

BTI 2012 | Kenya Country Report

Status Index	1-10	5.57	# 67 of 128	
Political Transformation	1-10	6.35	# 52 of 128	↗
Economic Transformation	1-10	4.79	# 87 of 128	↗
Management Index	1-10	4.51	# 80 of 128	

scale: 1 (lowest) to 10 (highest) score rank trend

This report is part of the Bertelsmann Stiftung’s Transformation Index (BTI) 2012. The BTI is a global assessment of transition processes in which the state of democracy and market economy as well as the quality of political management in 128 transformation and developing countries are evaluated.

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Key Indicators

Population	mn.	40.5	HDI	0.509	GDP p.c.	\$	1689
Pop. growth ¹	% p.a.	2.6	HDI rank of 187	143	Gini Index		47.7
Life expectancy	years	56	UN Education Index	0.582	Poverty ³	%	39.9
Urban population	%	22.2	Gender inequality ²	0.627	Aid per capita	\$	44.7

Sources: The World Bank, World Development Indicators 2011 | UNDP, Human Development Report 2011. Footnotes: (1) Average annual growth rate. (2) Gender Inequality Index (GII). (3) Percentage of population living on less than \$2 a day.

Executive Summary

Kenya is experiencing significant changes in its institutional and political configuration. After 20 years of political bargaining, the government agreed on a new constitution, which was adopted by the electorate in a free and fair referendum in August 2010. The new constitution encompasses issues such as greater independence for the judiciary, political decentralization, a new land law and greater legislative control over the executive, and provides for the creation of a Supreme Court within a year after the constitution's promulgation (i.e., August 2011). While these reforms constitute significant progress, major questions remain as to how they will be implemented in fact. The fragile power sharing arrangement between President Mwai Kibaki and Prime Minister Raila Odinga, formed in the violent aftermath of the 2007 election, has muddled through despite personal and ethnic antagonisms between the major actors involved. However, it risks falling apart from a functional perspective in the run up to the 2012 elections, even if it remains officially and formally intact. The endurance of the grand coalition thus far has mitigated the threat of a return of civil unrest.

In December 2010, the chief prosecutor of the International Criminal Court (ICC) took a major step toward dealing with the perpetrators of post-election violence in Kenya, publishing the names of six prominent figures alleged to be the key instigators. The list included two key members of the government, the head of the civil service and the former head of police. The ICC investigation could fundamentally alter the political landscape. In a separate incident unrelated to the publication of the list, several leading cabinet ministers were forced to resign following the revelation of their roles in large-scale corruption affairs. The appointment of the well-respected Patrick Lumumba as head of the Kenya Anti-Corruption Commission in 2010 has led to genuine improvements in the fight against the abuse of public office. Indeed, for the first time there seems to be a real chance that the fight against corruption will be taken seriously.

Economic growth has recovered, yet remained under the pre-2007 level throughout the review period, and is not strong enough to reduce poverty. Despite the global economic downturn, the government was able to keep the budget deficit at lower levels than many had predicted, and was not forced to raise the tax rate. Recently, the government initiated a new privatization drive designed to boost private investment in infrastructure and transport. The volume of foreign direct investment (FDI) remained low in comparison to the size of the population and the volume of FDI inflows into neighboring East African Community (EAC) countries. There has been disinvestment from Kenya in recent years on the part of consumer goods manufacturers, partly because of competition from counterfeit and substandard goods. Over the last few years, the international community has on various occasions expressed disappointment over the misuse of donor money, and has at times threatened to stop dispersing aid. Political behavior has remained driven by individual and ethnic interests, a situation exacerbated by the fact that the 2012 elections are rapidly approaching. The recovery of the infrastructure is underway, while the process of reintegrating thousands of internally displaced people has stagnated, being executed in a way favoring a single affected group, the Kikuyu.

History and Characteristics of Transformation

The political transformation of Kenya remains shaped by its colonial legacy (1896 – 1963). Questions of land allocation, which are ultimately linked to questions of wealth and inter-ethnic group relations, have never been handled appropriately. Both during the initial period of de facto and later of de jure one-party rule (1967 – 1991) under the Kenya African National Union (KANU, as well as during the period of multiparty competition (1991 to the present), politics has been characterized by strong ethnic undercurrents. Under the country's first president, Jomo Kenyatta (1964 – 1978), most prominent cabinet positions and economic privileges were given to his Kikuyu community, the country's largest ethnic group (the population share of which, however, has continuously decreased from 20.12% in the first census in 1969 to 17.15% in the 2009 census). In the fertile Rift Valley, both Kikuyu and Kalenjin have aspired to claim land previously under colonial occupation. Competing demands for land were never resolved, and thus became a latent source of conflict between the two communities. The political instrumentalization of the uneven distribution of land has led to widespread ethnic violence, which has flared up several times in the wider context of elections after the return to multiparty democracy in late 1991.

In 1964, the Kenyatta government altered the independence constitution by abolishing the federal institutional system ("majimbo constitution"). The debate over "majimboism" (Swahili for federalism) has since returned to the political agenda. In addition to tensions between the Kikuyu and the Kalenjin, political antagonism developed between the Kikuyu and the Luo. The dismissal of Kenyatta's Luo Vice President Oginga Odinga (the father of current Prime Minister

Raila Odinga) and the mysterious assassination of the other senior Luo politician Tom Mboya – a potential contender for the presidency – produced a sense of betrayal among the Luo. These long-held resentments between Luo and Kikuyu resurfaced vividly prior to the 2007 elections.

Under Kenyatta's successor, Daniel arap Moi (1978 – 2002), the allocation of public resources shifted in favor of his Kalenjin group and several pastoral communities. As a result, the Kikuyu were gradually pushed to the political margins over a period of 10 years. After a failed coup d'état against his government in 1982, Moi grew increasingly authoritarian and implemented a system of control, terror and torture. During the Cold War, Moi secured Western support with his strict anticommunist stance. After the end of the Cold War, the regime initially remained authoritarian. Faced with a temporarily united opposition of civil society, churches, academia, NGOs, and former KANU politicians, and against the background of a changing international environment, the Moi government was eventually forced to concede ground and institute a multiparty system. Running against an ethnically fragmented opposition, Moi benefited from the country's first-past-the-post polling system, winning the 1992 and 1997 elections despite attracting considerably less than 50% of the vote. In the 1997 elections, KANU ensured its parliamentary majority by rigging the results in several constituencies.

Having learned from its failures in the past, the opposition managed to overcome its state of ethnic fragmentation and rallied behind Mwai Kibaki, a former vice president in the KANU government (1978 – 1988), under the auspices of the National Alliance Rainbow Coalition (NARC) in 2002. This national coalition managed to beat KANU and its presidential candidate, Uhuru Kenyatta, Jomo Kenyatta's son and Moi's chosen successor. The 2002 elections were seen as a watershed moment in Kenya's history, representing the freest and fairest competition thus far, and ushering in the country's first democratic transfer of power. Cracks within the broad interethnic yet fragile NARC coalition emerged when Kibaki's Kikuyu-dominated inner circle failed to honor several pre-election agreements, including the implementation of constitutional reform. These would have resulted in the creation of a strong prime minister, a role promised to Raila Odinga, the political leader of the Luo community and one of NARC's key figures. Kibaki's own reform package, which envisioned a strong executive president, was rejected by a wide margin of the Kenyan electorate in a constitutional referendum in 2005. The constitutional referendum thus led to a reformation of the political landscape and the formation of two major parties in the run-up to the 2007 elections, which were contested by Kibaki's newly formed Party of National Unity (PNU) and the Odinga-led Orange Democratic Movement (ODM). Although Kenyans voted peacefully in large numbers, the election aftermath resulted in bloodshed on an unprecedented scale, with an estimated 1,300 people killed and 650,000 displaced.

After several high-profile international mediation efforts, all political players agreed to the formation of a grand coalition with Kibaki as president and Odinga as prime minister, a position that had not previously existed under the constitutional regime. The grand coalition faced a number of monumental tasks, including the reintegration of thousands of internally displaced people, addressing the impunity of those who instigated the 2008 ethnic clashes, the fight against deep-rooted corruption in the public sector, and the urgent need to draft a new constitution. Its

record in office has been mixed. On the negative side, a large resettlement program has been riddled by large scale corruption, and thousands of internally displaced people are still without a permanent home. The Kenyan government has failed to establish a local tribunal in order to try those who planned and executed the ethnic violence after the 2007 elections; the government created a Truth and Reconciliation Commission, yet this body's mandate is too broad, and its controversial composition has proven a hindrance in the task of identifying perpetrators and gaining new insights into past and present injustices. As in previous periods, the government has at times shown a distinct lack of will in rooting out corruption, and has at times been close to losing the support of key international donors. The coalition itself has been marked by heavy partisan infighting. On the positive side the government was able to pass a new constitution, which at least on paper tackles the most urgent political and economic challenges. Stable economic growth rates have returned and economic spending can be regarded as prudent. The government has focused on attracting private investments in infrastructure. In April 2009 the World Bank approved three loans for Kenya. In May 2009, the IMF awarded Kenya \$209 million in emergency funding. In a boost to Kenya's finances, reform prospects and policy credibility, the government and the IMF reached a preliminary agreement in November 2010 on a new funding package worth \$500 million over three years, potentially the largest IMF disbursement in Kenya to date. There were no significant changes during the review period in the agricultural sector – the backbone of the Kenyan economy – though poor rainfall and power shortages threatened agricultural production.

The BTI combines text analysis and numerical assessments. The score for each question is provided below its respective title. The scale ranges from 10 (best) to 1 (worst).

Transformation Status

I. Political Transformation

1 | Stateness

Question
Score

The state's monopoly on the use of force is established nationwide in principle, but it is not realized thoroughly or at all times throughout the territory. Political interference and the lack of proper police oversight and supervision mechanisms, as well as technical and organizational deficiencies within the police force, are the main reasons for these gaps.

Monopoly on the
use of force

6

Violent crime remains a serious problem in Nairobi. In several of the capitol's slum areas, an effective monopoly of force is held by street gangs, not the government. In rural areas, armed banditry continues to increase.

Kenya does not face threats to its territorial integrity. However, it remains affected by state crises in its immediate neighborhood. Kenya currently provides shelter for thousands of refugees from Somalia. According to new estimates, there are roughly 100,000 asylum seekers in Kenya, while the refugee camps in Dadaab (close to the Somali border) and Kakuma (close to the South Sudanese border) respectively host roughly 400,000 and 100,000 refugees. In both camps, clashes between refugees and the police have occurred on several occasions. The Dadaab camp also serves as a hideout for members of the al-Shabab terror group and related militia groups. The UNHCR has asked the Kenyan government to increase its security measures around these camps, but control of the borders along Somalia, Sudan and Ethiopia remains difficult.

All major groups in society respect the Kenyan state as legitimate. However, the centralized governance system has led to complaints by various ethnic, religious and nomadic groups regarding their perceived political and economic marginalization.

State identity

8

The Kenyan state does not recognize the so-called Kenyan Nubians as citizens. Many Nubians have lived in Kenya for generations, but are unable to claim Kenyan passports. The majority of them are descendants of Sudanese ex-servicemen from the British army.

Since independence, religious dogma has not interfered with the state's legitimacy. The referendum campaign over the proposed constitution ushered in a new dynamic, however. The Christian churches, including the mainstream (Catholic and Anglican) and evangelical churches, rejected the new constitution on the grounds of an abortion clause that was allegedly too liberal, and the anchoring of the Khadi courts (Muslim law courts dealing with limited personal status issues) in the new constitution. Church leaders strongly campaigned for a "No" on the referendum, and pressed their congregations to follow suit by grossly distorting the contents of the proposed constitution. Both abortions and the constitutionality of Khadi courts have long been a reality in Kenya. The Khadi courts' jurisdiction is confined to matters concerning personal status law, such as marriages, divorces and inheritances for Muslims. They have far less power than do Kenya's high courts, and both parties to any court case have to consent in order to use the Khadi courts. Some fringe representatives of the Muslim community have used the debate over federalism (majimboism) as a platform to advocate the implementation of Shari'ah law. The Christian churches must be seen as responsible for considerably impairing relations between the Christian and Muslim communities.

No interference of religious dogmas
8

The state's administrative functionality remains hampered. Administrative structures exist throughout the country, yet reforms to the civil service are urgently required. The state machinery's level of functioning is low. According to Afrobarometer, the vast majority of Kenyans feel that the administration is unwilling to deal with their requests. A perceived preference for the Kikuyu-dominated region has been an issue since independence. The feeling has increased in strength since Kibaki's election in 2002, and has hardened since his contested 2007 reelection. According to the recently passed constitution, Kenya's basic administration will soon be subjected to a complete overhaul. The implementation of a federal structure that gives counties with their own assemblies aims to bring state services closer to the people. However, previous experience with constituency development funds showed that local structures can be as corrupt and as underperforming as the central government.

Basic administration
6

2 | Political Participation

Kenya has conducted regular elections every five years since independence. With the return to a multiparty system in 1991, the presidency began to be contested by multiple parties. The 2002 elections resulted in the country's first peaceful and democratic handover of power. The most recent elections, in late 2007, reversed

Free and fair elections
6

that democratic trend in many ways. The contest between incumbent Mwai Kibaki (PNU) and Raila Odinga (ODM) was largely an ethno-political struggle for the presidency. While the elections themselves were peaceful, and Kenyans voters showed great commitment to participating in the democratic contest, both the governing PNU and the opposition ODM rigged the election results in their respective strongholds. The tallying irregularities by the Electoral Commission of Kenya (ECK) in Nairobi undermined the body's credibility, and fostered the impression that the electoral authorities had manipulated results in favor of Kibaki. It further gave credibility to the insistent accusations by ODM that the presidential results had been rigged in several constituencies. The slim parliamentary majority won by ODM (and its allies) over PNU (and its allied partners) gave further credence to these allegations. Post-election violence on an unprecedented scale, with heavy ethnic undertones, left thousands of people dead and many more homeless. The chaotic electoral aftermath demonstrated that democratic norms have not yet been internalized by the major political players. With the backing of the international community, the African Union's Panel of Eminent Personalities, led by Kofi Annan, facilitated the construction of a grand coalition between the ODM and the PNU, which despite severe challenges and heavy infighting, remained formally intact through the review period.

Following the findings of an independent review commission led by South African Justice Johan Kriegler on the causes of the electoral chaos in 2007, the Electoral Commission of Kenya was disbanded. All commissioners, including Chairman Samuel Kivuitu, and all permanent staff were made to resign. Since then, a wide range of electoral reforms has begun to be implemented, but the effort has not yet been concluded. As part of this process, an Independent Interim Electoral Commission (IIEC) has been set up as a transitional body under the National Accord (the power-sharing agreement that created the grand coalition), with a complete new secretariat and new coordinators for the 210 constituencies. The IIEC carried out a wholly fresh voter registration effort, which was necessitated by the fact that the old register was no longer accurate, as it continued to hold a large number of deceased persons. With 12,656,451 individuals, the new register is 89% the size of the inflated 2007 register, and thus appears more realistic. In a pilot project in 18 selected constituencies (with a total of 1.8 million registrants), voter registration was conducted electronically, allowing for easy identification of multiple registrations and other deficiencies. The IIEC conducted the August 2010 referendum and a number of parliamentary and civic by-elections in a professional, nonpartisan manner, thus gaining credibility. In the August 2010 referendum, 67% of the electorate endorsed the new constitution, while 31% rejected it. The so-called No campaigners, led by Rift Valley political leader William Ruto and strongly supported by the Christian churches, accepted defeat. While these developments certainly helped the electorate, stakeholders and international community to regain trust in the electoral process, it is premature to draw any conclusions for the 2012

general elections, as the stakes will be much higher and the political climate potentially more polarized. Meanwhile, the Interim Independent Boundaries Commission (IIBC) presented its report, suggesting – along the lines of the new constitution – the creation of an additional 80 constituencies and the adjustment of existing constituency boundaries. A high court injunction, however, stopped its official public adoption; the resulting deadlock needs to be resolved quickly if it is not to impact negatively on the implementation of the new constitution and the preparations for the 2012 elections. With an initial life span of two years, the IIEC was supposed to be merged with the IIBC by December 2010, to form the new Independent Electoral and Boundaries Commission (IEBC). Delays in the implementation of the new constitution have hampered this process, and the IIEC’s mandate has been prolonged.

The new constitution retains the first-past-the-post system, but adds 47 seats (one per county) in order to meet the requirement that at least one-third of elected seats be held by women. A newly created Senate serves as a second chamber of the National Assembly, and consists of 47 elected senators plus representatives of special interest groups. The president now needs an overall majority (“more than 50%”) and – after the dissolution of the provinces as administrative units – at least 25% in the majority of the counties to ensure a minimum of national legitimacy (previously 25% in five of the eight provinces).

There are no classical veto powers operating, but the effectiveness of governance has been substantially hampered by frictions, tensions and infighting within the grand coalition. The ICC’s publication of the list of the six persons the court seeks to prosecute has led to a breakdown in government unity.

Effective power to govern

6

It appears unlikely that ethno-regional leaders and their political patrons will use ethnic militia to veto central government decisions they are uncomfortable with. In contrast to most other African nations, a takeover of power by the army does not appear to be a possibility.

There are no legal constraints on the right of any group to assemble or associate freely. However, in the aftermath of the 2007 elections, the police systematically interfered with these rights. As the immediate crisis was resolved and large-scale demonstrations subsided, the police acted with more restraint; however, the police forces today still deny human rights activists’ requests for meetings or disperse those meetings.

Association / assembly rights

7

Press freedom exists in Kenya on paper as well as in principle. There is a substantial diversity of published opinions. In contrast to the previous constitution, the constitution passed in 2010 explicitly refers to the freedom of expression. In January 2009, President Kibaki signed the Kenya Communications Bill, a step widely criticized by journalists at home and abroad. The law originally provided for

Freedom of expression

8

heavy fines and prison sentences. It gave the government authority over the issuance of broadcast licenses and the production of new programs. It further allowed the government to raid media offices, tap phones and control broadcast content for purposes of national security. In May 2009, President Kibaki ordered the attorney general to revise the law in collaboration with all stakeholders, including the Kenya Union of Journalists and civil society organizations who advocate freedom of expression. Subsequently, the most contentious parts of the law were withdrawn; the government is now no longer allowed to raid broadcasting stations or to control the content on TV and radio. These amendments were widely welcomed by all Kenyan media practitioners.

Kenya's position on the worldwide press freedom index has improved from position 96 in 2009 (out of 167 countries) to position 70 in 2010. Several positive legal reforms such as the freedom of information policy bill (2007) have yet to be implemented. Although extrajudicial killings of journalists remain uncommon by regional standards, a number of journalists have been harassed, beaten, arrested or at times even killed by the security apparatus. In July 2009, the antiterrorism police unit illegally interrogated editors about sources for an article that claimed the police unit had lost crucial files relating to al-Qaeda members. The media has also become a target when police corruption and professional neglect have entered the headlines. There are known and reported cases where security forces have harassed and beat up journalists. Self-censorship is practiced, though to a much lesser extent than during the period of the one-party state.

3 | Rule of Law

The executive has long dominated Kenyan politics, throughout the authoritarian Kenyatta and Moi eras, but also during the Kibaki presidency. The 20-year struggle for a new constitution was to a significant degree driven by a quest for a clear separation of powers. Since the work of the Kenya Constitution Review Commission under Yash Pal Ghai (2000 – 2002), the debate over reducing the presidency's vast powers has been connected to the introduction of parliamentary system features, particularly the creation of the position of prime minister as a second center of power. While in opposition the National Rainbow Coalition (NARC) favored a second center of power, but once in power the Kibaki wing of government viewed the concentration of power in the hands of the president far more positively, and during its first term in office (2002 – 2007) sabotaged all attempts to pass a constitution that would have curtailed those powers. The political power impasse after the 2007 elections could only be overcome by adding the position of prime minister to the old constitution to pave the way for the grand coalition. However, the prime minister position was not added to the old constitution in an efficient way, thus creating overlapping and conflicting

Separation of
powers

6

responsibilities, particularly with the office of the vice president. This fueled considerable tension between the two coalition partners.

The grand coalition integrated the three major political parties, all of which contested the 2007 elections with their own presidential candidates (Mwai Kibaki for the PNU, Kalonzo Musyoka for ODM-Kenya, and Raila Odinga for the ODM). This left only an ensemble of fragmented fringe parties incapable of exerting strong legislative power, as a check and challenge to the executive. The appointment of more than 90 members of parliament (out of a total of 222) as ministers or Assistant Ministers – an effect of the grand coalition’s creation –robbed parliament of some of its most experienced members. The new constitution states that ministers must be selected from outside parliament.

The new constitution came into force, promulgated by President Kibaki, on 27 August 2010. However, it requires the enactment of at least 48 new laws, all listed in the constitution’s fifth schedule, with a defined time span for their enactment. The implementation of the constitution is therefore a staggered process, to take place over a period of five years. During this time, parts of the old constitution will remain in place, as will the provisions (until the next general election) of the National Accord and Reconciliation Act (NARA) that facilitated the grand coalition’s creation. This sometimes creates confusion as to which provisions of which law apply. More than half of this new legislation has to be drafted and passed by parliament before the next elections, which according to the constitution are scheduled for August 2012. This created a heavy workload for parliament in a short period of time. The impact of the ICC proceedings as well as the positioning and political realignments for Kibaki’s succession caused delays in the implementation process. The Commission for Implementation of the Constitution (CIC) and the Commission for Revenue Collection (CRA) were initially set up belatedly, and then the appointment of the chief justice, attorney general and chief prosecutor created a severe coalition – and almost a constitutional – crisis.

According to the NARA, decisions must be made on the basis of close consultation between the president and the prime minister, providing a transitional check on presidential powers. For major policy decisions and key appointments, President Kibaki has several times shown that he continues to discharge his office in the spirit of the imperial presidency. However, during the period under review, parliament twice performed its role as constitutional check, supported by the public, civil society and the international community, and rejected unilateral appointments by the president; initially with the renewal of the contract for the head of the Kenya Anti-Corruption Commission in 2009, and again with regard to the nomination of the chief justice and three other senior public officers in January 2011. While parliament was heavily divided between the Kibaki and the Odinga wings, particularly in the latter case, the speaker upheld the independence of the legislative branch against threats and intimidation attempts by the Kibaki faction. Generally,

compared to the previous institutional configuration, the powers of parliament have been strengthened and the powers of the president curtailed. The president is required to seek parliamentary approval for his cabinet secretaries (formerly ministers). Parliament can dismiss a minister, which previously was the exclusive prerogative of the president.

The judiciary is institutionally differentiated, but its functions are severely restricted. The old constitution did not guarantee the independence of the judiciary. National and international agencies have for several years called for in-depth judicial reform, as a way to root out corruption and diminish executive interference in judicial affairs. The reforms of 2010 and early 2011 point in the right direction, as the independence of the judiciary has been guaranteed and strengthened by the new constitution and the related body of new legislation. However, attempts by the executive to interfere with judicial independence have been persistent under the old as well as under the new configuration of power. In April 2009, former Minister for Justice and Constitutional Affairs Marta Karutha resigned following President Kibaki's appointment of a number of judges without consulting her. In January 2011, the president unilaterally tried to appoint a new chief justice, attorney general, public prosecutor and controller of budget. The legal basis for these appointments was not entirely clear, as provisions from the National Accord and Reconciliation Act coexist with those in the new constitution. However, the unilateral attempt to appoint these four key civil servants went clearly against the spirit of both documents, and was therefore rightly rejected by Speaker of Parliament Kenneth Marende. The appointment and recruitment process thus had to be reopened.

The failure to try those responsible for the violence after the 2007 elections is attributable to both the legislature and the judiciary. Parliament failed to assent to a bill to set up a local tribunal. In both parliamentary and the judicial circles, the delay is partly attributable to fears that any local tribunal acceptable to the international community, particularly to Kofi Annan's Panel of Eminent African Personalities, would have to meet international standards that would not include immunity for the president. In contrast, under the Kenyan political tradition, the president has always been seen to stand *de facto* above the law.

The president's unilateral attempts to appoint the chief justice and the attorney general were part of a wider government strategy to achieve an international deferral of the post-election violence cases, which are now being handled by the ICC. For both positions, Kibaki named persons not considered to be independent (the chief justice candidate still has a legal case pending against him, and the initially designated attorney general was one of Kibaki's key advisors for the ICC deferral strategy).

Independent
judiciary
5

Based on a broad national debate and two reports in 2010 (one by the government's Task Force on Judicial Reform and another by the International Legal Consortium and the International Bar Association) the Judicial Service Commission, key in the appointment process of judges, was reconstituted in October 2010. It was allocated a greater administrative support base and its mandate generally broadened.

The new constitution mandates the independence of the judiciary, and calls for a vetting procedure of all sitting judges and the replacement of several senior figures in the judicial system.

The fight against corruption was a major theme in Kibaki's 2002 election campaign, and was one of the main reasons for his success. In 2003 and 2004, the government enacted several laws designed to curb corruption. These included the Anti-Corruption and Economic Crimes Act, the Public Officer Ethics Act, and the Public Procurement and Disposal of Assets Act. The new legal framework led to the restoration of the Kenya Anti-Corruption Commission (KACC), and required legislators and civil servants to provide evidence of their source of income. These were bold steps in comparison to the Moi period. However, these new initiatives were never translated into concrete actions. The KACC is legally unable to prosecute corruption incidents that occurred before 2003. The KACC operates under the control of the executive. As in the past, high-ranking government ministers have been involved in large-scale corruption affairs. The 2009 maize scandal – in which maize unfit for human consumption was imported by local businessmen, with the knowledge of senior government members – involved at least three ministries. Reports in January 2010 that \$1 million was missing from the country's primary school system caused the United States to temporarily suspend its education fund program. In March 2010, 20 EU mission heads announced that the European Union would no longer market the country to potential investors, due to the government's ongoing abuse of public funds. The European Union urged Kenya to formulate an effective anti-corruption policy and to enact vital anti-graft legislation on issues such as freedom of information, witness and whistle-blower protection, and mutual legal assistance. Michela Wrong's book "Our Turn to Eat," which is based on original documents collected by the former permanent secretary for ethics in the Office of the President, John Githongo, provides an in-depth illustration of the lack of political will to end public abuse by the country's political class.

In recent months there have been positive developments. Former KACC director and long-term Kibaki ally Aaron Ringera stepped down in late September 2010 after the rejection of Kibaki's attempt to unilaterally renew his contract. Successor Patrick Lumumba has reopened Kenya's largest corruption scandals, the Goldenberg affair (dating back to the 1990s) and the Anglo Leasing affair (dating back to Kibaki's first term). In addition, several high-ranking politicians including Foreign Minister Moses Wetangula, Nairobi Mayor Godfrey Majiwa, and

Prosecution of
office abuse
4

Industrialization Minister Henry Kosgey resigned over shady land deals. In early November 2010, Lumumba indicated that he had at least another four cabinet ministers and roughly 50 senior government officials on his list for further scrutiny. Lumumba's work is aided by a clause in the new constitution, which demands that officials stand down if accused of corruption. Part of the explanation for the renewed interest in holding officials to account might be that Kibaki's era is slowly drawing to a close, and the incumbent president wants to leave a positive legacy.

Civil rights are guaranteed by the constitution. Since 2002 there has been significant progress in fostering a culture that respects civil rights. Nevertheless, international organizations have continued to criticize the security forces for random arrests. Civil society groups report that the police engage in illegal confinement, extortion, physical abuse and the fabrication of charges. Between 2007 and 2009, open clashes between the security forces and members of the Mungiki sect (a group that engages in criminal and political activity) increased, but have since subsided. Police officers in several districts have been issued orders to shoot the Mungiki ("shoot to kill"). Human rights organizations accused the police and the government of using the Mungiki as a pretext to justify the killings of innocent citizens. The U.N. special rapporteur on extrajudicial and arbitrary killings, Philip Alston, has cited a "systematic, widespread and carefully planned strategy" of executions by the police, and pointed out that no member of the force has been tried. Kenya's 2003 Suppression of Terrorism Bill gives the authorities wide-ranging powers to search and detain people. In addition, the criminal procedure code gives the police broad powers of arrest. Although a 2009 U.N. special report condemned the culture of impunity that prevails inside the security forces, no actions have been taken to improve the situation. The National Task Force on Police Reform appointed by President Kibaki in 2009 has not come up with any recommendations to date. Women are disadvantaged in all aspects of public and civil life. This applies in particular to the rural areas, where civil rights are not shared by all.

Civil rights

7

4 | Stability of Democratic Institutions

Democratic institutions are underperforming but stable. In the past, parliament has been unable to control government effectively. This was partly due to the vast constitutional powers allocated to the presidency, and partly due to the frequent realignment of political blocs as a result of changing political preferences and priorities. Since 2008, parliament has been unable to scrutinize the government due to the size of the governmental majority and the size of the government itself (many members of which were recruited from parliament). The internal fragmentation of the grand coalition over the issue of the ICC and the nomination of key public officers has made parliament the forum for a power struggle between a group consisting of President Kibaki's PNU faction and suspended cabinet minister

Performance of
democratic
institutions

6

William Ruto's breakaway ODM wing on one side, and Raila Odinga's ODM on the other. With the ICC's late 2010 publication of its list of those likely to be indicted for masterminding the post-electoral violence, the government has effectively ceased to function as a cohesive body. Kibaki's allies have translated this collapse to the parliament, stalling any issue-oriented politics and effectively delaying the implementation of the new constitution.

The failure of the Electoral Commission of Kenya to ensure free and fair elections in 2007 eroded trust in democratic institutions. The unsatisfactory performance of state institutions has been illustrated by poor results in the fight against corruption, the government's failure to establish a local tribunal able to bring the perpetrators of the 2008 ethnic violence to account, judicial malaise that has been addressed but not yet resolved, and the very slow and ethnically biased (in favor of the Kikuyu) reintegration of internally displaced persons (IDPs). However, the grand coalition was able to draft a new constitution, remaining united on that cause despite extensive internal bickering and personal animosities. This prevented Kenya from falling apart as a nation state. Results from the latest Afrobarometer surveys (conducted in 2008) indicated that a majority of Kenyans had trust in the presidency and the office of the prime minister. However, only a third had trust in parliament.

Generally, the country is in a transition phase, undergoing a staggered implementation of the new constitution and related legislation. In this process, the old, often undemocratic institutions are being substantially reformed and redefined. The old institutions suffered from executive interference and political instrumentalization, but the new ones are not yet in place. The serious infighting within the grand coalition, though it may not lead all the way to disintegration of the government, endangers the new constitution's implementation.

All actors accept the value of democratic institutions and rules in principle. The KANU party's acceptance of defeat in 2002 indicated significant progress in terms of the internalization of democratic norms. Yet the behavior of all major political players in the aftermath of the 2007 elections indicates that commitment to democracy is linked to the question of whether or not all major ethnic groups are involved in the victorious party. That condition existed in 2002 but not in 2007. In terms of the legislative framework, the judiciary and the civil service can operate freely (despite corruption), yet once the government comes under political pressure, their freedom is compromised to a significant degree.

Commitment to
democratic
institutions

7

5 | Political and Social Integration

Parties are not differentiated by platforms or principles; instead, they are built around ethnic loyalties and patronage, and serve the interest of strongmen. Accordingly, party politics has long been characterized by a high degree of

Party system

4

polarization and volatility. The legalization of party politics in December 1991 led to various cycles of party formation, party splits, party mergers and the establishment of new parties. Consequently, no stable party system has emerged. Kenyan members of parliament receive the highest legislative salaries in the world, and politics is consequently seen as lucrative business. Parties are not rooted in society, and relationships with interest groups are limited and ad-hoc at best. The ability of Kenyan parties to integrate large segments of the population and to aggregate their interests is limited to nonexistent, with the exception of the leaders of ethnic communities.

Just prior to the 2007 elections, Kenya had 300 registered parties. The new party law that came into effect in January 2009 provides for public funding, and regulates the funding of parties by private individuals. In order to register, parties have to comply with rules that are designed to stop individual members' defections, particularly among those who have lost their party's nomination in an upcoming election. Party leadership structures have to include representatives from all provinces. Parties cannot be founded on the basis of ethnicity or religion. By March 2010, Kenya had 47 registered parties. The new constitution gives the Independent Electoral and Boundaries Commission the responsibility to regulate the nomination process for elections, something that in all previous multiparty elections had been beyond the reach of proper legal supervision. The new party law will now have to be adjusted to the new constitution, and much of its success will depend on two factors: the establishment of clear sanctions capable of acting as deterrents for violating its provisions, and secondly the political determination to enforce the law.

As social interests are not articulated along society's economic divide, but along ethno-regional lines, social groups do not appeal to or absorb certain social strata or professional groups. Organizations with potentially significant political leverage due to their sheer membership numbers, such as the Central Organization of Trade Unions (COTU) and the Kenya National Federation of Agricultural Producers (KENFAP), the successor of the Kenya Farmers Union, continue to be hampered by corruption and weak leadership. They therefore fail to address any social issues even for their members, let alone on a national scale. However, there is a plethora of professional and interest groups covering a variety of fields, including human rights, gender equality, business interests, fair trade and environmental protection, among others. These are mostly confined to the urban centers, thus fail to represent the interests of rural populations such as farmers. Their impact varies. Some, such as the Kenya Human Rights Commission (NGO), the Kenya National Commission on Human Rights (governmental, but constructively critical), the Law Society of Kenya and other professional associations, have taken up genuine and constructive engagement with the government. This was particularly visible during the protracted constitutional drafting process, when a wide variety of organizations submitted proposals to the Kenya Constitutional Review Commission (2000 –

Interest groups
6

2002), the constitutional conferences at the Bomas of Kenya (2003 – 2004) and the Committee of Experts, the body in charge of leading and coordinating the constitutional reform process following the 2007 elections. However, interest groups and civil society organizations have also been susceptible to the ethno-political divide, which can limit their impact on national debates and events.

Despite the post-election violence and the persistence of corruption, support for democratic forms of government remains high. According to the latest Afrobarometer findings, 78% of Kenyans prefer democracy to any form of authoritarianism. These data were collected in 2008, thus after the electoral violence. In 2005, 75% preferred democracy to any form of authoritarianism. Taken together, the survey results indicate that support for democratic values remains unshakably high. Two-thirds expressed trust in the president and the prime minister, even though these high rates of approval differ across time. Only one-third of the Kenyan population expressed trust in parliament, however. The passage of a new constitution has increased trust in democratic norms.

Approval of
democracy
8

Kenya has a long history of community-organized self-help fundraisers (harambee). Invitations to these events are normally spread by word of mouth, or by newspapers in the case of larger fundraisers. Local members of parliament and dignitaries are expected to contribute to these events. Since independence, “harambee” fundraisers have become an integral part of social life in Kenya, and have contributed to fostering a sense of unity at the local village level.

Social capital
6

A significant number of social and self-help organizations exist, although these organizations lack an effective division of labor. Outside the capital, the building of networks is limited due to financial and infrastructural constraints. Social trust remains limited to family, clan or ethnic networks. Thus, trust within the population is high on the local level when compared to the national level

II. Economic Transformation

6 | Level of Socioeconomic Development

Question
Score

With a GDP per head of \$1,572, Kenya has the highest per capita income in the East African Community (EAC). However, it is categorized as a low-income country. Kenya has the largest and most vibrant economy within the EAC, but has suffered from economic stagnation, with an increase in poverty, since the 1990s. The multiparty Moi era (1991 – 2002) was characterized by the lowest growth rates since independence (annual average GDP growth of 1.83%), and saw an increase in the poverty rate (defined, as in the Millennium Development Goals, as people living

Socioeconomic
barriers
2

on less than \$1.25 per day) from 45% in 1992 to 56% in 2002. Under the Kibaki administration (2003 to the present) the economy experienced a strong upsurge, showing average annual growth of 4.45%; however, this is not considered enough to reduce poverty substantially. The MDG goal of halving poverty by 2015 is now beyond reach and would have required sustained annual growth of 8% from 2000 to 2015. According to the latest Integrated Household Budget Survey by the government, in 2007, 45.9% of the population lived below the poverty line, a figure that has been disputed by the opposition and some media representatives. It is safe to conclude that those areas affected by the post-election violence saw a subsequent rise in the incidence of poverty. According to World Bank estimates, the Gini coefficient has improved over time from 0.63 at independence to 0.599 in 1992 to 0.452 in 2005 – 2006. However, it remains the most unequal society within the EAC. The high levels of inequality are a long-term consequence of British colonialism, which led to uneven economic development between regions and communities. However, post-independence governments have also failed to rectify this situation. In addition to regional inequality, Kenya suffers from great differences between the haves and the have-nots.

Poverty is more pronounced in rural areas, with a 2005 rate of 49.1%, as compared to an urban rate of 33.7%. The distribution of wealth and poverty is also highly uneven in regional terms. Some regions (Central Province and Nairobi), where much of the economic power of the country is concentrated, qualify as middle-income areas, while others lag far behind with a high concentration of poverty (most notably North Eastern Province but also Western, Nyanza and Coast provinces). The least poor province in Central Province: However, even 40% of the population there is considered poor by the United Nations. Several factors account for the extent of poverty and inequality. These include the existence of a large low-wage sector, as about 50% of the population working at least 40 hours per week has a high chance of doing so under poverty-level employment conditions (employment that generates income below the poverty line); unequal government spending on infrastructure; general inefficiency and corruption in public spending and the implementation of development programs; a lack of safety nets; and natural disasters such as droughts that disproportionately affect the arid and semi-arid regions (North Eastern Province, parts of the coast). Under the Vision 2030 program, the government has embarked on a broad and ambitious program to rehabilitate and extend the physical infrastructure, particularly the road network. The aim is to achieve sustained annual economic growth of 10% for more than 20 years to eradicate poverty by the year 2030.

For almost two decades, the HIV epidemic spread without any government intervention, and was only declared a national disaster in 2000. According to statistics by the National AIDS/STD Control Program (NAS COP) and UNAIDS, government policies have shown remarkable success by reducing the HIV infection

rate from 14% of the adult population in the mid-1990s to 6.7% in 2003. Particularly remarkable were reductions in medium-sized towns such as Nakuru, Busia, Meru and Thika. Since that time, however, the trend has reversed somewhat, as NASCOP's AIDS Indicator Survey Report showed that in 2007, 7.8% of the adult population (1.4 million people) were living with HIV. Improvements in treatment and the broader availability of drugs at more affordable prices have helped improve overall life expectancy, from a reduced level of 47 years in 2001 to 54 years.

Economic indicators		2007	2008	2009	2010
GDP	\$ mn.	27173.7	30031.4	29375.8	31408.6
GDP growth	%	7.0	1.6	2.6	5.3
Inflation (CPI)	%	9.8	26.2	9.2	4.0
Unemployment	%	-	-	-	-
Foreign direct investment	% of GDP	2.7	0.3	0.4	0.6
Export growth	%	7.3	7.5	-7.0	6.1
Import growth	%	11.1	6.6	-0.2	3.0
Current account balance	\$ mn.	-1032.0	-1982.6	-1688.5	-2512.2
Public debt	% of GDP	46.1	46.2	49.4	50.5
External debt	\$ mn.	7461.9	7548.9	8182.0	8400.4
Total debt service	\$ mn.	453.4	411.1	385.4	398.8
Cash surplus or deficit	% of GDP	-3.0	-4.1	-5.5	-
Tax revenue	% of GDP	17.8	18.8	18.8	-
Government consumption	% of GDP	17.9	16.7	16.3	13.5
Public expnd. on edu.	% of GDP	-	-	-	-
Public expnd. on health	% of GDP	4.3	4.2	4.3	-
R&D expenditure	% of GDP	-	-	-	-
Military expenditure	% of GDP	1.8	1.9	2.0	-

Sources: The World Bank, World Development Indicators 2011 | International Monetary Fund (IMF), World Economic Outlook 2011 | Stockholm International Peace Research Institute (SIPRI), Military Expenditure Database 2011.

7 | Organization of the Market and Competition

Since independence, Kenya has in theory been led by free market economic ideology, while in fact pursuing strong state interventions under its first two presidents, using the market as a political instrument to safeguard power. The first real moves toward a more market-oriented approach began in the 1980s with the easing and – in the 1990s – the eventual cessation of price controls. Though price controls were officially abandoned in 1994, the government still exercises selective price controls through agricultural marketing boards, sometimes in order to favor certain politically well-connected business persons, thereby distorting market prices. In December 2010, the government introduced fuel price controls to prevent high fuel costs from choking off a nascent economic recovery.

Though Kibaki's first and second administrations each have shown a considerable level of corruption, political interference in the economy has subsided, allowing ministers and staff to conduct their work in a more professional, technocratic way. The selection of personnel, while still following nepotistic patterns, has become driven somewhat more by professional experience than by pure political power calculations.

The first Kibaki government significantly reformed the regulatory framework governing the establishment of businesses (Investment Promotion Act 2004). This resulted in less red tape and was designed as an anti-corruption measure. A Kenyan exporter needs 15 signatures on eight forms and has to wait 45 days before being able to export goods. The government openly encourages investment through agencies such as the Kenya Investment Authority.

A large and growing part of the working population is employed in the informal sector (known as the jua kali sector). In November 2010, the Kenyan government estimated that approximately 5 million people worked in the sector and that it contributed about 18.4% of the country's GDP. Most enterprises start off in the informal sector, as they cannot afford the comparatively expensive process of registering with the government. Most informal enterprises are subsistence based, and only very few qualify as entrepreneurial, operating with the goal of profit and expansion. Links to the formal economy are therefore limited. From a policy perspective, the government treats the informal sector as part of the micro- and small enterprises category, some of which are registered and form a part of the formal economy. The sector has a wide variety of interest groups that are vocal and constructively engaged with the state. The government seeks to encourage and facilitate entrepreneurship within the sector with a wide range of policies, including credit support programs, thus fostering links to the formal economy. However, structural constraints remain high (including limited access to markets, inadequate skills and technology, poor product quality, inadequate business skills, limited

Market-based
competition

5

access to information, and the lack of an institutional framework). The Micro and Small Enterprises Development Bill aimed at easing access to credit, but implementation has been long delayed by the unclear division of responsibilities within the ministries of Finance, Trade and Labor.

Parastatal organizations are not cost effective, and remain an instrument for rewarding political loyalty.

The Kenyan Monopolies and Prices Commission (MPC) is part of the Ministry of Finance. It was established by the Restrictive Trade Practices Monopolies and Price Control Act of 1989 and is intended to act as a safeguard against monopolies. The act provides for the control of restrictive trade practices, collusive tendering, monopolies and concentrations of economic power, and provides oversight power for mergers and takeovers. The act was originally seen as a transitional measure, and is widely considered outdated and inappropriate as it leaves open wide-ranging exemptions. The commission's effectiveness has been additionally hampered by a lack of financial resources and insufficient harmonization between sector regulatory laws and competition law. A proposal was tabled in parliament in 2009 to replace the old act, with the goals of ensuring market competition, protecting consumers against price fixing, and establishing a Competition Authority and a Competition Tribunal. As of the time of writing, however, the bill had yet to be passed. Given this unfavorable legal framework, the cement and beer industries are characterized by strong concentration, leading to a lack of competition and high prices. In contrast, the telecommunications sector shows relatively healthy competition, as two additional companies beyond the traditional service provider have received licenses to operate. The sugar industry is protected by powerful political players who safeguard it against international competition despite high production costs (\$415 per metric ton, as compared to a global average of \$263). However, under the terms of the Common Market for Eastern and Southern Africa (COMESA), liberalization and reform of this sector is inevitable.

Anti-monopoly
policy
5

Kenya is an active member of the WTO, the East African Community (EAC), the Intergovernmental Authority on Development (IGAD), the Indian Ocean Rim Association for Regional Cooperation (IOR-ARC), and is granted nonreciprocal trade preferences under the Cotonou Agreement with the European Community. On 11 October 2007, Kenya signed an economic partnership agreement with the European Union. Kenya has additionally signed bilateral treaties for the promotion and protection of FDI with a variety of countries in Europe and Asia. With the establishment of the East African Customs Union in January 2005, the East African Community (EAC) common external tariff (CET) has become Kenya's main trade policy instrument. Imported goods are subject to three tariff bands: 0% for raw materials and inputs, 10% for processed and manufactured goods, and 25% for finished products. Sensitive items such as milk, sugar, rice and wheat have tariffs above 25%. These import duties are then further increased through the 16% value-

Liberalization of
foreign trade
7

added tax, which applies to all goods, domestic and foreign. Other investment barriers include the 2007 reduction of allowable personal and corporate foreign ownership shares from 75% to 60%. The judicial system's lack of credibility and corruption in the port of Mombasa are cited as reasons for Kenya's failure to apply anti-dumping, countervailing or safeguard measures under the WTO. Nontariff measures include costs associated with a recently introduced Import Standardization Mark and fees for import declarations. According to the WTO, standard-setting in Kenya follows international norms.

Kenya currently grants tariff exemptions on goods for use by the president; by charitable bodies, churches and approved educational institutions; by the military and police; in official aid-funded projects; in emergency situations; and by diplomatic and international organizations.

There are currently 43 commercial banks in Kenya, 30 of which are locally owned, and the remaining 13 being foreign-owned institutions. Foreign banks account for roughly 40% of the commercial banking sector's core capital. The banks are supervised by the Central Bank of Kenya (CBK). In 2010, the CBK stated that the majority of banks are aware of the Basel II guidelines and allocate medium importance to them. Around 75% of the country's banks are ready to implement them in theory, but only a limited number have set aside a budget to do so. The share of nonperforming loans has decreased substantially from 34.9% in 2006 to 13.1% in 2009. The capital-to-assets ratio has for years remained between 11% and 12%.

Under former President Moi, banks frequently served as vehicles to enrich corrupt KANU politicians. In early 2007, the Kibaki administration amended the Banking Act, which now requires banks to share information on nonperforming loans. In February 2009, regulations were put in place that facilitated the sharing of this information in practice. For decades after independence from Britain in 1963, Kenyan banking was dominated by local units of international banks such as Barclays or Standard Chartered. Even though foreign-owned banks dominate the sector, these have been challenged in recent years by home-grown institutions targeting the lower end of the market. In the last two years, pan-African banks such as Nigeria's United Bank for Africa have also entered the market. Two Islamic banks, Gulf African Bank and First Community Bank, entered Kenya in early 2010. The banking sector was not adversely affected by the recent global financial crisis.

8 | Currency and Price Stability

In the aftermath of the post-election violence in 2008, inflation hit an all-time high at an annual rate of 26.2%. In 2009 (9.2%) and 2010 (an estimated 4.1%), the rate fell back significantly, returning essentially to where it was in previous years

Banking system

7

Anti-inflation /
forex policy

8

(2007:9.8%; 2006: 14.5%). The low inflation rate of 2010 was due to better rainfalls, which kept food and electricity costs comparatively lower. In February 2010, the government increased the number of categories and goods used to calculate inflation, which means that current figures are only partially comparable to previous ones. The Kenyan shilling is allowed to float freely. Following the post-electoral violence, the shilling lost 13% relative to the U.S. dollar in 2008 (the dollar-shilling exchange rate in 2008 was 1:78). The decline was also driven by global aversion to emerging-market risk, and a downturn in tourism. In subsequent years, the shilling has remained stable at the 2008 rate (the 2009 dollar-shilling exchange rate was 1:76; while estimated 2010 rate was 1:79). The shilling can rely on relatively robust levels of foreign-exchange reserves (covering four months of imports by the end of 2010), as well as ongoing recovery in the tourism industry. The central bank is independent yet subject to political interference. In contrast to the Moi administration, the Kibaki administration has avoided printing more money in election years in order to finance its campaigns, and has therefore not fuelled inflation.

The Kibaki government is in principle committed to macroeconomic stability, one of its major themes when it came to power in 2002. Government consumption remained stable during the period under review at 17% and 18% of GDP. In order to boost economic growth, the government has embarked on an expansionary fiscal policy. Kenya regularly incurs cash deficits (2008: 4.1% of GDP, 2007: 3.0%). The proposed budget deficit for 2010 – 2011 is 6.8% of GDP, which makes it the second budget in a row crafted specifically to stimulate economic growth. External debt has increased from \$6.4 billion in 2005 to \$8 billion in 2010, the equivalent of 22% of GDP, while domestic debt totals 30% of GDP; together, this makes 52% of GDP, well above the government's 40% target. Kenya's annual debt service has declined from 2.9% of gross national income in 2005 to 1.3% in 2009. The country does not participate in the HIPC initiative, as its debt burden was found to be sustainable by the IMF in 2003. In November 2010, the IMF agreed to support Kenya with \$500 million through its extended credit facility. The program is designed to reduce the fiscal debt and to target the most vulnerable in society. Fiscal experts have called for the simplification of the tax code and for the elimination of tax exemptions.

Macrostability
6

9 | Private Property

Property rights are guaranteed by law, but during the 2008 post-election violence, they were violated on a large scale, leaving 650,000 people displaced from their homes. Tens of thousands still live in refugee camps. Others have returned to their place of origin, but have been forced to live in temporary accommodations. Many are unlikely ever to reclaim their property. Land rights have been the most contested topic since independence. Claims to land have never been registered. Evictions and

Property rights
4

land disputes between individuals or communities have in some regions become a commonplace. The Kalenjin, Masai and other smaller communities have persistently sought to reclaim land taken from them during the colonial period. The International Property Rights Index ranks Kenya at position 88 out of 125 countries. It takes eight procedures and an average of 64 days to register private property.

Private companies form the main pillar of the economy. It is estimated that the private sector is responsible for 80% of the country's ongoing economic development. That is partly attributable to an improved investment and business climate since Kibaki's rise to power in 2002 (despite continued corruption), and partly the result of the privatization process that started in 1991. Out of the 207 companies earmarked for privatization in 1991, 186 have been fully or partly divested according to the World Bank. The Privatization Law was enacted in 2005, and came into force in January 2008. Privatization is still ongoing; in recent years the government has privatized parastatal companies such as Kenya Electricity Generating Company (KenGen), Telkom Kenya, and Kenya Reinsurance, and sold 25% of Safaricom. While the privatization of some companies such as Kenya Airways was a success, other cases such as that of Telkom Kenya have led to questionable deals. Given that all leading Kenyan politicians are also successful businessmen, privatization is ultimately seen as a vehicle for the realization of individual business interests, rather than as a political goal per se.

Private enterprise
6

Foreign direct investment (FDI) reached a record high in 2007, at the equivalent of 2.7% of GDP. Since then, FDI has decreased drastically (2008: 0.3% of GDP; 2009: 0.5%). The United Nations has ranked Kenya as an underperformer in attracting FDI.

10 | Welfare Regime

Although the new constitution includes the right of every citizen to social security, there is no universal access to social welfare. Kenya's social security system is centered on employment, meaning that all potential benefits are restricted to those who are employed and able to pay into the system. The only people with regular access to the health care and pension system are those working in the formal sector of the economy. Kenya has a tripartite social security system. First, there are public programs, in which membership is compulsory. These include the National Social Security Fund (NSSF), the National Health Insurance Fund (NHIF) and the Civil Service Pension Fund. The NSSF is known to be one of the most corrupt institutions in the country. In November 2010, it underwent a drastic change of personnel. Second, there are occupational schemes run by employers, in which membership is voluntary. Third, there are private individual programs in which membership is voluntary. Existing social protection policies are governed by a variety of legal frameworks, and fall under a number of ministerial portfolios; these

Social safety nets
3

include the Retirement Benefits Act 1997, the National Hospital Insurance Fund Act 1998, the National Social Security Fund Act 1985 and the Pensions Act 1988.

Very high levels of poverty, corruption, diseases such as HIV/AIDS, global migration patterns and refugee crises have all had an impact on social security arrangements. Despite some progress during Kibaki's first term, the government has not yet integrated international treaty provisions into domestic policies on the right to social security. The current system does not provide for those working in the informal sector (i.e., the vast majority of workers) or for vulnerable groups such as refugees or asylum seekers. Access to health institutions varies significantly across the provinces. The situation is best in Nairobi (5,000 individuals per health facility) and worst in Western (11,000 per facility) and North Eastern (13,500 per facility) provinces. Crucial factors in ensuring personal welfare, especially in the countryside and in the much larger informal sector, are family and clan structures. However, these discriminate against women and cannot guarantee well-being, given widespread underemployment and unemployment. Remittances from Kenyans working in other countries play an important role in social security.

Kenya suffers from gross social differences that have a negative effect on women and the disabled. These two groups are supported by a variety of NGOs and development agencies, but their situation has not markedly improved. Though women have made strides in the education sector in recent years, and have since 1991 been better represented in leadership positions, they are by no means given the same opportunities as men. The situation for women is particularly bleak in rural areas. The new constitution refers to the need for equal opportunity and women's rights. The World Bank Poverty Atlas and the U.N. Human Development Report (both from 2005) demonstrate that poverty is particularly prevalent in North Eastern, Western, Coastal and Nyanza Provinces. By contrast, the Kikuyu-dominated Central Province is comparatively less poor. The United Nations states that the desperate situation in Western and Nyanza Province is due to disease (particularly in Nyanza) and a lack of income-earning opportunities. In the public perception, these differences are also attributed to administrative bias in favor of the Kikuyu.

Equal opportunity
3

11 | Economic Performance

Prior to the democratic transfer of power from Moi to Kibaki, Kenya experienced more than a decade of only modest economic growth and progress (1991 – 2000: an average of 2.1% per annum), that due to inflation and population growth resulted in declining per capita GDP. During the first term of the Kibaki administration (2003 to 2007), economic growth reached higher levels (2005: 5.9%; 2006: 6.3%; 2007: 7.1%) that had been unseen since the 1960s and 1970s. The post-electoral crisis and violence of 2008 proved to be detrimental to further economic expansion, and led to

Output strength
6

a sharp decline in growth rates (2008: 1.7%; 2009: 2.2%). However, at the time of writing, 2010 growth was estimated to have been 4.5%, with Kenya appearing to be on course to a more significant economic recovery. The economic success of the last few months is due in part to improvements in domestic infrastructure. The agricultural sector has remained at the center of the economy; however a breakdown of growth rates by sector shows that the economic recovery of the last few years is due to consistently high growth rates in the industry and service sector, while growth in the agricultural sector has been negative due to the ongoing drought. The annual inflation rate was 9.2% in 2009 and 4.1% in 2010 (estimated), a remarkable improvement compared to the 26.2% rate seen in 2008.

The Ministry of Labor does not issue employment statistics on a regular basis. The official unemployment rate is 21%. The real unemployment rate is probably closer to 40% or even 50%. The situation is even worse for youth: Three in five unemployed are estimated to be young. According to press reports in 2010, Kenya's youth unemployment stands at 65% and is among the highest in the world.

Seeking to combat the effects of the international recession and the domestic recession following the post-election violence, the government has tried to stimulate growth. The proposed budget deficit for 2010 – 2011 is 6.8% of GDP, while the 2009 – 2010 deficit was 5.1% of GDP. In the years prior to 2008, the Kibaki administration pursued a prudent fiscal policy. The current fiscal policy is supported by the IMF. Tax revenue has increased from 15.7% of GDP in 2003 to 18.9% in 2009. External debt has increased from \$6.4 billion in 2005 to \$7.4 billion in 2008. Kenya's trade balance has traditionally been negative. Foreign direct investment (FDI) reached a record high in 2007, totaling 2.7% of GDP. Since that time, FDI levels have decreased drastically (2008: 0.3%; 2009: 0.5%).

12 | Sustainability

Kenya's most pressing environmental issues include deforestation, poaching, soil erosion, water shortage and degraded water quality. The main forces leading to resource degradation are the increasing pressure on resources exerted by population growth and low agricultural productivity; inadequately designed and managed settlement programs; and the lack of a comprehensive land policy. Although the government has acknowledged the impact of environmental issues on poverty reduction and growth, the policy instruments addressing the topic within this broader frame are not adequate. The National Environment Management Authority (NEMA), founded in 2002, was given a mandate to coordinate all environmental matters. However, NEMA is hampered by a lack of capacities, persistent conflicts between its mandate and previously existing laws, and budgetary allocations insufficient to finance the implementation of environmental plans.

Environmental
policy
4

Kenya is a signatory to various international agreements including global and regional accords on the atmosphere, hazardous substances, marine resources, and plant and animal resources in the sea, in freshwater bodies and on land. The government does not pursue a coherent environmental policy. Environmental protection is only a reality in areas important for tourism. On the 2010 Environmental Performance Index, Kenya ranks 108th out of 163 countries.

Kenya's literacy rate is 87%, which makes it a top performer on the African continent.

Since 2002, there have been serious attempts to improve Kenya's education sector. In early 2003, the Kibaki government introduced free primary education. This increased the number of children enrolled in primary school from 6 million to 8 million within two years. The underestimation of additional costs, a lack of skills and the misallocation of education funds have since led to a decrease in the quality of primary education. Free secondary education was introduced in early 2008, and the number of children attending secondary school immediately increased by 30%. Under the proposed program, the government was slated to cover tuition fees while parents covered boarding costs. However, the government provided the education system with only a quarter of the funding needed to make free secondary education a reality. To cope with the crisis, schools have drastically increased boarding fees. Overall, the quality of secondary education has been compromised. This is particularly true for densely populated areas where class sizes went up. In more remote areas, class sizes are low, but there is a shortage of schools. In all areas there is a shortage of adequately trained teachers. The reforms of the primary and secondary education sector have thus led to a decrease in the quality of education.

Kenya has six public universities and 13 private universities. Public and private universities have a total enrollment of approximately 50,000 students, with about 80% of these enrolled in public universities (however, this represents just 25% of students who qualify for university admission). In addition, more than 60,000 students enroll in middle-level colleges, where they study career courses leading to certificate, diploma, and higher diploma awards. In recent months, the Ministry of Education published a list of 445 colleges that are recognized by the government. This has raised the bar for private colleges, whose numbers have risen substantially in recent years.

There is no reliable data on research performed in Kenya.

Education policy /
R&D

5

Transformation Management

I. Level of Difficulty

Despite high economic and administrative potential associated with its traditional political stability and comparatively highly educated workforce, Kenya remains one of the poorest countries in the world. It ranks 147th worldwide on the Human Development Index (HDI), and its human development has been stagnating for years despite increased rates of economic growth since 2002. For many years, its rate of population growth has been 2.6%, one of the highest such growth rates in the world. The instability of many of its neighboring countries does not make the task of economic development any easier.

Structural
constraints
7

In 2008, the government announced a drop in the HIV prevalence rate from a high 14% to a relatively low 5%. This is due to extensive donor and government efforts that have gone into fighting the disease and raising awareness. However, the 2009 Kenya AIDS Indicator Survey shows the HIV infection rate to be 7.8%. Drought continues to haunt Kenya. The 2009 – 2010 drought forced 4 million Kenyans into reliance on food aid. The displacement of 650,000 people after the contested 2007 election has required enormous expenditures related to rebuilding basic infrastructure, although a significant part of these costs were covered by the international community. Uneven economic development between as well as within communities and regions has not been addressed.

Civil society has played a crucial role in building a democratic public sphere, especially during the transition period to multiparty democracy in 1991 and prior to the 1997 elections. Numerous NGOs and other civil society organizations engage constructively with the state in all areas of policymaking. Since coming to power, the Kibaki administration has actively recruited members of civil society for government positions, a fact that initially weakened the capacity of civil society to scrutinize government. However, civil society has since undergone a restructuring process, both in terms of organization and personnel. Civil society has criticized the government for its lackluster fight against corruption, the continuing impunity enjoyed by perpetrators of past and recent crimes, and the attempts to sabotage the ICC proceedings. It is, however, not immune to the political salience of ethnicity. The events surrounding the 2007 election illustrated how ethnic polarization

Civil society
traditions
4

affected the work of the consortium of domestic observers, which suffered from deep internal divisions. Civil society has been one of the driving forces of the constitutional reform process since the 1990s, and continued to play a major role once reform became a part of the government's agenda under Moi and subsequently under Kibaki. The mainstream and evangelist Christian churches have lost their moral high ground, becoming increasingly partisan in support either of the PNU or the ODM during the 2007 election campaign, and were unable to prevail upon the conflicting parties to restore peace after the violence broke out. During the constitutional referendum campaign, the churches came out surprisingly strongly against the draft, further losing moral credibility. In conclusion, civil society traditions are relatively strong, but in times of strong political polarization, as during elections, ethnic considerations can supersede or compromise moral and political convictions.

For many decades Kenya has been regarded as a relatively stable country in comparison to many of its neighbors. During the period of the one-party state (1967 – 1992), Kenya enjoyed a superficial tranquility, keeping simmering ethno-regional conflicts in check first through a mix of elite agreements and the use of force (Kenyatta era), and later almost solely through the use of force (Moi era, during the one-party system). The legalization of political parties immediately brought the longstanding but previously suppressed ethno-political cleavages to the surface. Conflicts initially took the appearance of ethnic conflicts, but their nature was less intrinsically ethnic than distributional (land, resources). However, the prolongation of these conflicts over decades and the political elite's deliberate failure to solve them has changed their nature. In addition to the distribution issue, the conflicts now have a clear ethnic component. This applies particularly to Luo-Kikuyu relations. The manifestation of this conflict is still strongly dependant on the policy directions taken by the political elite. This has been powerfully demonstrated by Kikuyu-Kalenjin relations. Since the 1960s, conflict over control of parts of the Rift Valley has been simmering. At that time, a pact between President Kenyatta and Moi, the Kalenjin leader, prevented an escalation – Kalenjin were integrated into the government, while Kikuyu in exchange were able to keep control over the contested parts of the Rift Valley. This pact became dysfunctional when, at the dawn of the multiparty system, Kikuyu en masse left Moi's ruling KANU party to join the opposition. Therefore, the Kalenjin no longer felt obliged to waive their claim on the contested land. The displacement of around 500,000 people and the killing of about 1,200 resulted. The new pact between Moi and Uhuru Kenyatta as his preferred successor in 2002 renewed the old pact, and prevented any major further Kikuyu-Kalenjin confrontation. Their parting of ways for the 2007 elections (Kalenjin with ODM, Kikuyu with PNU) reopened this conflict, and led to the attempt by Kalenjin leaders to finish the large-scale evictions that had not been concluded in the 1990s. The new alliance between Kalenjin leader Ruto and Uhuru Kenyatta, with the blessings of Kibaki, comes as a result of their likely prosecution

Conflict intensity

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by the ICC, as they were the main organizers of the opposing militias (Ruto of armed Kalenjin youth, and Kenyatta of the Mungiki) who carried out the acts of violence in the Rift Valley.

The traditional Kenyan political culture, characterized by giving financial or material rewards in return for ethnic loyalty, stands in the way of political change toward overcoming ethno-regional divisions.

The main conflict lines are in form and partly in substance ethno-regional. They are mainly social conflicts focused on resource and wealth distribution. However, the political culture has prevented those conflicts from entering the political stage as what they are, and has instead led to the instrumentalization of ethnicity.

II. Management Performance

14 | Steering Capability

The National Accord, which enabled the creation of the grand coalition in the aftermath of the 2007 – 2008 post-election crisis, is based on a clear analysis of the causes of the crisis. An agenda for action was derived from that analysis, aimed at addressing the immediate and the more fundamental conditions that led to the crisis. The agenda contains four items, the fourth of which focuses on long-term and strategic measures (constitutional and institutional reform, tackling poverty and inequality, reducing youth unemployment, enacting land reform, and addressing the issues of transparency and accountability). The passage and enactment of the new constitution in August 2010 stands out as the grand coalition’s biggest achievement. Despite significant infighting within the coalition, it succeeded in remaining more or less united in rallying to support the constitution. Initially, elements of the PNU wing around Uhuru Kenyatta and Kalonzo Musyoka, both potential Kibaki successors, were reluctant to give unambiguous support to the “Yes” movement, particularly for fear of standing in the shadow of Odinga, the most publicly active and committed crusader for the new constitution’s passage. Since passage, implementation of the constitution has proved difficult, with several deadlines already missed. The process is also under constant threat of being derailed, as political positioning and the realignment of alliances in preparation for Kibaki’s departure have begun. These realignments have been strongly shaped by the ICC announcement of the six figures facing potential prosecution related to the post-election violence. Thus, 2012 electoral considerations and the ICC cases have impeded support for further political change along the lines of the National Accord and the new constitution, particularly on the part of PNU figures allied to Kibaki

Question
Score

Prioritization
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and Uhuru Kenyatta (one of the likely ICC defendants) and ODM dissident William Ruto (another likely ICC defendant). The PNU also seems determined to prevent an Odinga presidency, and has subordinated any political policy goals to this priority. The PNU appears to fear that, if president, Odinga would initiate a broad crackdown on party leaders for involvement in large-scale corruption, and might also initiate or support the prosecution of Kibaki for his role in the post-election violence. However, Odinga has over time proved his ability to serve as a driver of change, and is likely to continue in this role in the run-up to the 2012 elections, as he is most likely to gain from the full implementation of the constitution. He has also come out in support of the ICC proceedings. This has led to the falling-out with William Ruto and other Kalenjin leaders, as he did not come to their defense. Odinga, like Kibaki, has never been implicated in any major corruption case, although rumors exist that both were involved in a serious maize-importing scandal in 2009 – 2010, for example. The parliament and its committees are heavily divided along party lines, mirroring the divisions within the grand coalition itself. Parliament has flexed its political muscle only infrequently, as when it rejected the president's unconstitutional reappointment of Aaron Ringera as head of the Anti-Corruption Commission, and in those instances when it has scrutinized ministers over their involvement in corruption scandals, leading to their resignation.

Apart from the new constitution, the government has made some remarkable progress with regard to land reform through the new National Land Policy, steered by ODM minister James Orengo. This was approved by the cabinet and parliament in 2009, and takes advantage of provisions in the new constitution for recovering illegally allocated or acquired land. The fight against corruption and impunity has also made some progress. However, the government has been less determined in meeting other of its long-term goals. Judicial and police reform are underway, but are behind schedule and face unclear prospects due to the distractions of the 2012 elections. The Truth and Reconciliation Commission, ostensibly tasked with addressing past crimes and injustices, has gained no traction due to its chairman's foreseeable lack of credibility. Three years after the ethnic riots, thousands of internally displaced people still have no permanent homes, and money meant for their resettlement has been misappropriated. Youth employment and poverty remain largely unaddressed. Under its new chair Patrick Lumumba, the Kenya Anti-Corruption Commission and the general fight against corruption gained momentum during the review period. Several ministers were summoned over corruption cases, leading to resignations that as of the time of writing had not yet resulted in reappointments. In conclusion, supporters of reform appear less strongly represented in the divided government, but due to a mix of circumstances (international and domestic pressure, blatant legal mistakes by opponents of reform), have nevertheless been able to secure progress in key sectors.

However, the defenders of status quo occupy more powerful positions in government. They are likely to intensify their obstructionary tactics in the run-up to the 2012 elections, hampering action focused on the long term. They do not strategize beyond this short-term goal.

Both Kibaki administrations have shown some commitment to fighting poverty. However, despite early promises of wide-ranging reforms, this goal has been subordinated to key political players' immediate power considerations. Results have been mixed. The economy has shown remarkable gains despite continued corruption, and the new constitution was passed despite strong opposition, initially even from within the government. Continuous infighting within the coalition has derailed the implementation of the constitution, however. Other reforms (police, judiciary) are underway, but are considerably behind schedule. The fact that all ministries have ministers from one party and assistant ministers from the other coalition partner has made implementation difficult. Strong animosities and open conflicts between the partners have to a large extent rendered the ministries ineffective.

Implementation
6

Kenya's political leadership shows little learning ability. A focus on policymakers' individual interests continues to hamper the work of the grand coalition. The best example is the government's failure to establish a local tribunal to try the perpetrators of the 2008 ethnic violence, which would have been in the interest of all segments of the population. However, the provisions of the new constitution show a clear positive learning curve, including those that curtail presidential powers; strengthen parliament and the judiciary; put the electoral (and boundaries) commission on a new, more independent basis; create a comprehensive and progressive bill of rights; and ensure more gender balance throughout society. However, it should not be overlooked that a Committee of Experts did the main drafting of the constitution, and that any changes coming after its review by a parliamentary select committee needed the approval of two-thirds of parliament, a threshold too high to be met by a divided parliament. Politicians' real willingness to learn will be shown by the extent to which they are willing to fill the document with life. There has been considerable consultation with international experts and with domestic civil society interests; however, advice is accepted and acted on only in those cases when it does not run counter to personal interests.

Policy learning
5

15 | Resource Efficiency

The government makes efficient use of only some of the available human, financial and organizational resources. In all ministries, the number of politically motivated appointments is high. Recruitment for top positions is mainly driven by personal and ethnic loyalty, not by competitive procedures, even though these might exist on paper. All previous government budgets were managed in a nontransparent manner.

Efficient use of
assets
3

The 2009 Fiscal Management Act requires the minister of finance to publish the budget in detail before it is discussed in parliament. However, few parliamentarians use this as an opportunity to question the minister's policy closely. It is too early to evaluate the impact of the new act. The International Open Budget Index has called on the Kenyan government to publish midyear and year-end reports, but as of the time of writing, this had not yet been done. Funding provided by the government to various sectors often fails to reach the designated recipients; this is a particular problem in the education sector. Constituency development funds (CDFs) provide every member of parliament with approximately \$1 million a year to support development projects in his or her constituency. While these funds have in some cases been grossly mismanaged, in others the CDFs have successfully been used to bring governmental services closer to the people, thus fulfilling their promise. Generally, however, it has rightly been questioned why legislators are entrusted with financial allocations for tasks that are more rightly the responsibility of the public service.

The grand coalition was born out of political expediency, following ethnic clashes and strong pressure by the international community. The grand coalition is East Africa's largest cabinet. Ministries have been split, and related responsibilities artificially separated in order to accommodate all the coalition partners' key figures in the cabinet. Ministries with a PNU minister have an ODM assistant minister, and vice versa, as a means of establishing mutual checks and controls. However, this makes it next to impossible to plan for related sectors in an integrated manner. The formation of the grand coalition has led to increased amounts of red tape and confusion as to ministerial responsibilities. The position of the prime minister has never been well defined. Efficiency, coordination and the prioritization of policies and goals have been deliberately sacrificed in order to create an equilibrium of power that is virtually immovable. The cabinet currently has two power centers in the president and the prime minister. Politicians have used various policy debates, such as the constitutional referendum, to position themselves for the 2012 elections. The tendency to appoint members of one's own ethnic community to head state-owned companies has increased in recent months. In several organizations, including the National Social Security Fund, the Kenya Bureau of Standards and the Insurance Regulation Authority, this has led to extensive infighting between managing directors and the managing board. The personalistic and ethnic nature of Kenyan politics is an additional obstacle to policy coordination.

Policy
coordination
3

The government has long lacked the political will to curb corruption effectively. In the past, some individual, generally low-ranking perpetrators were brought to trial, but even these were exceptions. However, Kenya has in recent months witnessed the resignation of several high-ranking politicians, including Industrialization Minister Henry Kosgey, Higher Education Minister William Ruto, and Foreign Affairs Minister Moses Wetangula, due to pending corruption charges. This new

Anti-corruption
policy
4

determination in the struggle against corruption is attributable to several factors. First, a clause in the new constitution states that politicians suspected of abusing public funds have to resign. Second, Kenya Anti-Corruption Commission (KACC) Chairman Patrick Lumumba, who remained in place through the end of the review period, appeared to be serious about his mandate. Third, Kibaki's second term is slowly drawing to a close. To date, his presidency has been associated with large-scale corruption, and impunity for those involved in them. Kibaki may want to leave a positive legacy as he leaves office. As the review period closed, the new KACC director (who took the position in October 2009) appeared to have the government's temporary blessing to proceed as he wished. Fourth, the donor community has put consistent pressure on the government to achieve at least some progress in the fight against corruption. All of these factors are artifacts of the current political constellation, and not the result of efficient state institutions. The government as a whole is only rudimentarily willing to make efforts to contain corruption. The political elite can live with sacrificing some perpetrators to quiet the public and the donor community, as long as larger corruption deals are not jeopardized.

16 | Consensus-Building

All Kenyan politicians agree in principle on democratic norms, the need for development and the importance of free-market principles. However, irreconcilable differences often exist with respect to translating these principles into practice. The failure of various governments to arrive at a new constitution for two decades speaks volumes. However, the fact that a new constitution was eventually passed also indicates at least some capacity to agree on the basic principles of governance. Many political and administrative positions are linked to the well-being of ethnic groups. This further hampers the capacity to work toward a consensus. Even though no leading Kenyan politician openly doubts the merits of democratic electoral contests and basic human rights, the 2007 election demonstrated that none of the top candidates was willing to concede defeat. This raises severe doubts as to the extent to which basic democratic norms have been internalized. The high salience of ethnicity and personalities in Kenyan politics makes any form of consensus building difficult. This has been amply demonstrated by the activities of the grand coalition, which has in several cases needed the combination of international and domestic pressure, plus a determined speaker of parliament, to reach consensus on policy decisions and appointments. The clear divisions within the coalition with respect to the ICC proceedings clearly demonstrate the limits of consensus building when one side's fundamental interests are threatened (in case of the ICC, official prosecution of the named suspects would prevent Kenyatta and Ruto from contesting the 2012 elections).

Consensus on goals

6

There are no significant anti-democratic actors in Kenya. No political force is opposed to democratic reform per se. However, self-interested individuals may sabotage democratic policies if they believe their interests are threatened; such actors can be found in any political faction. In the current government, the reform opponents around President Kibaki appear to hold the upper hand. It is in their interest to block further reform on the political side, as any such progress would likely aim at ending impunity and limiting the powers of the executive. As one example, William Ruto pursued two objectives with his campaign against the new constitution: First, to assume the position of undisputed Kalenjin leader in the Rift Valley, and second, to block the new constitution's improvements to the rule of law. This type of progress is not in his interest, given several pending corruption cases against him, and his likely prosecution for a role in the post-election violence. Political parties and party factions are frequently divided over goals and aspirations. This and the constant shifting of political alliances make the political landscape volatile and highly unpredictable.

Anti-democratic
actors

6

The 2007 elections and their aftermath have illustrated the deep ethnic divisions between various communities, particularly between the Kikuyu and Luo and between the Kikuyu and the Kalenjin. The inability of political leaders to defuse the violence was evident in their readiness to accuse each other of fostering ethnic genocide. No political party has ever managed to include representatives of all major communities in positions of leadership for a significant period of time. The same is true of the grand coalition, where ethnic and personal division have come to the fore regularly since 2007. The coalition came together only after the international community placed high pressure on all sides to cooperate. Yet at the same time, there is agreement that the 2007 riots could have led to even more bloodshed had leading politicians wanted such a scenario, and that in turn, the bloodshed could have been minimized if the political will, particularly among key Kalenjin politicians, had existed. It also ought to be stressed that despite all of its infighting, the coalition did not formally fall apart, as was widely predicted by the Kenyan media. This could suggest there is some form of mutual understanding that national disintegration must be avoided. On the other hand, when the vital personal interests of the elite, are at stake they do not shy away from exploiting and furthering cleavages particularly of an ethnic variety.

Cleavage /
conflict
management

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A prominent example of this can be seen in politicians' instrumentalization of the land conflict for their own, ever-shifting political goals and ambitions, thus taking their communities hostage. Neither side has shown an interest in fairly and substantially solving the conflict over land control in the Rift Valley, as this would preempt the possibility of exploiting the conflict in the context of future power games. This conflict and its instrumentalization carry a significant risk of future escalation into open violence. The clear determination by the Ruto, Kenyatta and Musyoka alliance to prevent an Odinga presidency is based both on a strong

rejection of Odinga himself and of the Luo as the community he represents. This determination has strongly shaped the work of the grand coalition. The political elite remains deeply divided and it is largely due to their individual self-interest in keeping their lucrative positions as ministers, assistant ministers and parliamentarians that the coalition has not yet collapsed. Constant international pressure and strong civil society scrutiny have also helped to keep the coalition formally together. However, it is apparent that both coalition partners are trying their best to obstruct the other side. The conflict is likely to intensify substantially as the elections draw closer, particularly once the coalition ties are thrown off.

More broadly, Kenyan political culture, which is characterized by providing financial or material rewards in return for ethnic loyalty, also stands in the way of any political change aimed at overcoming ethno-regional divisions.

The pending ICC cases represent another source of elite interest-driven division. Kibaki's close advisors, perhaps rightly, see the likely prosecution of the head of civil service, Francis Muthaura, and Mohammed Hussein Ali, the former inspector general of police, as proxies for Kibaki, who the ICC avoided implicating in the post-election violence for fear of destabilizing the country further. If they expect the ICC to prosecute the president after his retirement, Kibaki's confidants may be willing to risk further destabilization and the exacerbation of ethnic divisions to save their leader and themselves. The close connection between Kenya's political elite and its business elite, however, would also suggest that no one has a genuine interest in state failure or months of bloodshed. Nevertheless, the experiences of 2007 – 2008 showed that once the spiral of ethnic violence begins, neither the political elite, nor civil society or the business community is able to stop it. Apart from ethnic considerations, Kenyan leaders are too obsessed with power and status to engage in any meaningful give-and-take relationship.

On various occasions, Kenyan civil society has played a key role in determining political outcomes. This was the case during the country's struggle for multiparty competition in the early 1990s, in leveling the playing field before the 1997 elections and before the first transfer of power from KANU to NARC in 2002; in the three constitutional conferences in 2003 and 2004, which saw significant and highly professional input from civil society; and finally, in the run-up to the constitutional referenda in 2005 and 2010. With the exception of the 2010 referendum, civil society each time successfully opposed the government of the day. The Committee of Experts, which drafted the new constitution, received over 40,000 public submissions by civil society groups and individuals. Civil society advocates further reforms vocally, and consistently criticizes corruption and human rights abuses. During the 2008 riots, civil society groups were very visible in their demands for an immediate end to the bloodshed, but their own ethnic divisions and their rejection by the Kibaki parties left their voices with limited effect. After Kibaki's rise to power in 2002, many leading members of civil society joined the

Civil society
participation
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new government. However, the political leadership does not generally seek dialogue, and in most cases simply ignores civil society. This has been particularly true since the formation of the grand coalition, which civil society rejected in principle. In most cases in which civil society is consulted for advice, this is done to legitimate governmental decisions that have already been made. Civil society is good at reporting government misconduct, but in the current political environment lacks a political ally in parliament due to the grand coalition's overwhelming majority.

There is widespread consensus that the one-party state, as well as the Moi regime between 1992 and 2002, harmed large segments of the population. There have long been calls for some sort of mechanism to deal with past crimes, as well as a campaign of reconciliation. However, former President Moi has been granted de facto amnesty. The fact that Moi supported his former enemy Kibaki in the 2007 election makes future prosecution very unlikely.

There is also general agreement that the perpetrators of the ethnic clashes of 2008, which led to the deaths of more than 1,000 people and drove hundreds of thousands of Kenyans to flee their homes, should be prosecuted. For this purpose, the government has established a Truth and Reconciliation Commission (TRC), and local hearings have been ongoing since August 2009. However, there are many problems with this commission. The choice of its chairman has been contested. Bethwell Kiplagat is under suspicion of having gained access to land allocations illegally. His selection led Deputy Chairperson Betty Murungi and several other commissioners to resign. Conflicts within the commission have hampered its efficiency. More importantly, the group's mandate is too broad given its time in office and its resources. The commission is tasked with investigating all abuses that took place between December 1963 and February 2008. This is the longest time frame any truth and justice commission has ever had to analyze. Large parts of the Kenyan population reject the option of providing amnesty to perpetrators. Finally, it is not clear to what extent the TRC will cooperate with the International Criminal Court (ICC), which is set to try six high-ranking officials suspected of having planned the 2008 ethnic clashes. While the TRC has the potential to provide some sense of justice and reconciliation, it could also have a negative effect on intercommunal relations. This could occur if local politicians use the TRC proceedings in order to instrumentalize ethnic grievances. So far, none of the persons responsible for the big corruption scandals (Goldenberg and Anglo Leasing) or political assassinations (of Tom Mboya, J.M. Kariuki, Robert Ouko and others), or for the past or most recent ethnic clashes, have been sentenced. Despite official proclamations of commitment to addressing past injustices, the government's action has demonstrated something to the contrary. Real, systematic approaches to reconciling the communities in the Rift Valley are lacking. Instead, the government has sought to give an impression of action through shallow, high-

profile but ad-hoc visits by national leaders without any follow-up. Imbalances in the resettlement of IDPs in favor of the Kikuyu have furthered grievances and ethnic divisions. The National Cohesion and Integration Commission, which was established under the National Accord in September 2009 with a mandate to address and reduce discrimination against individual ethnic groups, has done little more than criticize politicians for their use of hate speech.

17 | International Cooperation

Kenya is heavily dependent on donor aid. With the arrival of the Kibaki administration in 2002, the relationship between Kenya and the international donor community initially improved significantly. Very quickly, however, the Kibaki government showed that it was not serious about its election pledge to fight corruption in a sustainable manner. In recent years, both the European Union and the United States have at various stages threatened to withdraw development aid either because political reforms were not pursued in a serious manner or because development aid was diverted on large scale. The Obama administration in particular has been vocal about its disappointment with the Kibaki government. Both the World Bank and the IMF on the other hand have in the last few years expressed positive views on the performance of the government. The IMF has twice awarded the government substantial credit facilities, \$209 million in May 2009 and over \$500 million in November 2010 for the 2011 – 2013 period. Multilateral donor efforts such as poverty reduction strategies suffer from poor data collection and a lack of qualified personal.

The government has the clear aim of fostering economic growth and prosperity. Kenya's Vision 2030 program outlines this strategy and how it will be achieved over the course of the next two decades. Yet in the past, donor money has often been used for developmental projects that were then put on hold once the government ran out of foreign funds. Corruption and bad management remain the two biggest obstacles to the effective use of support.

Kenya's international credibility is low. For decades, the donor community has criticized various governments for corruption in the public sector. The situation has remained the same during both Kibaki administrations. Several leading figures have been implicated in large-scale corruption affairs. Ministers have sometimes been forced to resign, but were often reappointed just months later. The ethnic clashes of 2008 illustrated that Kenya's top politicians are not only heavily corrupt but also willing to jeopardize national cohesion through organized ethnic violence and the use of excessive police force. Kibaki's initial rejection of international mediation efforts in 2008, and the recent resolution by the Kenyan parliament to withdraw from the International Criminal Court following the court's initiation of investigations against leading cabinet members and civil servants, have been

Effective use of support

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Credibility

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detrimental to the image of the country. Recent attempts by the government to refer the cases of the six named suspects in the post-election violence to a local tribunal have further tainted the country's reputation. Due to Kenya's heavy dependence on foreign aid, donor influence will remain strong. However, the country's formal dedication to multiparty democracy and market reforms will remain in place.

Kenya is a member of all relevant regional organizations. It is considered an important international ally in solving the many crises that have affected the Horn of Africa and the wider Eastern African region. Following the riots in early 2008, Kenya lost some of its international stature; the International Criminal Court's investigations against leading Kenyan politicians have contributed to the country's declining regional image. The Kibaki wing of the government is extremely uncomfortable with the ICC proceedings, and has successfully tried to drum up regional support for a deferral of the ICC process. The government has sought to find a legal and internationally accepted way to avoid the ICC prosecution. However, it has not adopted the position advocated by parliament, which voted overwhelmingly for Kenya's withdrawal from the Rome Statute and the ICC. In recent months, Kenya's advice was sought during the crisis talks in the Ivory Coast, given the country's experience with power sharing. However, divisions in the governing coalition spilled over to the continent's political scene when the Kibaki wing undermined the efforts of Prime Minister Odinga as the African Union envoy to the Ivory Coast by establishing bilateral negotiations with the loser of the elections, Laurence Gbagbo. This diminished Kenya's continental and regional weight and diplomatic clout further.

The government remains committed to championing a peace initiative in Somalia and South Sudan, where Kenya has played a key role as a regional facilitator of peace. Until 2005, Kenya served as a major host for both the Somali National Reconciliation Conference and the Somali Transitional Federal Institutions. Relations with Uganda and Tanzania have further been strengthened. Kenya was instrumental in revitalizing the Common Market for Eastern and Southern Africa, and is a founding member of the Indian Ocean Rim Association for Regional Cooperation. The government has expressed its ongoing commitment to regional cooperation.

Regional
cooperation

7

Strategic Outlook

In the next few years, Kenya will face two principal challenges. The government needs to implement the new constitution and come to terms with the legacy of the violent clashes of 2008. Both processes hold the potential of healing or tearing apart the country. During the first half of its mandate, the grand coalition was able to provide a minimum degree of stability. In the second half it will be required to deliver concrete solutions for the future. While the institutional conditions provided by the new constitution and already enacted reforms have improved the basis for democratic governance, the spirit with which these changes have been pursued by the political leadership are still neo-patrimonial rather than democratic. This endangers the entire reform project. The new constitution requires the enactment of around 50 bills into laws, a large segment of which must be in place within the next year, before the general elections scheduled for August 2012. This will not only produce a huge workload for legislators and parliament, it will require all leading members of the grand coalition to compromise. Many contested issues are newly addressed in the constitution, including land reform, judicial reform and reforms related to the implementation of devolved government structures.

Reforms of the electoral regulations have moved in the right direction. Free, fair and universal elections will become possible if the constitution is implemented in a timely manner, the corresponding electoral legislation is drafted and passed by parliament well ahead of the elections, and the new electoral management body, the Independent Electoral and Boundaries Commission (IEBC) is constituted along the criteria contained in the new constitution. However, given Kibaki's previous attempt to appoint key senior public officers unilaterally, without following clearly laid out procedures, it is possible that the IEBC staffing process will be subject to political interference and intense political infighting between the grand coalition partners. This would certainly cloud the prospects for free and fair elections in 2012.

The new constitutional provisions have to be implemented through the passage of additional detailed legislation. This process is likely to become one of the forums for conflicts over the shaping of the country's future. Indeed, Kibaki's controversial attempts to appoint four key civil servants in January 2011 already demonstrated this. All of these issues have the potential to cause deep political divisions, and many can lead to instability. A further challenge will be the work of the Truth and Reconciliation Commission (TRC) and the International Criminal Court (ICC). The work of the TRC has been sabotaged by bad decisions regarding its composition. Given its broad mandate, the TRC is unlikely to produce substantial new information relating to any past injustice. In anticipation of the 2012 election, many local legislators might position themselves against the TRC. This will be contingent on the TRC's findings. However, both the TRC and the ICC processes are essential, and represent major initial steps in the country's fight against impunity.

The ICC carries a heavy burden, as it has taken over prosecution of the key actors behind the post-election violence from the Kenyan authorities. It has to succeed in prosecuting and sentencing those responsible. Failure to do this will send a clear signal to perpetrators and other criminals that they can get away with anything. The ICC has identified six persons, three from the ODM and three from the PNU or government. Among these are current and previous cabinet ministers (the PNU's Kenyatta, and Ruto and Kosgey from the ODM), as well as the head of the civil service and the former commissioner of police. Several opinion polls have indicated that the ICC work is supported by the vast majority of Kenyans. The failure of this process could precipitate further violence in the elections ahead. An alliance has started to take shape between Ruto as the Kalenjin leader and Kenyatta as the future Kikuyu leader; this could pre-empt the possibility of renewed clashes between the two groups in the Rift Valley, as took place in 2008. However, the root causes behind the clashes would remain unaddressed, and this would be an elite settlement functioning only so long as it serves the main political leaders on both sides. If the international community supported such an alliance as a short-term recipe to avoid a repetition of the 2008 violence, it would send the wrong signal. However, a trial of Ruto and Kenyatta might actually foster an alliance between them and their communities in the run-up to the 2012 elections; this is a real possibility if the ICC does not manage to bring the two ethnic leaders to trial during 2011, as appeared likely at the time of writing. The international community should stay firm on its commitment to a full ICC trial of those implicated. The ICC's findings and the ability of the Kenyan political class to deal with these findings in a politically mature manner are two key variables that will shape the country's future political trajectory. The Kibaki wing of the government has already shown that it will go to great lengths to have the ICC cases deferred beyond the 2012 elections, so that the three political leaders implicated can contest the 2012 elections. The new constitution stipulates that no one charged with a crime nationally or internationally can contest elections. The government's attempt to regain control over the cases through local legal processes are not convincing as honest or serious attempts to bring those responsible to justice. The Kenyan government let the chance for a local tribunal slip when they were not willing to let the legal framework for the process match international standards for such trials. If the government does manage to have the six ICC suspects tried by a local court, or if it manages to delay the ICC trial, a drastic loss of trust in the Kenyan state is inevitable.

The fight against corruption has received new momentum the appointment of a new Kenya Anti-Corruption Commission director who – at least as of the time of writing – appears to be able to conduct his mission unhampered by the political imperatives of the day. However, the serious drive to fight corruption has in the past never been sustainable. The recent wave of high-level resignations due to corruption charges could be either an interim phenomenon or the first step in a larger committed campaign to end impunity, thus possibly ending the political career of potential presidential candidates. The long-term effects of the 2008 clashes will continue to affect politics, as thousands of internally displaced people are still in refugee camps. Progress has been very slow and heavily contingent on international goodwill; nothing indicates that this situation will change.

The government recently introduced its first five-year plan (2008 – 2013) indicating how it plans to translate the Kenya Vision 2030 program into practice. Vision 2030 outlines the major policy goals that the government will pursue in order to foster economic growth and make Kenya a middle-income country by 2030. The donor community should shape its policies around that plan. It should further insist on the full implementation of the new constitution and continue its pressure on the government to address corruption.