Journal of Science, Innovation and Creativity
Vol. 5 No. 1 (2026): ISSN (Online): 2958-454X
DOI: https://doi.org/10.58721/x8f5a526
The Consensus Trap: Negotiated Democracy and Social Transformation in Northern Kenya

The Consensus Trap: Negotiated Democracy and Social Transformation in Northern Kenya

Steven Ouma Akoth & Abdiweli Mohamed Hussein
Tangaza University, Kenya

Article History
Received: 2026-03-28
Revised: 2026-07-09
Accepted: 2026-07-10
Published: 2026-07-16

Keywords
Clans consensus
Democracy
Devolution
Governance ethics

How to cite:
Akoth, S. O., & Abdiweli, M. H. (2026). The Consensus Trap: Negotiated Democracy and Social Transformation in Northern Kenya. *Journal Science, Innovation and Creativity*, *5*(1), 242-254.

Abstract
This conceptual, desk-based paper interrogates negotiated democracy in the frontier counties of Garissa, Wajir and Mandera in northern Kenya, a region shaped by clan identity, pastoralist social structures, contested state authority and a protracted security emergency on the Somalia border. Negotiated democracy is defined here as the structured, extra-constitutional mediation of electoral outcomes through clan consensus. It reads audit reports, county fiscal reviews, official statistics and legal instruments as governance footprints of informal clan pacts across the 2013, 2017 and 2022 electoral cycles. Across those cycles the mechanism has hardened in Garissa, grown more transactional in Wajir, and fragmented into violent contestation in Mandera. The paper argues that clan consensus possesses pragmatic and cultural legitimacy rather than blanket normative legitimacy. Its institutionalisation within competitive electoral politics produces a distinctive governance pathology. Candidate selection rewards financial capacity over competence, as county contractors, political entrepreneurs and monetised elders converge into a durable capture coalition. Executive appointments fall to kin loyalty, and public employment displaces development spending. Development follows electoral geography, allied minorities are included tokenistically, and women, youth and minority clans are excluded from accountability relationships. Social transformation, the systemic enhancement of human dignity, justice and community resilience, is thereby undermined, because the elder displaces the citizen as the principal of governance. The paper proposes a hybrid model that anchors clan deliberation in constitutional accountability and specifies safeguards against recapture by clan elites.

Introduction

The three counties of Garissa, Wajir and Mandera, comprising Kenya's North Eastern region and historically the Northern Frontier District, present one of the most compelling governance paradoxes in contemporary African politics. Formal constitutional democracy coexists uneasily with entrenched clan-based mediation systems that predate Kenyan statehood and continue to determine who governs, how, and for whom.

Kenya's 2010 Constitution introduced a devolution architecture premised on citizen sovereignty, participatory governance and equitable service delivery, promising a rupture with the marginalisation and exclusion the north had endured since colonial times (Schlee, 2013; Anderson &

McKnight, 2015). In practice, devolution here has produced a distinctive politics, variously described as consensus democracy or clan democracy, in which electoral competition is resolved not through the ballot box alone but through clan negotiations that precede, accompany, and sometimes override electoral outcomes.

That claim requires qualification. Kenyan politics is everywhere mediated by ethnic coalitions and elite pacts, from regional kingpin bargaining to the elite settlements popularly known as handshakes. The frontier counties are distinctive not because mediation is present where it is absent elsewhere, but because there, mediation is corporately organised and sub-nationally institutionalised. The negotiating unit is the clan and its lineage segments; the brokers occupy recognised customary offices; and the outcome is a binding pre-electoral settlement rather than a shifting coalition of convenience. Three electoral cycles show that these arrangements are neither static nor benign. In 2013, clan settlements were formalised as the mechanism for distributing newly devolved power. By 2017, they had hardened into incumbent-protecting pacts as the fiscal stakes rose. In 2022, their fragility was exposed, as contestation spilt into intra-clan splits, litigation and, in Mandera and its neighbours, episodes of election-related violence (International Crisis Group [ICG], 2015; Abdille, 2023; McCrone, 2023).

This paper names the phenomenon negotiated democracy, capturing both its procedural character, democracy mediated through negotiation, and its normative ambiguity, being neither purely liberal nor simply authoritarian. The central argument is that clan consensus possesses pragmatic and cultural legitimacy rather than blanket normative legitimacy. It is pragmatically legitimate because it draws on communal values and on a historically rational adaptation to state absence. Yet those values are not universally held by the communities that practise them. They are articulated principally by the senior men who convene and conclude the assemblies, and they are not the values of the women, youth and minority clans whom the system excludes. The arrangement is flawed because its interaction with competitive electoral politics generates pathologies that undermine accountability, ethical leadership and transformative service delivery.

The lens is apt because it shifts the evaluative question from the procedural, whether an arrangement is democratic, to the substantive, whether it advances human dignity, distributive justice, citizen agency, ethical leadership and community resilience. The paper moves from a conceptual framework (Section 2) and an evaluative lens (Section 3) to context (Section 4), pathologies (Section 5), conditions for transformative deliberation (Section 6), a hybrid model (Section 7) and a conclusion (Section 8).

Research Questions, Methodology and Scope

The study is guided by four questions: how negotiated democracy operates as clan-mediated electoral practice in the three counties; in what respects it advances or undermines social transformation; under what conditions clan deliberation can contribute to, rather than obstruct, transformative governance; and what arrangements might reconcile the indigenous legitimacy of clan deliberation with constitutional accountability. It is a qualitative, interpretive, desk-based inquiry relying on secondary data, and its contribution is conceptual and analytical.

The interpretive claim requires explanation because much of the evidence is macro-quantitative. Poverty estimates, maternal mortality ratios, wage-bill shares and audit findings are not read here as measures of compliance or performance in their own right. They are read as governance footprints, the material residue left by informal clan pacts on formal institutions. An audit query about irregular procurement, a recurrent-expenditure ratio far above the statutory ceiling, or a ward-level disparity in project siting is treated as the trace of a bargain struck outside the formal system. Interpretation proceeds by asking what structure of informal obligation would make an observed fiscal pattern rational for the actors concerned. The figures supply the pattern; the scholarship on clan politics supplies the meaning.

The evidence base comprises peer-reviewed scholarship on devolution, clan politics and hybrid governance; official statistics, notably poverty estimates (KNBS, 2024) and maternal health data (NCPD, 2020); fiscal and oversight reporting from the Commission on Revenue Allocation (CRA, 2021) and the Office of the Controller of Budget (OCOB, 2025); governance and conflict analysis of the three counties (ICG, 2015; Abdille, 2023); the World Bank's assessment of devolved service delivery (Muwonge et al., 2022); and legal instruments, principally the Constitution of Kenya (2010) and the County Governments Act (2012). The report of the Institute of Certified Public Accountants of Kenya (ICPAK, 2019) is used not as a current statement of county performance but as a baseline marker for the pre-2022 period, against which the later evidence of Muwonge et al. (2022) and OCOB (2025) is read.

Three limitations should be stated. Reliance on secondary data inherits its variable granularity, and several propositions, particularly those on the micro-mechanics of elder endorsement and resource recovery, are advanced as analytically grounded inferences rather than verified observations. The counties, though treated as a comparative set, are not interchangeable. The findings are analytically generalisable rather than statistically representative, and primary, county-disaggregated fieldwork constitutes the natural next stage.

The paper makes three contributions. Scholarship on hybrid governance in the Somali-inhabited Horn has established that negotiated politics is a rational adaptation to weak state authority (Menkhaus, 2006, 2008; Elmi, 2010), while research on ethnicity and devolution in Kenya shows how communal identity structures electoral competition (Lynch, 2011; Cheeseman, 2015). That literature has tended either to describe negotiated democracy or to evaluate it against a liberal-procedural benchmark. This paper instead evaluates it against a substantive, African-grounded standard of social transformation; specifies the conditions under which clan deliberation becomes transformative rather than extractive; and translates the diagnosis into a hybrid model grounded in county-level fiscal and audit evidence.

Negotiated Democracy: Conceptual Framework and Theoretical Location

Defining Negotiated Democracy

Negotiated democracy refers to governance in which the formal mechanisms of liberal democracy are systematically mediated through extra-constitutional consensus-building rooted in communal identity structures, particularly clan and lineage. It is not a deviation from democracy but a hybrid arrangement in which democratic forms are filtered through communal deliberation that determines acceptable candidates and loyalty structures before, during and after electoral competition.

The definition departs from related concepts. Electoral ethnicity (Posner, 2005) describes the tendency to support co-ethnic candidates but misses the structured, pre-electoral negotiation central here. Consociationalism (Lijphart, 1977) describes elite power-sharing but presumes constitutional recognition. Negotiated democracy operates outside constitutional frameworks, driven by cultural authority rather than legal mandate. Its closest analogue is what Helmke and Levitsky (2004) term informal institutions, socially shared rules enforced outside official channels, which here constitute a parallel governance system frequently overriding the formal architecture.

The Mechanics of Clan Consensus in Electoral Politics

Clan elders and lineage heads convene deliberative assemblies, the *shir* among Somali communities, in which candidates are evaluated against clan balance, seniority, turn-taking norms and outstanding grievances, often more determinatively than the ballot. Financial resources play a critical intermediary role, since candidates seeking endorsement must demonstrate financial capacity through funding events, clan-welfare contributions or transfers to elders, a filter that embeds wealth as a prerequisite of legitimacy. The resulting loyalty structure is bifurcated: the leader owes his primary debt not to the voters who cast ballots but to the elders whose consensus secured his candidacy. This split between the constitutional principle and the informal principle is the central structural source of the pathologies analysed in Section 5.

The elder in this account is not the figure of ethnographic memory. Three decades of monetised electoral competition have converted customary authority into a brokerage occupation. Political entrepreneurs finance the assemblies that select them; county contractors underwrite clan welfare funds; and commercial interests based in Nairobi, in the regional trading economy and in the diaspora bankroll preferred candidates through elder intermediaries. What emerges is therefore not a confrontation between traditional elders and modern citizens, but a composite capture coalition in which the elder retains ritual authority while functioning as a remunerated intermediary, and the county elite retains formal office while depending on customary legitimation. County political forums, as Crisis Group observed a decade ago, are increasingly convened around compromised elders while women's and youth networks are sidelined (ICG, 2015).

Theoretical Location: Between Legitimacy and Pathology

Situating negotiated democracy requires navigating two poles, each capturing a partial truth. The communitarian defence holds that clan-based mediation expresses an authentic African political philosophy, the Ubuntu principle of collective decision-making and the Somali *shir* as a consensual institution (Menkhaus, 2006; Lewis, 2008). The liberal critique holds that clan mediation subverts the individual-rights basis of democracy, substituting group identity for individual agency, enabling elite capture and producing accountability gaps that harm service delivery (Cheeseman, 2015; Branch, 2011). The most productive move is to subject negotiated democracy to a social transformation lens, whose criteria acknowledge the pragmatic foundations of clan consensus while exposing its structural failures.

Social Transformation as an Evaluative Lens

Social Transformation Theory

Social transformation refers to systemic, structural changes that enhance human dignity, reduce inequality, advance justice and build community resilience (Peet & Hartwick, 2009; Swilling & Annecke, 2012). It is distinct from liberal modernisation theory, which posits a linear trajectory from tradition to modernity, and from Marxist theory, which posits class conflict as the singular engine of change. Its emphasis falls on locally grounded, participatory and ethically driven processes.

The paper operationalises social transformation through five criteria contextualised for northern Kenya. Structural accountability denotes enforceable accountability between leaders and the governed. Distributive justice denotes the degree to which resources reach the most marginalised. Human agency denotes the meaningful voice of ordinary citizens, including women, youth and minorities. Ethical leadership denotes motivation by the public good rather than private gain. Community resilience denotes the capacity to manage climate, conflict and economic shocks. These are not external impositions but values that community members themselves articulate and have historically been denied.

Social Transformation and the African Context

The theory resonates in Africa because it takes the structural legacies of colonialism, the dynamics of state weakness and elite capture, and the resources of indigenous knowledge and communal organisation seriously. In the African governance literature, it has been linked to developmental states (Mkandawire, 2001), to feminist political economy centring women's agency (Mama, 2011), to Ubuntu-based frameworks of communal solidarity, and to Freirean *conscientisation*. Its application here is apt because the region's challenges, among them extreme poverty, maternal mortality, girls' educational exclusion and inter-clan violence, are precisely the conditions the theory addresses. The scale is stark: in 2022, the poverty rate stood at 72.9 per cent in Mandera, 67.8 per cent in Garissa and 64.7 per cent in Wajir, against a national rate of 39.8 per cent (KNBS, 2024).

Freirean and Ubuntu Dimensions

Freire's *conscientisation*, the process by which oppressed communities develop critical awareness of their condition and a capacity for transformative action, provides a supplementary lens on the exclusion negotiated democracy produces (Freire, 1970). His concept of *assistentialism*, patronage that meets immediate needs while reproducing dependency, applies directly, since pre-election distributions of food, materials and cash reinforce passivity. Transformation therefore requires not merely better services but a democratisation of deliberation itself. The Ubuntu tradition, encapsulated in the aphorism *umuntu ngumuntu ngabantu*, similarly emphasises the moral priority of communal wellbeing over individual interest (Shutte, 2001), and resonates with the *shir*'s emphasis on collective decision-making. The critical insight is that genuine communal solidarity is not clan-partisan solidarity: clan consensus in its current form generates solidarity within the clan at the expense of inter-clan equity, and the tradition must be expanded from clan solidarity to county-wide civic solidarity.

The Historical Foundation of Clan Politics

Understanding negotiated democracy requires engaging the historical conditions that made clan organisation the region's dominant institution. The north's incorporation into colonial Kenya was deeply contested. Its predominantly Somali population was governed under a separate administrative regime, subjected to emergency laws in force until 1991, and excluded from mainstream development for most of the post-independence period (Carrier & Lochery, 2013; Anderson & McKnight, 2015). Amid weak state services, clan structures became the primary mechanism of social organisation, conflict resolution and resource allocation. The *shir* was a functional institution performing governance tasks the state could not or would not perform (Menkhaus, 2006), and clan consensus commands legitimacy because it earned that legitimacy by governing when the state did not. The Shifta War of 1963 to 1967 deepened alienation from the state and reinforced clan identity as the foundational political loyalty.

This alienation is compounded by a contemporary security emergency. The three counties form the frontline of Kenya's confrontation with al-Shabaab, whose cross-border incursions have produced recurrent attacks on security personnel, civil servants, teachers and infrastructure, most devastatingly the 2015 assault on Garissa University College. Because this is a profoundly elder-centred society, the state's security response works through, rather than around, clan authority. Security and peace committees, community policing and early-warning arrangements enlist elders as interlocutors for intelligence, dispute resolution and the brokering of local order. This is the logic of the mediated state (Menkhaus, 2008), in which the formal apparatus governs through customary intermediaries rather than by direct citizen-state accountability. Its effect is to deepen the centrality of the very elders on whom negotiated democracy depends, since the authority that brokers security also brokers votes (ICG, 2015).

Devolution and the Democratisation of Clan Competition

Devolution transformed the political economy of clan competition in ways both enabling and distorting. It was enabling, bringing substantial resources to regions historically starved of investment. It was distorting in that it dramatically raised the stakes. When a governorship controls a multi-billion-shilling budget, the clan that captures it gains patronage of an order of magnitude beyond anything previously available. Negotiated democracy is thereby transformed from a low-stakes mechanism for managing inter-clan relations into a high-stakes contest for fiscal resources, in which the financial dimensions of elder engagement have become more elaborate, more expensive and more corruption-prone (ICG, 2015; Abdille, 2023).

Clan Topology and Comparative Dynamics

Each county has a distinct clan composition, and the common logic of negotiated democracy unfolds differently in each. Garissa, dominated by the Ogaden, tends toward a hegemonic and stable consensus in which competition is displaced inward among sub-clans through rotation and financial negotiation; comparatively orderly, it entrenches the marginalisation of non-Ogaden minorities. Wajir, where the Ajuran, Degodia and Ogaden are roughly in equal proportions, operates through intensive inter-clan bargaining and rotational pacts. Its history includes intense inter-clan violence, notably the Wajir Massacre of 1984, but also the Women's Association for Peace, later the Wajir Peace and Development Committee, from whose experience the mediated-state model was theorised (Menkhaus, 2008). Mandera, bordering Ethiopia and Somalia, has the most fragmented topography, with the Garre, Degodia, and Murulle as major actors, and its border position produces the highest-stakes and, at times, most violent competition (ICG, 2015; McCrone, 2023). Negotiated democracy is thus a family of arrangements, comprising single-dominant hegemony, balanced-competitive bargaining and fragmented-volatile contestation.

Governance Pathologies Of Negotiated Democracy: A Social Transformation Critique

The critique synthesises the documented record rather than original fieldwork. The pathologies are presented as structural tendencies evidenced in that record, not as findings of primary observation.

Sycophantic Leadership: The Elder-Loyalty Trap

The most structurally significant pathology is sycophantic leadership, an orientation in which the elected official's primary objective is to satisfy elder networks and clan brokers rather than to deliver transformative services. This is not a personal moral failure but a structural outcome of the incentive architecture. When a candidate must secure the elders' blessing contingent on financial contributions, patronage promises and commitments to appoint clan members, the governor comes to owe his position to the elders. His decisions on appointments, tenders, infrastructure siting, and public hiring are filtered through elders' satisfaction rather than citizens' needs. This inverts the direction of accountability, and its institutional and spatial expressions in Sections 5.6 and 5.7 follow from the same logic. Citizens outside the governor's coalition face systematic exclusion, and service delivery becomes clan patronage rather than a constitutional right.

Utilitarian Governance and the Marginalisation of Voters

Closely related is utilitarian governance, a mode in which public resources serve the elite's political-survival calculus rather than the mandate of equitable delivery. The antithesis of distributive justice, it is characterised by over-allocation to administrative and personnel costs, which serve clan patronage through employment, and under-allocation to development in health, education, water and pastoralist support (ICPAK, 2019; CRA, 2021). This reflects not incompetence but rational clan utility maximisation, since every county job is a clan resource and every project a source of tender-based rent.

The scale is borne out at the system level. In 2024/25, county governments spent roughly 74 per cent of funds on recurrent items and only about 26 per cent on development, short of the statutory 30 per cent minimum set by the Public Finance Management Act (2012), with the Controller repeatedly flagging unsustainable wage-bill costs (OCOB, 2025). Where public employment is distributed as clan patronage and renewed each cycle, the county functions less as a provider of development services than as an employment bureau for the governing coalition. The first major independent assessment of Kenyan devolution concurs, identifying human resource management and the wage bill as binding constraints on devolved service delivery (Muwonge et al., 2022). Approaching elections, the documented pattern is a surge in visible but shallow public works, the governance equivalent of Freire's *assistentialism*.

The Wealth-Legitimacy Nexus and Elite Capture

The wealth-legitimacy nexus is a condition in which access to capital is a prerequisite of legitimacy. Securing endorsement is reported to involve significant financial obligations, including funding gatherings, contributions to clan welfare and transfers to elders. At its heart lies a corrupted criterion of selection. In principle, endorsement identifies the candidate best able to serve; in practice, the decisive qualification has become the financial muscle to campaign across a county, so that wealth stands in for merit. The corruption is twofold: normative, in that affluence is treated as itself a leadership value; and transactional, in that where endorsement can be purchased, elders have reportedly blessed the heaviest-pocketed contender.

The capture is not anonymous. Its principal drivers are county contractors and procurement suppliers whose businesses depend on the county purse; political entrepreneurs and incumbent officeholders recycling public rents into the next endorsement cycle; commercial interests based in Nairobi, in the regional trading economy and in the diaspora, whose transfers reach candidates through customary intermediaries; and the elders themselves, whose brokerage has become a monetised profession. These actors are partners in a single coalition, which is why measures aimed at any one of them leave the arrangement intact.

The nexus filters out capable but resource-poor candidates, including educated women, reform-oriented youth and community activists. More perniciously, it creates post-election incentives toward resource recovery. Having spent heavily to secure endorsement, the candidate rationally treats the post-election period as a period of recovery, thereby generating incentives for rent extraction and the private appropriation of public resources. Elite capture is the systemic outcome, embedded in the logic of negotiated democracy and therefore resistant to anti-corruption interventions that target symptoms rather than structural causes.

The Exclusion of Women, Youth and Minority Voices

Negotiated democracy systematically excludes categories whose inclusion is essential for transformation. Women are excluded as decision-makers from the typically male-dominated *shir*, and clan consensus rarely produces female gubernatorial or parliamentary candidates. They are confined to the reserved women's representative seat, itself subject to clan mediation. This is a transformation catastrophe, because the region's most urgent challenges, including maternal and infant mortality, female genital mutilation, early marriage and girls' school dropout, require governance informed by women's leadership. Mandera's maternal mortality ratio of 3,795 deaths per 100,000 live births is the highest in Kenya, and Wajir's stands at 1,683 (NCPD, 2020). Youth exclusion is equally damaging, since young people are a demographic majority, but their influence is subordinated to elder authority. Minority communities face under-investment, exclusion from employment and absence of voice.

The Campaign-Governance Cycle: Perpetual Election Mode

A further pathology is the campaign-governance cycle, in which the logic of the next campaign dominates decision-making from early in a term, eliminating the space for long-term investment. Because survival is contingent on continuous elder satisfaction and financial capacity, the sitting governor is never fully in governance mode. Resource accumulation is reported to begin immediately after election, through procurement manipulation and the appointment of revenue-generating officials, in preparation for the next consensus process. The cycle is insidious because it operates through entirely legal means, which is why addressing these pathologies requires structural reform rather than individual accountability.

The Competence Paradox: Elder Control of Executive Appointments

If Section 5.2 traced the aggregate fiscal bias toward employment over development, a more paradoxical pathology operates at the apex of the bureaucracy. The three counties now produce a growing cohort of graduates, professionals and diaspora-educated returnees who, judged on competence, would be natural candidates for senior appointments, yet who are themselves bound by clan consensus. Because the governor owes his mandate to the elders who brokered it, they press him into appointing their kin to executive and chief-officer positions, subordinating the merit and fair-competition principles of Article 232 of the Constitution of Kenya (2010) and the competitive-recruitment provisions of the County Governments Act (2012) to clan loyalty. The executive comes to reflect clan arithmetic rather than technical capacity, eroding competence at the level responsible for health, water and education. Minority clans, lacking elder leverage, are doubly marginalised, and educated reformers are co-opted or shut out.

Spatial Favouritism, Alliance Tokenism and the Fracturing of Cohesion

Closely related is the uneven, clan-inflected geography of development. A governor elected through clan consensus concentrates projects, and public recruitment, in the areas from which he hails or drew his decisive votes, while sub-counties associated with rivals are comparatively starved. Because each administration repeats this for its own base, development becomes a function of electoral geography rather than of need. Visible favouritism corrodes social cohesion, and the resulting grievances harden into open tension around the electoral calendar (McCrone, 2023). A related mechanism is the hollowness of the alliances on which negotiated democracy depends. To assemble a winning majority a dominant clan forges alliances with smaller clans, but once the election is won that inclusion is frequently withdrawn, with allied minorities assigned low-status dockets or finding their budgets slimmed. The appearance of power-sharing masks continued dominant-clan control.

Alternative Explanations: Capacity, Insecurity and the Limits of Rival Accounts

It would be one-sided to attribute these deficits solely to negotiated democracy. Three rival explanations deserve consideration. The first is capacity, since young administrations with thin professional labour markets do not always spend allocated funds effectively (Muwonge et al., 2022). The second is insecurity, since the al-Shabaab frontier and inter-clan conflict raise delivery costs. The third is structural marginalisation, since decades of neglect left a deficit that even competent government would struggle to close quickly. Each is real, yet insufficient alone. The problem is not simply money: these counties receive substantial allocations and, on paper, meet the development threshold, with Wajir's 2024/25 budget allocating some 38.6 per cent to development (Wajir County Government, 2024), yet outcomes remain among Kenya's worst. Nor can capacity and insecurity explain the patterned failures: that benefits cluster in the governor's strongholds, that senior posts go to elder-favoured kin, and that allied minorities are included nominally but starved substantively are facts about clan-political logic. Insecurity is, moreover, partly endogenous (ICG, 2015; McCrone, 2023).

The Legitimate Foundations, and the Limits, of Clan Consensus

Under what conditions does clan consensus represent a legitimate and potentially transformative resource? The question matters analytically and practically, since sustainable reform must engage rather than dismiss indigenous institutions. The *shir* tradition, at its normative core, is a sophisticated model of participatory deliberation rooted in collective responsibility, restorative justice and communal solidarity (Lewis, 2008). Its principles, that affected parties have voice and that consensus is sought over winner-takes-all outcomes, embody genuine deliberative values. The Wajir women's peace initiative of the 1990s demonstrated that *shir* mechanisms can be reconfigured to serve cross-clan peace-building rather than clan-partisan ends (Menkhaus, 2008).

The Wajir precedent must nevertheless be read with care. The peace process of the 1990s was a phenomenal success at conflict mitigation and security stabilisation, and it earned the customary institution a legitimacy that endures. Yet its operational design was suited to the task it performed: convening disputants, restoring relations, brokering restraint and enforcing agreement through social sanction. That design is structurally unequipped for distributive fiscal governance and technical public administration. Settling a pastoralist resource feud requires moral authority, patience and the capacity to bind kin. Managing a multi-billion-shilling county budget requires compliance with procurement law, actuarial forecasting, clinical staffing standards, payroll control, and auditable accounting. The first competence does not transfer to the second, and the legitimacy earned by the former has been used to license participation in the latter. Reformed consensus is a genuine resource for peace and deliberative inclusion, not an alternative public administration.

Conditions for Transformative Clan Deliberation

Four conditions can make clan consensus enable rather than obstruct transformation. The first is inclusive deliberation, meaning the systematic inclusion of women, youth and minority clans; evidence from Wajir and from Somaliland, where reformed *shir* processes have included women, suggests inclusion need not destroy the institution's legitimacy (Ingiriis & Hoehne, 2013). The second is constitutional anchoring, so that a leader produced by consensus remains answerable to citizens through audit, oversight and judicial mechanisms independent of clan loyalty. The third is transparency of resources, meaning public disclosure of the financial flows associated with candidacy and elder engagement. The fourth is outcome accountability, meaning evaluation of governance against social-transformation criteria, publicly reported to both elders and citizens, so that elders bear reputational accountability for those they endorse.

The Conceptual Case for Hybridity

The challenge is not simply implementation failure but institutional alignment: how to build governance that honours the deliberative legitimacy of indigenous institutions while delivering the accountability, distributive justice and citizen agency that transformation demands. The answer lies in a hybrid model that neither transplants liberal forms onto unreceptive terrain nor accepts the pathologies of unreformed negotiated democracy. Hybrid design has precedents. Somaliland's post-civil-war settlement combined an elected parliament with a constitutionalised house of elders, the *Guurti* (Walls, 2009), and Rwanda's *Gacaca* courts hybridised community justice with transitional-justice frameworks. These cases carry a warning as well as a promise, since the *Guurti*'s unelected tenure has itself become a vehicle for entrenchment, which is precisely the risk the design below must anticipate.

Proposed Elements of a Hybrid Democratic Model

The model is a set of reforms, each answering a specific pathology from Section 5 and each anchored in institutions already within Kenya's devolved system. First, the informal authority of elders should be given a formal, inclusive, rule-bound channel through statutory Elder Advisory Councils under the County Governments Act (2012), with defined membership including women and youth, an advisory function distinct from executive decision-making, and any candidate-screening role governed by published rules. Second, County Executive Committee and chief-officer appointments should be lifted out of elder-brokered bargaining onto a competitive, merit-based footing through the County Public Service Board, countering the competence paradox of Section 5.6. Third, public employment as clan patronage must be checked by fiscal discipline, with personnel costs monitored by the Office of the Controller of Budget and expenditure rebalanced toward the thirty per cent development floor of the Public Finance Management Act (2012).

Fourth, development spending should be insulated from clan and electoral geography. Each County Integrated Development Plan would embed a transparent intra-county allocation formula keyed to population, poverty and service-gap indicators, mirroring the marginalisation logic the Commission on Revenue Allocation applies between counties, with ward-disaggregated budgeting so that resources follow need. Fifth, governance should answer to social outcomes, with each plan reporting annually to the county assembly and the Auditor-General against measurable indicators including maternal mortality, girls' school completion, water access and inter-clan violence (KNBS, 2024; NCPD, 2020). Tying a portion of the Equalisation Fund to performance would attach a fiscal cost to capture. Sixth, reform must be carried by those with an interest in it, through women's and youth political-development programmes supported through the Frontier Counties Development Council. Underpinning all of this, county assemblies and public-accounts committees must be strengthened, and the reach of the Auditor-General, the Ethics and Anti-Corruption Commission and Senate oversight extended.

These proposals invite an obvious objection, and the model fails without an answer to it. Formalising elder authority could simply give the capture coalition of Section 5.3 a statutory instrument, converting an informal cartel into a legally protected one. The design must therefore be anti-capture by construction rather than by aspiration. Five safeguards follow. Membership of an Elder Advisory Council must be governed by published eligibility criteria, fixed and non-renewable terms, and reservation of at least one third of seats for women and one third for persons under thirty-five, so that the body cannot be reproduced as a gerontocratic freehold. The councils must be barred by statute from any budgetary, procurement, appointment or contracting role, so that formalisation confers voice without conferring rents. Members must file public declarations of income, assets and business interests, and any person holding a county contract, or whose immediate family holds one, must be disqualified. All transfers to councils or their members must be disclosed in a public register, and undisclosed transfers criminalised as electoral offences. Enforcement must rest with institutions outside the reach of county clan networks, since a rule policed by the captured is no rule at all.

The Political Economy of Reform

A candid account must confront a further objection. The actors best placed to implement these proposals, namely incumbent governors, county elites and the elder networks that sustain them, are the very beneficiaries of the consensus trap. Reform therefore cannot rest on the goodwill of those it would constrain, and its prospects depend on shifting the incentive structure from beyond the captured core. National institutions outside the reach of county clan networks, including the Senate, the Commission on Revenue Allocation, the Auditor-General, the Ethics and Anti-Corruption Commission and the courts, can impose accountability that county actors cannot, and tying fiscal transfers to measurable outcomes would attach a material cost to capture. Equally important are the constituencies with an interest in change: an organised women's and youth movement, an assertive civil society and media, and a politically engaged diaspora. Reform is likelier where framed not as an assault on clan authority but as a defence of its deliberative legitimacy against the corruption that discredits it.

Conclusion

This paper has argued that negotiated democracy, as practised in Garissa, Wajir and Mandera, is a pragmatically legitimate but profoundly flawed alternative to liberal constitutional democracy. Its legitimacy derives from its rootedness in communal values, from its historical rationality as an adaptation to weak state authority, and from its demonstrated capacity, in reformed iterations such as the Wajir peace process, to serve peace and inclusive deliberation. That capacity, however, is specific to the task. Traditional deliberation excels at reconciliation, restraint and peace-building; its operational design is structurally unequipped for distributive fiscal governance and technical public administration, and legitimacy earned in the first domain has been used to license authority in the second.

The flaws are structural rather than incidental. The incentive architecture produces sycophantic leadership; a wealth-driven selection rewarding financial muscle over competence; the capture of executive appointments by kinship loyalty; employment-bureau governance; clan-inflected development; the tokenistic inclusion of allied minorities; voter exclusion; and a perpetual campaign-governance cycle.

By the criteria of Section 3, negotiated democracy in its current form fails these communities. It fails not because it is African, indigenous or communal, but because it prioritises elite interests over community wellbeing and substitutes patronage for transformation. The Freirean critique sharpens the judgement, since the arrangement reduces citizens to passive objects of elite decisions. That judgement survives the rival explanations: capacity constraints, insecurity and historical marginalisation cannot by themselves account for the patterned, clan-inflected character of the failures.

The path forward requires neither the abolition of clan deliberative institutions nor their uncritical acceptance, but a creative institutional synthesis that channels the deliberative wisdom of clan consensus into arrangements that are constitutionally accountable, socially inclusive and transformation-oriented. Such a model will not be granted from above. Those who preside over the consensus trap are its principal beneficiaries, and no appeal to their better judgement will persuade them to dismantle the patronage network that placed them in office. Change, where it comes, will be extracted rather than conceded. It will be forced from below by the organised political agency of women, youth, minority clans and ordinary citizens who bear the highest costs of these pathologies, and constrained from outside by constitutional oversight bodies whose mandates lie beyond the reach of county clan networks, principally the Auditor-General, the Ethics and Anti-Corruption Commission, the Commission on Revenue Allocation, the Senate and the courts.

The deeper contribution is that the test of any democratic arrangement, negotiated or otherwise, must ultimately be whether it serves the social transformation of the communities it governs. Democratic legitimacy, on this view, is not merely procedural but substantive, and it must produce outcomes that advance human dignity, justice and community flourishing. By this test, negotiated democracy in northern Kenya falls short. Yet by the same test, the communities' own deliberative traditions, reformed and constitutionally anchored, contain genuine resources for the governance innovation that transformation demands. The task is to build the bridge between those resources and that demand.

References

Abdille, A. (2023, February 24). Devolution has not delivered for the people of north-eastern Kenya. The Elephant. https://www.theelephant.info/analysis/2023/02/24/devolution-has-not-delivered-for-the-people-of-north-eastern-kenya/

Anderson, D. M., & McKnight, J. (2015). Kenya at war: Al-Shabaab and its enemies in Eastern Africa. African Affairs, 114(454), 1-27. https://doi.org/10.1093/afraf/adu082

Branch, D. (2011). *Kenya: Between hope and despair, 1963-2011*. Yale University Press.

Carrier, N., & Lochery, E. (2013). Missing states? Somali trade networks and the Eastleigh transformation. *Journal of Eastern African Studies, 7*(2), 334-352.

Cheeseman, N. (2015). *Democracy in Africa: Successes, failures, and the struggle for political reform*. Cambridge University Press.

Commission on Revenue Allocation. (2021). *County budget implementation review report: 2019/2020 financial year*. Republic of Kenya.

Constitution of Kenya. (2010). National Council for Law Reporting.

County Governments Act, No. 17 of 2012. (2012). National Council for Law Reporting.

Elmi, A. A. (2010). *Understanding the Somalia conflagration: Identity, political Islam and peacebuilding*. Pluto Press.

Freire, P. (1970). *Pedagogy of the Oppressed*. Continuum.

Helmke, G., & Levitsky, S. (2004). Informal institutions and comparative politics: A research agenda. *Perspectives on Politics, 2*(4), 725-740. https://doi.org/10.1017/S1537592704040472

Ingiriis, M. H., & Hoehne, M. V. (2013). The impact of civil war and state collapse on the roles of Somali women: A blessing in disguise. *Journal of Eastern African Studies, 7*(2), 314-333. https://doi.org/10.1080/17531055.2013.776281

Institute of Certified Public Accountants of Kenya. (2019). *Public finance management status report: Northern Kenya counties*. ICPAK.

International Crisis Group. (2015). *Kenya's Somali north-east: Devolution and security (Africa Briefing No. 114)*. International Crisis Group. https://www.crisisgroup.org/brf/africa/kenya/b114-kenyas-somali-north-east-devolution-and-security

Kenya National Bureau of Statistics. (2024). *The Kenya Poverty Report 2022*. Republic of Kenya.

Lewis, I. M. (2008). *Understanding Somalia and Somaliland: Culture, history, society*. Hurst.

Lijphart, A. (1977). *Democracy in plural societies: A comparative exploration*. Yale University Press.

Lynch, G. (2011). *I say to you: Ethnic politics and the Kalenjin in Kenya*. University of Chicago Press.

Mama, A. (2011). What does it mean to do feminist research in African contexts? *Feminist Review, 98*(Suppl. 1), e4-e20. https://doi.org/10.1057/fr.2011.22

McCrone, F. (2023). 'I have opened the land for you': Pastoralist politics and election-related violence in Kenya's arid north. *Journal of Eastern African Studies, 17*(1-2), 121-140. https://doi.org/10.1080/17531055.2023.2245596

Menkhaus, K. (2006). Governance without government in Somalia: Spoilers, state building, and the politics of coping. *International Security, 31*(3), 74-106. https://doi.org/10.1162/isec.2007.31.3.74

Menkhaus, K. (2008). The rise of a mediated state in northern Kenya: The Wajir story and its implications for state-building. *Afrika Focus, 21*(2), 23-38. https://doi.org/10.1163/2031356X-02102004

Mkandawire, T. (2001). Thinking about developmental states in Africa. *Cambridge Journal of Economics, 25*(3), 289-314. https://doi.org/10.1093/cje/25.3.289

Muwonge, A., Williamson, T. S., Owuor, C., & Kinuthia, M. (2022). *Making devolution work for service delivery in Kenya*. World Bank. https://doi.org/10.1596/978-1-4648-1726-7

National Council for Population and Development. (2020). *Maternal deaths in Kenya [Policy brief]*. Republic of Kenya.

Office of the Controller of Budget. (2025). *County governments' budget implementation review report, FY 2024/25*. Republic of Kenya.

Peet, R., & Hartwick, E. (2009). *Theories of development: Contentions, arguments, alternatives (2nd ed.).* Guilford Press.

Posner, D. N. (2005). *Institutions and ethnic politics in Africa*. Cambridge University Press.

Public Finance Management Act, No. 18 of 2012. (2012). National Council for Law Reporting.

Schlee, G. (2013). Customary law and the joys of statelessness: Idealised traditions versus Somali realities. *Journal of Eastern African Studies, 7*(2), 258-271.

Shutte, A. (2001). *Ubuntu: An ethic for a new South Africa*. Cluster Publications.

Swilling, M., & Annecke, E. (2012). *Just transitions: Explorations of sustainability in an unfair world*. UCT Press.

Wajir County Government. (2024). *Programme-based budget estimates, FY 2024/25*. Wajir County Government.

Walls, M. (2009). The emergence of a Somali state: Building peace from civil war in Somaliland. *African Affairs, 108*(432), 371-389. https://doi.org/10.1093/afraf/adp019