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Abstract:

Purpose of study: This article examines whether a shift to parliamentary government would resolve Kenya's recurrent electoral conflict. It argues that winner-take-all competition stems from four mechanisms—the indivisible presidency, concentrated appointive power, absence of a credible position for the defeated, and material exclusion stakes—of which constitutional design addresses only two, while an unwritten elite settlement convention performs integrative functions that formal reform promises but cannot deliver.

Methodology: The study employs process tracing of Kenya's constitutional and electoral record from 1963 to 2026 and comparative

analysis of eight jurisdictions. It examines constitutional texts, Supreme Court judgments, electoral declarations, and recent secondary literature, comparing executive forms, electoral alternation, institutional credibility, and conflict intensity across the selected cases.

Findings: The findings indicate that electoral conflict in Kenya is not primarily determined by executive form. Winner-take-all competition arises from the indivisibility of the presidency, concentration of appointive and distributive power, the absence of a credible position for defeated contenders, and the material stakes of political exclusion. Comparative evidence shows that presidential systems can achieve peaceful alternation when electoral commissions and courts are credible, while parliamentary systems can experience prolonged dominance or severe violence. Kenya's informal elite settlement convention has repeatedly resolved political crises but also reinforced ethnic and regional mobilisation. Devolution appears more consequential than executive redesign because it distributes resources and reduces the stakes of exclusion from national power.

Conclusion: Parliamentary government alone cannot resolve Kenya's electoral conflict. Reform should first strengthen electoral administration, party regulation, opposition representation, police accountability, oversight institutions, and devolution. Executive redesign should be considered only later and should genuinely divide political power rather than merely relabel the presidency.

Keywords: *constitutional design;
presidentialism; parliamentary government;
electoral violence; winner-take-all politics;
political settlements; Kenya; constitutional
conventions*

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1. INTRODUCTION

Few propositions in comparative constitutional politics have proved as durable as the claim that the choice between presidential and parliamentary government carries systematic consequences for democratic stability. Juan Linz's argument that presidentialism introduces rigid, zero-sum incentives inimical to democratic consolidation shaped constitution-making across Latin America, post-communist Europe and Africa for three decades. The debate has not settled: recent comparative scholarship continues to dispute whether the survival advantage long attributed to parliamentary government reflects the form of the executive itself or the conditions under which each form tends to be adopted (Ganghof, 2021).

In Kenya, the question carries a specific historical resonance. The independence constitution negotiated at Lancaster House established a parliamentary system with a Prime Minister and a regional structure of government. Within two years that settlement was dismantled: the premiership was converted into an executive presidency and regional authority hollowed out through successive amendments. Kenya's subsequent trajectory a *de facto* and then *de jure* single-party state, the concentration of appointive and distributive power in the presidency, and ethnicised competition for access to that office cannot be understood apart from this early inversion. The contemporary proposal to revive parliamentary government is therefore not a novel importation but, in an important sense, a proposal to restore an abandoned design.

That proposal acquired renewed salience through the Building Bridges Initiative (BBI), which followed the political accord between President Uhuru Kenyatta and opposition leader Raila Odinga in March 2018. BBI recommended a Prime Minister drawn from the National Assembly alongside a retained, modified presidency. The High Court, Court of Appeal and finally the Supreme Court held the BBI constitutional-amendment bill unlawful: the Supreme Court's 2022 ruling found, among other things, that the President could not initiate constitutional change through the popular-initiative route and that the process had circumvented the participatory requirements of Articles 255–257 (Judiciary of Kenya, 2021; iCONnect, 2022). The underlying argument for executive redesign nonetheless persists, and re-emerged after the lethal 2024–2025 protests against the Finance Bill and its successors, which killed at least sixty people outside any electoral contest (CSIS, 2025; CIVICUS Monitor, 2025).

The stakes of this question extend well beyond a single design choice. Kenya has now spent more than a decade of political energy on two successive attempts at executive redesign the aborted 2005 draft, adopted in radically revised form in 2010, and BBI between 2018 and 2022 while institutions with a more direct bearing on electoral conflict, notably police accountability and party regulation, have received comparatively little sustained legislative attention. If constitutional



redesign is not merely ineffective but actively displaces this harder institutional work, then the opportunity cost of a further redesign debate is not neutral; it is a further decade in which the mechanisms actually driving conflict remain unaddressed. This article asks whether a shift to parliamentary government would, by itself, resolve Kenya's recurrent electoral conflict. It answers no. Winner-take-all competition in Kenya is a compound of four mechanisms the indivisibility of the presidential office, the concentration of appointive and distributive power in it, the absence of a credible position for the defeated, and the material stakes of exclusion of which constitutional design bears directly on only two. A fifth, unwritten feature, an elite settlement convention that prices political standing in bloc delivery, does much of the integrative work that formal redesign promises, and constitutional reform risks displacing rather than complementing it. The argument proceeds through a review of the theoretical debate, an account of Kenya's constitutional evolution, a comparison with eight jurisdictions, and a sequenced reform framework.

2. LITERATURE AND THEORETICAL FRAMEWORK

Presidentialism, parliamentarism and democratic performance

The classical case against presidentialism rests on three claims: that fixed terms and dual democratic legitimacy generate deadlock, that the "winner-take-all" character of a single executive office raises the stakes of losing, and that the resulting rigidity of tenure removes a routine, peaceful mechanism for replacing unpopular leaders. Subsequent empirical work substantially complicated the model. Steffen Ganghof's synthesis of the debate distinguishes the *concentration* of executive power in a single person from the *separation* of executive and legislative origin, arguing that these are analytically separable and that some parliamentary systems concentrate power in a single leader just as thoroughly as presidential ones (Ganghof, 2021). A 2023 review symposium on Ganghof's book, bringing together several of the field's leading scholars, underscores that the presidential-parliamentary dichotomy obscures more than it reveals once coalition dynamics, party-system fragmentation and unilateral decree powers are taken into account (Tsebelis et al., 2023). This distinction matters directly for Kenya: the reform question is not simply "presidential or parliamentary" but whether a given design divides the executive prize, and among how many veto-holders.

Ethnicity, patronage and winner-take-all competition

A separate literature explains why African elections in particular tend toward zero-sum mobilisation. Where the state is the principal channel of economic opportunity and public office the principal route to it, elections become contests for control of a resource that cannot easily be shared, and voters have strong incentives to support co-ethnic or co-regional candidates who can be expected to direct resources toward them (Cambridge University Press, 2022, ch. 6, on winner-take-all politics in Africa). Comparative work using disaggregated electoral-geography data



confirms that regional and ethnic voting blocs in African presidential elections are unusually persistent across cycles, more so than class or urban–rural cleavages (ScienceDirect, 2022). A related literature on electoral violence in Sub-Saharan Africa finds that formal majoritarian rules interact with informal patron–client institutions to convert electoral competition into a contest for the "dominance of the state and its sources of patronage," heightening the stakes of losing well beyond the value of the office itself (Taylor & Francis, 2023, synthesising recent work on incumbency and electoral politics in African democracies). This is the theoretical bridge between constitutional form and conflict: design matters to the extent that it changes the *stakes* and the *credibility of the arbiter*, not merely the title of the executive.

Constitutional design, courts and the limits of text

A further strand concerns the capacity of constitutional text and courts to constrain incumbents once adopted. Kenya's own experience with the "basic structure doctrine" first recognised by the High Court in 2021 and then substantially narrowed by the Supreme Court in 2022, which held the doctrine inapplicable in Kenyan law while still striking down the BBI amendment bill on narrower procedural grounds illustrates both the strength and the limits of judicial constraint. Courts can stop a particular amendment; they cannot, by themselves, alter the underlying incentives that produced the demand for it.

Power-sharing, devolution and the vertical division of power

A parallel design literature asks whether power can be divided *vertically*, between national and sub-national government, rather than only horizontally, between executive and legislature. Devolution is, on this view, a form of constitutional engineering distinct from executive redesign, and one that operates on a different mechanism: rather than dividing the presidential prize itself, it reduces the *stakes* of losing it by relocating a share of resources and decision-making to units that the losing side may still control. Kenya's 47 county governments are the clearest instance of this logic in the 2010 settlement, and the comparative literature on quasi-federal arrangements suggests that their political effect depends heavily on whether the transferred functions come with real fiscal autonomy or merely with administrative responsibility unmatched by revenue (Federal Law Review scholarship on Kenya's cooperative model of devolution, 2024/2025). This distinction a design mechanism that reduces stakes without touching the presidency at all is largely absent from the Kenyan public debate over BBI, which has concentrated almost exclusively on the shape of the national executive.

3. METHODOLOGY

Research Design

The study adopted a qualitative comparative research design based primarily on process tracing and structured cross-case comparison. Process tracing was used to examine Kenya's constitutional



development and electoral experience from independence in 1963 to 2026, with particular attention to the relationship between constitutional arrangements and episodes of electoral and political conflict. The analysis tested two competing explanations. The first proposes that electoral conflict is substantially influenced by the formal powers attached to the presidency and should therefore decline following constitutional constraints on executive power. The second proposes that conflict is more closely associated with the credibility of institutions responsible for certifying and enforcing electoral outcomes.

Comparative Case Selection

The study complemented the Kenyan process tracing with a comparative analysis of eight jurisdictions: The United Kingdom, Germany, South Africa, Ghana, Botswana, India, Ethiopia, and Senegal. Kenya served as the reference case, producing a nine-country comparison. The cases were selected using a diverse-case logic to examine different executive arrangements and political contexts. The sample included parliamentary, presidential, semi-presidential, and parliamentary-federal systems. The comparison enabled the study to examine situations in which executive form and political outcomes diverged, thereby assessing whether parliamentary government is necessary or sufficient for peaceful political alternation.

Data Sources

The study relied on documentary and secondary data. Primary documentary sources included constitutional texts, Supreme Court judgments, and official electoral declarations. Particular attention was given to Kenya's presidential election petitions and decisions concerning the 2013, 2017, and 2022 elections. Secondary sources consisted of recent academic publications, institutional reports, comparative constitutional scholarship, and contemporary analyses of electoral and political developments. The study deliberately prioritised recent literature, particularly for developments concerning Kenya's 2022 election, Senegal's 2024 political transition, and Kenya's 2024–2026 protests.

Data Analysis

Data were analysed through process tracing and structured qualitative comparison. Kenya's electoral cycles were examined sequentially to identify changes in electoral conflict, constitutional arrangements, institutional responses, and acceptance or rejection of electoral outcomes. The analysis focused on four mechanisms: the indivisibility of the executive office, concentration of appointive and distributive power, the absence of a credible position for defeated political actors, and the material stakes associated with exclusion from political power. An informal elite settlement convention was examined separately as a scope condition because it influences how political crises are contained rather than functioning as a fixed constitutional mechanism.

The comparative analysis then examined executive form, frequency of political alternation, conflict intensity, and the credibility of electoral and judicial institutions across the nine cases. Ghana and Kenya received particular analytical attention because both operate presidential systems with significant political stakes but have experienced substantially different patterns of electoral conflict and peaceful alternation. Senegal was also examined because its 2024 experience provided a contemporary test of whether institutional resilience and judicial enforcement can moderate political conflict under a hybrid executive arrangement.

Analytical Framework

The study evaluated whether constitutional executive design is a necessary or sufficient condition for peaceful electoral competition. The central analytical distinction was between the formal structure of government and the institutional credibility required to make that structure effective. The study therefore assessed whether peaceful alternation was more consistently associated with parliamentary government or with credible electoral administration, judicial enforcement, institutional independence, and mechanisms that reduce the material consequences of losing national power.

Structural conditions, institutional form and the production of conflict

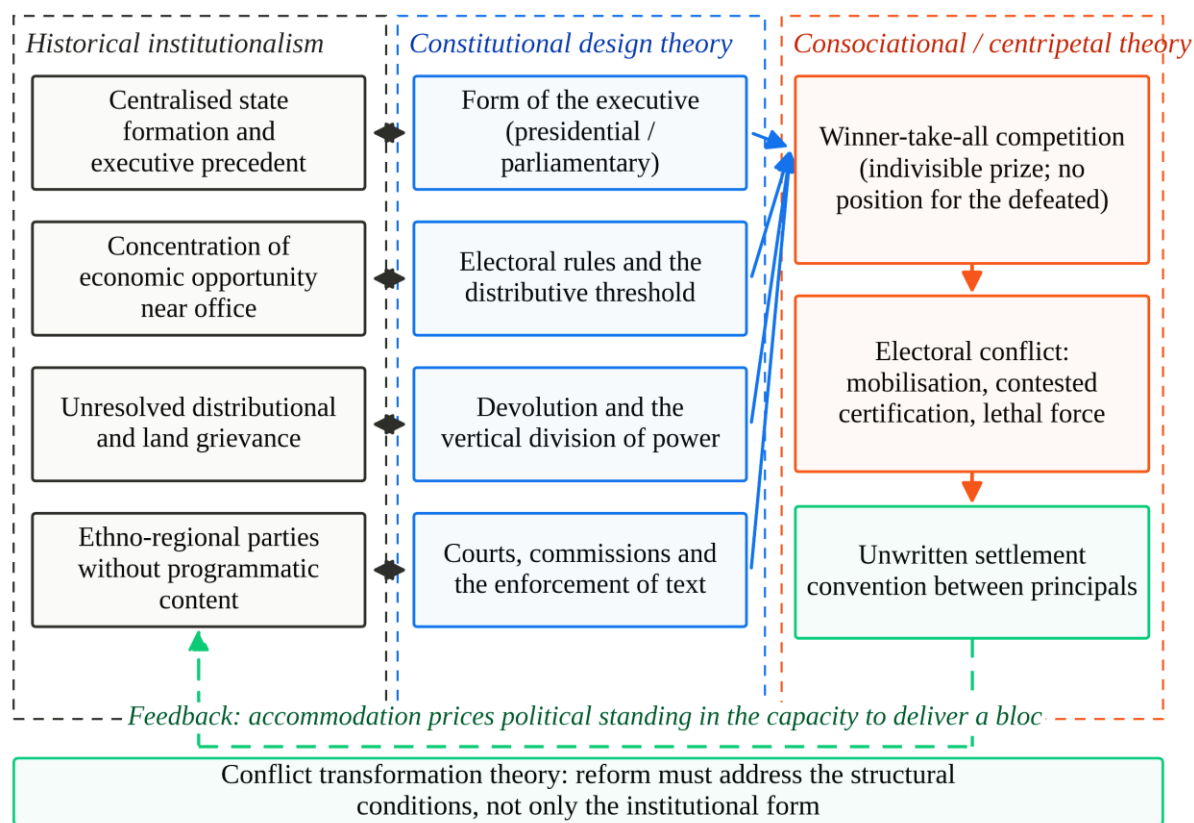




Figure 1. *Structural conditions, institutional form and the production of conflict.* The framework links historical-institutionalist structural conditions to constitutional-design variables and to the winner-take-all mechanisms examined in Sections 3–5, with the unwritten settlement convention operating as a feedback loop rather than a fixed structural feature.

Kenya's Constitutional Evolution and the Record of Electoral Conflict, 1963–2026

From parliamentary settlement to entrenched presidentialism

The 1963 Lancaster House constitution established a parliamentary system with a Senate and regional (*majimbo*) government. Between 1964 and 1969, constitutional amendments converted the premiership into an executive presidency, abolished the Senate and hollowed out regional authority. The single-party state that followed concentrated appointive, budgetary and security power in the presidency to a degree with few parallels among Commonwealth Africa's constitutional monarchies-turned-republics.

The 2010 Constitution: what changed and what did not

The Constitution of Kenya, 2010, followed the 2007–2008 post-election crisis, in which contested tallying produced an unadjudicable result and violence that killed roughly 1,100 people and displaced several hundred thousand. The 2010 text devolved substantial functions and a guaranteed share of national revenue to 47 new county governments, entrenched a justiciable bill of rights, restored a Senate, and required a presidential candidate to secure more than half the vote and at least 25 per cent in a majority of counties (Article 138(4)). Devolution is widely regarded as the 2010 settlement's most consequential structural change, redistributing some resources and political relevance away from the centre, although its record is uneven: counties have consistently missed own-source revenue targets, and national funds routed through legislators have repeatedly been challenged as encroachments on devolved authority (Kenya Institute for Public Policy Research and Analysis, 2023; ConstitutionNet, 2023, on the National Government Constituencies Development Fund ruling). What the 2010 Constitution did not change was the underlying indivisibility of the presidency itself: the office remains a single, winner-take-all prize with extensive appointive power over the civil service, security agencies and, in practice, the allocation of state resources.

The electoral record since 1992

Table 1 summarises presidential contests from the return of multiparty politics in 1992 to the 2024–2026 protest cycle. The pattern does not track the constitutional reduction of presidential power after 2010: the two most severe crises, in 2007 and 2017 (when the Supreme Court annulled Uhuru Kenyatta's declared victory, the first such annulment in Africa), occurred sixteen years apart and under different constitutional regimes, while the two least contentious cycles, 2002 and 2022,



shared not a change in the constitution but the losing side's acceptance of the outcome. In 2022 the Supreme Court unanimously dismissed Raila Odinga's petition against William Ruto's declared victory a margin of roughly 233,000 votes out of more than 14 million cast — despite four of seven electoral commissioners having publicly repudiated the result before the court ruled (Kenya Law, 2022; Cheeseman and Lynch, 2024, *Journal of Eastern African Studies*). Scholars examining that election attribute the comparatively peaceful outcome less to constitutional change than to incremental gains in the perceived independence of the count and to Odinga's calculation that further contestation carried more political risk than acceptance (Long and Kanyinga, 2024, *Journal of Eastern African Studies*, "Has Kenya democratised?").

Table 1. Presidential election outcomes and disposition of disputes, 1992–2026 (condensed)

Cycle	Outcome	Disposition	Reported fatalities
1992	Incumbent returned, divided opposition	No effective adjudication	Several hundred (Rift Valley/Western)
1997	Incumbent returned	Limited pre-election concession (IPPG)	Not systematically compiled
2002	First transfer of power	Accepted	None of comparable scale
2007	Incumbent declared winner amid disputed tallying	Not adjudicable	≈1,100; several hundred thousand displaced
2013	Incumbent coalition above Art. 138(4) threshold	Supreme Court petition dismissed	Not systematically compiled
2017 (Aug.)	Incumbent declared winner	Annulled by Supreme Court, 1 Sept. 2017	Dozens, mainly in policing operations
2017 (Oct.)	Incumbent returned, opposition boycott	Extra-constitutional counter-inauguration	Included in 2017 total
2022	Ruto declared winner, ≈50.5% to 48.9%	Petition dismissed unanimously; result accepted	Not systematically compiled
2024–2026	Finance Bill and successor protests; no electoral contest	No electoral dispute; deaths largely unadjudicated	At least 60



Note. Compiled from IEBC declarations, Supreme Court presidential election petitions (2013, 2017, 2022), and contemporary reporting (CSIS, 2025; CIVICUS Monitor, 2025). Fatality figures are not comparable across episodes owing to differing mandates and definitions.

The 2024–2025 protests as a test of the constitutional hypothesis

The Gen Z-led protests against the 2024 Finance Bill, and the successor mobilisations through 2025–2026 following the death in police custody of blogger Albert Ojwang, occurred entirely outside any electoral cycle, under the fully devolved, rights-entrenched 2010 Constitution, and produced at least sixty fatalities with minimal prosecution of the officers responsible (CSIS, 2025; CIVICUS Monitor, 2025). This episode is analytically important because it isolates lethal, unaccountable use of state force from the presidential-succession dynamics that dominate the 1992–2022 record: the mechanism recurs — public-order violence with negligible accountability — even where the trigger is fiscal policy rather than an election. It suggests the underlying problem is broader than executive form: it is the character of the security sector and the absence of credible institutional channels for contestation between electoral cycles.

The two-thirds gender principle as a test of constitutional command

The 2010 Constitution's requirement, in Article 27(8), that no more than two-thirds of the members of elective public bodies be of the same gender offers a useful, self-contained test of how far constitutional text alone can move political outcomes absent a credible enforcement mechanism. More than a decade after promulgation, and despite a 2012 Supreme Court advisory opinion confirming the provision's binding character, Parliament has repeatedly failed to pass the enabling legislation needed to give it effect, and successive National Assemblies have been seated in violation of the principle without consequence. The episode illustrates a general proposition relevant to the article's central claim: a constitutional command, however clearly worded, does not enforce itself against a legislature with an incentive to ignore it, and the mechanism that would supply enforcement a credible external constraint willing and able to dissolve a non-compliant Parliament has not been activated in over a decade of non-compliance. The same structural weakness, a credible-commitment problem rather than a drafting problem, recurs in the article's account of why BBI-style executive redesign would be unlikely to bind on its own terms.

The 1997, 2013 and 2017 cycles in comparative relief

The intervening cycles sharpen the pattern established by the 2007 and 2022 extremes. In 1997, a limited pre-electoral concession by the ruling party, negotiated through the Inter-Parties Parliamentary Group, secured minor procedural reforms and avoided a repeat of the 1991–1993 violence, but did so without any constitutional change; the concession was itself a small instance of the elite-accommodation convention examined in Section 3.5. In 2013, the first election under the new Constitution, the Supreme Court dismissed a petition against Uhuru Kenyatta's declared



victory, which cleared the Article 138(4) threshold, and the result was accepted without significant violence — an outcome consistent with either explanation, since no contested arbiter decision was required. In 2017, by contrast, the same constitutional framework produced the most severe judicial rupture in Kenya's electoral history when the Supreme Court annulled the presidential result on 1 September 2017, citing irregularities in the transmission of results, only for a boycotted and sharply lower-turnout re-run in October to return the incumbent uncontested in substance; dozens of deaths were recorded in policing operations in opposition-supporting areas around both the original poll and the annulment. That the constitution's most dramatic act of judicial constraint in 2017 was followed by one of its most violent post-election periods is difficult to reconcile with a simple account in which constitutional reform monotonically reduces conflict; it is more consistent with an account in which conflict tracks whether the *losing* side accepts the arbiter's determination, which in 2017 it did not, and in 2022 despite a similarly public split among the electoral commissioners it eventually did.

The unwritten settlement convention

Across the post-1992 cycles, a further, non-constitutional pattern recurs: serious post-election crises have typically been resolved not by courts or by the constitutional text but by direct accommodation between the principal contenders the 2008 National Accord mediated by Kofi Annan, and the 2018 "handshake" between Kenyatta and Odinga that produced BBI itself. This convention functions as an insurance mechanism against the costs of prolonged contestation, but it also has a cost: it prices political standing in a leader's capacity to deliver a bloc of votes, which reinforces rather than dissolves ethno-regional mobilisation, and it operates outside any accountability mechanism, since accommodations are negotiated between elites rather than adjudicated. Where this convention is already available to resolve a contested outcome, it substitutes for, rather than complements, the reform that constitutional redesign proposes to deliver.

4. COMPARATIVE CONSTITUTIONAL ANALYSIS

Table 2 situates Kenya against eight jurisdictions selected on a diverse-case logic: parliamentary systems with strong party institutionalisation (United Kingdom, Germany), a parliamentary system in a deeply divided society (South Africa), a presidential system with repeated peaceful alternation (Ghana), a parliamentary system under prolonged single-party dominance (Botswana), a large parliamentary federation (India), a parliamentary federation that has nonetheless experienced mass civilian violence (Ethiopia), and a semi-presidential system that has both enforced and violated succession norms within a single decade (Senegal).

Table 2. *Comparative outcomes: executive form, alternation and conflict intensity (condensed)*



Case	Executive form	Alternations since 1990	Conflict intensity	Bearing on the design argument
United Kingdom	Parliamentary	Several, routine	Low	Neutral — peace tracks party competition, not form
Germany	Parliamentary, coalition	Several	Low	Neutral — supports design only as a full package
South Africa	Parliamentary	Governing party lost majority, 2024	Low nationally; localised violence	Qualifies — indivisibility fell only after 30 years of dominant-party rule
Ghana	Presidential	Four, incl. sub-1% margin	Low, declining	Undermines — peace achieved without reducing any mechanism
Botswana	Parliamentary	One, in 2024, after 58 years	Very low	Undermines — form coexisted with the region's longest single-party rule
India	Parliamentary federal	Several	Substantial subnational violence	Qualifies — federalism, not executive form, divides the prize
Ethiopia	Parliamentary federal	None by electoral means	Armed conflict, mass casualties since 2020	Undermines decisively
Senegal	Semi-presidential	Three (2000, 2012, 2024)	Protest deaths 2021–2023; 2024 result accepted	Qualifies decisively — the subtype, not the form, is what matters
Kenya (reference)	Presidential	Two (2002, 2022)	Recurrent; ≈1,100 deaths (2007–08) and continuing lethal policing	The case to be explained



Note. Alternation counts transfers of executive power between parties or coalitions since 1990. Conflict intensity is a qualitative characterisation, not a coded fatality count.

Several of these cases repay individual comment before the synthesis. The United Kingdom's parliamentary system fuses executive and legislative authority in a single-member-plurality Parliament, and its peaceful record is best explained not by that fusion as such but by the near-total absence of any contender able to mobilise a bloc large enough to make contesting a national result plausible a condition entirely absent in Kenya. Germany divides authority formally, through a constructive vote of no confidence that prevents a government from being removed without a positive majority for its replacement, and substantively, through coalition government that has been continuous since 1949; both features are design choices distinct from, and additional to, the mere fact of parliamentary selection, and neither has an analogue in the BBI proposals. Ghana is the case that carries the greatest weight against the constitutional-design explanation: a directly elected president with powers comparable to Kenya's, operating in a comparably regionalised party system, has produced four alternations since 2000, including one decided by less than one percentage point, without any reduction in the indivisibility of the office or in the stakes attached to it. What differs is a credible, broadly trusted electoral commission and a judiciary whose rulings on election petitions have been accepted by both major parties. Botswana's fifty-eight years of single-party parliamentary dominance before its first alternation in 2024 shows that parliamentary form is compatible with the near-complete absence of competitive alternation for over half a century; its recent transition, when it came, was attributed by observers to economic discontent and generational change in the ruling party rather than to any constitutional mechanism. India's parliamentary federalism divides the executive prize through genuine federalism rather than through the mode of selecting the prime minister, and has coexisted with substantial subnational and communal violence even as national transfers of power have been accepted. Ethiopia is the comparison's starkest negative case: a parliamentary federal constitution, on paper the most accommodating design in the set, has coexisted with an armed conflict since 2020 that has produced mass civilian casualties, illustrating that no design feature is self-enforcing absent the political conditions for its operation.

The decisive pairing is Ghana and Kenya: two presidential systems, similar in the material stakes attached to office and in the regional organisation of party support, that differ sharply in the credibility of electoral certification and in compliance with judicial rulings and differ correspondingly in outcome. Since executive form, the concentration of power, and the stakes of exclusion are held roughly constant across the pair, the residual explanatory variable is the credibility of the arbiter, not the form of the executive.

Senegal offers the clearest live test of the hybrid model Kenya has twice proposed. President Macky Sall's attempt in February 2024 to postpone the scheduled election precipitated a serious constitutional crisis; the Constitutional Council reasserted the election timetable, opposition leader



Ousmane Sonko and his ally Bassirou Diomaye Faye were released from politically charged detention shortly before the poll, and Faye won a competitive first-round election on 24 March 2024 with international observers assessing it as free and fair (Institute for Democracy and Electoral Assistance, 2024; Carnegie Endowment for International Peace, 2024/2025; Freedom House, 2024). Sall's peaceful concession, and the judiciary's willingness to enforce the electoral calendar against a sitting president, is widely read as a triumph of institutional resilience rather than of the semi-presidential form itself (Journal of Democracy, 2025). The same system had produced years of politically motivated prosecutions of the opposition and periodic lethal protest crackdowns between 2021 and 2023 (Freedom House, 2024). Senegal therefore supports the article's central claim in its strongest form: a hybrid executive divides formal power, but whether that division translates into peaceful contestation depends on the independence of courts, election bodies and the security sector, exactly the variables the Kenyan BBI proposal left largely untouched.

South Africa supplies a further live qualification. Its parliamentary system, in which the President is elected by the National Assembly, produced no alternation in the presidency between 1994 and 2024 despite regular, competitive elections, because a single party retained its parliamentary majority throughout that period; the governing African National Congress's loss of its outright majority in 2024, and the coalition government it formed as a result, is the first instance in which the parliamentary form has visibly constrained the presidency rather than simply channelling one-party dominance. This sequencing three decades in which the constitutional mechanism for constraining an over-mighty executive existed on paper but had no occasion to operate is a caution against reading any single election as proof that a given design works: the relevant test is not whether the constitution permits constraint but whether the party system ever produces the competitive conditions under which that permission becomes consequential.

Read together, the nine cases support a general proposition about scope conditions rather than a simple ranking of executive forms. Parliamentary government reduces electoral conflict reliably only where it is coupled with a competitive, multi-party system and credible external constraint on the executive, whether through coalition bargaining (Germany), federal division of the prize (India), or judicial enforcement of the electoral calendar (Senegal, South Africa). Where those supporting conditions are absent, parliamentary form is compatible with either extended single-party dominance (Botswana) or extreme political violence (Ethiopia). Presidential government, conversely, is compatible with low-conflict alternation where the arbiter institutions are credible (Ghana) and with severe, recurrent conflict where they are not (Kenya). The single variable common to every low-conflict case in the comparison, regardless of executive form, is a credible and broadly accepted institution for certifying the result — precisely the variable Kenya's BBI-era reform debate addressed only glancingly, through peripheral provisions on commission composition, while devoting its principal attention to the shape of the executive itself.



5. DISCUSSION: WHY CONSTITUTIONAL ENGINEERING ALONE FAILS

The parliamentary proposal assessed against the four mechanisms

A shift to a Westminster-style parliamentary system, or to the hybrid BBI model, would address M1 (indivisibility) only partially, by creating a second senior office, and M3 (absence of a credible position for the defeated) only if paired with a statutory leader-of-the-opposition role with real resources and standing, which none of Kenya's parliamentary proposals to date has included in binding form. It would not, by itself, touch M2 (concentration of appointive and distributive power, which is a function of state capacity and patronage practice, not of the title of the chief executive) or M4 (the material stakes of exclusion, which are a function of the political economy of access to office, not of its constitutional form). The comparative record in Section 4 corroborates this: Ghana achieves low-conflict alternation without altering M1–M4 at all, by strengthening the credibility of the arbiter, while Ethiopia retains extreme violence despite a parliamentary federal form that formally addresses M1.

The constitutional displacement thesis

The article's principal theoretical contribution follows from this pattern. Where an informal elite settlement convention already exists as in Kenya since at least 2008 and performs some of the integrative work that constitutional redesign advertises, pursuing that redesign risks two forms of failure simultaneously. First, the reform is unlikely to work as intended, because the mechanisms driving conflict (M2, M4) lie outside its reach. Second, and more consequentially, the political energy, elite bargaining capacity and public attention consumed by a constitutional-amendment process is a substitute for, rather than an addition to, the harder political work of building independent institutions an insulated election commission, a professional and accountable police service, and enforceable party regulation that could address M2 and M4 directly. This is the constitutional displacement thesis, stated as a scope-conditioned and falsifiable proposition: *where a settlement convention already exists and has previously resolved a contested succession, a proposal for executive redesign will tend to divert institutional reform effort rather than complement it, and will be observably associated with the continuation, not the reduction, of non-electoral lethal state violence.* The 2024–2026 protest cycle, occurring after two rounds of BBI-style constitutional debate and producing at least 60 deaths through ordinary policing rather than electoral competition, is consistent with this prediction; it is not, on its own, sufficient to confirm it, and a stronger test would require observing the aftermath of an actual BBI-style enactment, which the courts prevented.

Devolution as the more consequential completed reform

If the constitutional displacement thesis is correct, the 2010 settlement's most valuable structural innovation is not one that current reform debates emphasise. Devolution directly reduces M4, the



material stakes of exclusion from the centre, by relocating a guaranteed share of national revenue and a range of service-delivery functions to 47 elected county governments, several of which have since been controlled by parties or individuals opposed to the sitting president without triggering a constitutional crisis. Its record is genuinely mixed chronic under-collection of own-source revenue, litigation over centrally administered constituency funds that shadow devolved functions, and uneven administrative capacity across counties but these are implementation failures of a design that is structurally sound, rather than evidence that the design itself is misconceived. Completing devolution, by contrast with redesigning the executive, requires no new constitutional bargain, only the political will to resource and defend an arrangement that already exists in the text.

Theoretical implications

The constitutional displacement thesis has an implication for how comparative constitutional design scholarship should treat conflict-affected democracies more generally. The dominant framing in that literature asks which institutional configuration, adopted at a moment of constitutional choice, will best contain future conflict. The Kenyan case suggests a prior question is often more important in practice: what informal mechanism is *already* performing the containment function that redesign proposes to formalise, and what happens to that mechanism, and to the political energy required to build its formal replacement, once a redesign debate begins. Where the informal mechanism is itself a source of the pathology being addressed as Kenya's elite settlement convention arguably is, since it reinforces ethno-regional bloc politics even as it resolves individual crises a redesign debate that does not also dismantle the informal mechanism's incentives is unlikely to succeed even on its own terms, regardless of which formal design is chosen.

Alternative explanations considered

Two rival accounts deserve explicit consideration. The first holds that Kenya's 2022 relative peace itself already demonstrates constitutional maturation, since it occurred entirely under the 2010 text. This is weakened by the fact that 2017, under the same text, produced the more severe crisis of the two, and by the qualitative-case-study evidence that participants attribute the 2022 outcome to specific, non-constitutional factors including incremental gains in perceived tally integrity and the losing candidate's calculation of the costs of further contestation (Long and Kanyinga, 2024). The second holds that devolution, not the presidency, is the operative variable, and that its expansion rather than executive redesign is the more promising reform route; the argument advanced here is broadly consistent with this view and treats devolution as a higher-priority reform than executive redesign, precisely because it is one of the few components of the 2010 settlement that plausibly reduces M4 by distributing resources away from the centre.

6. TOWARD A SEQUENCED REFORM FRAMEWORK

Reform priorities and sequencing

The framework that follows is deliberately conservative in its use of constitutional amendment. Every component placed early in the sequence is achievable through ordinary legislation, executive administrative action, or more rigorous enforcement of provisions already in the 2010 text; only the later components require a further constitutional bargain, and the analysis in Sections 4 and 5 gives reason to attempt that bargain, if at all, only after the earlier components have measurably strengthened the credibility of Kenya's arbiter institutions.

Reform should be sequenced according to which mechanism each component addresses and whether it requires constitutional amendment. Table 3 sets out a nine-component sequence; the first four require no constitutional amendment and should proceed first, since they directly target M2 and M4, the mechanisms constitutional redesign cannot reach on its own.

Table 3. Sequenced reform priorities

Order	Component	Mechanism addressed	Requires amendment?
1	Insulated, professionally staffed electoral administration	M2	No
2	Statutory party regulation and campaign-finance enforcement	M2, M4	No
3	Statutory Leader-of-the-Opposition office with resources and standing	M3	No
4	Conversion of a regime police force into an accountable, democratically governed police service	M2, non-electoral violence	No
5	Full implementation of the county revenue share and own-source revenue capacity	M4	Partial
6	Entrenched independence of oversight institutions (IEBC, Judiciary, IPOA)	M2	Partial
7	Executive redesign, if pursued at all, in a divided (premier-presidential) rather than fused form	M1	Yes
8	Binding public-participation and basic-structure safeguards on any future amendment	M1	Yes



Order	Component	Mechanism addressed	Requires amendment?
9	Constitutional entrenchment of the reformed police oversight architecture	Non-electoral violence	Yes

Why executive redesign belongs last

Placing executive redesign last is not a claim that the presidency is unimportant; it reflects that (a) the mechanisms most directly implicated in Kenya's worst episodes (2007, and the 2024–2026 protests) are M2 and non-electoral state violence, neither of which executive redesign reaches, and (b) any redesign undertaken before the arbiter institutions are independent risks being captured by the same incumbency advantages that have shaped every previous amendment attempt, including BBI. The Kenyan record since 2010 shows courts capable of blocking a captured amendment (the 2022 Supreme Court ruling) but not of supplying the institutional independence that would make redesign safe to attempt.

Implementation instruments

Each of the first four components in Table 3 has a concrete legislative or administrative instrument available without constitutional amendment. Insulated electoral administration can be advanced through amendment of the IEBC Act to depoliticise commissioner appointment, insulate the secretariat's budget from annual Treasury discretion, and require open, auditable transmission of results, building on lessons from the KIEMS-based transmission dispute that reached the Supreme Court in 2022. Party regulation can be strengthened through enforcement of existing Political Parties Act provisions on campaign finance disclosure, which have to date been only weakly applied. A statutory Leader-of-the-Opposition office would require ordinary legislation defining resourcing, protocol standing and a formal consultative role in security and appointments oversight, modelled loosely on Commonwealth practice rather than on any single foreign transplant. Police reform is the most institutionally demanding of the four: it requires both the operationalisation of the Independent Policing Oversight Authority's investigative findings into actual prosecutions, which has been the persistent weak link since IPOA's creation, and a change in the standing orders governing the use of force in public-order policing, an area where the 2024–2026 protest cycle has generated renewed but so far unresolved parliamentary attention.

Building coalitions and anticipating failure modes

Each component in Table 3 requires a distinct coalition: police reform requires security-sector buy-in that has historically been the weakest link in Kenyan reform efforts; devolution's completion requires county governments willing to trade own-source revenue effort for national



transfers; oversight-institution entrenchment requires a parliamentary supermajority that no single administration has yet been willing to concede. The principal failure mode to anticipate, based on the BBI precedent, is elite capture of the amendment process itself the use of a genuine popular grievance (in BBI's case, post-2017 tension; potentially, after 2024–2025, police impunity) to justify a bundled reform package whose executive-redesign component serves incumbent succession interests more than the stated public purpose. Sequencing, and the public-participation safeguards courts have already begun to require, are the principal available defences against this failure mode.

7. CONCLUSION

What the study found

Kenya's recurrent electoral conflict is not primarily a problem of executive form. Across nine cases including Kenya, the variable most consistently associated with peaceful, accepted alternation is the credibility and independence of the institutions that certify and enforce electoral outcomes, not whether the chief executive is elected directly or selected by a legislature. Constitutional design bears on this only partially, through the indivisibility of the office and the presence or absence of a credible position for the defeated; it does not reach the concentration of appointive and distributive power in the presidency or the material stakes of exclusion, both of which are political-economic rather than constitutional in character. Kenya additionally carries an unwritten settlement convention that has repeatedly substituted for institutional reform at moments of crisis, and this convention means that a further round of constitutional redesign risks displacing, rather than producing, the political reform its own logic requires. The 2024–2026 protest cycle, arising entirely outside the electoral calendar and met with lethal, largely unprosecuted policing, is consistent with this diagnosis: the country's central problem is the accountability of state power, not the label attached to its head. A responsible reform agenda should therefore prioritise insulated electoral administration, party regulation, a statutory opposition office and police reform all achievable without constitutional amendment before returning, if at all, to the question of executive redesign, and then only in a form that genuinely divides rather than relabels the presidency. Future research should track the implementation and effects of Kenya's post-2025 police-oversight reforms and Senegal's parliamentary consolidation under PASTEF as the next available tests of the framework proposed here.

Policy implications and a conditional forecast

For policymakers and civil society actors preparing for Kenya's next electoral cycles, the practical implication is a change in priority rather than a rejection of constitutional reform as such. Energy currently directed at drafting a further executive-redesign bill would, on the argument advanced here, be better directed at the IEBC Act amendments, party-finance enforcement and police-



oversight legislation identified in Table 3, each of which is achievable within the current constitutional text and each of which addresses a mechanism M2 or the non-electoral use of lethal force that executive redesign cannot reach. A conditional forecast follows from the analysis: if the 2027 electoral cycle proceeds without a renewed attempt at bundled constitutional amendment, and if even partial progress is made on police accountability and electoral-commission insulation, the framework predicts a further incremental reduction in contested-result violence of the kind observed between 2017 and 2022; if, instead, a new BBI-style redesign process is launched before those institutions are strengthened, the framework predicts that it will consume the same political and civic energy that produced BBI's seven-year, ultimately unsuccessful, passage through the courts, with little corresponding gain in electoral peace. Kenya's next major test of state accountability is, on present evidence, more likely to arise between elections, in the policing of protest, than during a presidential contest itself a possibility the constitutional-design debate has so far been slow to absorb.

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