parliament

⁷⁰ KANU political heavyweights such as Raila Odinga (Secretary-General), Kalonzo Musyoka (Information Minister) and Saitoti (former Vice-President) left the ruling party and joined the LDP (Throup, 1998).

⁷¹ Leading opposition parties formed the National Alliance for Change in February 2002. It was composed of the Democratic Party, Ford-Kenya and the National Party of Kenya. Ten other parties, together with two pressure groups, later joined these three to form the National Alliance (Party) of Kenya (NAK) (Commonwealth Secretariat, 2008).

that would have given the watchdog wide-ranging powers. Parliament responded by throwing the bill out in August 2001. This was a major setback to the government's hope of improving international confidence in the county's economy, particularly for the IMF to resume its lending programme to Kenya which was suspended in 1997, pending the government's action to eliminate corruption and improve revenue collection (Commonwealth Secretariat, 2008). The government, in a kneejerk attempt to restore donor confidence in the Kenyan economy, set up two anticorruption courts and a police unit specialized in fighting the growing menace of crime in the cities. This only worsened the already low international confidence in Kenya's economy. Kenya's tourism industry, the cornerstone of its economy, declined further due to the 1998 anti-American terrorist attacks on Nairobi and Dar es Salaam; widespread criminality in Kenya's major cities and the aftermath of September 11, 2001 terrorist attacks on the US (Commonwealth Secretariat, 2008).

From mid-2002, the key political issues were the succession of President Moi, the timing of the general elections and the fate of a long delayed constitutional review amid a declining economy.⁷² The atmosphere was politically charged with a more organized and vibrant political opposition (Commonwealth Secretariat, 2008). This atmosphere set the tone for more competitive elections.

⁷² The constitutional reform issue had been on the table for more than a decade, but Moi's resistance to change meant that the Constitution of Kenya Review Commission, the body charged with drafting a new basic law, was not established until April 2001. It issued its first draft just three months before the 2002 elections, by which time both KANU and the opposition had decided to contest the polls under the existing rules. The commission's proposal called for the devolution of authority to district governments, a substantial reduction of presidential authority, and, most controversially, the establishment of a new prime minister post that parties were not prepared to work with for the pending (2002) elections (Barkan, 2004)

3.7.3. Election Management and Electoral Reforms in the Republic of Kenya (1992-2002)

Major constitutional amendments were made during Moi's regime. In 1991 the Constitution was amended to restore multiparty democracy in Kenya. In 1997 all political parties were granted equal access to the media, detention without trial was prohibited and the opposition was allowed to participate in selecting the 12 nominated members of the National Assembly. Other reforms in 1999 reduced the level of presidential control over the legislative process (Commonwealth Secretariat, 2008). Official and civil society consultation processes led to the adoption of what became known as the "Bomas draft" Constitution (after the location of the conference that adopted it). The reforms made in 1991 and after were the most comprehensive and led to establishment of the Electoral Commission of Kenya (ECK).

In December 1992, Kenyans voted in the country's first multiparty elections in twenty-six years. As Kenya prepared for elections in 1992, a fierce tribal conflict gripped western Kenya. About 2,000 people were killed in the run-up to the election, caused by state sponsored gangs in opposition strongholds (Ajulu, 2002). The divided front of the opposition parties was an opportunity for Moi and the KANU party to dominate the politics of Kenya. Opposition members of parliament (MPs) continued to view the single-member constituencies as local battle-fields between contenders carrying different party colors without linking their competition to national politics and therefore forging a united front to unseat the president. Civil society, with support of external donors, continued to push for democratization and institutional reforms and threatened to boycott the elections (Commonwealth Secretariat, 2008).

Agitation and civil demand for electoral reforms increased after the 1992 elections that were won by Moi who had not shown any commitment to reforms. On December 31, 1995,

President Moi responded to public demand for reforms by promising the public that constitutional review would begin. Civil society organizations mounted pressure on the government to make good on its promise. A National Convention Planning Committee (NCPC), the executive branch of prodemocracy forces was formed to advocate for constitutional change. The independence of the ECK was put to a test in the 1992 elections. According to several elections observer reports, the ECK's management of the electoral process was below standard (Commonwealth Observer Group Report, 2003). Part of the problem was identified as the lack of independence of the ECK (particularly the mode of appointment of commissioners and its composition) (Okello, 2006). Although the 1992 elections were declared free and fair by observers, albeit with reservations, there were widespread electoral malpractices and rigging. Government's instigated violence was reported in many areas.⁷³ Moi and KANU maintained control over the electoral process and instigated 'ethnic clashes' in opposition strong-holds that deprived hundreds of thousands of their right to vote and the loss of lives and property. The elections were non-competitive (Mueller, 2011). They were described by observers as not being free and fair, and did not bring the expected victory for the opposition because it had split along inter and intra-ethnic lines. President Moi was re-elected with 40.6 percent of the vote, while his nearest rivals, Kenneth Matiba of the FORD-Asili party won 26 percent, Mwai Kibaki of the Democratic Party (DP) won 19.5 percent and Oginga Odinga of FORD- Kenya won 17.5 percent (African Election Database on Kenya, 2012).

In 1997, the National Convention Assembly and its executive branch, the National Convention Executive Council (NCEC), were formed to advocate for reforms in Kenya. Between May and July, pro-democracy forces led widespread mass actions, forcing the government to

⁷³ The 1992 elections in Kenya were held against the backdrop of a violent electioneering campaign in which vigilante groups such as the "Baghdad Boys," "*Angola Musimbiji*," and the "Old Man's Army" (*jeshi la mzee* in Kiswahili) terrorized non-conformists of the KANU party and the government with impunity (Mueller, 2011).

concede to the minimum constitutional and legal alterations necessary to facilitate more free and fair elections (OSIEA, 2006). As a consequence of the agreements reached between the parliamentary political parties during the IPPG process, the opposition proposed ten additional ECK commissioners in 1997. All nominees were to be appointed by the president (Commonwealth Report, 2006).⁷⁴ The cross-party parliamentary reform initiative of 1997 revised a number of the oppressive laws inherited from the colonial era that had been used to limit freedom of speech and assembly. The law has been changed to limit the number of commissioners on the ECK to no more than twenty-one commissioners. This improved public freedom and contributed to relative improvement over 1992 elections (Electoral Commission of Kenya, 1998). The increased number of commissioners to include opposition party representatives made marginal improvement as Moi prevailed in the 1997 elections.

In December 1997, Kenyans went to the polls to elect a president and parliamentarians in the second multiparty elections at the height of tension between the opposition and the ruling KANU party. Once again, Moi had managed to strike a last-minute parliamentary alliance of opposition parties and KANU had agreed on some minor constitutional and political concessions in October 1997 but ignored the question of presidential powers and the design of the electoral system. The elections took place at a time of economic decline as articulated by Barkan (2004) above. Despite the unimpressive economic and social conditions, Moi was re-elected for the second time under the multiparty system. As was the case in the 1992 elections, Moi's victory was largely due to divisions within the opposition camp and the inability of the opposition to back a single candidate against Moi and the KANU (Commonwealth Secretariat, 2008). KANU won a narrow majority of seats in the National Assembly but not a majority of the ballots cast.

⁷⁴ The number of commissioners was increased in 1997 in order to allow greater representation by opposition parties (Commonwealth Report, 2006).

Moi's KANU won 40 percent and his closest rival Mwai Kibaki's DP won 31 percent. KANU won 107 (plus 5 more of the 12 appointed members to make a total of 113) seats in the 222-member parliament while the opposition parties together secured the remaining 103 seats. International and local election observers such as the EU, Carter Center and domestic monitors reported that while there were some irregularities, the results of the elections reflected the wishes of most Kenyans. The 1997 elections were also characterized by communal violence and foul play. Therefore, the elections could not be described as completely free and fair, despite the presence of domestic and international observers (Barkan, 2004).

The reforms continued after the 1997 elections. Some significant changes in the electoral laws and procedures prior to the 2002 general elections significantly improved the political space. More importantly, in 1999 an amendment had reduced the level of presidential control over the legislative process (OSIEA, 2006). In December 2002, Kenya held national elections that were deemed generally free and fair by international and domestic observer groups (the Commonwealth, EU and AU). The 2002 elections marked an important turning point in Kenya's democratic evolution as power was transferred peacefully from KANU to the National Rainbow Coalition (NARC), a coalition of multiple political parties. The NARC and Mwai Kibaki won the elections with 63 percent of votes, followed by Uhuru Kenyatta of KANU with 31 percent and the rest of three parties together won 6.5 percent. In the parliamentary elections NARC won 125 seats; LDP won 59; DP won 39, FORD-K won 21, NPK won 6, KANU won 64, FORD-P won 14 while four other parties together won the remaining seven of the 210 elective seats (African Election Database on Kenya, 2012).

3.7.4. Election-Related Violence under Arap Moi (1991-2002)

One legacy of Moi's long rule is the creation of a violent elections environment. Every election since the establishment of a multiparty system in 1991 witnessed widespread violence (Human Rights Watch, 1993). Among the most explosive periods in the pre-2007/2008 period in Kenya's post-independence history was between 1991 and 1993 when President Moi tried to stir up sentiment against the Kikuyu in the Rift Valley to consolidate his vote in that province (the area with the most parliamentary seats).⁷⁵ He drove out those unlikely to vote for him, particularly the Kikuyu. The clashes in the Rift Valley and on the coast left up to 1,500 people dead and 300,000 displaced. Several perpetrators of the violence were not arrested although they were identified by the Akiwumi Commission (Human Rights Watch, 2008). Where arrests were made the culprits were set free at the intervention of their political benefactors. Election-related violence in the 1992, 1997 and 2002 elections confirmed the lack of government intervention in criminal behaviour as demonstrated by the unwillingness of government to implement the recommendation of commissions it had set up to investigate post-election violence such as the Akiwumi and Kiliku parliamentary select committees in the 1990s. The government's inaction led to recurring violence, murder and evictions in the Rift Valley just before the general elections in 1992 claiming 779 lives and creating 50,000 displaced persons; Coast Province in 1997 and the Likoni areas in the 2002 elections witnessed similar levels of violence (Human Rights Watch, 2003). As the debate about *majimboism* resurfaced with a vengeance, politicians in the Rift Valley and the Coast provinces incited and organized pogroms against 'outsiders,' mostly Kikuyu, Luo, Luhya, and Kisii emigrants perceived as political rivals. High-ranking politicians

⁷⁵ According to the Kenyan Human Rights Commission (2001) state-sponsored or state-condoned violence killed an estimated 4,000 people and displaced 600,000 others over the period 1991-2001. Much of this violence occurred in the Rift Valley and in urban areas, especially in Nairobi where the opposition held sway since 1992 (Kagwanja, 2003).

made inflammatory speeches in support of this chauvinistic interpretation of *majimboism* that led to ethnic violence (Human Rights Watch, 2008).

President Moi's long reign was characterized by impunity, shielding criminals for political gains and promoting sectarian private security forces. This approach, coupled with Moi's unwillingness to implement recommendations of commissions of inquiry into election-related violence and malpractices amounted to purposeful neglect.⁷⁶ Therefore aggrieved sections of the Kenyan population harbored the desire for revenge and were ready to strike at the least provocation (Kagwanja and Southall, 2009).

3.8. Political Development and Electoral Reforms in Kenya (2003-2012)

Mwai Kibaki was sworn into office as the third president of Kenya on December 30, 2002. The most important factor behind Kibaki's victory was the opposition's decision to unite around a single candidate. It was a lesson that had taken a decade to learn --- NARC did not come together until ten weeks before the 2002 elections. The NARC coalition came to power with the stated aim of consolidating Kenya's decades-long struggle for democracy and to improve the economy (Barkan, 2004). NARC had promised in the campaign that it would restore economic growth and create 500,000 new jobs a year. Kibaki's government faced the daunting task of delivering on its campaign promise because it was saddled with a coalition government that was beset with fundamental weaknesses like disagreement in implementing the terms of the coalition agreements and fixing a declining economy (Barkan, 2004).

⁷⁶ Two separate commissions, the all-party group and the task force established by the National Council of Churches of Kenya (NECK) and the Parliamentary Select Committee, conducted an inquiry on the clashes and arrived at the same conclusions--- that they were instigated by the government for political gain (Ajulu, 2002).

Kibaki inherited an economy clouded by insecurity and the growing threat of terrorism. It also suffered from high crime rates in Kenya's urban areas since the early 1990s due to bad governance (authoritarian rule and corruption) and a declining economic outlook. Other challenges were rural-urban migration, the burden of managing nearly 900,000 AIDS orphans, and the influx of small arms and refugees from Somalia (Barkan, 2004). These factors created a climate of fear and insecurity among Kenyans. To reverse this trend and to make good the NARC's promise to the electorate, the Kibaki government embarked on a series of reforms and pragmatic policies to revamp the Kenyan economy. The government claimed it appointed competent people into the top hierarchy of the governing machinery; it reformed and resized the bloated civil service from the bottom up and instituted a comprehensive pay policy reform that necessitated retrenchment in the civil service. The lack of private-sector employment opportunities for potential displaced civil servants led the Kibaki government not implementing the retrenchment exercise. It embarked on a program to expand, equip and motivate the Kenya police force, provided better salaries for workers, and reduced unemployment (Barkan, 2004).⁷⁷ By 2007 the economy recorded growth of 6.4 percent. Ironically, the poverty indicators for the same period showed that 58 percent of the population lived on less than 2 US dollars a day (Human Rights Watch, 2008).

3.8. 1. Political Parties and their Influence on the Political Process in Kenya (2003-2012)

NARC remained a coalition of convenience (made up of 14 political parties), united more by what it opposed than by what it actually stood for (Barkan, 2004). NARC's inherent weakness

⁷⁷ Kenya had 190,000 civil servants (excluding teachers). According to Barkan (2004), this figure was roughly 20 percent more than the country needed. Most of these workers are prone to corruption because they are poorly paid.

was compounded by Kibaki's poor health (he was hospitalized in January 2003 after suffering a stroke that kept him unfit for about four months). His ill health (coupled with his *laissez-faire* leadership style) created a vacuum at the center of government and fueled speculation that the new president might not serve his full term in office (Barkan, 2004). The absence of a strong hand at the center of government encouraged prominent leaders in the new government to pursue their own agendas, resulting in confusion and conflict within the ruling coalition. Consequently, five factions emerged in the Kibaki government: 1) the old politicians and Kibaki's cronies who favored conservatism and return to Kenyatta's style of strong- man rule; 2) the former LDP members who were not happy because of the non-adherence of the coalition terms; 3) differences between the LDP and NAK members within the coalition; 4) those opposed to Kibaki's cronies and whose agenda was to work to change system for the better by serving the interest of the elites, professionals and other economic groups and 5) the Vice-President Moody Awori's faction that represented the main force for moderation and cooperation within the coalition (Barkan, 2004). With these differences threatening to break-up the coalition, it was clear that the 2007 election would be hotly contested. Shortly after the NARC's victory political parties began to realign and configure political arrangements that were attractive to the Kenyan public rather than simply rely on ethnic allegiances (Commonwealth Secretariat, 2008).

Kibaki pushed for further reforms, but the coalition was soon plagued by disagreement over the constitutional reform question which exacerbated tensions within NARC. Odinga and his faction supported the original draft, but the old guard and the other factions were adamantly opposed to its provision for a non-appointed prime minister. They argued that Kibaki was elected under the pre-reform constitution and thus entitled to retain his full set of executive powers and not to share with a prime minister. It appeared that the divides were caused by each party's

interest in controlling power and resources to serve their supporters. The dispute paralyzed the government and contributed to Odinga leaving NARC to form the Orange Democratic Movement (ODM) to contest the 2007 elections (Barkan, 2006).

In the run up to the 2007 elections the realignment of political parties and levels of voter mobilization were unprecedented in Kenya's political history. Hitherto opposing parties and ethnic enclaves agreed to work together to grab power from the majority Kikuyu while the incumbent did same to retain power.⁷⁸ Raila Odinga was nominated the presidential candidate for the ODM which was made up of several political parties and interest groups that mobilized votes from many ethnic groups that traditionally were not allies. The incumbent president, Mwai Kibaki, put together an alliance made up of six major political parties and a number of smaller fringe parties called the Party of National Unity (PNU) (IFES Final Report, 2008). Although these political realignments were not without their ethnic undercurrents, this appears to be the first time attempts were made to mobilize votes on national rather than ethnic considerations. The campaign period was dominated by the unfinished business of constitutional reforms and the debate on whether to maintain a centralized government or adopt a federal government structure (*majimbo*). While the ODM argued that *majimbo* stood for devolution, the PNU was emphatic that *majimbo* referred to ethnic enclaves. Ethnicity was heightened due to perceptions of ethnic bias in public appointments. Politicians from each side of the political divide demonstrated their inability to build consensus on major political issues (IFES Final Report, 2008).

Like his predecessors, Kibaki did not deal with the most fundamental problem underlying Kenya's violence and disunity (injustice, grievances over land ownership and inequalities).

⁷⁸ The alliance formed in the ODM was made up of regions opposed to the government such as the Nyanza and the Rift Valley Provinces. A surprising member of the ODM alliance was the Western Province because since independence the Luhya had distinguished themselves as an unpredictable voting bloc (in 1963 and 1992, they split their votes between the Kalenjin, Kikuyu and independent candidates but seldom voted for a Luo candidate) (IFES Final Report, 2008).

Although Kibaki launched the Ndung'u Commission to investigate patterns of corruption and unfair allocation of land, the final report was deemed too controversial and was never implemented (Waki Report, 2008). The report recommended radical measures to redistribute land and to take measures to deal with the injustice and inequalities in the country. Kenyans, especially those who feel discriminated against, are disappointed that Kibaki's performance was business as usual; little significant has happened to change things for the better.

3.8.2. Elections and Election Management in the Republic of Kenya (2003-2012)

In fulfillment of his campaign promise to provide a new constitution for Kenya, Kibaki established a constitution drafting commission. However, differences over the draft constitution contributed to the collapse of the coalition. Kibaki delayed the process and watered down key reforms before the draft was presented.⁷⁹ Raila Odinga and those who opposed the proposed constitution won an easy victory with 58.12 percent 'No' votes as against 41.88 percent 'Yes' vote in a referendum on the draft constitution in 2005 described as free and fair by both domestic and international observers. Kenya's struggle for constitutional reform was set back to square one (African Election Database on Kenya, 2012). It was a major blow to Kibaki's government and was seen by some political analysts as a referendum on Kibaki's government. The Kenyan electorates' resounding defeat of a new draft constitution backed by the Kibaki government in the 2005 referendum further boosted public confidence in the ECK to conduct credible elections free of intimidation, harassment and rigging. However, the Kibaki government's subtle withdrawal from pursuing reforms shortly after the failure of the referendum to approve the proposed constitution, raised suspicion about Kibaki's commitment to sustain the improved

⁷⁹ The draft that emerged from the National Constitutional Conference included revised provisions for the reduction of presidential powers, the creation of a new post of prime minister, parliamentary oversight of the central government, land rights, and judicial independence (Human Rights Watch, 2008).

environment for free and fair elections (OSIEA, 2006). Despite this pessimism, Kenya remained remarkably stable, probably because the coalition leaders were determined to chart a path of peace and to allow the ballot box to decide in 2007. Unfortunately the ECK delivered flawed elections to Kenyans in 2007 that threw that country into chaos and violence.

As the political temperature of Kenya heated up, several opinion polls pointed to a close contest between the ODM and PNU. This raised the stakes very high. The Kibaki government took certain actions that were interpreted as a well-orchestrated plan to ensure a predetermined election result. President Kibaki abrogated the IPPG 1997 agreement (10 seats reserved to be filled by persons appointed by the president on the recommendations by opposition parties in parliament) for appointments to the Electoral Commission and instead single-handedly appointed all the 22 commissioners of the ECK. Kibaki's unilateral action elicited protests from the opposition who said that he was fortifying the ECK with his supporters.⁸⁰ Another issue was allegations of questionable procedures in the appointment of returning officers (IFES Final Report, 2008). In addition, the Kibaki administration and the ECK fueled suspicion when they turned down an offer from the International Foundation for Election Systems (IFES) to install a computer program that would have enabled election officials in the constituencies to submit results electronically to Nairobi and then display results on to a giant screen available to the public to promote transparency and forestall any manipulation of election results. Furthermore, the practice of using ECK staff in the verification and tallying center was abandoned in favor of

⁸⁰ Apart from bypassing political parties to appoint electoral commissioners, Kibaki prepared the ground for rigging when he made his former lawyer the vice-chair of the commission. He also created a number of new judicial vacancies, including appeals judges before the election. As a result of these actions, institutions that already had been seriously weakened totally lost their autonomy, independence, integrity and legitimacy over time (Mueller, 2011).

direct recruitment of casual staff by the commissioners. The commission also refused the proposal that election officials in areas with large predictable majorities for any of the candidates should be people from different areas to reduce the likelihood of ballot stuffing. With the benefit of hindsight, it is possible to infer that a well-orchestrated plan was implemented to ensure a predetermined election result (IFES Final Report, 2008). Kibaki ignored the criticisms saying that the ECK is neutral and has the capacity to conduct free and fair elections, citing the 2002 and 2005 elections which results were accepted by most political actors (Commission of Inquiry into the Post-election Violence Report, 2008).

The 2007 Elections and After

Kenya has held several national elections, many of which were characterized by violence but smooth changeovers of governments. However, the 2007 highly competitive elections and its attendant violence exposed the challenges and weaknesses in Kenya's democracy. Although the period preceding the 2007 election saw an escalation of violence in many parts of Kenya, with some 600 people being killed in political violence in the three months before polling day, there is consensus among many observers that the voting itself in 2007 was relatively peaceful. Many people made optimistic predictions that Kenya would witness yet again a peaceful change of power (Mueller, 2011). However, the gradual decline in trust in the government and the ECK and the national security apparatus' inability to provide security made the political environment in the run up to the 2007 elections vulnerable to violence. The parties were driven by ethnic interests with winner-take-all views of political power and its associated economic rewards (Mueller, 2011). The elections took place in an atmosphere of diffused violence that could be ignited easily but not controlled; non-credible and non-neutral but critical institutions coexisted

with political leaders and followers who perceived the elections as a ‘do or die,’ zero-sum game. Had the election not been so close, these same factors may have been held in check for a while but there is no guarantee that that would have been the case, given the poor performance of the ECK (Mueller, 2011).

The elections were characterized by relative peace and calm on the voting day until the tables began to turn during ballot counting when it was reported that Kibaki, who was trailing Raila Odinga initially, closed the gap and overtook his opponent by a substantial margin to win amid largely substantiated claims of rigging (most notably by European Union observers) (IFES Final Report, 2008). The results as published by the ECK were as follows: Mwai Kibaki of (DP) PNU: 46.42 percent; Raila Odinga of ODM: 44.07 percent; Kalonzo Musyoka of the ODM-K: 8.91 percent; the other six candidates won the remainder of the votes cast. In the parliamentary elections, ODM allies won 102 seats [ODM won 99], PNU allies won 78 [PNU 43], KANU won 14, and ODM-K won 16 seats. The rest of the 19 minority parties won the rest of the seats ranging from 1 to 5 seats (African Election Database on Kenya, 2012). Protesters discredited the ECK for collaborating with the government to rig the elections. The conflict escalated into unprecedented violence in Kenya, leading to over 1,000 deaths and the internal displacement of more than 350,000 people (IFES Final Report, 2008).⁸¹ The first attacks were led by opposition supporters, mostly against Kikuyus. Later retaliatory attacks were led by Kikuyus on ODM supporters (Mueller, 2011). The outcome of the elections deepened the already ethnically polarized country.⁸² The post-election violence of 2007/2008 points to the fact that Kenya had

⁸¹ The counting and tallying of presidential votes at the constituency levels, at the national tallying center in Nairobi and the transportation of ballot boxes were criticized as deeply flawed by observer teams including the EU, East African Community, the Commonwealth and the Kenya Elections Domestic Observation Forum (KEDOF). Serious concerns were raised about the manner in which the ECK concluded the presidential elections, declaring a winner under tight security and hurriedly inaugurating Kibaki as president (OSIEA, 2006).

⁸² In the run up to the elections, different key players such as vernacular FM radio stations, the ‘yellow press’ and some politicians relayed news inflammatory and intemperate language. They also played offensive music aimed at

become divided into 5 ethno-cultural zones; the GEMA in Mount Kenya region, the Kalenjin enclave in Rift Valley, the Luhya zone in Western Province, Luo and Gusii enclaves in Nyanza and the Muslim dominated Mombasa area (Mueller, 2011).

According to the Kenya National Commission on Human Rights (KNCHR) and the Commission of Inquiry on Post Election Violence (CIPEV) (“The Waki Report”), top Kenyan politicians were suspected to have instigated (organized and financed) the violence. Consequently, after investigation the International Criminal Court (ICC) indicted four political leaders for instigating the violence. The Kenyan Government was given the chance to establish a special tribunal to try the accused persons but the Parliament failed to pass a law to establish it. Furthermore, an extended effort by the UN envoy mediating the conflict, Kofi Annan, yielded no results. The accused are from both the government and opposition. They include top level political figures: three cabinet ministers, Kenya’s most senior civil servant, the former chief of police, and one radio broadcaster (Mueller, 2011).⁸³

Post-election reconciliation initiatives were immediately put in place with the support of the international community to stop the carnage and resolve the impasse between the two political rivals. The deadlock over the Constitution was finally broken by the intervention of the African Union through a mediation team. Under the leadership of a group of eminent African personalities, which included former UN Secretary-General Kofi Annan and human rights advocate Graça Machel, the three leading Kenyan political parties reached a power sharing agreement in February 2008 to end violence and restore stability through the creation of a

‘enemy’ groups, circulated and/or churned out alarmist information as well as made inflammatory statements against other communities which sparked off confrontations at the least provocation (CIPEV, 2008).

⁸³ Judges examined approximately 30,000 pages of evidence. Those charged by the ICC for murder, deportation or forcible transfer and persecution, as well as sexual violence and other inhumane acts include: Uhuru Kenyatta, deputy prime minister and finance minister; William Ruto, Eldoret North member of parliament; Francis Muthaura, one of Kibaki’s closest allies and postmaster-general; and Joshua Arap Sang, a journalist with the privately owned Kass FM Radio. Charges were dropped against two others, former Industrialization Minister Henry Kiprono Kosgey and ex-Police Commissioner Mohammed Hussein Ali (Alston, 2010).

Government of National Unity (GNU). The agreement created two commissions with mandates to examine the 2007 elections. One commission was to examine the causes and consequences of the violence while the Independent Review Committee (IREC), was charged to examine the electoral process (IFES Final Report, 2008).

The coalition government of the PNU, ODM and ODM-Kenya is headed by Kibaki as the president (serving a second and last term), Prime Minister Raila Odinga from the ODM, and Vice President Musyoka Kalonzo of ODM-Kenya. As the dust settled, pragmatic efforts have been made to reform and restructure the electoral system in Kenya to forestall a recurrence of the 2007 post-election violence (Mueller, 2011).

With support from international pro-democracy agencies, Kenya drew up and approved a new constitution in 2011. Kenya has also passed a number of preemptive legislative acts directly related to the conduct of elections (including a replacement for the ECK). The Interim Independent Electoral Commission (IIEC) formed after the 2007 elections to oversee elections has won the confidence of most Kenyans for its conduct of the 2011 constitutional referendum. The IIEC demonstrated professionalism in the conduct of the referendum. According to recent polls, the chairman of the commission is the most highly trusted person in Kenya. The IIEC was replaced with a more permanent EMB, the Independent Electoral and Boundaries Commission (IEBC) at the beginning of 2012. The IEBC members were appointed by a consultative process involving the executive and parliament with civil society input. The IEBC began its work by completing a revised map of electoral districts in Kenya (IFES, 2012).

In addition to an improved electoral commission, an important reform that holds prospects for a brighter future for Kenya's democratization process is the enactment of the National Cohesion and Integration Act of 2008. This law has created a commission which is to

facilitate and promote equality of opportunity, good relations, harmony and peaceful co-existence between persons of the different ethnic communities of Kenya. It is also to advise the government and to promote the elimination of all forms of discrimination on the basis of ethnicity. The law makes it a crime to discriminate on the basis of ethnicity in employment or other avenues of life and sets a quota for ethnic representation (of no more than 30 percent of one ethnic group) in public entities (Githush, 2011). However, some analysts are skeptical of Kenyan politicians and express fears that these reforms may not be implemented and that leaders may not change from their old practices of business as usual. Is the optimism that Kenya will avoid another electoral violence real or a mirage? Since the establishment of the GNU in February 2008, several programs aimed at promoting reconciliation as well as legal and constitutional frameworks to develop democratic institutions and ensure national integration have been pursued. In addition, there was landmark approval of a new constitution for Kenya as 67 percent voted “Yes” in a peaceful referendum on April 4, 2010. Just as in 2005, the referendum has been heralded as evidence of Kenya having discarded violence and embraced a new era of peace. Is Kenya out of the woods yet? Is a peaceful referendum an omen of peaceful elections in the future? As was the case in 2005, the 2010 referendum was not an election; it was not about who gained and lost power or wealth nor were the results close. Furthermore, the state provided heavy security during the referendum. In the Rift Valley alone 18,000 security forces were deployed (Mueller, 2011). While we should embrace these institutional and legal changes, the incentives that guide political life in Kenya are still much the same. According to Mueller (2011), politicians are still mostly concerned with positioning themselves and their ethnically rooted parties for the 2013 elections.⁸⁴ Gangs still hold sway in many parts of the country, with the state

⁸⁴ Politicians are amassing wealth, are reluctant to pay taxes and seem more intent on building expensive mansions for the vice president and the prime minister and refurbishing various rural state houses than dealing with hunger in

having become impotent, indifferent, or having colluded with some gangs to gain power, thereby making them untouchable and heightening insecurity among the citizenry. Muller (2011) reports that a recent survey by Synovate shows that in areas affected by the 2007 elections, 40 percent of respondents predict more violence in 2013 while a similar survey commissioned for the Kenya National Dialogue and Reconciliation (KNDR) monitoring project found that 77 percent of respondents blame politicians for inciting violence between different groups (Mueller, 2011).⁸⁵ The hope of many Kenyans is that the ICC trial of accused perpetrators of the 2007 violence may serve as deterrence to politicians indulging in criminal and violent acts during elections. The 2013 elections is likely to follow the same trend as 2007 in terms of party alliances and vote mobilization. Uhuru Kenyatta is likely to be the presidential candidate for the governing coalition against Raila Odinga of the ODM. Therefore, the probability that ethnic undercurrents and tensions play out again is high. What is needed is to strengthen the democratic institutions and security measures and admonish and punish fairly and firmly politicians who fund division and violence.

3.9. Consolidating Democracy in Kenya –Lessons and Prospects

Elections in Kenya have provided an avenue for voters to vent their frustrations from injustices, inequality, poverty and bad governance on perceived ‘enemy’ groups. Electoral violence in 1988, 1992, 1997, 2002 and 2007 deepened fault lines caused by a combination of injustices from Kenya’s colonial past and the failure of successive governments to address comprehensively the problems of inequality of its citizens. Political campaigns during past

the countryside. The political wrangling (due to nepotism, ethnic identity and manipulation) between the PNU and ODM has not ceased (Mueller, 2011).

⁸⁵ Gangs have continued to proliferate, have increased their shakedown operations, and some areas such as in Nyeri (Kibaki’s home town), Murang’a, Meru and the slums of Nairobi have become virtual shadow states. Increasingly, the state has lost or abrogated its monopoly of legitimate force and finds it difficult to maintain peace or order (Mueller, 2011).

elections have heightened the expectations of Kenyans, as politicians have promised to address the issues of inequality overnight. Resolving issues concerning truth and justice, particularly the issues of corruption and past violence, demand that political leaders give up their own privileges and ambitions (such as fringe benefits and winning elections at all cost) in favor of the national interest and development (Ndungu, 2008). Kenyan democracy is far from being consolidated; it may be best described as a shell of democracy produced by political liberalization without the democratization of political institutions and the establishment of rules of the ‘political game.’ The institutions of democracy, particularly the Electoral Commission of Kenya, have been sacrificed for personal and sectional interests and the control of power and resources (Nasong’o, 2007).⁸⁶ However, the National Cohesion and Integration Act of 2008, provides a ray of hope for change in Kenya as it has created an opportunity to criminalize discrimination of any form, ensure fairer representation and distribution of national resources by political leaders, and work towards building a more cohesive Kenya.

3.10. Emerging Patterns of Democratic Development in Kenya

The history of opposition in Kenya since 1992 is one of division, infighting, and a consistent inability to cooperate to achieve common goals (Githu, 1998). One characteristic of Kenya’s fledgling democracy is that as rival parties agree to pool efforts for political gains and a process of ‘outbidding’ ensues, pushing the locus of political competition towards the extremes (Reilly, 2006; Collier, 2009). Therefore, the winner-take-all mentality drives the use of foul means to gain power at all costs. The consequence is the endemic election-related violence.

An emerging pattern in the Kenyan democratization process is the gradual shift from the dominance of KANU in Kenyan politics. Since 2002, the realignment and formation of

⁸⁶ The Independent Review Commission, chaired by South Africa’s Johann Kriegler, found the ECK’s execution of the 2007 general election sloppy and recommended dissolution of the body to create a leaner and more credible commission (Ndungu, 2008).

coalitions and alliances has become the preferred way to mobilize voters. It was done initially to unseat the dominant KANU, but is gradually becoming one of the reliable ways of capturing power. If the parties are able to move beyond simple alliances to mergers, they could probably become more nationalistic and ideological in developing policies and programs which will eventually reduce the incentive for making emotional appeals to issues of identity and history. The parties that are opposed to the Kikuyu dominance of Kenyan politics such as those in the ODM coalition are likely candidates for a merger. On the other hand, beneficiaries of state largess under Presidents Kenyatta and Kibaki, most likely the GEMA group and other minority ethnic groups, are more likely to merge. It is, however, unlikely in this early stage to have a Luo and Kikuyu merger, given the bitter rivalry between them.

Yet another pattern of Kenyan's democracy is the reconfiguration and realignment of hitherto ethnically-based political parties around national issues rather than ethnic and sectarian issues. The pooling of efforts and resources in the form of coalitions and alliances like NARC in 2002 and the PNU and ODM that contested the 2007 elections are manifestations of this new pattern. Although these coalitions are still alliances of ethnic-based parties, it is a good start for the establishment of parties with national outlooks. The practice of bringing smaller parties together has been given a boost by the post-2007 legislation that criminalizes all forms of discrimination and sectarian politics in Kenya.

Yet another pattern in Kenyan politics is seeking power through pooling resources for selfish, not national interest. There is still evidence of the strong presence of ethnic identity and cleavages among governing coalitions. The inability to sustain the 2002 NARC coalition and the difficulties the current GNU faces (to deal with differences and perceived hidden agendas of coalition members) are pointers to the fact that the unresolved historical injustices and unfair

distribution of the nation's resources still dictate political discourse in Kenya. The coalition building, although an encouraging development, it is seen by some as a selfish move by politicians to satisfy their individual and group interests. On this note, Kagwanja and Southall (2009) agree with Elischer and Horowitz's (2004) classification of political parties into three types. These are the mono-ethnic party, the multi-ethnic alliance type and the multi-ethnic integrative types. Although the multi-ethnic integrative types such as the NARC and GNU have incorporated diverse communities, they have consistently failed to bridge the country's dominant ethnic cleavages. Both PNU and ODM were multi-ethnic coalitions forged to win power (and simply a marriage of convenience, as is the GNU) (Kagwanja and Southall, 2009). Oucho (2002) shares this view and argues that alliances and coalitions between ethnic-based parties since independence are for convenience and control of power, not for the national good. He states that the periodic mutilation (amendments) of the imperial constitution that portrayed a deceptively smooth transition for governments since independence resulted in a misguided perception that the country was a bastion of peace in a politically volatile region. This misperception suited the powers that be, but was hardly in the interest of the electorate (Oucho, 2002). The formation of multi-ethnic alliances in Kenya have always revolved around one or more of the four major ethnic groups: the Kikuyu, Luhya, Luo and Kalenjin. At any one time, the winning coalition is the one that is able to win the support of the majority of voters from these four groups. This trend has serious implications for the stability of Kenya (Kagwanja and Southall, 2009).⁸⁷ For example, one of the immediate causes of the 2007/2008 post-election

⁸⁷ All three Kenyan presidents, Jomo Kenyatta, Daniel Arap Moi and Mwai Kibaki, ascended to power through a strong coalition of two or more of the four major ethnic groups in Kenya (Kagwanja and Southall, 2009)

communal violence was the construction of political coalitions around Kenya's 42 ethnic groups. The 2007 elections campaign was critically shaped by ODM's rhetoric of '41 against one' (the rest of the 41 ethnic groups against the Kikuyu) (Kagwanja and Southall, 2009). Thus, throughout the three regimes, Kenya belonged to cliques that did not care about the problems facing the country and its citizens (Oucho, 2002). Therefore, when the regime that the electorate was determined to vote out allegedly stole the presidential election, it had to be stopped at any cost---hence the post-election violence. Kenya needs real integrative national parties with policies that will ensure national identity (not sub-national ones), unity, and a fairer distribution of resources.

Kenyan politics is also characterized by leaders' manipulation of the constitutions to control and weaken democratic institutions to their advantage. All three presidents rode to power on the back of ethnicity and sometimes relied on the subtle endorsement of the use of violence or election malpractices as a means to sustain them in power. For many years this practice helped to keep Kenya deceptively stable, with change of governments through sometimes flawed elections but without the progressive development of institutions that support and sustain the democratization process. Therefore, despite an impressive record of successive elections since independence there has been little alternation in power. Kenya is yet to pass Huntington's "two turnover test" of a nation transitioning from an "emergent democracy" to a "stable democracy," partly because the elections are not free and fair (Oucho, 2002). Given this history, Kenya's democratization process can be salvaged if only leaders rigorously implement the progressive reform stated in the 2010 Constitution, particularly the electoral reforms and the non-discriminatory laws. The 2013 elections in Kenya will be a litmus test of the resilience of the democratic institutions and processes in that country, particularly the EMB. However, political

leadership is key to creating an enabling environment for the EMB to operate freely according to its mandate.

Despite being one of the few African countries with a record of regular elections to choose national leaders, Kenya's electoral system and the election management body is seen as weak and underperforming. The EMB has a history of executive control over its activities. Therefore, the EMB in Kenya is perceived not to be legitimate, neutral or effective despite availability of constitutional provisions meant to insulate the EMB from all forms of control and abuse. Election malpractices, flawed elections and violence associated with many elections in Kenya point to the fact the EMB is yet to get its house in order and be the referee that the electorate and political actors expect of it. Unless the new independent Election and Boundary Commission is supported adequately to perform its role as a legitimate, autonomous, neutral and effective referee and it wins the confidence and trust of the electorate, Kenya is not out of the woods. In 2013, the onus rests on the political leadership of Kenya and the IEBC to move Kenya out of this quagmire of election-related violence.

CHAPTER 4: ANALYSIS: COMPARING GHANA'S AND KENYA'S EMBs

4.0. Analysis of Findings

Determining the performance of election management bodies (EMBs) or electoral commissions based on the relative quality (judgments and assessments by informed election observers and specialists based on a set of standards) of elections is not an easy task. Many factors combine to determine the success or failure of elections and the performance of the EMB is just one of those. Even more complex and daunting is determining how EMBs' performance influences election-related violence in emerging democracies, particularly in multi-ethnic societies in Africa. One of the most important exercises of the democratization process, elections, has become a curse for some countries and a blessing for others. Elections should be procedurally fair and technically sound and the results should reflect the will of the voters, freely expressed at the ballot box. In turn, the process should enhance public confidence in the electoral system as a whole because of its perceived fairness, accuracy, and efficiency which should invoke the acceptance of the results by all as credible (Mozaffar and Schedler, 2002). But as discussed in the previous chapters, elections conducted in some emerging democracies have either precipitated political disputes or have escalated simmering tensions to an outburst of conflict (Mozaffar and Schedler, 2002).⁸⁸ The questions then are: Is the existence of an effective and independent election management body a necessary prerequisite for election results to be credible? Are credible elections correlated with lower levels of election-related violent conflicts?

⁸⁸ The credibility of many elections in Africa are marred by the negative application of ethnicity and religious differences, political propaganda and machination by political elites, incumbent leaders' manipulation of the polls and the weaknesses of the electoral system that leads to communal violence (Mozaffar and Schedler, 2002).

Chapter 1 detailed the main assumptions underlying this study. It is hypothesized that election-related violence is more likely to occur in countries with weak elections administration and dispute management systems. Furthermore, the findings of this study support the conclusions of scholars like Lopez-Pintor (2000), Gurr (1993), Pastor (1999), Reynolds (2009), (Darnolf, 2011), (Przeworski, 1991), Bratton (2006) and Mozaffar (2002) who emphasize that election governance is an important factor in determining whether the results of an election are credible. This view is aptly articulated by Robert Pastor (1999).⁸⁹ It is against this background that the study analyzed the effect of the performance of EMBs in Ghana and Kenya from 1991 to 2008 and the correlation between election management and communal violence during election periods.

The rest of this chapter is organized as follows. The first section compares and contrasts the performance of EMBs in Ghana and Kenya from 1991-2008. The next section analyses the impact of EMBs on election outcomes and their influence on communal violence in particular and the democratic process in general. The comparative discussion and analysis of the performance of EMBs in Ghana and Kenya has demonstrated that the hypothesis--- election-related violence is more likely in countries with weak election administration/management bodies and dispute resolution mechanisms is upheld. The third section discusses the theoretical implications of Mansfield and Snyder's war theory for transitional democracies. The final section draws conclusions and makes recommendations for further research.

⁸⁹ As far as people take for granted the administrative dimension of elections they tend to overlook the critical role of electoral governance in securing the credibility and continued legitimacy of democratic elections. The character, competence and composition of EMBs determine if an election becomes a source of peaceful change or a source of serious instability (Pastor, 1999).

4.1. Comparing the Performance of EMBs in Ghana and Kenya

As discussed in Chapters 2 and 3, the performance of the EMBs of Ghana and Kenya are impacted by socio-economic, cultural and political factors that have played important roles in determining the credibility of elections and the development of electoral management bodies in these countries since independence. According to Nicholas Kerr (2009), diffuse support for this institution is critical for the acceptance of election results. He asserts that diffuse support of an institution arises when citizens respect the role and function of the institution--- even when the institution delivers outcomes that diverge from their preferences. Therefore, institutional trust (the extent to which citizens believe that a specific institution will promote citizens' preferences even when the authorities in control of the institutions are not being directly monitored) is fundamental to assessing the performance of EMBs and their output in determining whether elections are credible. In this regard, a central thesis of this study is that the performance of electoral management bodies has an influence on citizens' evaluation of election quality in the context of emerging democracies, and consequently, determines the propensity of the electorate to react peacefully or violently to the results of elections. Factors such as ethnicity, political party formation and management, political leadership, constitutional and institutional framework for elections as well as resource allocation and management determine to a large extent why Ghana's and Kenya's EMBs perform differently at certain times in their political development. These factors also provide some insight into the nature of the EMBs, the political environment and incentives for either embarking on reforms or maintaining a conservative approach to managing elections in the two countries.

As stated in Chapter 1, the study has adopted the most similar design to compare the performance of the electoral commissions of Ghana and Kenya. The study focused on the three

main facets of rule making, rule adjudication and rule enforcement. It assessed the EMBs' legitimacy (legal status and the level of acceptance by the electorate), neutrality (the absence of government and other stakeholders' control of the electoral process) and effectiveness of the EMBs (services delivered as mandated).⁹⁰ The study relied on the reports and perceptions of key political actors such as election observers, political parties and civil society groups who are directly involved in the election process to gauge the performance of the ECs in their conduct of national elections and referendums. The data used in this study is derived from Ghana and Kenya's constitutions, electoral codes, EMB procedural regulations as well as scholarly research like Kerr's (2009) study on assessing the impact of EMBs, Straus and Taylor's (2009) assessment of EMBs and Elklit and Reynolds' (2000) work on the impact of election administration on the legitimacy of elections in emerging democracies. Also considered is election observers' reports that detail formal rules governing assessment of the electoral process and quality of the work of EMBs.

Tables 1 to 3 below measure the level of legitimacy, neutrality and autonomy and effectiveness of the EMBs as well as determine whether these elections were successful overall, flawed in some way, or outright failures. The method of assessment is adopted from the work of Straus and Taylor (2009) which calculates the scores based on the appointment process, length of tenure, and financial autonomy to construct an additive index of EMB legitimacy, autonomy, neutrality and effectiveness. Table 1 measures the legitimacy (legal status, as well as commissioners' qualifications and level of acceptability as credible leaders) of the EMBs of Ghana and Kenya as perceived by political actors, reports of election observers, and scholars.

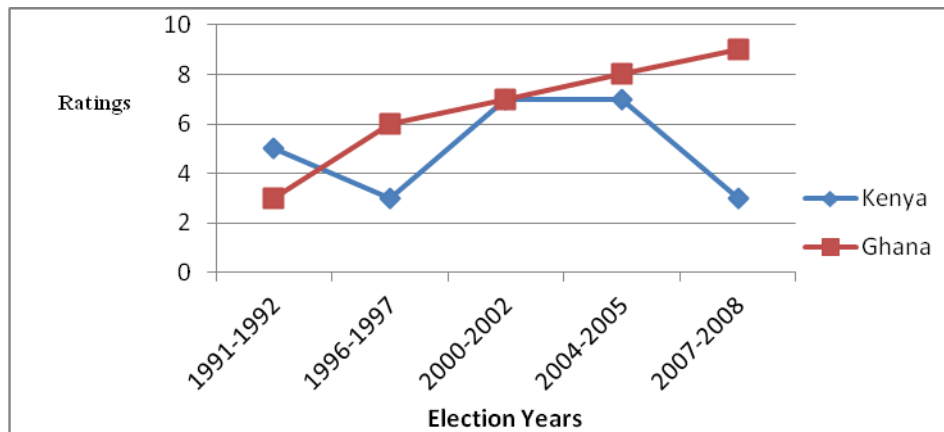
⁹⁰ The effectiveness of EMBs depends on electoral management, voter registration and polling, ballot counting, declaration of results, resolution of election-related complaints and law enforcement.

Table 4.1: Comparing the Legitimacy of the Electoral Commissions of Kenya and Ghana (1991-2008).

Election Years	Kenya	Ghana	Remarks
1991-1992	Medium (5)	Low (3)	New ECs established. Legal framework for ECK was supported by republican constitutions. ECK commissioners were perceived to be legitimate. Ghana's IEC was perceived to be less legitimate as it was established by the military regime (PNDC).
1996-1997	Low (3)	Medium (6)	Kenya maintained the status quo with some reforms in 1997. EC officials were perceived to be controlled by the president and were blamed for alleged rigged elections in 1997. Ghana established a permanent EC backed by the national constitution and initiated reforms to strengthen the legal framework for elections.
2000-2002	High (7)	High (7)	Both ECs were perceived to have exercised high levels of professionalism. Incumbent Presidents Moi and Rawlings lost the elections and handed over power to victorious opposition parties.
2004-2005	High (7)	Very High (8)	Both ECs were perceived to be professional. Elections results were accepted widely because of perceived reduced governmental influence over the process. Ghana pursued more progressive reforms than Kenya did.
2007-2008	Low (3)	Very High (9)	Kibaki unilaterally appointed commissioners; he acted in other ways that suggested he was preparing to rig the 2007 elections. Ghana's EC continued reforms to build trust in electorate and supervised three rounds of elections with a small margin of victory for the opposition party without large-scale violence.

Ratings: on a scale of 0-10 with 10 being the most positive score: very high (9-10); high (7-8); medium (5-6); low (3-4) and very low (0-2).

Figure 4.1: Comparing the Legitimacy of Electoral Commissions of Kenya and Ghana (1991-2008).



As shown in Figure 4.1, the EMBs of Kenya and Ghana made a poor start in their conduct of elections at the resumption of multiparty elections in 1992. The EC of Ghana has developed progressively over the years. In December 2008 it managed the delicate task of refereeing the most keenly and closely contested elections in the history of Ghana. The incumbent lost and handed over power to the opposition. The Electoral Commission of Kenya, on the other hand, fluctuated in its performance and services delivered to the Kenyan electorate. It made progress after the 1997 elections, gained high legitimacy in 2002 national elections and the 2005 referendum on constitutional reforms, only to flop in the 2007 elections as the president's party rigged the elections when it appeared would not win fairly. President Kibaki's breach of the constitutional arrangement for appointing ECK commissioners and the actions of the ECK leaders before, during and after election day largely account for the low legitimacy rates of the ECK in 2007. The legitimacy gap contributed to the perception that the elections may not be free and fair. Closely linked to the issue of legitimacy are the questions of autonomy and the non-partisan nature of the ECs. An EMB that is autonomous and neutral (not controlled or influenced by entity, commissioners not affiliated to any political party and the EMB free to take decisions without any constraints from an external any bodies) of government and other state

institutions and nonaligned to either the government or opposition parties is more likely to be accepted as genuine and reliable and therefore seen as a legitimate referee in elections.

Table 4.2: Comparing the Autonomy and Neutrality of the Electoral Commissions of Kenya and Ghana (1991-2008).

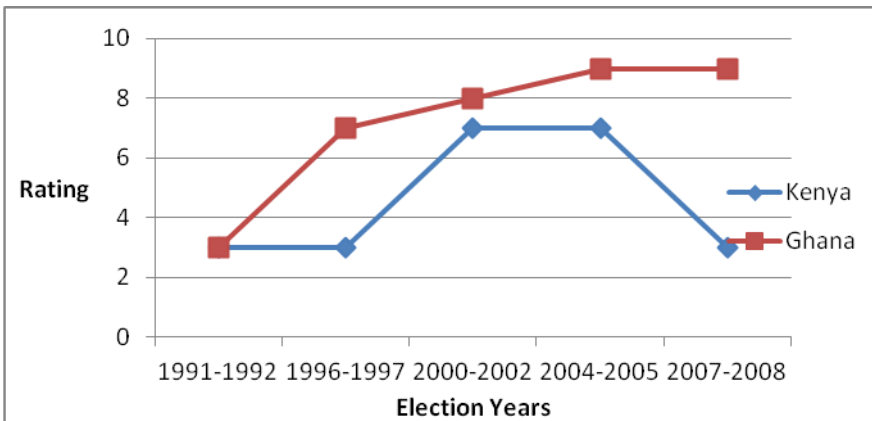
Election Years	Kenya	Ghana	Remarks
1991-1992	Low (3)	Low (3)	Commissioners for both ECs were appointed by presidents without consultation or input of key stakeholders. Both countries were emerging from single party rule and the executives had substantial influence on the electoral process. The presidents allegedly appointed their party sympathizers to the ECs. ⁹¹
1996-1997	Low (3)	High (7)	The Kenya government still had influence over the ECK despite some reforms. Ghana established a permanent and independent EC and reformed the electoral process to reduce the influence of government over the EC.
2000-2002	High (7)	High (8)	Both ECs were perceived to be professional. Public perception of governments' influence over both ECs reduced drastically. The results were accepted by many actors. Both incumbent governments lost the elections.
2004-2005	High (7)	Very High (9)	Both ECs were perceived to be professional. Both ECs made reforms to the electoral process that reduced perceived governmental control of the ECs. Ghana's president won a second term in office and Kenya government lost the referendum on constitutional reforms.
2007-2008	Low (3)	Very High (9)	Kibaki unilaterally appointed commissioners and acted in ways that suggested the ECK was partisan. Ghana's EC stood its ground and rejected attempts by both the opposition and

⁹¹ The Interim National Electoral Commission (INEC) of Ghana's first members were hurriedly handpicked by the PNDC regime without opposition parties' input. The leaders of the INEC (Justice Josiah Ofori-Boateng (chairman), Nana Oduro Numapau and Kwadwo Afari-Gyan---deputy chairmen, finance and operations respectively--- and David Adeenze Kangah) were widely perceived as being pro-PNDC (Debra, 2011).

			government to control aspects of the electoral process. It strengthened the dialogue with all actors. ⁹² The EKC could not stand its ground because it was not neutral.
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Ratings on a scale of 0-10 with 10 being the most positive score: very high (9-10); high (7-8); medium (5-6); low (3-4) and very low (0-2).

Figure 4.2: Autonomy/Neutrality of ECs of Kenya and Ghana (1991-2008)



The autonomy and neutrality of Ghana’s EC is growing to maturity with continuous reforms after each election. Kenya EMB’s growth pattern is similar to that of its legitimacy curve. As shown in Figure 2, the higher the level of legitimacy, the higher the level of perceived autonomy and neutrality which influence the level of acceptance of election results as credible. Scholars attest that the central task of an EMB is to secure the ‘procedural legitimacy’ and ‘substantive uncertainty’ of elections (Kerr, 2009). Mozaffar (2002) extends this position by explaining that political actors will accept the uncertainty of outcomes in electoral competition if they are certain that the rules for organizing competition will not pre-determine the outcomes.

⁹² Throughout the regimes of the NDC and NPP, the EC aggressively defended its independent actions whenever it had reason to believe that they were legal. In a radical move to secure its autonomy, the EC of Ghana broke legal ties with the state Attorney-General (AG) thereby ending a long period of reliance on the government for legal counsel and recruited an independent attorney. The EC insisted that civil society groups seeking to observe Ghana’s elections and processes could only do so under its authority and accreditation to ensure observers are neutral and professional to observe. This decision prevented the government from giving accreditation to the domestic and foreign groups that expressed an interest in observing the 1996, 2000, 2004 and 2008 Ghanaian elections (Debrah, Asante and Gyimah-Boadi, 2010).

Therefore, the perceived government control or influence over the ECK contributed tremendously to reducing public trust in the ECK and the sharp drop in the perception of the autonomy and neutrality of the ECK in the run up to the 2007. The quality of services delivered by the ECK led to criticisms and rejection of some election results by many citizens in Kenya from 1991 to 2008 (the 2002 elections and 2005 referendum are exceptions).

The effectiveness of an EMB is measured by the quality of its members, services delivered to ensure free, fair, transparent and credible elections that are accepted by majority of political actors.

Table 4.3: Comparing the Effectiveness of Electoral Commissions of Kenya and Ghana (1991-2008).

Election Years	Kenya	Ghana	Remarks
1991-1992	Low (3)	Low (2)	Both ECs were new and interim. They had weak capacity and were not well-resourced. Both countries were still in a single-party political environment and governments had influence over the electoral process. Both ECs compiled inaccurate voters' registers. Election results were not accepted by all parties. In Ghana opposition parties boycotted parliamentary elections. Kenya experienced very high level of communal violence as a result of poor performance of the EMB.
1996-1997	Low (4)	Medium (6)	KANU manipulated the election process and instigated violence in opposition strongholds. Elections were described by observers as relatively free and fair. ⁹³ Ghana's EC structures, systems and staff capacity improved; other stakeholders were

⁹³ Domestic and international election observers reported that Kenya's 1997 elections had many irregularities and the incumbent manipulated the process but results reflected the will of the people (Commonwealth Secretariat, 1998).

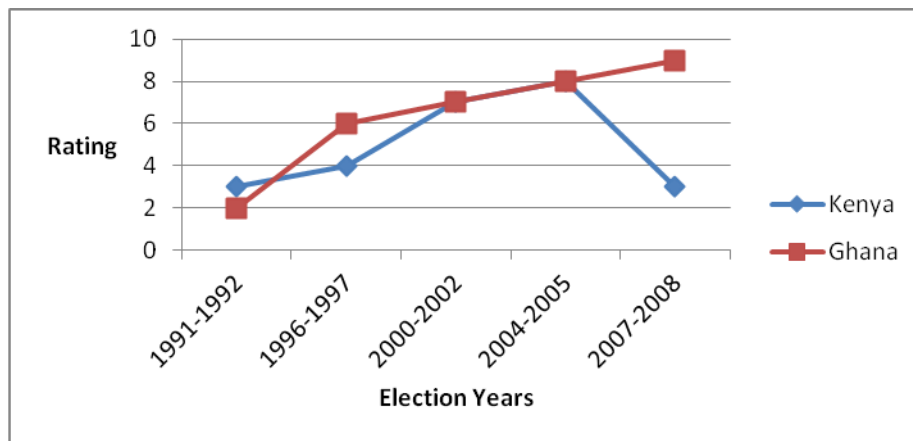
			involved through IPAC in the management of elections as well as initiated further reforms. ⁹⁴ Results were accepted by the major actors.
2000-2002	High (7)	High (7)	Both ECs were perceived to be professional. Election results were accepted by actors. Both governments lost the elections and handed over power to opposition parties. Better organized opposition parties made the elections more competitive and the ECs lived up to the task by delivering credible results.
2004-2005	High (8)	Very High (8)	The elections were better managed than previous ones; the elections results were accepted by many as credible. Ghana continued with the reforms.
2007-2008	Low (3)	Very High (9)	The ECK's image was dented by Kibaki's actions; some standards of the election processes were compromised by the ECK. It also rejected IFES support to ensure transparent and fast relay of results to Nairobi. Results were rejected by the opposition as rigged. ⁹⁵ Ghana's EC supervised in very close elections and power was transferred peacefully to the opposition party, the NDC.

Ratings on a scale of 0-10 with 10 being the most positive score: very high (9-10); high (7-8); medium (5-6); low (3-4) and very low (0-2).

⁹⁴ In Ghana, losing opposition parties accepted the results and conceded defeat, partly because IPAC worked hard to diffuse conflict and tension between opposition and government. The EC also got the political parties to establish compromises on the rules of electoral competition (Debrah, 2011).

⁹⁵ All election observers (domestic and international) described Kenya's 2007 elections as flawed, opposition parties rejected the results and unprecedented communal violence erupted in 136 of the 210 constituencies (Waki Report, 2008).

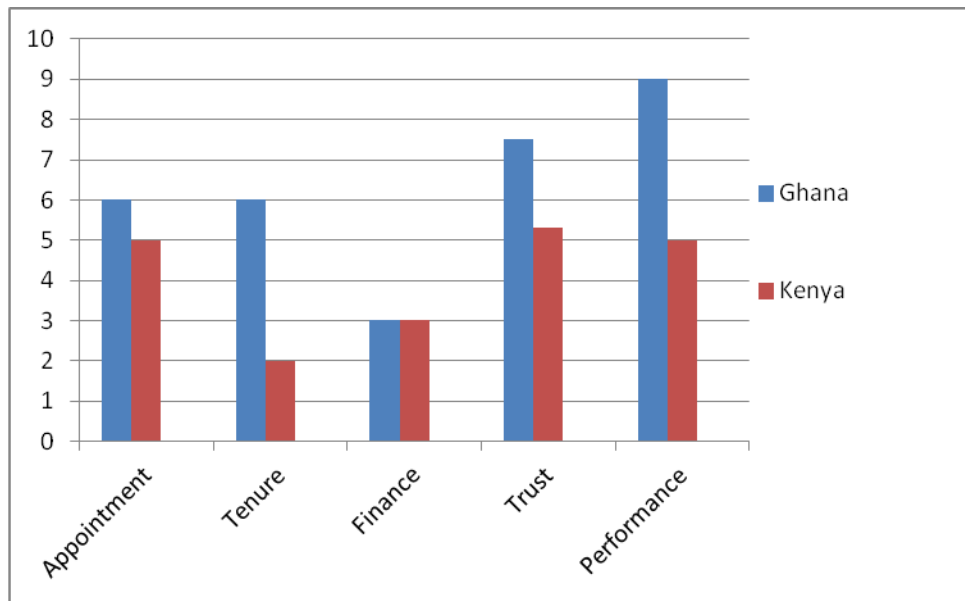
Figure 4.3: Comparing the Effectiveness of ECs of Kenya and Ghana (1991-2008).



The capacity of electoral management bodies captures the organization's ability to implement its decisions, or its constitutionally mandated functions. This study operationalised the capacity of the EMB by measuring its level of professionalism as commissioners are expected to have acquired certain competencies related to the management of elections before being appointed to office (Kerr, 2009). As shown in Figure 4.3, Ghana represents a special case. The 1992 elections were characterized by poor election management, while the conduct of the 1996 elections was considerably improved. Ghana's example demonstrates Lindberg's (2005) and Rustow's (1970) theory that democratic behavior produces democratic values. Ghana has consistently improved its electoral processes and institutions through the professionalism of the EC leaders and the active participation of all stakeholders in the electoral process. According to Emmanuel Debra (2011), the most distinguishing factors accounting for the Ghana EC's success were largely, but not exclusively: making the electoral process transparent, fostering agreement on the rules of the game, and asserting its autonomy in relation to the performance of its mandate. Kenya, on the other hand, failed to internalize democratic values and to build democratic institutions. The ECK's performance runs counter to the theory that repetitive

elections are an important causal factor in the development of democracy. This study reveals that it is not just repetitive elections that help develop democratic culture; free, fair, transparent and credible elections is what matters. Kenya provides an example of a country in which the unsatisfactory performance of the electoral management body undermined the popular legitimacy in elections in which the failures in election administration, among other factors, contributed to widespread post-election protests, outbreaks of violence, and fractured popular confidence in the electoral system (Kerr, 2009).

Figure 4.4: Comparing the Performance of the Electoral Commissions of Ghana and Kenya (1991-2002).



Source: Kerr (2009).

Figure 4.4 shows that Ghana scored higher in all five areas (except finance) than Kenya. Ghana’s EC demonstrated high capacity and during this period gained more of the confidence and trust of the electorate than the ECK had. It can be concluded that the level of autonomy, nonpartisanship and professionalism of EMB members is highly correlated with the quality of services provided by the ECs. This thesis has attempted to establish that there is likely

correlation between the election management quality variables (legitimacy, autonomy, neutrality and the quality of services provided by the EMBs) and the perceptions thereof at the level of the political elites and among the electorate at large. It establishes the eventual impact of such perceptions on the legitimacy and level of acceptance of election results in Ghana and Kenya since the early 1990s. How does the performance of an EMB (measured by the quality of services it provides), affect the credibility and acceptance of election results? How does the electorate respond to elections results perceived to be not credible? The next section discusses how EMB performance may influence the electorate to indulge in election-related violence.

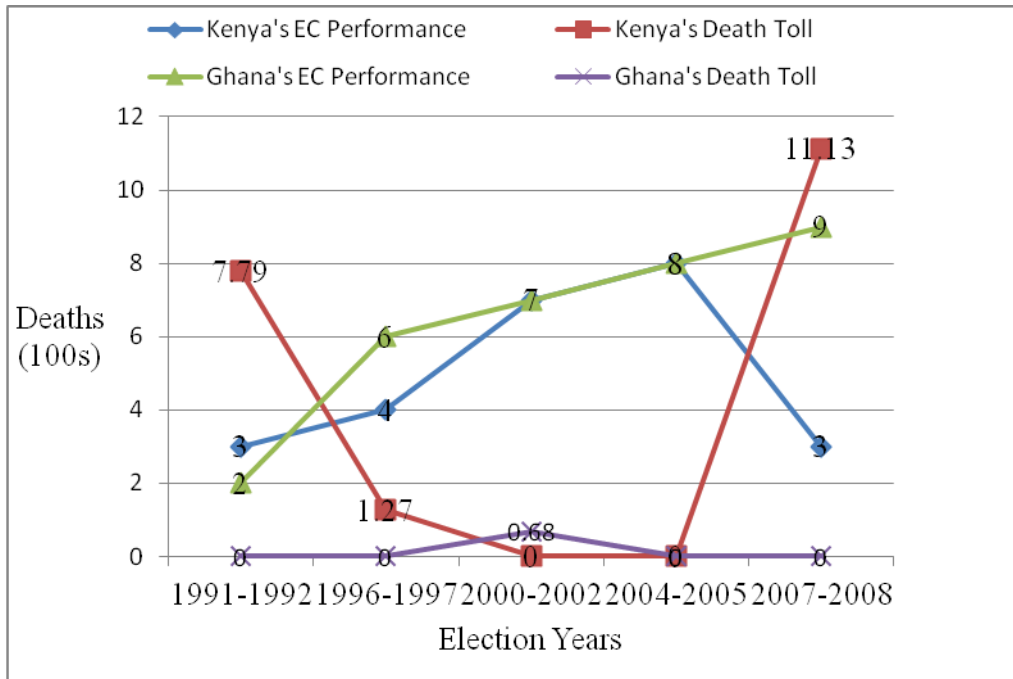
4.2. Effect of EMBs' Performance on Electoral Outcomes and Election-Related Violence

As discussed in Chapter 1, in a formal contest for power, incumbents and challengers generally use violence for different reasons and in different circumstances. While incumbents more often employ violence to maintain power through coercive means of the state (state violence), challengers are prone to using violence to protest outcomes through non-state means, such as rebellion and protest. Straus and Taylor's (2009) study finds that significant violence occurs in nearly one-fifth of all African electoral contests. This means that everyone should be concerned with the risk that elections pose to national security and development.

Through a combination of process-tracing and the congruence method, this study assessed the relations between elections outcomes supervised by the ECs of Ghana and Kenya and the level of election-related violence in these countries. Figure 6 shows an inverse correlation between EMB performance and number of deaths caused by electoral violence in Ghana and Kenya. For the purpose of this study, a recorded death rate of more than ten persons caused by mob action is considered significant for inclusion in the analysis. The number of

deaths has been used as the main indicator of violent behavior because of lack of data on the other forms of injuries.

Figure 4.5: Election-Related Deaths Compared with EMB Performance



Source: The Akiwumi Commission Report (1992); The Waki Commission Report (2008); Lund, (2003); Kenya Human Rights Watch (2003, 2008); the Parliamentary Select Committee Report (Kiliku Report)(1992). Data on death tolls for Kenya in the 2002 and 2005 elections are not available.

Figure 4.5 shows a strong inverse correlation between the performances of EMBs and the level of violent conflicts as demonstrated by the number of deaths recorded during election periods. As shown in Figure 4.5, the only significant direct election-related communal violence Ghana experienced was during the 2000 elections when fighting broke out during the counting of ballots between two supporters of NPP and NDC (who also came from the Mamprusi and Kusasi tribes respectively). There is a long standing chieftaincy dispute between the Mamprusi and

Kusasi tribes. The clashes in Bawku led to the death of 68 people (Lund, 2003).⁹⁶ The Bawku case is an isolated one. Election-related communal violence on a large scale is not widespread in Ghana. The performance curve of Ghana's EC shows a steady improvement in the quality of service provided since the 1992 presidential elections. The EC's performance has contributed significantly to reducing the incentive for mob action to rebel or protest against the result of elections in Ghana since 1992. A few isolated election-related violent deaths have been recorded but not on the scale that warrants inclusion in this study.

The performance curve of the ECK shows improvement in 2002 and 2005 from a weak start in 1991, but its performance dropped sharply again in 2007. The decline is largely attributable to executive control of the ECK in the run up to the 2007 elections. Although the two countries share similar characteristics in their political development, it is worth noting that Ghana's history of low levels election-related violence is partly attributable to the programmatic nature of political parties' campaign messages which are largely focused on government performance and ideological issues. Ethnic considerations manifest only marginal saliency in Ghana. Kenya's elections, on the other hand, have been heavily influenced by ethnicity, unfair distribution of resources and patron-client relationships which has led to mistrust, fear, and a sense of injustice among the public.

The study finds that access to vital resources, especially land, is a central contributor to higher levels of electoral violence in both countries (but to a much lesser extent in Ghana).

⁹⁶ There were rumors that the Bawku chief (Bawkunaba), a Kusasi, would be removed and a Mamprusi chief would be enskined (installed) if the NPP won the elections in 2000. The NPP won and the chief was never removed. The Bawku skin (skin is a term used to describe chiefly titles of chiefs who sit on skins as a symbol of authority in northern Ghana) dispute is between the chiefly tribe of Mamprusi (who have been chiefs of Bawku since the pre-colonial era) and the acephalous Kusasi tribes as to who owns the Bawku land and therefore has the right to be chief. The dispute dates back to the pre-colonial era. Successive governments, since independence have attempted to settle it but have so far failed. There is a public perception that the Mamprusi support the NPP while the Kusasi support the NDC. This perception has fed into rumors that ascending to the Bawku throne is linked to national partisan politics (Lund, 2003).

Elections trigger claims of indigenous status in states with significant migration like Kenya and Ghana. Higher levels of election-related violence are more likely where local rival groups fighting over access vital resources. Politicians view these conflicts as essential to winning in close elections as in the Rift Valley Province in Kenya and the Bawku dispute in Ghana.

Figure 4.5 shows great improvement in the performance of Kenya's EC in the 2002 and 2005 elections. A major reason for this improvement was the reduced influence of the incumbent president, Daniel Arap Moi over the ECK as a result of constitutional and electoral reforms. In addition, the ECK stepped up its services and adhered to standards of electoral process and procedures more than before, probably because it had a 'freer hand' (due to less governmental control) to do a better job this time round. Some analysts and political pundits who thought that the 2002 and 2005 peaceful elections were strong indicators that Kenya had gotten over the election-related violence syndrome, seem to have ignored the fact that the two main contestants for the presidency in 2002 (Mwai Kibaki of NARC and Uhuru Kenyatta of KANU) were members of the same ethnic group (Kikuyu). Furthermore, many underlying factors such 'playing the ethnic card,' a winner-take all mentality and the use of gangs to intimidate opponents (though gang activities reduced in 2002) had not dissipated but were less salient in this election (Mueller, 2011). The lack of an incumbent, a more organized opposition, and the strong message of change reduced the tension in the 2002 elections. It could be argued that two Kikuyu candidates for president might reduce the tension and bitter rivalry compared to an election with competing candidates from traditionally rival ethnic groups. Also, in the case of the 2005 referendum on constitutional amendments, there was less power to be won or lost and therefore less control of national resources at stake. The stakes were low, leading to lower

tension and fewer fears as compared to other elections when the battle line is drawn between ‘losers’ and ‘winners.’

However, in 2007 when the perceived credibility of the ECK sunk low, coupled with the ECK’s abysmal performance in the highly competitive and ‘too close to call’ elections, Kenya slid into chaos and the vote triggered unprecedented levels of violence, deaths, displacement of people and loss of property. Although the 2007 post-election violence in Kenya followed old cleavages and fault lines, the violence was triggered by the ECK’s flawed handling of the elections.⁹⁷ The pre-election day violence that claimed approximately 600 lives followed the patterns of violence in Kenya that had existed since the reintroduction of multiparty elections in the country in 1992. Election observers’ reports indicate that the voting process went on smoothly, devoid of major violence.⁹⁸ The ECK’s inability or lack of capacity to be firm, fair and transparent and the flawed collation and tallying of Kenya’s election results is a clear manifestation of the EC’s lack of control of the electoral process and the level of Kibaki’s influence over the EC. The EC officials’ connivance with government agents to tamper with election results undermined the autonomy, neutrality and effectiveness of the ECK. The carnage that followed the pronouncement of Kibaki as the winner of the elections no doubt was triggered by the suspicious election results delivered by the ECK. One of Kenya’s problems is that elections take place regularly but in an environment that is not wholly democratic. Justice Kriegler argues that in Kenya in 2007, nominal elections were conducted within the old practices of a one party state. He notes that relevant laws exist but they were not adhered to and that

⁹⁷ International observers later reported that both sides had been guilty of falsifying constituency returns. Furthermore, the ECK was found to have inflated the totals, resulting in 325,131 more votes being counted in the presidential than in the parliamentary poll and numerous other discrepancies between constituency reports and announced results (Kniss, 2010).

⁹⁸ The EU, Commonwealth, AU and many domestic election observers were all satisfied that election day voting was a huge success without any serious cases of violence reported.

incentives to apply relevant laws were nonexistent (Independent Review Commission, 2008).⁹⁹ This statement is reminiscent of the non-adherence to rules and regulations that is all too common by political actors during elections. They don't play by the rules of the electoral game and the ECK failed to live up to expectations (Waki Report, 2008).

The role of leadership in creating the right environment for the ECs to be effective cannot be overemphasized. Political leaders in the Fourth Republic in Ghana created the right environment for democracy to flourish by allowing the EC to operate according to the constitutional provisions and respecting the will of the electorates through the ballot box. Rawlings stepped down after two successive terms in office and accepted the defeat of his party led by his vice president, Atta-Mills in 2000 elections and handed power to the victorious opposition NPP. Agyekum Kuffour, likewise, allowed the EC the free hand to develop the systems and procedures for free and fair elections. He and his party, the NPP accepted defeat at the 2008 elections---the most closely contested elections in Ghana's history--and handed power back to the NDC. This commitment of the country's leaders to the course of democracy has made significant contribution to Ghana's successful conduct of elections since 1992. Kenya, on the other hand, has conducted flawed elections and experienced election-related violence because its leaders have failed to create an enabling environment for the ECK to develop and deliver credible elections to Kenyans.

4.3. Most Similar System Design for Ghana and Kenya

Given the common characteristics of Ghana and Kenya in their socio-political development a most similar case design is adopted to juxtapose the causal factors explaining why

⁹⁹ The Akiwumi Report on the ethnic clashes of the 1990s notes that civil servants, lawyers and others who tried to follow the law and report infringements were punished whereas those who turned a blind eye to misconduct or undermined the law were rewarded (Mueller, 2011).

the two countries experienced different levels of electoral violence. Tables 4.4A and 4.4B are a summary of the main variables in a most similar case design. They show the performances of the ECs of Kenya and Ghana from 1991 to 2008 and depict how their performances correlate with the election-related violence in the two countries.

Table 4.4A: Most Similar Case Comparison of the ECs of Ghana and Kenya (1991-2001).

Country Characteristics and EMB Capacity Status	Ghana	Kenya
Is it a former British colony & Anglophone?	Yes	Yes
Is the legal status of EMB stated in the national constitution?	Yes	Yes
Does the executive consult with other stakeholders before appointing leaders of the EMB?	Yes after 1992	Yes 1997 onwards
Is expertise the basis for selecting electoral commissioners?	Yes	Yes
Is the EMB designed to be independent of government?	Yes	Yes
Is the EMB in practice neutral and autonomous of government influence and manipulation?	Yes	No
Is the tenure of office of commissioners' permanent or long enough to ensure job security?	Yes	Yes
Does the EMB control its budget and other resources for elections? Is the budget from the consolidated fund?	Yes	Yes
Is EMB's dispute resolution mechanism effective enough to resolve electoral complaints?	Yes	No
Is the EMB effective (fulfilling its mandate of conducting credible free and fair elections to the satisfaction of majority of the electorate and other stakeholders)?	Yes	No
Is First Past The Post (FPTP) the electoral system?	Yes	Yes
Is the country multi-ethnic with partisan and socio-political cleavages?	Yes	Yes
What is the GDP per capita range for election years (in US \$) from 1991 -2001?	\$752-987	\$1,097-1,194
Does the EMB have a supervisory role over political parties and	Yes	No

does it effectively engage them and other actors on the electoral processes?		
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Table 4.4B: Most Similar Case Comparison of the ECs of Ghana and Kenya (2002-2008).

Country Characteristics and EMB Capacity Status	Ghana	Kenya
Is it a former British colony and Anglophone?	Yes	Yes
Is the legal status of EMB stated in the national constitution?	Yes	Yes
Does the executive consult with other stakeholders before appointing leaders of the EMB?	Yes	Yes
Is expertise the basis for selecting electoral commissioners?	Yes	Yes
Is the EMB designed to be independent of government?	Yes	Yes
Is the EMB in practice neutral and autonomous of government influence and manipulation?	Yes	No ¹⁰⁰
Is the tenure of office of commissioners' permanent or long enough to ensure job security?	Yes	Yes
Does the EMB control its budget and other resources for elections? Is the budget from the consolidated fund?	Yes	Yes
Is EMB's dispute resolution mechanism effective enough to resolve electoral complaints?	Yes	No ¹⁰¹
Is the EMB effective (fulfilling its mandate of conducting credible free and fair elections to the satisfaction of majority of the electorate and other stakeholders)?	Yes	No
Is First Past The Post (FPTP) the electoral system?	Yes	Yes
Does country multi-ethnic with partisan and socio-political cleavages?	Yes	Yes
What is the GDP per capita range for election years (in US \$) from 2002 -2008?	\$1776-1520	\$1,300-1,672
Does the EMB have a supervisory role over political parties and	Yes	No ¹⁰²

¹⁰⁰ Although the constitutional provision establishing the ECK makes it autonomous, in practice, the executive has influence over its operations and therefore is perceived as partisan.

¹⁰¹ In theory, the ECK has a dispute resolution mechanism but in practice it is ineffective. The reluctance of the executive branch of government to seek justice due to partisan consideration has hindered the effective adjudication of electoral disputes (Waki Report, 2008).

does it effectively engage them and other actors on the electoral processes?		
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Table 4.4A and 4.4B show that Ghana and Kenya have similar socio-political and cultural contexts. The two countries were colonized by the same imperial power (Britain) and inherited the same governance and electoral systems. The tables show that there is no correlation between income levels and the level of performance of the EMBs and by extension between income levels and violence during elections. Kenya, with a higher GDP growth rate has a lower performing EMB and a higher rate of recurring election-related violence. It is worth noting that in terms of income disparities and inequalities, Kenya is not much different than Ghana. Therefore, economic factors do not appear to have much of an impact on the electorate's behavior and incentive to indulge in election-related violence. Income levels do not play a significant role in determining the differences between Ghana and Kenya in the conduct of elections and related violent conduct.

A very important pattern that emerges from Tables 4.4A and 4.4B is that all but one set of variables separates Ghana and Kenya when it comes to the quality of elections and level of electoral violence. These are performance of the ECs of the two countries and political leaders' commitment to allowing the ECs the free hand to operate or to covertly influence its operations. While Ghanaian leaders have allowed its EC to develop, Kenya leaders have influenced the work of the ECK in order to stay in power.

Ghana has a higher level of autonomy and non- partisanship than Kenya. It has an effective dispute resolution mechanism in place, it has demonstrated a high level of professionalism in the conduct of elections, and exercised a high level of management and

¹⁰² The ECK engages political parties in the election processes but this is not as institutionalized as in Ghana where it is decentralized to the district levels with the rules of the game clearly established and enforced.

engagement with political parties and other stakeholders. However, Ghana's EC is not perfect. The commissioners of Ghana's EC are appointed by the president (in consultation with the Council of State, an advisory body to the presidency solely appointed by the president). This arrangement is open to abuse by the president. Ghana's EC also faces operational challenges. The EC's inability to provide adequate voting materials for local level elections in 2010, frequent break-down of machines during the biometric registration exercise in May 2012, and violence in Accra and Kumasi at registration centers has generated debate about the capacity of the EC officials to operate complex machines to confirm the identity of registered voters in the upcoming 2012 elections. Sections of the electorate have raised red flags about the ability of the EC to hold successful elections as tension grows between political party supporters ahead of the elections in December 2012. Four major political parties (the NDC, NPP, PNC and CPP) dragged the EC to court in July 2012 for attempting to use the old voters' registers to conduct by-elections in the Wulensi and Kwabre West constituencies. Public outcry over what is perceived as the inefficiency of the Ghana EC includes its inability to enforce the electoral rules and the cumbersome and slow adjudication processes of election disputes by the Attorney-General. There are examples of inefficiency, incompetence and institutional failure on the part of the EC (although the situation has improved since the EC declined the services of the Attorney-General and hired its own legal advisor)(Debrah, Asante and Gyimah-Boadi, 2010).

The ECK, on the other hand, is deficient in most of these variables, partly because of the environment created by political leaders of Kenya and partly because the EC leaders failed to be resolute, fair and firm on pursuing their constitutional mandate to ward off any machinations from the government to influence the electoral process. These variables (non-partisanship, a higher level of autonomy and professionalism, engagement with political actors, effective

dispute resolution and resisting temptations from government to be drawn into any unfair dealings) are the critical ingredients that scholars attest constitute the central task of an EMB to secure the ‘procedural legitimacy’ and ‘substantive uncertainty’ of elections (Kerr, 2009). When EMBs operate effectively in all three levels of their mandate (rule making, rule implementation and rule adjudication), they provide a trusted mechanism for adhering to the electoral rules (Mozaffar, 2002). It is this mechanism that structures the preferences and expectations of political actors and induces an acceptance of the final election results. It is therefore not surprising that Kenya is associated with recurrent electoral violence because the EMB has so far failed to gain the confidence and trust (or meet the expectations) of the Kenyan electorate and political parties.

4.4. Accounting for Other Intervening Variables

Although it is expected that the autonomy and capacity of EMBs influence popular perceptions of election quality, there are other factors that potentially mediate the causal pathway that are not the focus of this study. These include the commitment of government to respect the autonomy of the EC and not to influence its work, political parties’ activities, ethnicity and other cleavages, economic well-being, electoral system and margin of victory in elections. In this study the performance of the ECs of Ghana and Kenya demonstrate that the quality of work of EMBs has a huge influence on elections results. It also shows that Ghana’s EC achievements to a large extent is attributable to the commitment of successive governments to support the EC develop. The converse is the case in Kenya where governments have used the EMB to conduct regular elections to legitimize their continuous stay in power ---to the detriment of the growth and development of democratic institutions, particularly the ECK.

All things being equal, elections are more likely to be considered flawed or unacceptable if the victory margins are narrow because relatively low levels of incompetence or attempted fraud can affect the outcome. Similarly, some elections may have been accepted by political parties and observers alike in spite of procedural and technical flaws because of wide margins of victory that would preclude the problems from affecting the outcome (Hartlyn et al, 2008). I argue that a small margin of victory contributes to higher levels of tension and suspicion; however, if the EC gets things right, delivers quality service and is firm and fair, it can avert any negative fallout related to elections despite the margin of victory. Ghana's EC is a test case for this debate. In the 2008 elections in Ghana, it was the professionalism and quality of services provided by the EC, the EC's credibility as well as the democratic values exhibited by political leadership (the presidency and political parties, especially those in opposition) that steered Ghana away from violence when the ruling NPP lost to the opposition NDC by less than 1 percent of votes cast. A ruling party accepting defeat with a margin of victory of just 0.46 percent of votes cast without dispute and violence in Africa is unprecedented. Yet Kenya was thrown into violence with a margin of 2.35 percent between the winner (President Kibaki) and the main opposition coalition leader (Odinga) in the 2007 elections. It has been argued that the closeness of the result contributed to the violence. The violence may have not happened if the margin of victory was large enough to compensate for any anomalies. This, notwithstanding, the fact still remains that the ECK might have saved Kenya a great deal of horror and agony if it had performed its work professionally. There is abundant evidence from election observers that the ECK colluded with the ruling party to rig the elections (Waki Report, 2008; EU Observer Mission Report, 2008; Commonwealth Secretariat, 2008). The ECK had the constitutional backing to be firm, autonomous and non-partisan and it could have invoked these provisions to

resist any pressure from the government to influence the elections. Ghana's EC stood its ground to ward off efforts by the government to influence its work in the early days of Ghana's return to constitutional rule (Debrah, Asante and Gyimah-Boadi, 2010).

The study finds that ethnicity is a trigger factor for election-related violence that has been extensively used in Kenya to win power and distribute resources to clients and cronies. In the absence of a solid foundation for national political organization, the already entrenched nature of regional (tribal) associations was bound to be the predominant feature of political organizations (Ajulu, 2002). Citing Muigai (1995), Rok Ajulu argues that in the absence of other platforms upon which to base political appeal, ethnicity presented itself as the most natural basis of political organization, feeding, as it does, on pride and prejudice. In Ghana ethnicity does play a salient role in politics with the Ashanti and Ewe ethnic groups showing their ethnic bias towards their home region candidates and parties through bloc voting. However, the programmatic nature of political parties and successive presidents' affirmative action to deal with inequalities, Ghana has so far largely neutralized the effect of ethnic biases during elections. Ethnic undercurrents in political campaign are not uncommon in Ghana, but the electorate is discerning and they vote based largely on the issues not ethnicity (the Ashanti and Ewe are exceptions). Furthermore, the largest ethnic group, the Akan is too fragmented to mobilize voters on ethnic lines to vote en masse for any political party.

The findings of this study show that because of the non-programmatic political parties and zero-sum ethnic politics, two tenets which are fundamental to democracy are yet to be accepted by the electorate and political parties in Kenya. These are political loss (accepting defeat through the ballot box) and the rule of law, which is perceived as arbitrary and subject to personal influence rather than legitimate and neutral. This is partly the reason why recurrent

communal violence has become one of the means to either maintain power or capture power to safeguard the security of one's group as well as control and distribute resources to clients. I argue that the solution to Kenya's democratization challenges lies in developing auditable procedures that prevent or deter fraud and corruption. Kenya must adopt measures to ensure transparency and inclusive participation in the election process and most importantly, it needs a credible, autonomous and non-partisan, well-motivated professional election management body.

4.5. Theoretical Implications of Mansfield and Snyder's War Theory for Transitional Democracies

In his classic text on democratization, Robert Dahl warned that political transitions are risky. To introduce competition and contestation into a previously closed political system invites the potential for conflict between incumbents and opponents as each weighs the costs of violence and toleration (Dahl 1971). Mansfield and Snyder extended this position by theorizing that transitional democracies can lead to war. Thus:

Countries undergoing incomplete democratization---that is, stalled transitions from anocracy to democracy that results in autocracy within approximately five years--- are more likely to be involved in war than other regime types. Incomplete democratization is, especially likely to lead countries with weak political institutions to start wars" (Mansfield and Snyder, 2007 p.170).¹⁰³

These scholars argue that in transitional states, open political space in the early stages of democratization between declining old autocratic powers and the new democratic institutions

¹⁰³ Anocracy refers to a regime type in which power is not vested in public institutions (situated midway between an autocracy and democracy) but spread amongst elite groups who are constantly competing with each other for power (Web Dictionary, 2012).

lead to intense competition between old and new elites and the unhealthy interaction between mass political participation and underdeveloped institutions can lead to war.

Although Mansfield and Snyder's theory focuses on interstate wars, the dynamics are applicable to the internal struggle within countries that are transitioning from one form of government to democratic rule. Particularly important is the revelation that weaknesses may occur in the general institutions that underpin central authority as well as those that regulate political participation. Both Ghana and Kenya have experienced weaknesses in their system of authority through one party dictatorship or coups. The ECs still face institutional challenges.

Ghana seems to have escaped the five-year long stalled transition in anocracy since it returned to multiparty system in 1992. Kenya's GNU is a semblance of anocracy according to this theory. Is Kenya's GNU the beginning of anocracy in Kenya? Or can the analysis be extended to the period since independence when elites use ethnicity and regular elections to keep themselves in power in a 'semi democratic environment?' Whatever the answers to these questions, Mansfield and Snyder's war theory teaches us that transitional democracies are not only prone to interstate wars but internal strife caused by the same factors could destabilize countries in transition. Both Ghana and Kenya might have experienced at some stage war with themselves--- in the form of ethnic conflicts, coups, and other unrests. In many ways Kenya is still at war with itself as manifested in the recurrent violence during elections. The lesson learned is that institution building and the cultivation of democratic values such as tolerance, respect for the rule of law and human rights are necessary for a non-violent democratization process in cleavage societies. Building democratic institutions and democratic citizens implies aspiring to judicious use and sharing of national resources, striving to minimize inequalities and ensuring effective leadership. Political leaders must show the way by leading by example as democrats.

Lastly, the theory enjoins all countries and pro-democratic organizations to prepare before embarking on national elections. Elections have the potential to cause violence; therefore it is prudent to build the institutional infrastructure needed to manage the turbulent processes of increased political participation, particularly in settings where unresolved issues of national identity can be exploited for antidemocratic purposes (Mansfield and Snyder, 2007)

4.6. Conclusions and Recommendations for Further Research

Employing process-tracing with the congruence method and adopting the most similar case design to compare the quality of services provided by the EMBs of Ghana and Kenya, this research finds a strong inverse correlation between the performance of EMBs and election-related violence. The credibility of election results and the incentive for violent behavior on the part of the electorate as a way to win power or protest against the results of elections to a large extent is influenced by the performance of EMBs. Professional, autonomous and non-partisan EMBs provide a much greater chance of successful and violence-free elections in emerging democracies in Africa.

The findings reinforce the view that a policy focus on reforms and the strengthening of the electoral process as well as institutions is the best way of neutralizing the negative influence of ethnicity and other cleavages in emerging democracies. Consolidation of electoral institutions tends to parallel that of other key democratic institutions which in turn imbue electorate confidence in the EMB. Ghana's example shows that improving the quality of elections in emerging democracies requires generating a virtuous circle of reforms, building on lessons learned from past practices and maintaining sustained engagement with relevant stakeholders from state institutions, civil society and international pro-democracy groups help to strengthen

democracy. Focusing on developing the other institutions of democracy, political leaders need to be conscious of the ills of negative ethnicity and adopt policies to mitigate their effect as the surest way to avoid violence during elections in multiethnic societies. It could therefore be said that a successful EMB is a symptoms of an enabling environment for democracy to grow. Since the buck stops with the leaders, the challenge should be seen as challenge of leadership.

The study establishes that nurturing democratic behaviors among the public to respect the rule of law and accept the ‘rules of the game’ by political parties (including a preparedness to lose elections), constitute important steps towards successful elections in multi-ethnic and cleavage societies undertaking democratic transitions.

The experience of Kenya defies the established view that continuous and regular elections lead to improvement of the electoral process and the development of democratic values and principles. The study reveals that the existence of non-programmatic political parties, the lack of institutional checks on the executive branch of government, the incumbent’s unwillingness to give up power, and the expectation of benefits from clients encourages the adoption of other, non-democratic means of determining the distribution of national resources in cleavage societies. Kenya’s example is a case in point where ethnicity has always trumped issue-led policy for doing politics. In part, this explains the length to which leaders and followers are willing to go to get their person (from their ethnic group) in power by all means and at any cost. This partly explains why politically inspired violence has become diffused and has erupted during almost all elections in Kenya since independence, particularly in multiparty races. This trend is likely to continue in 2013 if political actors do not change behavior and the ‘must win at all cost’ mentality. There is a higher probability for violence if the two dominant coalitions choose a

Kikuyu and a Luo as their presidential candidates (most likely Uhuru Kenyatta for the PNU and Raila Odinga for ODM).

The analysis suggests some potentially interesting avenues for future research. The transitional scenario and the violence involved presents an opportunity for broader research to ascertain its effect on transitional democracies that have different characteristics and contexts. For example a comparative study of election-related violence in Francophone and Lusophone and between them and Anglophone countries will provide more insight into the challenges that emerging democracies in Africa face during elections, because almost all African countries at independence adopted the governing system of their colonial masters. The systems vary and may have different and varying effect on the political context in each country. As major stakeholders in elections, the activities of political parties and their role in fomenting and /or preventing election-related violence deserves a deeper analysis. Another area for further study is the role political leadership (incumbent presidents and ruling parties) play to influence the work of EMBs as well as the results of elections.

To achieve successes in conducting elections in African countries undertaking transition to democracy, those countries must necessarily develop and sustained legitimate, autonomous, non-partisan and effective EMBs to neutralize the destabilizing societal cleavages. We learn from Ghana's example that the commitment of national leaders to building a cohesive nation through conscious efforts of nurturing democratic values and building democratic institutions in an enabling environment is the surest way to conducting free, fair and credible elections in which election and peace officers will count only votes--- not votes and dead bodies--- during and after elections.

APPENDIX 1

The Electoral Commission of Ghana

The 1992 constitution provides for an absolute majority system. The candidate who receives more than 50 percent of the valid votes cast is declared elected. If no candidate obtains more than 50 percent of the valid votes cast, a run-off election will be held for the two candidates with the highest number of votes within 21 days. The president of the republic (together with the vice president as his/her running mate) and members of a unicameral parliament are elected on the same day, but with different votes and on different ballot papers. The regular term of office is four years. The president is eligible for reelection for a second four-year term and barred from contesting after the two conservative terms in office. A candidate may stand for presidential and parliamentary elections either on the ticket of a political party or as an independent candidate. Political parties based on ethnic, religious, regional or other sectional divisions are prohibited (Electoral Commission Act, 1993).

The principles of universal, equal, direct and secret adult suffrage are applied. Every citizen who has reached the age of 18 years and is of sound mind has the right to vote. To enjoy this right, citizens have to be registered voters and be resident in the electoral area where they intend to vote. Their names have to be included on the voters' list of their respective polling station. Special arrangements are made to allow citizens who by reason of their duties on the polling day are unable to present themselves at the polling station where they are registered to vote through a special voters' list or per transfer voters list for those who have moved residency

or on special election assignments on the voting day. Registration and voting are not compulsory (Constitution of Ghana, 1992).

Operational Design of Ghana's Electoral Commission

The sub-divisions of the electoral commission of Ghana all headed by a deputy chairperson of the EC and led by a coordinating central director. The elections department is responsible for the core electoral functions whilst the department of research, monitoring and evaluation is responsible for evaluating the commission's programs. The monitoring unit is responsible for documenting all of the commission's activities and monitors the activities as well as neutrality of all political parties legally registered with the commission. It also validates political parties' activities and credentials, their sources of funding, as well as audits their campaign accounts and budgets. The commission's information technology and public relations divisions ensure the EC's filing system is computerized. In addition, political parties in Ghana are required to have offices and conduct business in at least two thirds of the country's districts (Electoral Commission, 1992).

The EC operates a decentralized system with representation in each region and each district of Ghana. The regional offices are headed by directors, and district offices by district electoral officers in each of the country's districts (Electoral Commission Act, 1993). Clear reporting lines between different levels of the electoral management body reduce the risk of misunderstanding and failure to follow instructions (Fall et al., 2011). According to Fall et al (2011), Ghana's EC is without a doubt one of the best equipped election management bodies in Africa as regards its powers over the electoral process. It has the ability and power to impose sanctions on election law breakers. It establishes the voters' register and updates it annually,

organizes, supervises and verifies all public elections and provides civic and electoral education to the voting public (Electoral Commission, 2012). The commission also determines the location of polling stations according to demographic parameters manages the production of voting materials and recruits and trains all polling staff. It is the sole responsibility of the EC to collect all election materials and ballots once the polls are closed and it is the EC that announces the results (Electoral Commission Act, 1993). The EC chairperson declares the results of presidential and parliamentary elections but may delegate that responsibility to other individuals appointed by the commission at the constituency level and at the polling center (Provisional National Defense Council Law, 1992). It also collects and distributes financial and material resources allocated to political parties by the Ghanaian public authorities. The EC is constitutionally empowered to check, on a regular basis, the validity of constituency boundaries across the country and make changes to the number of constituencies when they are needed Fall et al., 2011.

The EC has the power to investigate and invalidate election results if alleged irregularities are proven before the publication of provisional results or that which is considered as provisional results. The Supreme Court of Ghana invalidates results of presidential elections that are proven to be flawed while the High Court performs that function for parliamentary elections (Provisional National Defense Council Law, 1992). Election results nullified by the courts require holding new elections. The EC also has the power to correct some irregularities such as data collection and entry errors. In such cases, aggrieved persons can bring the case before it Fall et al., 2011.

APPENDIX 2

The Electoral Commission of Kenya (ECK)

The electoral commission of Kenya was established in 1991. Various laws provide for the management of elections by the ECK. The most important laws for this study are the Constitution, the National Assembly and Presidential Elections Act, 84, the Election Offences Act, 85 and the Local Government Act 86. The 1991 Constitutional amendment establishes the ECK with functions and powers to administer and supervise elections in Kenya. It also provides for the appointment of commissioners, their conditions of service, security of tenure, operational independence and removal procedure (Okello, 2006).

The 1991 Constitution (amended) provides for an electoral commission consisting of a chairman and a maximum of 21 members appointed by the president. The legislative instruments establishing the ECK are similar to that of the 1993 EC of Ghana. The Constitution defines the commission's responsibilities as: registering voters, maintaining and revising the register of voters; directing and supervising the presidential, national assembly and local government elections; promoting free and fair elections; promoting voter education throughout Kenya; and such other functions as may be prescribed by the law (Constitution of Kenya, 1991).

The electoral commission also has the mandate to delimit parliamentary constituencies with the responsibility to review the number, boundaries and names of the constituencies at intervals of between eight and 10 years. The chairperson and vice-chair of the ECK must have held or be qualified to hold the office of judge of the High Court or judge of Appeal Court. All

commissioners must be Kenyan citizens. There is a code of conduct for members of the electoral commission provided under the National Assembly and Presidential Elections Act of 1992.

Electoral commissioners are appointed by the president for a term of 5 years and are eligible for reappointment. They enjoy security of tenure and can only be removed by the president. For the 2007 elections there were 22 electoral commissioners, including the chairperson. The independence of the electoral commission is guaranteed by the Constitution; in the exercise of its functions it is not subject to the direction of any other person or authority (Constitution of Kenya, 1991).

By virtue of powers derived through the Constitution the ECK employs its own staff. It has a Secretariat which consists of an Administrative Secretary and a deputy and heads of departments namely Finance, Supplies, Public Relations, Computer and Cartography. The Deputy Administrative Secretary is responsible, among other duties, for election matters. During general elections, however, ECK can employ temporary staff to assist him. The ECK finds that more preferable than having a director of elections or a chief election officer. The ECK employs election officials it calls District Election Coordinators (DECs) each of which is, in the district, in charge of such functions as the ECK may specify. Basically the DECs provide support services to the returning officers (ROs) during elections. They are also Registration Officers and in that capacity they oversee the revision of voters' registers in their respective districts. Each DEC has three (3) junior officers to assist them (Kivuitu, 2001).

Other Supporting Legislative Frameworks

The National Assembly and Presidential Elections Act (NAPEA) buttress the constitutional provisions by giving the ECK the overall power to conduct presidential and parliamentary elections in Kenya. These Acts also empower the ECK to make regulations for the

proper conduct of elections. Furthermore, the Acts contain an electoral code of conduct and gives the ECK the right to prosecute for an offence under the Code. At the council level, the Local Government Act provides the foundation upon which the ECK administers local government elections in Kenya. The Election Offences Act describes the election offences and sanctions for the offenders (Okello, 2006).

APPENDIX 3

Measuring the Performance of EMBs of Ghana and Kenya

The model for the measurement of the quality of elections and the performance of EMBs in Ghana and Kenya has been influenced by factors such as autonomy, legitimacy, neutrality and professional competences of its members. The first indicator of EMB autonomy is the appointment process score, which captures the inclusiveness of the appointment process of EMB commissioners. Various studies indicate that EMB autonomy and neutrality is positively associated with the number of institutions and political actors that are involved in the appointing of EMB commissioners (Kerr, 2009). While in Ghana the president does makes appointments in consultation with the council of state members, in Kenya, the president had complete authority over the appointment of EMB commissioners (until 1997, when amendments were made). These changes were again thrown overboard by Kibaki prior to the 2007 elections when he unilaterally appointed all the commissioners (Kenya Electoral Act, 1997). The second indicator of EMB autonomy/neutrality is the tenure of the EMB commissioners. EMB commissioners are more inclined to act impartially when they have some security of tenure. The concept of tenure is by the number of years EMB commissioners are appointed to their positions as well as the possibility of their terms being renewed. Ghana's EC commissioners are appointed for life and accorded the same privileges as justices of the Superior Courts (Ghana Constitution 1992 Article

44). In Kenya, EMB commissioners serve for five years and are eligible for reappointment. Both arrangements offer security of tenure.

The legitimacy of an EMB is measured by the legal and constitutional provisions that mandate it and the process of establishing its members. A more participatory process involving major political actors is more likely to give higher levels of legitimacy to an EMB than when members are handpicked by a few.

Data Used to Measure the Performance of the EMBs

The data used in this study is derived from Ghana and Kenya electoral codes, EMB procedural regulations, such as Kerr's (2009) study on assessing the impact of EMBs, Elklit and Reynolds' (2000) study of on the impact of elections administration on legitimacy of elections in emerging democracies, and election observer reports that detail formal rules governing assessment of the electoral process and quality (judgments and assessments by informed election observers based on a set of standards) of the work of EMBs. This study adopts a combined coding methods used by researchers such as Hartlyn et al, (2008), Elklit and Reynolds (2000), and Scott and Taylor, (2009) to measure the various variables for EMB performance. The elements listed below numbered 1 to 6 have been summarized into a single score range of 1-10, with 10 being the most positive score and 0 the lowest.

Variables Used to Assess the Performance of EMBs

- 1) Legal framework supporting EMBs-10
 - 1.1 Proper and implementable framework for EMB-2
 - 1.2 Comprehensive electoral time-table-1
 - 1.3 EMB members accepted as legitimate, impartial and transparent-3
 - 1.4 Degree of quality of EMB service delivery-4

- 2 Electoral management-14
 - 2.1 Fair system for constituency demarcation and seat allocation in place-6
 - 2.2 Constituency and lower level information readily available-2
 - 2.3 Voter and party registration free from serious bias- 2
 - 2.4 Provision to ensure all parties have equitable access to state-owned media-4
- 2) Voter registration and polling-27
 - 3.1 Voter registers are free of any bias and accessible to voters who want to check their particulars-5
 - 3.2 Transparent and secret method of ballot without bias-4
 - 3.4 Availability of systems to preclude and/or rectify fraudulent voting-7
 - 3.5 Accessible, secure and secret voting in place-6
 - 3.6 Level of intimidation and voters are able to express their will freely-5
- 4) Vote counting and declaration of results-27
 - 4.1 Vote counting is transparent and accurate and tabulation reflects polling booth count- 8
 - 4.2 Results are available to interested members of the public-4
 - 4.3 Counting is completed without undue delay and in the full view of the public-8
 - 4.5 Results announced and winner declared in a transparent manner and publicly -7
- 5) Resolving election-related complaints-14
 - 5.1 Proper dispute resolution mechanisms are in place and address complaints swiftly and in an impartial and nonpartisan manner-8
 - 5.2 Court disputes are settled without undue delay-6
- 6) Provision for law enforcement is adequate -8
 - 6.1 Law enforcement agencies are deployed at polling stations to ensure orderly voting -5

6.2 Law enforcers are nonpartisan, professional and address complaints/malpractices swiftly and justly-3

Indicators are adapted from Elklit and Reynolds (2005). The 11 elements proposed for the measurement of the effectiveness of elections. The total of the sub- elements equals the weight of each of the six main indicators.

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