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THE NATIONAL RAINBOW COALITION

Achievements and Challenges of Building and Sustaining a Broad-Based Political Party Coalition in Kenya

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INTRODUCTION

Kenyans made history on 27 December 2002 when two opposition movements consisting of a total of 15 political parties that had joined forces under the National Rainbow Coalition (the NARC) defeated the governing Kenya African National Union (KANU), ending its 39 years of monopoly rule. After the victory, the NARC was visited by opposition leaders from various corners of the continent who expressed their desire to learn from the Kenyan experience with respect to party coalitions.

The NARC has, however, evoked not only a great deal of interest but also serious concern in Kenya itself. Weeks, if not days, after its electoral victory, it began to experience grave factionalism. As described in the background section below, the NARC comprises two main components: the National Alliance Party of Kenya (NAK) and the Rainbow Coalition, also known as the Liberal Democratic Party (LDP), a major splinter group from the then ruling party, KANU. Shortly after the December 2002 election victory, serious disagreements arose over the implementation of the Memorandum of Understanding (MoU) signed on 22 October 2002, which formalised the merger between the NAK and the LDP. These disagreements threaten the very existence of the NARC as a party coalition.

Such is the seriousness of the disputes that it is not as much a question of when the coalition will split as of when the leaders of its two components will formalise the split that already exists between them and has resulted in the situation that, although they form the government, they are operating as distinct entities with different strategies, opposing each other openly in Parliament, in the media and even in the by-elections.

The dilemma for the two factions is the reality that, legally, any formal split will inevitably result in an excessive number of by-elections, an eventuality for which neither of the factions is prepared.

Despite the great interest generated in political circles by the NARC experience, there has, to date, been virtually no major research into the emergence and sustainability of political party coalitions in Kenya. Journal articles and reports of election observer missions have looked at coalitions from a fundamentally electoral perspective.¹ In addition, these studies have tended to encompass all types of political coalitions, including those that consist jointly of political parties, religious groups and non-governmental organisations. On the other hand, news reports and analyses in the press have tended to emphasise developments within the NARC on the basis of their newsworthiness.

In his study of the NARC soon after its election victory in December 2002, Stephen N Ndegwa (2003) analyses the challenges faced by the coalition in moving Kenya from political transition to democratic transformation. Shumbana Karume (2003) provides a historical background to the NARC, the power struggle within the coalition and its mixed performance in government in its first few months in office. Although the insights offered by these two studies are valuable, there is a need for studies of political party coalitions which document their formation, management and maintenance while analysing the structures, functioning, leadership, support bases and ideologies of the affiliated political parties, given the importance of these factors to the coalition. To date there are virtually no studies of party coalitions in Kenya from such a perspective. The purpose of this study is to fill this gap by documenting key aspects of the formation and management of the NARC coalition, with a view to learning and drawing lessons from this experience for Kenya itself, the rest of the continent and beyond.

The study does not encompass political alliances other than those consisting exclusively of political parties. For example, the Forum for Restoration of Democracy (FORD), which was initially a grouping of various political pressure groups, non-governmental organisations, religious groups and other stakeholders to agitate for political pluralism and electoral reforms, is not considered a political party coalition in this study and is therefore not covered.

¹ See election observation reports on the 2002 general elections in Kenya by the Carter Center, the Commonwealth, the European Union and the Institute for Education in Democracy (IED) and articles by Ajulu 2003 and Ndegwa 2003, pp 145-158.

The authors have collected and analysed data on the various aspects of party coalition politics in Kenya on the basis of a questionnaire presented to eight key persons (see Appendix 1), some of whom were directly involved in various capacities in the formative stages of the NARC, and some others of whom were attentive independent analysts of the coalition dynamics in the country. The authors ensured that the NARC respondents were drawn from the main factions within the coalition in order to get diverse and representative perspectives and views.

After this introduction, the chapter provides an historical background to the socio-political context and dynamics at play in the formation and management of the NARC. The background is followed by an overview of the legal provisions which impact positively or negatively on the formation, functioning and survival of the NARC as a party coalition. The legal analysis looks, *inter alia*, into the effects of the Kenyan presidential electoral system (ie, the electoral threshold in use in the presidential elections) on party coalition development in the country. The last four sections preceding the conclusion investigate a variety of issues, including coalition formation (driving forces, motives and objectives), coalition management procedures, coalition agreement (nature and content of the agreement), distribution of Cabinet portfolios and other governmental offices and gender and party coalitions as well as explaining the NARC's longevity.

The pervasiveness in and dominance of ethnicity on political parties in Kenya emerged as a key feature of coalition politics in the country and is worth exploring in depth. In addition, the ideological variance between parties was not obvious. It thus appeared that the standard question in the study of party coalitions, namely, 'why certain party coalitions are formed and others are not', could not be answered rationally from a purely ideological perspective in the case of Kenya. Factors such as the quest for office, the ethnic affiliation of leaders, the electoral system and the political regime, were among the most relevant elements.

The collection and analysis of these data and information have enabled the authors to explain the formation, management and survival of the NARC and to draw some lessons about party coalitions in Kenya.

HISTORICAL BACKGROUND

In 2002 Kenya held its third multiparty election since the restoration of multiparty politics in 1991. The first of these was held in 1992 and the second in 1997. From the standpoint of democratisation, these three general

elections and the intervening periods brought out one telling fact: periodic elections are not in themselves a guarantee of sustainable democracy. There is also a need for rules that create a level playing field and have sufficient prescriptive force to motivate obedience and for strong institutions, including political parties, to protect and safeguard democracy.

The restoration of multiparty politics in Kenya was necessitated by a constitutional amendment that repealed section 2A of the Constitution of Kenya revised edition 2001 (hereafter, the Constitution), enacted in 1982, that effectively proscribed multipartyism and entrenched a *de jure* one-party state. The provisions of section 2A explicitly provided that Kenya shall be a one-party state, that party being KANU. Thus, the period between 1982 and 1991 was marked by, among other things, the institutionalisation of a monolithic system of government as well as the curtailment of fundamental freedoms, including the freedoms of association and assembly. Allegiance to KANU was required as a precondition for participating in the electoral process as a candidate, with the KANU Disciplinary Committee ensuring compliance with the party's policies by using its power to expel members from the party.

Although the quest for democratic and accountable governance began soon after independence and persisted throughout the regimes of Jomo Kenyatta, the first President, and Daniel arap Moi, the efforts intensified in 1990 in the wake of a global resurgence of democracy precipitated by the collapse of the Soviet Union and the end of the Cold War. A fresh gale swept through the African continent giving impetus to a long repressed internal pressure for change. For Kenya in particular, the combined pressure of political action groups, religious organisations and non-governmental organisations saw KANU and former President Moi succumb and, in December 1991, multiparty democracy was reintroduced.

The repeal of section 2A and the subsequent reintroduction of multiparty politics, although hailed as a major political landmark, were, regrettably, not accompanied by legal, constitutional and administrative reforms. Consequently the country embraced multipartyism without the corresponding reforms necessary to a true multiparty democracy. For example, extensive, if not excessive, executive powers were still centralised in the office of the president of the Republic. The legal framework of political parties in Kenya is under-developed, with parties still required to register under the Society's Act. This represents a failure to recognise political parties as entities of public interest, a status which could oblige the state to guarantee the conditions and assistance required for their development. This situation

has undeniably had consequences for the functioning of political parties in general and the coalition in particular.

*Towards Political Party Coalition in Kenya:
The 1992 and 1997 General Elections*

The recent history of political coalitions or alliances in Kenya can be traced to the period preceding the 1992 elections, when a broad-based coalition called the Forum for Restoration of Democracy (FORD), was formed. FORD brought together various political pressure groups, non-governmental organisations, religious groups and other stakeholders to agitate for political pluralism and electoral reforms. As a result of these interventions, section 2A was repealed, paving the way for the reintroduction of political pluralism in Kenya.

One of the salient features of the 1991 constitutional amendment, besides repealing section 2A, was the provision that a winning presidential candidate, apart from garnering majority votes in a general election, had to win 25 per cent of the vote in at least five of the country's eight provinces. In the absence of a clear winner in the first round, the section provided that a second round of elections had to be conducted between the first two candidates. Theoretically, this provision was meant to ensure that a winning presidential candidate had national support. In practice, it was intended to forestall an opposition victory, relying on the divisions within the opposition and its consequent inability to unite. A fixed presidential term (two five-year terms) was also introduced. It should be noted that the application of this limit did not apply retrospectively. President Moi, who had served for 12 years from 1978, became eligible to contest the subsequent election, and was KANU's presidential candidate in both the 1992 and 1997 elections.

Sensing the potential threat to its hold on power represented by the FORD coalition, the KANU leadership allegedly embarked on a scheme to split FORD. A number of strategies were reportedly put in place. Prominent among these was a deliberate propaganda campaign that sowed suspicion between the leaders of FORD, contributing to its split in June 1992. This split resulted in the formation of two parties, namely Ford-Kenya (Ford-K), led by Jaramogi Oginga Odinga, and Ford-Asili (Ford-A), led by Kenneth Matiba. The unusual speed with which the Registrar of Societies moved to register the Ford factions added to the suspicion that the split had been orchestrated by the Moi regime. This period was also characterised by the mushrooming of political parties. There were reports that, in some cases, KANU sponsored the registration of opposition parties, leading to further

fragmentation. Cabinet Minister Johnstone Makau, for instance, formed the Social Democratic Party (SDP) in 1992 and later defected back to KANU.

By the time the presidential candidates were nominated nine opposition parties had been registered, which subsequently contested the 1992 general elections. The split in FORD and the fragmentation of the opposition meant that KANU's victory was almost assured, as can be seen from Table 1.

Table 1
Results of the 1992 Presidential Elections

Party and Candidate	No. of Votes	% of Votes
KANU Daniel a Moi	1 964 867	36,8
Ford-Asili Kenneth Matiba	1 430 627	26,8
Democratic Party Mwai Kibaki	1 064 700	20,0
Ford-Kenya Oginga Odinga	944 564	17,7
Others	43 037	0,8

Source: IED-Kenya 1997

Table 2
Results of the 1992 Parliamentary Elections

Rank	Party	Seats	% of Votes
1	KANU	100	30,4
2	Ford-Asili	31	24
3	Ford-Kenya	31	20,7
4	DP	23	21,8
5	KNC	1	1,7
6	PICK	1	1
7	KSC	1	0,4
8	Others	0	0

Source: ECK Elections Report 1992

As shown in Table 2, KANU also emerged victorious in the parliamentary elections, winning 99 of 188 seats. Ford-Asili won 31 seats, Ford-K 31 seats, the DP 23 and the KNC, KSC and PICK one seat each.

The outcome of the 1997 elections was similar to that in 1992 (Tables 3 and 4). President Daniel arap Moi, who was running for his final term, won the presidential election with slightly more than 40 per cent of the vote and the combined opposition won nearly 60 per cent of the total vote. KANU also won a slim majority in Parliament, garnering 113 seats in a 222-member Parliament, with the combined opposition winning 109.

As mentioned above, the transition in Kenya from a single-party state to a multiparty democracy was not accompanied by the constitutional and legal reforms necessary to sustain the multiparty political dispensation the

Table 3
Results of the 1997 Presidential Election

Candidate and Party	No. of Votes	% of Votes
Daniel arap Moi (KANU)	2 500 856	40,51
Mwai Kibaki (DP)	1 911 472	30,97
Raila Odinga (NDP)	667 886	10,82
Michael Wamalwa (FORD-K)	505 704	8,19
Charity Ngilu (SDP)	488 600	7,91
Martin Shikuku (FORD-A)	36 512	0,59
Katama Mkangi (KNC)	23 554	0,38
George Anyona (KSC)	16 428	0,27
Kimani Wanyoike (FORD-P)	8 306	0,13
Koigi wa Wamwere(KENDA)	7 745	0,13
Munyua Waiyaki(UPPK)	6 194	0,10
Godfrey Mwereria(GAP)	4 627	0,07
Wangari Maathai (LPK)	4 196	0,07
Stephen Oludhe (EIC)	3 691	0,06
Joseph Kangethe (UPPK)	3 584	0,06

Source: ECK Elections Report 1997

Table 4
Results of the 1997 Elections and Parties' Representation
in Parliament.

Party	Elected MPs	Nominated MPs	Total	% of total*
KANU	107	6	113	50,91
DP	39	2	41	18,47
NDP	21	1	22	9,90
Ford-Kenya	17	1	18	8,11
SDP	15	1	16	7,21
Safina	5	1	6	2,70
Ford-People	3	0	3	1,35
SPK	1	0	1	0,45
KSC	1	0	1	0,45
Ford-Asili	1	0	1	0,45
Total	210	12	222	100,00

Source: IED 1997 (+ * authors' calculations)

country had embraced. Throughout the electoral process, from the appointment of the electoral commission to the settlement of electoral disputes, both the political and legal framework clearly advantaged the ruling party at the expense of the opposition. As a result, the 1992 and 1997 elections did not meet universally acceptable electoral standards (Domestic Organisation Observation Mission 1993).

The impartiality of the Electoral Commission of Kenya (ECK) in supervising and administering these elections was seriously in question. Constitutionally, the appointment of the commission was and has remained a presidential prerogative. As such, there was a belief that the ECK commissioners owed their allegiance to the head of state and could therefore not discharge their responsibilities impartially, fairly and transparently. Allegations of bribery and other financial inducements were made in the run-up to both the 1992 and the 1997 elections. Serious logistical and administrative irregularities on the part of the ECK were also reported. Some polling stations opened late and ballot boxes meant for one province ended

up in another, causing enormous confusion that led to the extension of polling in some districts. This further undermined the integrity of the electoral process and the credibility of the ECK. In addition, in the run-up to the elections, rampant political violence was reported, mostly targeting opposition parties. The incidents of violence affected opposition campaigns and disenfranchised potential voters (Kangwanja 2001; Kenya Human Rights Commission Report 1997).

The opposition parties approached both the 1992 and 1997 elections thoroughly fragmented. In 1992, a mediation effort led by environmentalist (now Nobel laureate) Wangari Mathaai's Middle Ground Group and supported by faith-based groups failed to unite them. The parties were preoccupied with the desire to win and believed they could do so on their own. As a result of the fragmentation, KANU and President Moi were victorious and were able to rule the country with a slim majority.

Ndegwa (2003) explains that 'Five years later, in the wake of successful mobilisation to secure the passage of constitutional and electoral changes, ... civil society groups failed to persuade the opposition to coalesce behind a single candidate to take on Moi. Their painstaking work had planted seeds of cooperation, however, and these would ultimately take root and flourish amid continuous public dismay about splits within opposition ranks as well as about the threat still posed by KANU and the opportunity created by the cracks in its ill-fated merger with the National Development Party (NDP). Taken together, all these factors spelled new leverage for the cause of compromise.'

Between 1992 and 1997 KANU embarked on a deliberate scheme to woo members of the opposition to defect and join it. Indeed, a number of Members of Parliament (MPs) did so, allegedly in anticipation of Cabinet appointments and financial rewards.

In the period preceding the 1997 elections, opposition parties demanded minimum constitutional and legal reforms to level the playing field, as a precondition to participating. Civil society organisations echoed these demands. These efforts resulted in the formation of the Inter-Parties Parliamentary Group (IPPG), which negotiated for the minimum electoral reforms which facilitated the 1997 elections. Among the reforms demanded by the IPPG were the appointment of members of the opposition to the Cabinet, the nomination of opposition members to the ECK (s 16(2) of the Constitution as amended in 1997) and the proportional sharing of the 12 nominated parliamentary seats, which had previously been reserved for the ruling party.

THE 2002 ELECTIONS AND THE NARC COALITION

The 2002 general elections in Kenya were significant in many ways. They presented an opportunity to test the democratic gains the country had made a decade after reverting to multiparty democracy. President Moi, who had served the constitutional limit of two five-year terms, was expected to relinquish power, hence the serious jostling that characterised the electoral environment in the run-up to the elections.

For opposition parties in particular, the lessons of the previous multiparty elections were loud and clear. Although the fragmented opposition had secured an average of 60 per cent of the vote in 1992 and 1997 it had lost the election to President Moi and KANU because of the majority electoral system (one round) in use in the presidential election. It was obvious to all that their chances of winning would be slim if they did not form a coalition in the face of the formidable electoral machinery of the incumbent KANU. Citizens' expectations and their message to the opposition parties were that they must unite in order to win the elections.

The process of forging unity and a coalition began soon after the 1997 elections but accelerated in 2001. Two competing and parallel processes were being pursued simultaneously. The first was an alliance between KANU and the National Development Party (NDP) that was initiated soon after the elections to give KANU the necessary majority in Parliament to push through its legislative agenda. The second was an alliance between three of the main opposition parties, the Democratic Party (DP), Ford-K and the National Party of Kenya (NPK). This was aimed at enabling the opposition to be more effective in Parliament, as well as at establishing the framework that was to culminate in a formidable electoral coalition.

On 18 March 2002 KANU and the NDP merged to form new KANU. In response to this, the opposition parties became more proactive and in April the National Alliance for Change (NAC) was formed. In August 2002 the NAC was transformed into the National Alliance Party of Kenya, a coalition of 14 political parties. Meanwhile, serious divisions emerged in KANU which threatened its unity, after President Moi announced unilaterally his choice of one of the four KANU vice-chairmen, Uhuru Kenyatta, as his successor, a move that sidelined established figures in KANU, including the country's vice-president, George Saitoti, and Joseph Kamotho. The other vice-chairmen and the secretary general made public statements accusing President Moi of betraying them by forcing one of the officials on the party. The disgruntled officials of KANU united against Uhuru Kenyatta. The

disagreement in KANU led to the emergence of a splinter group called the Rainbow, with Raila Odinga, Kalonzo Musyoka, George Saitoti, and Musalia Mudavadi as its torchbearers.

The Rainbow entered into dialogue with Ford-People (Ford-P), a party formed shortly before the 1997 elections when it split from Ford-Asili, and formed the Rainbow Coalition in September 2002. The coalition with Ford-People, however, did not last as Simion Nyachae, the leader of Ford-People, left the coalition and the party contested the elections on its own, with Nyachae as its presidential candidate. Thereafter, the Rainbow Coalition embarked on a nation-wide tour to popularise the party, holding rallies which attracted unprecedented crowds. For its part, the NAK formalised its operations and chose an election line up consisting of Kibaki as the presidential candidate and Wamalwa Kijana and Charity Ngilu for the posts of vice-president and prime minister respectively, in the event of a victory.

Appreciating the need to broaden their base and guarantee victory, the National Alliance Party and the Rainbow Coalition (LDP) joined forces in October 2002 to form the National Rainbow Coalition. The agreement between the NAK and the LDP was contained in a Memorandum of Understanding (MoU) signed by the two parties before a Commissioner of Oaths. The NARC went on to win the 2002 general elections (Tables 5 and 6), taking 125 parliamentary seats. Its presidential candidate, Mwai Kibaki, won more than 3,6 million votes. KANU emerged second with 69 parliamentary seats and 1,84 million votes for its candidate, Uhuru Kenyatta. Ford-People came third, garnering 15 parliamentary seats and presidential candidate Nyachae securing 363 000 votes.

Table 5
Results of the 2002 Presidential Election

Candidate	Party	Votes
Mwai Kibaki	NRC	3 636 783
Uhuru Kenyatta	KANU	1 837 479
Simion Nyachae	FORD-People	362 668
James Orenge	SDP	24 340
Waweru Ng'ethe	Chama Cha Umma	9 941

Table 6
Results of the 2002 Parliamentary Elections

Party	Elected MPs	Nominated MPs
NARC	125	7
KANU	64	4
Ford-P	14	1
Ford-A	2	0
SISI KWA SISI	2	0
SAFINA	2	0
SHIRIKISHO	1	0
Total	210	12

The Role of Ethnicity in Politics

It cannot be denied that ethnicity has been a major feature of the Kenyan political landscape. The history of ethnicity impacting on the Kenyan political process can be traced back to colonial days when the colonial government, in a bid to effect the politics of divide and rule, divided the country into provinces which were essentially created along ethnic lines (Mulei 1997). At independence in 1963, the early political parties and pressure groups took on an ethnic pattern.

To begin with, the first nationalist Party, KANU, formed in March 1960, was perceived as an alliance of the then largest ethnic communities, namely, the Kikuyus and the Luos. Among the founding leaders of KANU were Jomo Kenyatta (Kikuyu) as its president; Jaramogi Odinga (Luo), vice-president; and Tom Mboya (Luo) as its secretary general. Fearing domination by the big tribes, and with the support of the colonial administration, smaller ethnic groups formed the Kenya African Democratic Union (KADU), to counter KANU. Thus, the 1963 election in Kenya was essentially a contest between the big tribes coalescing around KANU, which advocated a centralised unitary state, and the small tribes coalescing around KADU, which, fearing domination by the bigger tribes, preferred a federal state which would guarantee the provinces significant autonomy. In the ensuing election KANU won a majority of votes and subsequently formed the government. In 1964, however, former President Daniel arap Moi, who was

then the leader of KADU, dissolved the party and joined KANU with his members and supporters.

A spot check on the development of political parties in Kenya from independence to date reveals a significant emphasis on and manipulation of ethnic feelings as a strategy for securing political power. Although this strategy was initiated by the colonial administration, it was perfected during the Kenyatta and Moi regimes. Political power and the control of the reins of government became synonymous with tribalism as people in positions of power invariably appointed members of their ethnic communities to senior government positions. Undoubtedly, appointments to the Cabinet and senior government positions were heavily skewed in favour of the president's tribesmen.

These developments were exacerbated in 1978 when, upon the death of President Kenyatta, Vice-President Moi took over the presidency. It should be noted that President Moi, who was originally the chairman of KADU and who represented a small ethnic community, the Kalenjin, upon assuming office soon engineered the revival of alliances of the small tribes – a platform which was at the core of KADU philosophy. As has been noted in numerous articles by political scientists and by *Sunday Nation* columnist Mutahi Ngunyi, 'President Moi's preoccupation with survival hinged more on his ability to unite the small tribes while at the same time marginalising the big tribes that originally coalesced around KANU'. This strategy was catalysed by the fact that the unity of the Kikuyus and the Luos, which was the main strength of KANU, had been broken after the fallout in 1969 between President Kenyatta and the foremost Luo leader, Jaramogi Oginga Odinga, following the assassination of Tom Mboya, KANU's secretary general. This had triggered tension between the Luos and Kikuyus.

When multipartyism was restored in 1991, the Kikuyus and the Luos, and indeed other big tribes, came together to form the pressure group FORD. As mentioned above the alleged machinations of KANU led to the split of FORD into two parties – Ford-K, which was mostly associated with the Luos, and Ford-A, which was seen as Kikuyu-dominated. The subsequent registration of other political parties also, for the most part, took on a tribal pattern, with the Registrar of Societies exercising enormous discretion and registering political parties virtually when it served the interests of the ruling KANU party.

By and large the results of the 1992 and 1997 elections reflected ethnic affiliations. Apart from KANU, none of the opposition parties won 25 per cent of the vote in more than three provinces and some failed to win a seat

in provinces other than their own. KANU was able to win 25 per cent in at least five of the eight provinces and also won seats even in areas which were predominantly opposition zones. One explanation for this is the fact that almost all Kenya's provinces are heterogeneous, with big and small tribes living in each province. Consequently KANU was able to elicit the support of the minority tribes living in provinces dominated by opposition parties and therefore to get the required 25 per cent minimum while maintaining its advantage in provinces, which were considered its stronghold.

In 2002 tribal considerations came into play once more for a number of reasons. First, the opposition parties realised that they could not win on their own unless they formed an alliance to counter KANU. Secondly, the electorate was dissatisfied with the performance of KANU in the past four decades and desired a change. Thirdly, President Moi was ineligible for another term. This led to the expression of personal ambitions within KANU, which resulted in competition and a lack of unity in the ruling party. The formation of the NARC was, in effect, a response to the above realities, and its subsequent victory was due to affiliate parties bringing their ethnic and regional votes into the NARC basket, effectively guaranteeing a victory. One of the conclusions of this study is that ethnic affiliation is one of the core variables explaining the formation and sustainability of party coalitions.

PARTY STRUCTURES AND IDEOLOGY

Apart from the impact of ethnicity on party coalitions, political parties in Kenya profess certain policy stands which are contained in their policy documents. However, the overriding and unifying principle of political parties has been ethnicity. The prominent role played by ethnicity in Kenyan politics has, in effect, meant that ideology and other policy positions have been relegated to the periphery. However, this does not mean that parties do not have policy positions.

A critical look at the party manifestos and other policy documents in Kenya reveal striking and remarkable similarities. The constitutions of almost all the major political parties are basically the same – modelled on the same format and with similar structures. They are largely centralised, with power concentrated in a group of individuals. The organisational structures are clearly spelt out in their constitutions. In all parties the ultimate source of power is the National Delegates Congress. Between sessions of the Congress, the National Council is the body charged with the general supervision of the party. The day-to-day management of the party is, subject to the general

supervision of the National Council, entrusted to the National Executive Committee, and working under it are the district executive committees.

Decisions in the party tend to be made at the highest level. Political parties are privately owned and are registered like private companies as per the Society's Act and it has been observed that they often register first and look for members later. As a result, Moi was seen as the owner of KANU, the DP as Kibaki's property and the LDP as belonging to Odinga. All the parties are managed and controlled by their leaders. They are centralised with decisions made at the top, with little consultation with the grassroots and limited internal democracy.

On the other hand, political parties in Kenya are, regrettably, not formed around any sound ideological framework and this has contributed significantly to the weak party system in the country. Parties lack binding principles, commitments and values to unite their members. Theoretically, they profess some ideological leanings. For example, among the major affiliated parties of the NARC, the Democratic Party is considered to be conservative, the Liberal Democratic Party professes to be liberal and Ford-Kenya leans towards social democracy. Most party members, including senior officials, do not unanimously agree on whether their parties actually espouse these ideologies. A lot of work and development is still needed on this front. The official opposition, KANU, is also closely linked with social democracy. In practice, parties operate without any regard to their declared ideological leanings and, in most cases, neither party leaders nor members stick to their professed ideology.

The absence of an ideological identity is one of the main reasons for the rapid disintegration of the NARC only weeks after it won the election.

PARTY COALITIONS AND GENDER REPRESENTATION

The hypothesis of this chapter in relation to the issue of gender parity in politics was that party coalitions add an additional level of competition to the one that already exists at party level where women are already significantly marginalised. A comparison of the number of women in Parliament representing individual political parties and those who enter through pre-electoral coalitions will help test the hypothesis.

The participation of women in electoral politics in Kenya compares poorly with that of most countries on the continent. Indeed, since the attainment of independence in 1963, Kenya has never reached a minimum quota of one-third of women. This situation is appalling since Kenya is a

signatory to many of the international and regional instruments whose sole objective is to enhance women's rights in all spheres (social, political and economic). Among the international and regional instruments which incorporate and acknowledge the rights of women to participate in the social, political and economic sectors are the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW 1979), the Beijing Platform for Action, the Millennium Declaration on Development, the African Charter for Human and People's Rights-Protocol on the Rights of Women, the Constitutive Act of the African Union and, most recently, the principles espoused in the Nepad initiative.

The struggle by Kenyan women for equal representation in political leadership and decision-making processes dates back to the struggle for Kenya's independence. However, it was not until 1969 that the first woman, the Hon Grace Onyango, was elected to Parliament. Although subsequent parliaments (1975-1988) increased female representation, there was no significant breakthrough in terms of equal or equitable representation. Accordingly, the numbers of women elected to Parliament dwindled and even the presidential discretion to nominate 12 MPs did not benefit women much, since most of those nominated were men.

The advent of multiparty politics in 1991 and the 1992 multiparty elections brought with it new hope for women. In 1992, for the first time in Kenya's history a total of six women (out of 210 members) were elected.

Table 7
Women's access to Parliament from 1963 to 1997

Year	No. of Candidates	Elected	Nominated	Total
1963	7	0	0	0
1969	13	1	1	2
1974	11	4	1	5
1979	15	5	1	6
1983	7	1	2	3
1988	6	2	0	2
1992	19	6	0	6
1997	52	4	4	8

Source: Friends of Esther and Deborah (FREDA): 1999

Although this number was certainly low it nevertheless signalled a positive move towards the involvement of women in elective politics. In the period between 1992 and 1997, the number of organisations involved in empowering women politically mushroomed, with the objective of consolidating the gains made in the 1992 election. Unfortunately, this goal was never realised – the 1997 election reversed the gains made in 1992, with only four women elected, although a further four were nominated as a result of the affirmative action principle negotiated by the IPPG. A remarkable feature of the 1997 election was that for the first time in Kenya's history two women, the Hon Charity Ngilu and Wangari Maathai, contested the presidency. Although neither won, the fact that they stood served to demonstrate that the quest for women to access positions of leadership had reached a point of no return.

The 2002 transitional election and the ushering in of a new administration represented a major turning point for women in electoral politics. For the first time in Kenya's history ten women were elected and a further eight were nominated, bringing the total to 18 women out of 222 MPs in Parliament (8,1%). Although this percentage was far below the international commitment of one-third, it was nevertheless a step in the right direction.

The extent to which a women's agenda was an issue for the National Rainbow Coalition, especially during the campaign, is largely debatable. Granted, the need to mainstream women in key leadership position was a concern, especially in the manifestos of the major affiliated parties of NARC. Indeed the DP, NPK, Ford-K, and LDP manifestos all provide for one-third of women in positions of leadership. However, the translation of this declaration into broad based commitment has been lacking. Secondly, all the affiliated parties of NARC were unanimous that the previous KANU administration had done little to increase women's participation in leadership positions; they lacked a coherent strategy through which the perpetual marginalisation of women could be addressed. Perhaps the greatest obstacle is the lack of a legal framework designed to increase the participation of women. This, together with the fact that Kenya has a first-past-the post (FPTP) system, has seriously undermined women's access to leadership positions.

Certainly, the NARC administration has instituted more measures to increase women's participation than the previous KANU regime had done. As an example, of the seven slots that NARC had for nomination after the 2002 elections, five were given to women. In addition, for the first time in Kenya's history, four women were appointed to the Cabinet. Throughout

the nearly 40-year rule of KANU only one woman, the Hon Nyiva Mwendwa, had held a Cabinet position. A number of women were also appointed as heads of the various departments and parastatals. Despite all these efforts, the number of women in positions of leadership in Kenya is still far below that in many other countries in Africa as well as the minimum international threshold of one-third that many countries are embracing. Looked at in this context, the mere nomination of women and appointment of a few to the Cabinet might be viewed as tokenism that will do little to redress past imbalances.

The NARC coalition's contribution to the better representation of women demonstrates that, whether at party level or at coalition level, the increase in women's representation depends on the commitment of the party leadership.

POST-ELECTION FACTIONALISM

The growing cleavages within the NARC, which became increasingly visible soon after the electoral victory, have been seen as fundamentally resulting from unprincipled leadership. Only weeks after winning the election in December 2002, the NARC leaders disagreed about the allocation of Cabinet portfolios and other important posts, accusing President Mwai Kibaki and his DP/NAK base of keeping the lion's share for themselves at the expense of the other coalition partners, contrary to the pre-election agreement.

The LDP faction, led by Raila Odinga, accused the president and his group of dragging their feet, thus impeding the reforms intended to provide the country with a new constitutional framework. Based on the pre-election agreement contained in the NARC's MoU, Odinga was expected to be appointed prime minister. The MoU provided that the new Constitution would be finalised and adopted by Parliament within 100 days of the inauguration of the new government. Yet it took three years before a draft constitution was produced and rejected by the electorate because it failed to address most of their concerns, especially regarding the excessive powers vested in the country's president. The emergence of grand corruption implicating senior government officials close to the president has also been a major concern to the coalition. It has been alleged that the people involved are hell bent on raising campaign money that will be crucial for the re-election bid of President Kibaki. The inability of the president to combat this corruption has ensured that speculation continues unabated. A more detailed analysis of the MoU is provided further on in this study.

These developments have resulted in growing factionalism within the NARC. President Kibaki is supported by the majority of his DP/NAK allies.

Odinga and the majority of his former LDP or Rainbow Coalition have re-emerged and are opposing Kibaki vigorously and publicly. *The Nation* (20 September 2004) reported that the LDP announced on 19 September 2004 at Kendu Bay Trading Centre that it would go it alone in the 2007 elections. The newspaper also reported that at Homa Bay Town's stadium, where the party's leaders were wrapping up a three-day membership recruitment campaign in Western and Nyanza provinces, party chairman and deputy speaker of the National Assembly David Musila put to rest any doubts about the disintegration of the NARC by declaring: 'Be under no illusion; we (LDP) have decided to chart our own fate [...] by leading our own pack for the next national polls' (*The Nation* 20 September 2004).

In the course of the same week top party officials had announced that the LDP would break ranks with the NARC and field its own candidate in the by-election for the Kisauni parliamentary seat. Environment minister Kalonzo Musyoka expressed the LDP's disenchantment with the pre-poll pact it had entered into with its NARC partner, the National Alliance Party of Kenya, declaring: 'LDP will only enter into any MoU with another party or parties after elections ... We have learnt our political lessons' (*The Nation* 20 September 2004). Odinga also recalled the frustrations after the pre-election pact was not honoured by the NARC colleagues and said the LDP would exercise 'utmost caution before entering into a similar deal with any party [in the future]' (*The Nation* 20 September 2004). In an interesting development, the LDP fielded a candidate under the NARC in the November 2004 Kisauni by-election after winning the primary election. However, the by-election was won by Anania Mwaboza of the National Labour Party, who reportedly received support from the NAK faction which had lost the primary when they had contested it as members of the NARC.

Faced with the possibility of a backlash that might affect the implementation of the government legislative and policy agenda, President Kibaki has been trying to reach out to the former ruling party, KANU. On 30 June 2004, for example, he appointed selected KANU members to the NARC Cabinet to create a semblance of a government of national unity. As things stand at present the LDP has indicated its intention of contesting the 2007 elections on its own, and has embarked on a recruitment campaign, while simultaneously continuing to benefit from its presence in the NARC government. President Kibaki, on the other hand, has been attracting new members, including KANU, to the NARC coalition ahead of the 2007 general elections as a way of consolidating his position, and pushing through his legislative agenda.

Currently the NARC exists only on paper. With the LDP virtually having left the coalition and deciding to operate as a separate entity, it has been reduced to NAK, more or less in its pre-MoU form. The latest development has seen a further split in NAK, with the emergence of a group calling itself the third progressive force. As explained above, any formal withdrawal of the LDP would inevitably result in a loss of power and, by extension, political oblivion, as the party would be required to seek a fresh mandate from the electorate. It is predicted that the final and formal pullout of the LDP will only occur close to the 2007 elections.

THE CONSTITUTIONAL, LEGAL AND ADMINISTRATIVE FRAMEWORK GOVERNING PARTY POLITICAL COALITIONS

General Legal Provisions

Section 34(d) of the Kenyan Constitution provides that parliamentary candidates must be nominated by a political party – there is no provision for independent candidates to compete in parliamentary elections. The critical role played by political parties in the democratic process is further reinforced by the provisions of s 1A of the Constitution, which states that ‘Kenya shall be a multiparty democratic state’. However, despite this provision and the significance of political parties in a democracy, there is no political party law or constitutional chapter in the country’s legislation that explicitly recognises and provides for the regulation and operation of political parties.

Legally, political parties are required to register under the Society’s Act, Chap 108 of the Laws of Kenya. It is important to note that all other societies, including clubs, welfare groups and women’s groups, also derive their legal existence from the Society’s Act. The absence of an explicit legal framework for political parties and the failure to recognise their significance in the democratic process have clearly undermined the proper functioning of political parties and contributed to the weak institutional structures of parties and coalitions in Kenya.

In the absence of an explicit law governing political parties it has been assumed that they are bound and regulated by the electoral laws, two sets of which govern elections. The first set of laws contains provisions that were enacted exclusively for the purpose of regulating elections and impact directly on the electoral process. In this category are the Constitution of Kenya, the National Assembly and Presidential Elections Act, the Election Offences Act and the Local Government Act. The second set, although not enacted for the purposes of elections, nevertheless have a collateral impact

on the electoral process (Wachira Maina 1997). There are a number of laws in this category but the most important are the Constitutional Offices, the Remuneration's Act, the Public Order Act, the Chiefs Act, the Society's Act and the Penal Code. Equally important are the party constitutions which provide for the internal regulation of individual parties. However, compliance by the various parties with these constitutions has been deficient and blatant abuses have been reported in the past. For example, KANU has held no party elections since 1988 despite the fact that its constitution provides for elections every five years. Most officials of other parties, too, are holding office on an interim basis.

The Kenya Law Reforms Commission has drafted a Political Parties Bill whose object is to deal with issues of registration, funding and the regulation of political parties. The draft Bill will be submitted to the attorney general for tabling in Parliament.

The Legal Framework of Party Coalitions

The constitutional and legal framework governing coalition formation has been a subject of considerable debate in Kenya since the formation of the NARC. The question of whether the NARC is legally constituted as a coalition and speculation about the future of any possible coalition government in Kenya have also featured prominently in that debate. The absence of political party law in Kenya and the fact that the parties owe their legal existence to the Society's Act while invariably being regulated by the electoral law and a variety of other laws have further contributed to the complexity of the debate. Strictly speaking, there is no law in Kenya at present that grants political parties the power to form a governing coalition or recognises the legality of such a government. However, this does not rule out the possibility of forming an election coalition like the NARC.

In order, therefore, to throw more light on the legal nature of the NARC it should be noted from the outset that it is a registered political party with the same legal standing as all its affiliated registered parties. All the parties affiliated to the NARC have retained their legal identities and their entry into the coalition was through corporate and not individual membership, as part of the agreement reached in the MoU. Consequently, member parties of the NARC resolved to field candidates in the presidential, parliamentary and civic elections under the umbrella of the NARC and not through the affiliated political parties.

Given the above scenario, the important question to ask is: 'What is the impact of the legal status of the NARC as a registered political party, on

the coalition itself?' A peripheral question is whether the NARC is a party and, at the same time, a coalition of parties. The answer to this question is better understood if it is looked at in the context of the Constitution of Kenya, particularly with regard to vacation of seats in the National Assembly and appointment to the Cabinet. Section 40 of the Constitution, also known as the Turncoat Amendment, enacted in 1966, with further amendments in 1991, provides that:

A member of the National Assembly who, having stood at this election as an elected member with the support of or as supporter of a political party, or having accepted appointment as a nominated member as a supporter of a political party, ... resigns from that party at a time when that party is a parliamentary party shall vacate his seat forthwith unless in the meantime that party of which he was last a member has ceased to exist as a parliamentary party or he has resigned his seat.

This provision underscores the fact that, legally speaking, all the NARC parliamentarians are in Parliament on a NARC ticket, and legally they cannot defect to their affiliated parties without having to face the possibility of a by-election. This explains why, despite serious wrangles in the ruling coalition, the implications of resignation would be enormous – consequences to which no affiliated party would want to be subjected – and the chances are that the NARC will soldier on until the end of the current term, its coalition partners continuing to cohabit in a marriage in which none of them is interested. It is worth noting that of the 125 seats the NARC won in a 220-seat Parliament the LDP claims 68, while the rest are shared among the 14 parties that comprise NAK.

Other sections of Kenyan law have led to the assumption that despite the fact that the Constitution does not expressly provide for a coalition government there are provisions that may indirectly enable the formation of one. These provisions can be found both in the Constitution of Kenya and in the National Assembly and Presidential Elections Act. Section 5(3)(f) of the Constitution deals with the elections to the office of the president and provides that 'the candidate for president, who is elected as a member of the National Assembly, and who receives a greater number of the valid votes cast, and who in addition receives a minimum of twenty-five percent of the votes cast in at least five of the eight provinces shall be declared to be elected as president.'

Since political parties in Kenya are formed along ethnic and regional lines, the need to secure the constitutional requirement of 25 per cent makes

it almost imperative for them to form coalitions based on their regional strength. The lessons of the three multiparty elections in Kenya are proof of this. President Moi and KANU won the 1992 and 1997 general elections by building ethnic and regional alliances that enabled them achieve 25 per cent in at least five provinces. In 2002, the affiliated parties of the NARC were able to mobilise votes in their various regional strongholds, which enabled President Kibaki to win more than 25 per cent of the total vote in all eight provinces. It should be noted that in 1992 and 1997 Kibaki was unable to win 25 per cent in five provinces.

Another area where the legal framework impacts on coalition politics is the appointment of the Cabinet. Kenya has a presidential system of government with all executive powers vested in the president. The current Constitution allows the president to exercise enormous executive powers. He or she appoints the Cabinet and can dissolve it at will. The president also has the power to dissolve and prorogue Parliament (Part III, ss 58 and 59 of the Constitution). In doing so, he or she is not allowed to seek advice from any authority, which explains why Kibaki made no reference to the pre-election MoU when he constituted the Cabinet in January 2003. The executive authority vested in the president means that, once elected, he or she may choose not to be accountable to his or her coalition partners by virtue of his or her presidential prerogatives. This situation has been at the origin of the crisis and current impasse within the NARC.

The sustainability of party coalitions in a presidential system clearly depends on the president's good will, on his or her faithfulness to his or her word and willingness to compromise as well as on the fairness of the coalition agreement. If Kenya were a parliamentary regime and Kibaki prime minister with executive powers as the head of government, he could not ignore the views of his coalition partners because the government's very existence would depend on their continued support. In other words, in a parliamentary system, coalition partners have a say, which is generally based on the number of parliamentary seats they control. Their withdrawal from government, or a vote of no confidence, may lead to the collapse of the coalition government and the formation of a new one or the calling of early elections. As a result, consultation and consensus are the rules of the game in parliamentary regimes.

Kenya has a presidential system, which means that it is not obligatory for Parliament to have confidence in the government. So, once elected, even if the election was the result of the support of his or her coalition partners, the president can choose not to consult these partners. The partners are

vulnerable and may have to wait until the end of the presidential term of office if they do not wish to resign from government. For these reasons presidential regimes do not promote a culture of consensus amongst coalition partners.

The divisions within the NARC have effectively deprived the coalition of a majority in Parliament since the LDP faction, and indeed most of the backbenchers, do not toe the party line in parliamentary debates and voting. This situation makes it difficult for the coalition effectively to implement its legislative agenda.

The Kenyan electoral system gives parties no choice but to enter pre-election alliances in order to form a substantial voting bloc – a dominant characteristic of the single member district electoral system, also known as first-past-the-post (FPTP) or ‘winner-takes-all’ (Chap III, Part III, s 32(1) of the Constitution of Kenya). In the absence of one or two dominant political parties such alliances will continue to be an important feature of electoral and party politics in the country as long as that system is maintained.

However, the legal framework of elections and the electoral system do not alone account for the continuing need for party alliances. The fact that political parties continue to draw most of their support from the geographically concentrated ethnic groups of their leaders is a further determining factor.

Finally, s 16(2) was inserted in 1997 following a deal brokered by the Inter-Parties Parliamentary Group to allow the president to appoint members of the opposition to the Cabinet. These appointments are subject to section 17(5), which requires consultation with the party in question. The section dealing with the appointment of the Cabinet, together with s 17(5) of the National Assembly and Presidential Elections Act, allows what may be regarded as a semblance of a governing coalition. Section 16(2) provides that ‘The President shall, subject to any other written law, appoint the Ministers from among members of the National Assembly’, while s 17(5) states that ‘No person who is elected or nominated as a member of the National Assembly with the support of or as a supporter of a political party (other than the party whose candidate has been elected President at an election) shall be appointed a Minister of the Government of Kenya under section 16 of the Constitution without concurrence of the party which supported him for election or nominated him for appointment as a member of the National Assembly.’

This allows the president to appoint to the Cabinet members of Parliament regardless of their party affiliation but after consultation with

the appointee's political party. Section 1(5) further allows the president to negotiate with and seek the concurrence of opposition parties before appointing any of their members to the Cabinet. These provisions, if properly followed, would theoretically allow genuine governing coalitions to be formed since the president would be required by law to consult with members of the opposition parties before agreeing to the details of including them in government. In practice, however, the president merely negotiates with the various individuals, regardless of whether or not their parties concur.

FORMATION OF THE NARC

Objectives and Driving Forces

As indicated above, after the 1992 and 1997 general elections it was clear that no political party could win the presidential election alone. Indeed, KANU had resorted to ethnic alliances both during the era of one-party rule and once the multiparty dispensation came into being in order to keep and consolidate its power. It was inevitable, too, that the opposition would have to build a coalition. The electoral results reflected in Tables 1, 2, 3 and 4 show clearly that the combined opposition received far more votes than the ruling KANU but failed to win the elections because of its fragmented state.

In early 2002, the election year, informal consultations took place among opposition leaders. Several interviewees indicated that Mrs Charity Kaluki Ngilu, the leader of the National Party of Kenya, was instrumental in the formation of the NAK, approaching Mwai Kibaki of the Democratic Party (DP) and Michael Kijana Wamalwa of Ford Kenya. Since she was leader of a relatively smaller party, Ngilu was not seen as a threat and was therefore able to convince them to join her. The consultations lasted some nine months and the group grew bigger as the December 2002 election date approached. In its final form, NAK had 14 affiliate parties.

At the same time another coalition formation process, known as Rainbow, was initiated by Raila Amolo Odinga, following serious divisions within the new KANU after President Moi unilaterally chose Uhuru Kenyatta as his political heir. The new KANU's heavyweights, including Odinga himself, Kalonzo Musyoka, George Saitoti and Musalia Mudavadi, left the ruling party and formed the Rainbow Coalition/Liberal Democratic Party.

After a month of negotiations the NAK and Rainbow process culminated in the formation of one large coalition. On 22 October 2002, a coalition was formally established between the NAK and the LDP (Rainbow), to be known as the National Rainbow Coalition. It must be pointed out that

NAK, with its 14 political parties of varying sizes, on the one hand, and the LDP, on the other hand, came into the NARC coalition as two equal partners.

Article 1 of the MoU signed by the NAK and the Rainbow states explicitly that the NARC was established 'for the purpose of winning the next general election'. The rest of the MoU is focused on the mutual agreement to run elections as one party and share power in the Cabinet equally after winning the election.

Asked about the objectives of the NARC Titus Mbathi, the coalition's chairman and leading negotiator during its formation (Interview August 2004), declared that 'the mission was to win the 2002 elections and the vision to form a better government than KANU. While the mission was accomplished, the NARC is still struggling with its vision.' However, many of the coalition members interviewed argued that the NARC essentially had only one objective – to remove KANU; hence its apparent lack of direction once this objective was achieved.

In fact, the MoU reveals that the NARC had a number of objectives, including ending corruption, transforming the country politically and economically, providing free education and empowering the people. The coalition also intended, among other things, to change the Constitution within 100 days of taking power and to establish a parliamentary system of government with a ceremonial head of state and an executive prime minister. It was to prove, later, that these objectives were essentially slogans.

It is worth noting that the opposition leaders received technical assistance from international non-governmental organisations (NGOs) in their attempt to form a broad-based coalition. These NGOs included the German-based Friedrich-Ebert-Stiftung (FES), the Konrad-Adenauer-Stiftung (KAS) and the US-based National Democratic Institute for International Affairs (NDI). Their assistance was mainly confined to funding retreats at which party leaders could meet, negotiate and organise, with the assistance of experts.

The international NGOs did not coordinate their efforts thoroughly. FES was involved in the initial formative phase of the coalition but pulled out early and KAS took over, playing a more prominent role, given its supposed ideological affinity (Christian democracy) with the main NAK coalition partners and particularly the DP. At the same time the NDI helped the coalition meet some of its technical needs, and invited international experts, among them Roelf Meyer from South Africa and Dan Botwe, Secretary General of the New Patriotic Party of Ghana, to help with the delicate negotiation process.

Finally, the discrete roles of national civil society organisations and the donor and diplomatic community in convincing the various political actors to join an alliance should also be acknowledged.

Selection of Affiliated Parties and the Sharing of Power

The criteria for joining the coalition were not explicitly spelled out. Anyone who would agree to join was welcomed. The size of the party was not important, but a willingness to work together with the aim of defeating KANU was crucial. In practice, the strength of a potential partner party in terms of its popularity amongst voters proved to be a key but implicit criterion. This was measured by, on the one hand, the electoral performance of the party during the 1997 elections and, on the other, the size of the crowd at rallies. It should be emphasised that entry to the NARC was limited to corporate membership, which entailed affiliated parties and not individuals joining the coalition. Interestingly, while one would have thought that ideological affinity would be a fundamental criterion for recruiting a partner, it did not prove important at all. The ideology of the NARC members is blurred, despite their claims to the contrary.

Party manifestos do not reveal any fundamental differences and the parties have not been able to articulate convincingly what differentiates them. Indeed, nearly all the partners subscribe to the free market economy. Asked about their ideology, party representatives usually miss the point and expand on their adherence to good governance principles such as rule of law, transparency and accountability as well as insisting on the need for national unity. Conversely, most do not subscribe openly to direct popular participation.

The weak ideological identity of political parties in Kenya can be explained by their strong ethnic identity, a situation which impacts tremendously on the sustainability of the NARC. Indeed, factionalism in the coalition has a strong ethnic connotation.

Ethnic politics have permeated the political history of Kenya. According to Schmidt and Kibara (2002), the five most populous of Kenya's 42 tribes make up 70 per cent of the population. They are: Kikuyu, 20 per cent; Luhya, 14 per cent; Luo, 11 per cent; Kamba, 10 per cent and Kalenjin, 11 per cent.

Linking the top five parties after the 1997 elections to their tribal constituencies, Schmidt and Kibara found that KANU is a Kalenjin-dominated association of small tribes, the DP is a Kikuyu party, the LDP is a Luo party, FORD-Kenya is a Bukusu party, and the majority of SDP

legislators are Kambas. They conclude that in Kenya 'political mobilisation is not based on any ideology or programmatic action but on tribal considerations', arguing that 'faced with competition for power at the national scene, the political elites behind these parties prefer to rally support along ethnic lines, as emotive ethnic constituencies are easier to maintain'.

The presence of tribal leaders in the coalition attracted massive support from their ethnic groups. The Kikuyus gave more support to the NARC through the DP's Kibaki than they did to KANU's Uhuru Kenyatta, who was viewed as being exploited by Moi's Kalenjin. The Luos supported the NARC through the LDP's Odinga, the Luhyas through Ford-Kenya's Wamalwa, and the Kambas through the SDP's Ngilu. Party coalition has essentially been about ethnic arithmetic for electoral purposes.

The selection of candidates for parliamentary and civic seats proved a major challenge in the formative stages of the NARC. This was attributable to many factors. First, the NARC's affiliated parties were competing among themselves, believing that any slim parliamentary majority was necessary if they were to stamp their influence on the coalition in the post-election government. Second, the NARC was paranoid about KANU machinations, believing that KANU would interfere with the nomination process.

Once it was agreed, after protracted discussions, that the presidential candidate must be a Kikuyu in order to counter KANU's candidate, the choice of Mwai Kibaki as presidential candidate was relatively straightforward and did not attract much controversy. However, there were numerous problems relating to the selection of parliamentary and civic candidates. The main criterion used was the geographical strength of the leading affiliated parties. As a result, the Democratic Party nominated candidates from Central and parts of the Rift Valley Provinces, the LDP's nominees came mostly from Nyanza, Eastern, Nairobi and Coast Provinces and Ford-K's from Western and NPK from Eastern Province (particularly from the Kamba community). Secondly, the NARC directly nominated certain individuals who were to play a prominent role in the national campaigns and others who belonged to the top organs of the party, particularly the Summit and the Coordinating Committee.

Given that the NARC's ultimate objective was to defeat KANU and run the country, it was essential that its members reach consensus on their election campaign strategy, including the selection of candidates and the allocation of Cabinet portfolios. Accordingly, the coalition fielded one presidential candidate, one parliamentary candidate per constituency and one candidate per civic ward. In practical terms, all parties brought their

nominees to the NARC Election Board (NEB) for selection.

A presidential candidate had to meet the following criteria:

- Be the candidate most likely to win the presidential election. Popularity was essentially judged on the results of the 1997 presidential election.
- Have the ability to raise funds for the campaign (a minimum of one billion shillings).
- Be a consensus candidate.

It was reported that although a consultative process led to a consensus around Mwai Kibaki, it was clear to most people during the negotiations that Kibaki would not step down for another candidate. It is also imperative to mention that the nomination of Kibaki as the presidential candidate was, to a large extent, designed to counterbalance the tribal arithmetic. Since KANU had nominated Uhuru Kenyatta (a Kikuyu) it was necessary for the NARC to nominate another Kikuyu (Kibaki) to split the Kikuyu vote.

In relation to parliamentary and local government candidates a combination of approaches was involved in decisions about which coalition member party would field a candidate in a given parliamentary constituency or civic ward and which candidate would be nominated from within the qualified affiliated party. The choice of the political party for a given area was not too difficult. The criteria were the party's popularity in the area, based on the results of the previous election and current trends, measured, *inter alia*, on the basis of the size of the crowds at the party's recent rallies.

At party level most of the approaches used to select candidates were undemocratic and essentially patronage-based rather than a result of the popularity enjoyed by the candidates. These approaches included both handpicking candidates and holding primaries with balloting. According to one report NAK opted largely for primaries with any voter entitled to express support for a particular candidate; Ford-Kenya resorted to a combination of primaries and handpicking; and 90 per cent of the LDP candidates were handpicked. However, this view was disputed by a respondent who charged that primaries in all parties were essentially a farce, and were not based on the popular will.

The selection of candidates within political parties led, at times, to violence. The stakes were obviously high. The merger of the NAK and the LDP made it clear that most of the candidates fielded by the coalition would

have a strong chance of winning the elections in their respective constituencies and civic wards. Therefore, the selection of coalition candidates was desperately fought at all levels, causing tensions and divisions not only within the parties but within the coalition as a whole. For example, after the choice of Kibaki as the NARC's presidential candidate, Simion Nyachae of Ford-People and a few others left the NARC.

The MoU signed on 22 October 2002 by the NARC partners provided for the allocation of Cabinet portfolios among the coalition partners after the electoral victory. Equal representation in Cabinet was the rule, with each party (NAK and the LDP) nominating its ministerial candidates. Clause 2 stated that the composition of the Government of National Unity was as follows:

- Hon Mwai Kibaki shall be nominated as the single Presidential candidate.
- Upon successful completion of the national parliamentary and presidential elections, the President-elect shall immediately convene the Summit in order to discuss the appointment of the Cabinet and the distribution of ministerial duties.
- The membership of the Cabinet to be formed will be determined on a 50/50 power-sharing formula between the two political parties [NAK and LDP] and will be composed of individuals proposed by the respective political parties.

This clause also specified which portfolios the leadership of the NAK and LDP would receive.

- The following positions in the Cabinet shall be allocated to the National Alliance Party of Kenya (NAK) to be distributed among Hon Michael Kijana Wamalwa, Hon Charity Kaluki Ngilu and Hon Kaput arap Kiowa, namely, one position of Vice-President and two positions of second and third Deputy Prime Ministers.
- The following positions in the Cabinet shall be allocated to the Liberal Democratic Party (Rainbow) to be distributed among Hon Stephen Kalonzo Musyoka, Hon Raila Amolo Odinga, Hon Prof George Saitoti and Hon Moody Aware, namely one position of Vice-President, the Prime Minister, the Deputy Prime Minister and a position of Senior Co-ordinating Minister.

- The first Deputy Prime Minister shall co-ordinate a class of ministries to be identified and specified upon formation of Government.

Because the Constitution makes the appointment of Cabinet members the prerogative of the president, after his election, President Kibaki and the DP and NAK sections of the NARC became more influential than the other partners in the allocation of Cabinet portfolios. Many NARC partners, particularly its LDP component, have reported that disagreements about the implementation of the MoU have led to deep discontent.

The MoU provided for the creation of the posts of executive prime minister and senior coordinating minister after the finalisation of the constitutional review 100 days after the inauguration of the NARC government. The lengthy constitutional review process would also have removed the executive powers currently vested in the President of the Republic, who would have become a ceremonial president. Kibaki did not want to change a Constitution which not only allowed him to win elections but also gave him considerable executive powers. He has been accused by many of his partners of negating the spirit and letter of the MoU by refusing to back the constitutional amendments that were agreed. Few people have attempted to reflect on the extent to which the NARC's MoU, particularly the provision that the president would lose his executive powers and become a ceremonial president in favour of a prime minister, was fair to the popularly elected president. Perhaps the answer lies in the fact that, judging by the examples of 1992 and 1997, Kibaki would not have been elected on his own and is regarded as a team president rather than a popularly elected one.

MANAGEMENT AND MAINTENANCE OF THE NARC

Coalition Management Procedures

Article 5 of NARC's constitution states that the party (the coalition is registered as a political party) consists of the following organs: the council, the coordinating committee, the parliamentary group, the elections board and any other organ established by the NARC Council. Article 6 makes provision for the following officials: chairperson, deputy chairperson, secretary, deputy secretary, treasurer, deputy treasurer, organising secretary, deputy organising secretary, women co-ordinator and youth co-ordinator. The duties of the organs and officials are detailed in the subsequent articles. The constitution also includes a code of conduct for members and a pledge of commitment.

In spite of this detailed constitution, which should guide the functioning of the coalition, the NARC's organs have never been effective. Apart from the elections board, which worked remarkably well before and during the December 2002 elections, the party's organs and officials have been virtually paralysed by crises and stalemate.

Meetings were not held consistently, with most post-election meetings being fire-fighting in nature, especially during the early days of disagreements within the coalition when the leadership was trying to salvage it. The Summit, the highest body, composed of leaders of all the affiliated parties and endowed with the responsibility, among other things for dealing with conflicts within the coalition, met regularly before the elections, with minutes taken. Later, its quarterly meetings no longer took place because of tensions within the coalition between the ex-NAK and ex-LDP factions. The last meeting, in April 2004, virtually dealt a deathblow to the NARC. The hostility among the partners worsened when KANU members joined the government on 30 June 2004 as President Kibaki increasingly used his presidential prerogatives rather than the terms of the MoU to make appointments.

Coalition leaders appeared not to use the opportunity provided by their daily meetings in Parliament to iron out their differences. Instead they used Parliament as a battleground on which to attack each other.

How can the NARC achieve its ultimate post-election objective if the coalition leaders do not meet in order to develop and implement policies? All the factions in the coalition agree that the NARC has achieved only one goal: winning the elections. Many internal difficulties, combined with a lack of consultation on policies and strategies, prevented it from achieving its goals, which include free education, job creation, a new constitution for the country within 100 days, and zero tolerance of corruption, all of them crucial pledges it made during the campaign and on which it has since reneged.

The absence of an effective conflict management mechanism within the NARC has prevented the coalition from addressing serious internal tensions which led ultimately to irreconcilable factionalism. The summit has virtually been abandoned as a coalition structure. The informal consultations conducted by the vice-president in the early phase of the conflict, which took the form of retreats and workshops, had little impact on the deep divergences within the coalition.

Article 21 of the NARC constitution states that

any dispute, which cannot be resolved by the organs of the NARC, shall be adjudicated upon through arbitration. The parties concerned

shall agree on three arbitrators and their decision shall be communicated to the NARC Coordinating Committee in writing. The decision of the arbitrator shall be final.

In addition, Clause 4 of the Memorandum of Understanding of 22 October 2002 states that:

any disputes or disagreement that may arise regarding the interpretation or implementation of this Memorandum of Understanding shall be submitted for final settlement by a committee comprising the heads of the Catholic Church of Kenya, the Anglican Church in Kenya and the Supreme Council of Muslims of Kenya.

Apparently, this mechanism was not used.

Challenges of Sustaining the Coalition

Coalitions confront many challenges, most of them common to all types of coalitions. The NARC respondents indicated that when they formed the coalition ahead of the December 2002 elections the main problems they faced were the lack of funding and resources as well as the absence of technical expertise in building a coalition. It took a long while for the NARC to get a working structure to function. As a result, its campaign machinery for the elections was put in place relatively late.

Another challenge was the personal ambition of the main players – for a long time no leader wanted to step down for another, especially in the contest for the top post.

The ethnic orientation of the country made it difficult to reach consensus on a presidential candidate. Negotiations took place not only amongst the political leaders but also between politicians and ethnic groups, given that their backing was a *sine qua non* for coalition formation. For example, the choice of Mwai Kibaki as the coalition's presidential candidate was resented by some individuals and groups who could not accept another Kikuyu as the country's president – the first was Jomo Kenyatta.

In many cases the overall lack of democracy in the country tended to make the opposition's campaign particularly difficult. For example, the pre-election political environment in 1992 and 1997 was characterised by political intimidation and violence targeted at the opposition and its supporters. The security forces, the state-owned electronic media and public servants supported the ruling KANU. Although these abuses were limited in

scale in 2002, they still constituted additional hurdles in the way of the NARC's quest for power.

Once elected the NARC found it difficult to maintain the cohesion of the coalition. Trust amongst the affiliates was broken with the lack of full implementation of the MoU. President Kibaki's coalition partners accused him of failing to push for the constitutional review and for allocating disproportionately more ministerial and other important posts to the DP/NAK segment of the coalition.

The NAK faction has found it difficult to defend convincingly its failure to honour the MoU, a situation which has paralysed the NARC from the onset. One NAK supporter has argued that the party went into the pre-election coalition on the basis of certain assumptions which are different from the post-election realities on which government bases its decisions. This faction has accused the LDP of being irresponsible in reverting to tribalism and holding the country to ransom by blocking genuine legislative processes in Parliament for political reasons. The respondent illustrated this viewpoint with the example of the Forest Bill, which was acclaimed by many sectors of society but failed to pass the vote in the National Assembly because the LDP faction in Parliament refused to support it. Finally, it would appear that the intention to move from a presidency with extensive executive powers to a new post of prime minister was not considered fair to the elected president. The LDP, on its part, dismisses allegations of tribalism, claiming that of the 125 MPs elected on the NARC ticket 69 sought the NARC nomination through the LDP and it is the only party that has MPs in all eight provinces.

The undermining of the NARC as a coalition is virtually irreversible. New alliances are crystallising around the NAK and LDP and there is discontent in the ranks of Ford-K. Although the split in the NARC has still to be formalised the LDP is operating as a distinct party which has distanced itself from the NARC publicly and openly, is frantically recruiting new members and has vowed to field its own candidates in by-elections and go it alone in the 2007 general elections. In Parliament, where it claims to control 69 of the NARC's 125 seats, the LDP has the upper hand in its opposition to NAK/the NARC.

The NAK rejects the LDP's assessment, maintaining that both it and the LDP would have received a much smaller portion of the vote had they gone it alone in the 2002 elections because they would have gained seats predominantly in their respective tribal strongholds and very few outside these areas. The electorate voted beyond tribal lines because the coalition

offered a real chance for change. In addition, the NAK faction claims that the LDP's Odinga abused the NARC Electoral Board and changed names of the NARC nominees at the Electoral Commission of Kenya ahead of the December 2002 election, affecting 21 candidates in favour of the LDP component of the coalition. The ability to negotiate the share of parliamentary seats for one's party in the coalition, which resulted in the LDP gaining more seats than its coalition partners, should not be confused with actual electoral popularity, the NAK argues.

Meanwhile, though, the NAK faction has also been organising itself. The move to form a government of national unity to which selected members of KANU have been appointed in their individual capacity can be considered President Kibaki's attempt to broaden his support base ahead of the LDP's possible formal withdrawal from the NARC. In addition, two smaller parties, Safina and Sisi Kwa Sisi, which have two MPs each, have joined NARC. But NAK has also suffered setbacks. Ford-K, which was a member of NAK, has decided to retain its individual identity.

Hon Charity Ngilu, leader of the NPK, recently fell out with the president and the minister of finance over a Bill her ministry had tabled and has since resolved to work closely with the LDP and Ford-K, a complication in view of the fact that she is the bona fide chair of the NARC. A further split also occurred when a group calling itself the Third Progressive Force was formed. Increasingly, what is left of NAK is essentially the Democratic Party. Clearly the NAK and LDP factions of the NARC are strange bedfellows.

Consequences of the Coalition for its Affiliated Parties

This section deals with the challenges confronting political parties in coping with coalition-related internal conflicts? Many theorists argue that the more centralised a party the easier it becomes for the leadership to screen off inter-party politics from intra-party conflicts (Groennings 1968; Panebianco 1988). Moshe Moar (1998) opposes this view, arguing that organisational decentralisation is crucial in enabling party elites to manage intra-party conflicts in such a way that splits are avoided and dissent can be constructively absorbed.

The NARC experience has presented serious challenges to the affiliated parties' internal cohesion. While joining the coalition substantially improved their chances of accessing power, it came with a major trade-off, since member parties had to jostle among themselves for a share of elected seats and Cabinet portfolios.

The limited number of seats and portfolios available for each affiliated party combined with the quasi-assurance of winning these posts because of the popularity of the coalition also caused considerable competition within the party, leading to internal tension and dissension. In addition, disagreements within the NARC about allegations that Kibaki and his faction had failed to abide by the MoU have caused dissent within the parties. Some individuals who were appointed to the NARC government maintained their loyalty to the coalition while their parties, deeply annoyed by what they called Kibaki's shift, which frustrates their hopes of securing ministerial portfolios and other posts, have expressed their discontent publicly and threatened to quit the NARC.

Political parties in Kenya, as in most countries, are highly centralised, but the personal interests of politicians affect the ability of a political party to behave as a unitary force within coalition politics. The dynamics within the NARC bear this out. Some LDP members are closer to the NAK component while others oppose the continued participation of the LDP in the coalition. Similarly, tensions have been reported in Ford-K because of the failure by Kibaki to abide to the MoU. Ford-K has also complained that it should have been granted more ministerial positions. As a result, Ford-K ministers are pro-the NARC, while those who failed to be appointed minister are anti-the NARC.

THE SURVIVAL OF THE NARC

The failure to honour the MoU has divided the NARC along its pre-October 2002 lines. It also reflects a key dimension of politics in Kenya: personal ambition and lack of trust between coalition partners. In the face of all these problems one wonders how the NARC has managed to 'survive' at all.

There are three main reasons for its survival. First, Kenya's electoral law does not provide for independent candidates to stand in parliamentary elections and, since the NARC is legally constituted and registered as a political party, its elected leaders in Parliament are the NARC MPs. If any of these MPs resign formally from the party they will lose their seats and will have to contest by-elections. Nobody wants to take such risks. They all want to remain in power as long as possible in spite of the internal contradictions and obstructions which have characterised the NARC since it came to power. It is therefore not in the interest of groups such as the LDP to leave the NARC. It is anticipated that the LDP leadership will quit the coalition formally only before the elections. In the same vein, the party (or

coalition) leader can fire elected leaders from the party or the government but the law does not allow the leader to fire elected members from the chamber because they have been elected directly by the electorate on the basis of the first-past-the-post electoral system and, unless they resigned from Parliament, they would still keep their seats even if they were evicted from their party.

The second reason for the relatively prolonged existence of the NARC is that the support of Kenyans for the coalition was tremendous. Any leader seen by the population as being responsible for destroying the coalition might face the consequences in the 2007 general elections. The fear of public blame has therefore had a dissuasive effect.

Finally, the affiliated parties are benefiting from the coalition through their parliamentary seats and ministerial and other well-remunerated posts, such as in parastatals. In other words, the NARC provides financial security for the coalition partners. Power brings many advantages. In most countries it has been observed that there is always an advantage in running for office as an incumbent. Incumbency gives easier (and often undue) access to public resources such as state-owned media, civil servants, vehicles, the state apparatus and even public funding. There have been complaints that most of the appointees to the Cabinet and to parastatals in 2003 were members of the DP faction – of 24 Cabinet portfolios, the DP received 12, the LDP 6, Ford-K 3 and the NPK 1 – and that this situation has been mirrored in all other appointments. Running for election from an opposition party or coalition is an uphill race, given the uneven track that characterises Kenyan elections. The NARC dissidents do not wish to cause such trouble for themselves ahead of the general elections of 2007 and would prefer to leave the coalition as close to the election date as possible.

In light of the above it is clear that the NARC is surviving for reasons beyond the control of its leaders. To be strong and effective, a coalition's survival should not be the result of external factors but a consequence of its affiliated members' commitment to and belief in the need for it as a platform for achieving their policies. Given that the NARC has been unable to work toward its programme objectives, its longevity can be seen as benefiting only its members at the expense of society as a whole.

CONCLUSION

Asked what the NARC experience had taught them about coalition formation and sustainability the respondents cited four points.

First, if a coalition is to survive, it should be based on political honesty, mutual trust and respect. The respondents deplored the violation by the DP/NAK elements of the NARC of the letter and spirit of the MoU. They argued that if honesty, mutual respect and trust are not the basis of coalition formation, no coalition will survive. On the other hand, a number of respondents complained that the LDP faction has held the country to ransom over the failure of the NAK faction to respect the MoU and has often undermined genuine lawmaking initiatives as a way of venting its discontent.

Secondly, coalitions should preferably be formed after elections rather than before them because pre-election coalitions are not based on the relative strengths of the affiliated parties and some partners may enjoy undue influence. The respondents also argued that before elections party leaders tend to enter into unprincipled coalitions for the sake of winning, whereas post-election coalitions are based on the real electoral strength of the partners, with the *raison d'être* being fundamentally to govern. The LDP faction of the NARC felt that the DP/NAK faction used it to access power and, once in office, abused the LDP group by failing to honour the MoU. The LDP has indicated that it has learned its political lesson and, should it enter another coalition, it will do so only after an election.

Thirdly, respondents called for strong legislation governing party coalitions to avoid double-dealing. Some went so far as to advocate punishing any violations of the coalition agreement, citing the fact that after the elections the NAK faction had claimed that the signed MoU was not legally binding. Others suggested that pre-election coalitions be outlawed, or, at least, governed by specific sets of laws.

Finally respondents complained about the pervasiveness of ethnicity in party politics in Kenya, which emerged as a key feature of party coalitions. Ironically, all those who complained had chosen to remain within a faction that largely comprised members of their own ethnic group. Similarly, the inadequate internalisation of and belief in the constituent parties' declared ideologies and values gives rise to coalitions motivated by short-term personal and partisan goals rather than a long-term vision for the country.

Certainly the fairness of the coalition agreement and the need for the participating parties to honour this agreement are fundamental to the sustainability of a party coalition. Political honesty and mutual trust increase the chances of coalitions lasting long enough to make an impact on policy development and implementation. However, the authors' view is that even these pre-requisites are not sufficient to ensure the survival and effectiveness of coalitions. The history of such coalitions and alliances elsewhere has

shown that other factors, such as the personality of the various coalition leaders (a point not highlighted by the respondents), may have either a positive or a negative impact on the longevity and effectiveness of a coalition.

More importantly, some of the elements presented negatively by the respondents are, in fact, not problems but factors which should be taken into consideration. For example, the impact of ethnicity on coalition politics is universal and should be seen as normal and dealt with effectively. Given the strong ethnic identity in Kenya, a party coalition can only last and be effective if the existence of ethnic politics is not denied but is acknowledged and accommodated fairly. Such a pragmatic approach would contribute to preventing ethnic polarisation and possible violent ethnically based conflict.

Clearly some legal requirements should be imposed on party coalitions, for instance, their purpose, duration and the manner in which the parties will exert their joint prerogatives. The electoral commission could be given the power to decide whether the coalition agreement or MoU complies with the law. However, extreme regulation of a political process such a coalition might lead to unacceptable restrictions on freedom of association.

The sustainability of party coalitions in Kenya depends on a number of variables, namely:

- the relative autonomy of the president of the republic vis-à-vis Parliament, as is the case with most presidential systems;
- the first-past-the post electoral system used for parliamentary elections compounded by the 25 per cent threshold requirement for presidential elections;
- strong ethnic identity and weak ideological identity;
- the fairness of the agreement between the parties and the extent to which it is honoured after the election, coupled with the impact of leaders' personality; and
- the proximity of the next presidential election as coalitions tend to collapse close to elections because their leaders attempt to distance themselves from a losing government.

To be effective party coalitions must become part of the political culture of the country. Generally speaking, it must be recognised that a party that wants to win an election in Kenya must join forces with others and make compromises. The NARC has shown that this can be done successfully and, from that perspective, it can be argued that the NARC experience has possibly served its purpose. It is important, however, to realise that it takes decades

to build a political culture of coalition like that of Mauritius or continental Western Europe. And this is a learning process. One of the respondents expressed this quite well by saying ‘when you ride a bicycle and you are afraid of falling, you will never learn to ride a bicycle’.

It would be unrealistic to expect Kenyans to be fully successful in their first real attempt at a broad-based coalition in a multiparty environment. The NARC’s greatest achievement is that party leaders came together in an alliance and won the elections in the face of serious adversity. For this, the NARC has gained a privileged place in the political history of the country. Kenyans need to build on the National Rainbow Coalition’s success in winning elections with a view to enhancing the country’s political party coalition practices and, more importantly, their effectiveness in terms of policy development and implementation.

RECENT DEVELOPMENTS

THE CONSTITUTIONAL REFERENDUM AND THE CURRENT COALITION RECONFIGURATION

On 21 November 2005 Kenyans participated in a referendum intended to ratify the new constitution. The overwhelming rejection of the draft constitution and the dissolution and subsequent reappointment of the Cabinet were both historic and unprecedented. The constitutional referendum marked the first time since independence that Kenya’s citizens had participated in a referendum process. Following the rejection of the draft constitution, President Kibaki, in yet another unprecedented move, dissolved the Cabinet, sending the ministers and their assistants packing and promising to reconstitute the body within two weeks. The dissolution of the Cabinet was a departure from the precedent set by his predecessors, Presidents Kenyatta and Moi, who, rather than dissolve the Cabinet, reshuffled it frequently to achieve various political ends. The reconstituted Cabinet omitted the LDP ministers, who had mounted a spirited campaign against the draft constitution and who, for the most part, were credited with the defeat the government suffered in the referendum. Needless to say, the political implications of these events will have profound bearing on coalition politics in Kenya and may well signal the end of NARC.

The rejection of the new constitution means, in essence, that the country must restart the process of constitutional review. The clamour for a new constitutional dispensation has dominated Kenya’s political landscape for

the last 15 years. As mentioned above, the struggle was born of the realisation that fundamental rights and freedoms had been curtailed significantly during the regimes of both President Jomo Kenyatta and Daniel arap Moi, through constitutional amendments whose effect was the centralisation of executive power and the emasculation of other organs and institutions of state.

The Consensus Act, which essentially provided the legal framework for the referendum, outlawed direct campaigns by political parties and instead required them to transform themselves into either Yes (Banana) or No (Orange) committees to support or oppose the new constitution. The committees included other stakeholders, notably non-governmental and religious organisations. One of the major criticisms of the referendum process was the failure of the government to provide a sound legal framework by enacting enabling legislation to facilitate the process. In the absence of a Referendum Act, reliance was on the Electoral Laws of Kenya, which, as the process demonstrated, proved inadequate, especially in mitigating certain problems that emerged in the course of the campaign.

The referendum campaign presented the first real opportunity for the NARC's affiliated parties to test their political strength as well as the future of the coalition. As noted above, serious divisions and wrangles have characterised the functioning of NARC as a ruling coalition since it assumed power in 2003. While the affiliated parties have striven for the past two years to remain united, the referendum threatened finally to divide the coalition government. For the purposes of the referendum, and as provided for by the Consensus Act, the LDP wing of NARC teamed up with KANU to form the Orange, the symbol of those opposed to the new constitution, while DP, Ford-K and the National Party of Kenya (NPK) teamed up to form the Banana camp, which supported the constitution's ratification. This effectively meant that the government was split over a process that had been represented by its leading lights as its own project. During the campaign, the LDP and KANU transformed the Orange into a pressure group called the Orange Democratic Movement (ODM), which was to act as a broad-based coalition of all stakeholders and parties opposed to the enactment of the new constitution.

The referendum was held in mid-December 2005. The ODM successfully led the country into overwhelmingly rejecting the draft constitution. The campaign, which had been characterised by acrimony and name-calling concluded peacefully when Kenyans turned out in large numbers to vote on referendum day. The Orange team won in seven of the eight provinces, with the Banana team winning only in Central Province, which is

also home to President Kibaki, and in pockets of the Rift Valley, mainly the Nakuru and Naivasha districts, and Eastern Province (Embu and Meru Districts), home to Justice Minister Kiraitu Murungi. The Orange side also won in 153 of the country's 210 constituencies, with the Banana side winning in only 57 constituencies. This effectively gave the Orange side more than two-thirds support in the constituencies, a victory unique in Kenya's political history. In all, the Orange won a total of 3 548 477 votes (57% of the total votes cast) against the Banana, which won 2 532 918 (43%).

It is remarkable that the campaign strategy employed by both sides was to galvanise the electorate along ethnic as well as party lines. The Orange side was much more effective in this strategy. Once again, the referendum confirmed that coalitions in Kenya are primarily formed along ethnic lines rather than on the basis of policy issues. Although, by and large, issues contained in the draft constitution were widely debated and discussed, most of the major tribes were galvanised against the Kikuyus, as was evidenced in the regional voting patterns.

The results of the referendum also complicated politics within the Government of National Unity. It should be remembered that, in a bid to avoid political rebellion in Parliament and to pass the government's legislative agenda, President Kibaki formed a government of national unity by including members of Ford-P and KANU. An important element of the Banana team's strategy for winning the referendum was the ability of Ford-P and KANU appointees to the Cabinet to deliver votes from their respective districts. Unfortunately, these parties were unable to attract substantial votes for the government and thereby diminished their political clout and vote value to the government.

A further implication of the referendum result was the weakening of some political parties, particularly Ford-K. After the 2002 general elections, Ford-K and Ford-P enjoyed an unassailable lead in the Western Province and Kisii districts respectively. The fact that Ford-K lost in all the districts in Western except for Bungoma effectively diminished the party's stature in the province. Indeed, since 2002, the LDP has waged a formidable fight in Western and the outcome of the referendum clearly gave it the edge there.

For the most part, the referendum result also re-energised political parties in their quest for sustainable political alliances and coalitions. Increasingly, there is talk within KANU and LDP ranks of transforming the Orange Democratic Movement into a political party. The Democratic Party has also put out feelers to other parties, indicating its willingness to negotiate possible alliances. This scenario, if pursued further, would inevitably lead to

alliances taking two formidable directions, namely, the National Rainbow Coalition and the ODM, ahead of the 2007 general elections. The transformation of the ODM into a coalition was catalysed by the president's action in dissolving the Cabinet and subsequently reappointing it without the leading figures of the LDP wing of NARC. The fact that the president rewarded loyalty, especially that of Ford-K and the NPK, and the choice of the new ministers left little doubt that he intended to run for re-election in 2007 and that the battle lines between the Orange Movement and the NARC were clearly drawn.

The referendum result also confirmed one political reality in Kenyan politics after the 2002 general elections – no party can campaign and win elections without forming a coalition of some sort. Regrettably the post-referendum coalition talks have not been well structured and are taking the same route as those that led to the formation of NARC. Talks have all been premised on positions and appointments as opposed to policy and ideology. This emerged very clearly during the discussions between President Kibaki and Musikari Kombo and Charity Ngilu (chairmen of Ford-K and the LPK respectively). When coalition talks begin in earnest on the part of the ODM it will be interesting to see how they will deal with the question of fielding candidates. Currently the ODM enjoys wide support from the electorate based on its performance in the referendum and as confirmed by a recent opinion poll conducted by Steadman Associates which confirmed that the ODM was more popular than NARC and its leading light, Kalonzo Musyoka, was the preferred candidate for president among 35 per cent of the electorate, beating President Kibaki (26%) and Uhuru Kenyatta, another key ODM figure (17%).

