

“Kenya has successfully run the gauntlet of political transition. But the road ahead is daunting and hazardous. . . . Yet Kenya has major assets—a vital civil society that may be the key to a successful constitutional reform process over the next few months, . . . and a population that is optimistic about the future.”

Kenya’s Postelection Euphoria— and Reality

FRANK HOLMQUIST

It felt like a burden was lifted,” said one young man. Other Kenyans voiced nearly identical remarks about the results of Kenya’s December 27, 2002 presidential election. Mwai Kibaki, 73 years old, a former vice president who had also held a variety of ministerial portfolios in years past, took 63 percent of the vote to defeat Uhuru Kenyatta, the ruling party candidate and son of Kenya’s first president, Jomo Kenyatta. Kibaki’s election ended not only a quarter century of rule by Daniel arap Moi but also the Kenya African National Union’s dominance since independence in 1963. The opposition coalition, the National Alliance Rainbow Coalition (NARC), won a majority in parliament, taking 125 of 224 seats; the Kenya African National Union (KANU) retained only 64 seats. With additional appointed members included, NARC has 132 seats, compared to 90 seats for all opposition parties combined (that opposition includes Simeon Nyachae of Forum for the Restoration of Democracy for the People [FORD-P], who won 6 percent of the vote for president and 14 seats in parliament). An unprecedented 17 elected and appointed women are in parliament and 3 are cabinet ministers.

The sense of a “burden” being lifted was widely shared. People suddenly felt they were free to think bigger and better about their future. The election revived a long-dormant notion of a collective interest—indeed of a Kenyan national purpose. The prior regime was inept, parts of the bureaucracy were all but paralyzed, many bureaucratic offices were effectively “privatized,” corruption was routine, impunity was all but certain, poverty and crime were spreading, basic social services were

eroding, the economy was barely growing (a 0.7 percent growth rate in 2002), and ethnic tensions and extreme class inequities fragmented society. These conditions made it foolish to bet on the regime to seriously and effectively pursue even the most basic collective interests. Except for isolated persons and offices, there was simply no political will to reform.

The election changed all this. It also unleashed a powerful optimism, even euphoria, among Kenyans, including many supporters of the Moi regime. Overnight the global image of Kenya was transformed from rogue to righteous. But while the electorate had high expectations for the Kibaki government, divisions have crept into the ruling coalition and threaten to dim the bright prospects.

The actual handover of power was precarious, largely unplanned, and indicative of barely contained powerful emotions and forces. Kenya had no precedent for the transition because Jomo Kenyatta had died in office and the vice president, Daniel arap Moi, had succeeded him. The Moi regime appointed a committee to oversee the transition, but the committee apparently never met.

The handover took place in Nairobi’s Uhuru Park, which was packed with thousands of people. The event itself was poorly organized, with lack of attention to mundane details such as seating charts resulting in a scene that saw ambassadors searching for chairs on the dais. Observer accounts were dramatic. While Moi spoke, clumps of soil were thrown at him, and when the president of Uganda, Yoweri Museveni, tried to calm the crowd, he was shouted down. Meanwhile there was an undertow of chants—“*mwizi, mwizi*,” or “thief, thief”—during Moi’s speech. Raila Odinga, perhaps the second most powerful member of the NARC coalition after Presi-

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dent Kibaki, had earlier threatened to lead a march and storm State House if massive election rigging or a hitch in the handover occurred. The mood of the crowd left little doubt that he would have found ready followers.

TOWARD THE ELECTION

Six months earlier the actual results of this election could not have been imagined. But then Kenya's political earth began to move. A potent combination of politician realignment from above and popular pressure from below demanding opposition unity redrew the political map of Kenya. In June 2002 little enthusiasm was generated by the opposition or by Kibaki himself. Instead, KANU was riding a wave of excitement stemming from its March 18 formal alliance with Odinga's National Development Party (NDP), which was rooted in the populous Luo areas of Nyanza province. A large rally in Nairobi in June brought out thousands; many observers were surprised by the energy of the occasion, orchestrated by the politically savvy Odinga, KANU's new secretary general. The reconstituted KANU was the clear frontrunner.

Moi kept his choice of preferred successor a secret. He did talk about turning power over to younger leaders, namely a rather dubious group of KANU upstarts drawn into Moi's inner circle, and he spoke well of the 42-year-old Kenyatta. Not until early July did it suddenly become clear that Kenyatta was indeed the chosen one. This sparked anger among ambitious KANU leaders, who had dutifully cooled their heels waiting their turn to "move up," only to see the opportunity disappear. Also Kenyatta, a Kikuyu, clearly was not well received in all Kikuyu areas—Mwai Kibaki is also Kikuyu—let alone in other parts of the country. Kenyatta was seen as dependent on Moi; he was also viewed as the designated protector of top Kalenjin politicians (the Kalenjin are Moi's ethnic group) who may have wished to hide prior misdeeds. In addition, Kenyatta was considered a perfunctory campaigner who lacked the requisite competitive drive and who had never won an election. Indeed, he lost badly when he ran for parliament on a KANU ticket in 1997. The prospects of personal marginalization and KANU party loss soon pushed several top KANU politicians out of the party and into the ad hoc Rainbow Coalition, which was loosely formed by Raila Odinga, and later into the newly created Liberal Democratic Party (LDP) led by Odinga.

The other major opposition bloc was the National Alliance of Kenya (NAK), a coalition of leaders and

parties, the most notable of which were Kibaki from the Democratic Party (DP), Kijana Wamalwa of Forum for the Restoration of Democracy—Kenya (FORD-Kenya), and Charity Ngilu of the National Party of Kenya. NAK joined with the LDP to form NARC, with Kibaki as the presidential candidate. Kibaki proved to be the man of the hour—a credible reformer, experienced, not an ethnic chauvinist, and a self-declared one-term president. He was also a good coalition leader who did not try to overwhelm other coalition figures.

The early test for NARC was whether it could pass through the process of nominating parliamentary candidates intact. Choosing coalition standard-bearers in each constituency automatically produces disappointed aspirants who might split off and abandon the alliance. The coalition, however, survived the process in good shape. Some disputes may have been avoided when more than 20 "insiders" were granted—or they granted themselves—automatic nominations, thereby avoiding divisive, if more democratic, contests. NARC was a coalition of coalitions that proved adept in the electoral arena but it was constructed in the heat of the campaign battle with untested internal rules and procedures that would inevitably lead to contest and division after the election victory.

As the campaign proceeded, chants of "unite, unite" came with increasing frequency from the crowds. The failure of the opposition to beat Moi and KANU in the multiparty elections of 1992 and 1997 was primarily due to disunity. Moi received, respectively, only 36 percent and 40 percent of the vote in these elections; the 1997 balloting also saw KANU win only a four-seat majority in parliament. Opposition unity would be forged in this election year at last.

The constitution forbade Moi from running for another term, but many believed he would work to ensure NARC did not achieve victory. Despite considerable, if sporadic, election-related violence over the course of the year, there was no repeat of the state-sanctioned ethnic cleansings that occurred prior to the 1992 and 1997 elections. The 2003 election was probably the freest and fairest in Kenya's history. In the end, Moi's finest hour may have been his departure.

NO "PLAN B"

Even though no viable "plan B" emerged, attempts may have been made to create one, including a rigged election. Government-controlled radio and television stations were, as usual, biased toward

KANU. But they no longer had a monopoly because licenses for private operators were granted over the course of the 1990s. There was also some regime maneuvering that looked like an effort to raise quick money through privatizations of state-owned enterprises and sudden payment of bills to contractors. Both attempts were stymied. KANU probably spent much less than it had in the prior two elections, with the Kenyatta family expected to fund a great deal of that amount. Conversely, NARC may not have had much money but it received gifts in kind from young professionals who offered their goods and services. Businesspeople, primarily Kikuyu, who formerly gave to Kibaki's Democratic Party, were thought to be major funders, and the Kenyan diaspora contributed substantial amounts as well.

A second plan B may have been military intervention to preclude a handover of power to Kibaki. Newspaper accounts suggest that Moi made at least one visit to senior military officials asking whether they would intervene should the election results go "wrong." Apparently the military top brass said no. Although the military was re-created by Moi after a 1982 coup attempt, and Kalenjins dominate the top of the hierarchy, the military is thought to be quite professional. Military leaders have also acquired a comfortable middle- to upper-class lifestyle that would have been disrupted by any military intervention. In addition, the lower tiers of the military may have preferred Kibaki. They had grievances about salaries and working conditions, as well as the special perquisites enjoyed by senior officers. As a result, they may not have gone along with a military intervention. There are also suggestions that Kibaki or his people had talks with high-level military officials before the election. Moi—a lame-duck president—possibly even lost control of some of the security apparatus toward the end of his days in office.

An attempt to create violence and uncertainty that might then rationalize postponing the election or suspending the results was also an option. The proscribed Mungiki, the large militia-cum-Kikuyu cultural revival organization, was brought into the KANU fold as the campaign proceeded. In October, as the police looked on, its members—some with machetes—marched through downtown Nairobi in support of Uhuru Kenyatta and KANU. The subsequent outcry from the press and civil society leadership forced Kenyatta to distance himself from the group. The option of mayhem and disorder disappeared in its wake.

United States diplomacy may have helped reinforce processes already in play. In early December the red carpet was rolled out for a visit by Moi to the White House and discussions with President George W. Bush. Moi's stepping down from power in a constitutional manner was celebrated by elevating him to the status of statesman. Promises were also made to help sustain a foundation in his name.

Moi returned to Kenya. He issued some strong campaign language on arrival at the airport, but the fire then went out of him. Soon after, in a major speech on a national holiday, he asked the public for forgiveness if he had done anything wrong during his time in office. There are suggestions that Moi's intelligence chief had come to him early in the election campaign with a report detailing the poor progress of the Kenyatta candidacy, only to be temporarily suspended from his duties. Apparently Moi did not want to hear bad news at the time, but the reality must have eventually sunk in and he made peace with it.

GRADUALLY CLAIMING THE STATE

When Kibaki came to office, he did not immediately replace the top echelon of the intelligence apparatus, the military, or the police. The head of the Civil Service, Sally Kosgei, also stayed in her position. The administration explained the gradual transition by the need for continuity and smooth handovers. But the slow pace of the changeover bred anxiety among some top officials. Their fear was that holdover security personnel had networks of informers still in place and, should members of the previous regime wish to return to power or protect themselves, they might undermine the credibility of the new government by creating uncertainty and chaos, which would keep donors and investors at bay and the economy weak.

Everyday insecurity would also produce alienation and anxiety among a populace that expected enhanced security from the new regime. The urban poor in particular had seen police protection give way to police predation, while many people were simultaneously protected and terrorized by youth gangs. Rumors were also heard that some people were destroying documents to protect themselves while saving other documents to blame others. Some speculated that the brief Mungiki killing rampage resulting in 23 deaths that occurred soon after the election was part of a coordinated political effort. Gradually, however, new heads of the police, intelligence, and the civil service were appointed; some military figures were shifted, although General

Joseph Kibwana remains as chief of general staff; and many top provincial administration personnel were rotated. As a result, anxieties about a “dual power” in control were assuaged.

Kibaki formed his cabinet by paying attention to region and merit. It met with general approval from the press and most observers, although several politicians in the LDP claimed they did not obtain the equal representation that a preelection memorandum of understanding had led them to expect.

Kibaki's inaugural speech contained the pledge not to make policy “by the roadside”—that is, the often-criticized ad hoc policymaking characteristic of Moi's rule. But several ministers, buoyed by popular acclaim and high expectations, did exactly that. This created the impression of a certain policy confusion and lack of coordination at the top. The regime commitment to free primary education, however, was not a roadside enthusiasm, but rather a policy that emerged with popular approval on the campaign trail and rather late in the game. On Kibaki's coming to office there was no clear idea exactly what aspects of education would be free, and little planning for the extraordinary influx of children when schools opened. Schools and school administrators were completely overwhelmed when 1.5 million children previously out of school arrived for classes.

Policy uncertainty was exacerbated by the poor health of President Kibaki, the result of an automobile accident during the campaign in early December. He was hospitalized then, and again in January after taking office. Vice President Kijana Wamalwa was also weakened by long-term kidney illness. As a result the new administration started out fitfully, with the first cabinet meeting coming in late January.

Kibaki's “hands off” style of governing—which has been criticized—is very different from Moi's, who centralized policymaking and administration in his person and in the office of the president. Kibaki has peeled government functions away from his office and given great latitude to his ministers to make policy. The story is told that soon after their appointment to the cabinet, some ministers came to Kibaki asking what they were supposed to do. The president responded that they were chosen because they were qualified and clever and they were expected to devise their own agendas. The comparative independence

of ministers implies a decline in the president's use of state resources for patronage purposes. It remains to be seen, however, whether his autonomous ministers will follow suit.

By the end of January it was understood that each ministry should have devised its own plan of action, shared it with the cabinet, and, where necessary, coordinated with overlapping ministries. But by March the limited coordination of the autonomous ministries clearly was a problem, and occasional policy dissonance was exacerbated by divisions within NARC. The tensions grew to the point that NARC backbenchers and KANU passed a bill that was opposed by the government: they then forced the administration to withdraw a bill from parliament that was to set up an anticorruption commission and is a prerequisite for a return of donor aid. The backbencher, largely LDP, and the KANU alliance may threaten Kibaki's legislative initiatives.

There is no question about the political will of the Kibaki government to fight corruption, although the regime includes not-so-reformist elements who

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may be tempted by those with ill-gotten gains trying to “purchase” protection from top officials. The balance of power between them will be a key determinant of the success of the reform agenda. The early days of the administration saw strong anticorruption initiatives and broad discussion of past human rights abuses. Efforts came from both civil society organizations and the regime, and the synergy was energizing. When the new ministers and top officials assumed their posts, some were surprised by the enormity of the “rot” in government—the pervasive corruption and mismanagement at all levels of the bureaucracy.

The anticorruption campaign was advanced by the appointment in January of the respected former journalist and head of Transparency International in Kenya, John Githongo, as permanent secretary for governance and ethics; Githongo reports directly to the president. The court system, by all accounts highly compromised under Moi and allegedly riddled with corruption, has been targeted for reform, and a special commission has been formed to look into judicial misconduct. The regime is also likely to offer legislation banning civil servants from owning businesses, thus removing them from many conflict-of-interest situations. Other commissions will be

appointed to probe corruption in several of the major state-owned enterprises. A committee was also created to investigate the infamous Goldenberg affair, a case of breath-taking corruption in the early 1990s in which the government paid export compensation money for nonexistent exports to a company called Goldenberg. Githongo estimates the total amount involved at about a half billion dollars. The scam allegedly involved top Moi officials, possibly including Moi's former vice president, and the current minister of education in the NARC government, George Saitoti. Despite difficult legal issues, recalls have been announced of some illegally allocated public land, most of it acquired in the 1990s when the appropriation of public land by politically connected individuals became the new frontier of corruption at all levels of the political system.

In February there were well-publicized visits of torture victims to the sites of their brutalization in the 1980s. Public discussion of torture is a new experience for Kenyans, although during the Moi era it was fairly well known that torture of political prisoners occurred routinely in the basement and on the twenty-fourth floor of Nyayo House, a major government building in downtown Nairobi. After considerable informal discussion, the minister for justice and constitutional affairs, Kiraitu Murungi, called for the establishment of a truth and reconciliation commission to deal with human rights violations. The commission's mandate remains unclear. One question with important political and ethnic implications is the time period to be examined and whether the years of the Kenyatta presidency will be included. The regime has also pledged to investigate the murder of cabinet member Robert Ouko in 1989.

CONSTITUTIONAL REFORM: LONG DISCUSSED, SLOW TO ARRIVE

Beginning in the 1990s and until the end of his presidency, Daniel arap Moi alternately allowed a formal constitutional reform process, obstructed it, personally engaged with it, and all the while tried to control it. In the run-up to the 1997 election, civil society organizations led politicians in a demand for constitutional reform. Kenyans were mobilized and, according to some observers, the country was close to a political meltdown. At that point Moi sued for peace, gathered support among many parliamentarians for some reforms, and took constitutional reform deliberations out of civil society and into parliament, which he could better manage. A painfully long process led to the establishment of an independent Constitution of Kenya Review Commission that

would report to parliament. Professor Yash Ghai, a Kenyan citizen who lived outside the country and an internationally respected constitutional scholar, was appointed to chair the commission. After extensive deliberations, citizen input, and accusations that several members were taking their cues from State House, the commission produced a draft constitution in late September 2002.

During the election campaign NARC pledged to produce a new constitution based on the draft constitution within 100 days. But a new constitution did not emerge within that time frame, and anxieties have grown that Kibaki's commitment to the process may have weakened, although it will surely go forward. The draft constitution created many new political positions, including the powerful role of executive prime minister, a post that Raila Odinga reportedly would like to occupy, despite his denials. Although any new constitution will be phased in, or may await the 2007 election, the prospect of a new government position rivaling the power of the president may not appeal to Kibaki and those close to him. Several other provisions in the draft are also controversial, including proportional representation, a second legislative chamber, a process to impeach judges, and the elevation of local government authorities in the name of decentralization. The draft also contains several provisions long advocated by women's groups, including protection against discrimination and preservation of matrimonial rights on divorce.

ETHNICITY RESURGENT

The immediate aftermath of the election saw considerable ethnic goodwill as common interests came forward. Ethnic leaders still indicated how voters should cast their votes, and many people probably followed the advice. But many citizens also crossed new ethnic borders with their vote, while others, completely dissatisfied with the old regime, voted for reform above all other considerations. Despite this moment of ethnic comity, ethnic anxieties soon resurfaced. It was evident from the early weeks of the regime that all the prominent people in State House, as well as a half dozen or so informal advisers to the president, were from the Kikuyu and related ethnicities. The overwhelming prominence of one community at the pinnacle of power could not go unnoticed. The lack of appointees from other communities was perhaps especially surprising and disappointing after the popular euphoria of voting for an explicitly reform government, and with it the revival of national purpose.

A leading civil society figure once commented that in Kenya “everyone reads the letterhead.” He meant that in assessing an NGO, everyone reads the names on the organization’s letterhead to determine the ethnic makeup, and hence the likely political tendencies, of the organization. Similarly, but even more so, those in State House are “read” for their ethnic identity; twentieth-century Kenyan experience suggests that an ethnic group’s prominence in State House triggers biased flows of resources and policy benefits in its direction—white settlers during colonial rule, the Kikuyu under Jomo Kenyatta, Kalenjins in the Moi period, or, some now fear, the Kikuyu under the Kibaki administration. This perception suggests that the presidency, and not just the cabinet and high-level civil servants, must be seen as multiethnic if it is to gain and retain broad legitimacy.

“Tribalism” is ritually condemned but routinely practiced. Ethnicity in Kenya’s politics clearly will not go away; it will only come and go. The political imperative is to somehow devise informal rules of ethnic containment.

“VERY OPTIMISTIC”

Kenya has successfully run the gauntlet of political transition. But the road ahead is daunting and hazardous. The country is not completely unlike a society emerging from a severe conflict, suffering from rampant corruption, institutional and infrastructural decay, a virtually stagnant economy, little recent investment, growing poverty, and deep social divisions. Yet Kenya has major assets—a vital civil society that may be the key to a successful constitutional reform process over the next few months, sluggish but viable government institutions, a donor community that is eager to provide assistance, and a population that is optimistic about the future. In late February a public opinion poll found 77 percent of the population was “very optimistic” about the direction in which the country was going. The large margins of Kibaki’s and NARC’s victories afford unusual popular support for real reform and the chance for the government to conduct the people’s business after decades of bowing to the private agendas of politicians and government officials. But at the same time parliamentarians have not appeared as models of austerity by voting themselves a base salary of about \$6,000 per month plus all allowances (including \$43,000 toward purchases of duty-free personal vehicles).

The reform agenda is threatened by contention within the political class, and within NARC itself. The division is driven by the perfectly normal array of personal ambition and factional maneuvering, but it is also draped in ethnic identity. Top regime officials are insensitive to the powerful symbolism at the juncture of ethnicity and power. As a result, they are accused of creating an ethnic redoubt in State House. That perception, which revives anxieties about alleged Kikuyu dominance of the Kenyatta presidency, surfaced as early as January and gave rise to talk that the Kikuyu “have captured State House and will never let go.” In this view, the 2007 succession struggle is ethnic and it is already under way.

Ethnic claims are also made opportunistically by frustrated politicians, who argue that they have not been rewarded with proper appointments in the new government. And ethnicity has been embraced by those who seek popular support as protection from the law.

Ethnicity is a marvelously nuanced and flexible tool for politicians to gain support without the need to point to the real interests at stake—which would compromise that support and undermine the entire effort. The new reform regime should take care not to “provide” more ethnic cards—beyond what Kenyan history so generously supplies—to frustrated politicians and lawbreakers.

The Kikuyu middle and upper classes, and indeed some of the reformers themselves, occasionally allow the ideology of merit to justify de facto Kikuyu dominance of top positions. They tend to imply that they exclusively possess the skills and understanding of good governance, or they devalue the critique of others who understand the need to recognize merit but who also expect an appreciation of anxieties built on the solid bedrock of Kenya’s twentieth-century history.

How to acknowledge and contain ethnic anxieties is far from clear, but it likely requires a State House—not just a cabinet—broadly reflective of Kenya’s ethnicities. A long-term discussion and debate over the role of ethnicity in politics may also be necessary to stake out the range of legitimate behavior. The ultimate success of the reform process may depend on such an effort. Kenya is fortunate that this regime has the resolve and political will to reform, and one cannot help but be optimistic—like Kenya’s population—about reform prospects. But because of the historical baggage of ethnic division, it may lack the cohesion to bring it about. ■