

# BTI 2014 | Kenya Country Report

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This report is part of the Bertelsmann Stiftung's Transformation Index (BTI) 2014. It covers the period from 31 January 2011 to 31 January 2013. The BTI assesses the transformation toward democracy and a market economy as well as the quality of political management in 129 countries. More on the BTI at <http://www.bti-project.org>.

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### Key Indicators

Population	M	43.2	HDI	0.519	GDP p.c.	\$	1765.5
Pop. growth <sup>1</sup>	% p.a.	2.7	HDI rank of 187	145	Gini Index		47.7
Life expectancy	years	60.4	UN Education Index	0.584	Poverty <sup>3</sup>	%	67.2
Urban population	%	24.4	Gender inequality <sup>2</sup>	0.608	Aid per capita	\$	40.4

Sources: The World Bank, World Development Indicators 2013 | UNDP, Human Development Report 2013. 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 as the country goes through the process of implementing its 2010 constitution. This constitution brings about numerous fundamental changes, some of which have started to take shape while others have been delayed and/or undermined.

The biggest success in the implementation so far has been the reform of the once highly corrupt judiciary under new Chief Justice Willy Mutunga, who was appointed in late 2011. All judges of the newly introduced Supreme Court, the Court of Appeal, the High Court and the Magistrates Court underwent strict vetting procedures by an independent panel. These steps have boosted significantly public confidence in the judiciary.

On the negative side, crucial commissions on corruption and human rights have been incapacitated through delays in the appointment of commissioners. Key laws, like the Leadership and Integrity Act, were substantially diluted. Members of parliament made self-serving changes to the Electoral Act immediately before the 2013 elections. In addition, the police reform was slow to start and the new police command was not solidly in place before the elections.

Civil society remains an indispensable force, though its political clout has weakened over the past decade, partly because some of its strongest advocates have been absorbed by the government. Civil society has lost its agenda-setting impact and has become more reactive. However the sector is also highly diversified with a broad spectrum of expert knowledge which parliament draws on to varying degrees.

Political forces remain organized along ethnic lines. Coalitions of ethno-regional leaders emerge and collapse. Alliances usually serve short-term purposes, usually elections, and generally do not survive long beyond election day. The 2007 opponents, William Ruto (Kalenjin) and Uhuru Kenyatta (Kikuyu), both allegedly responsible for post-election violence and indicted by the

International Criminal Court for crimes against humanity, united in an attempt to evade trial, forming the Jubilee Alliance to win the 2013 presidential elections. Nonetheless there has been no reconciliation between communities responsible for, and affected by, the 2007 post-election violence.

The Independent Electoral and Boundaries Commission (IEBC) was keen to avoid a repetition of the 2007 election chaos. It greatly increased the use of information communication and technology in the elections, but proved unable to master the technology required for decisive features. For example, the electronic voter identification system failed, as did the electronic results transmission system. Nevertheless, the main national and international observer missions came to the conclusion that these failures were not deliberate but technical, and did not affect the overall result of the presidential election. The Supreme Court dismissed two petitions and gave the presidential election a clean bill of health, much to the surprise of close observers of the court proceedings. With election losers calling for peace and a significant special police force presence in potential trouble spots, there were no major outbreaks of violence after the election.

Economic growth recovered, yet remained below 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 manageable levels of around 4.5% of GDP. The government has been oscillating between a more expansive fiscal policy to stimulate growth and restrictive fiscal measures to keep inflation under control. Failed harvests in both 2010 and 2011 along with increased world market prices for oil and food items limited growth, which for Kibaki's second term averaged 3.74% per annum (compared to 5.44% between 2002 and 2007). The economy benefited from improved and expanded infrastructure.

## History and Characteristics of Transformation

The political transformation of Kenya remains shaped largely 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 adequately addressed. Both during the initial period of de facto, and later of de jure one-party rule (1967 – 1991) as well as the period of multiparty competition (1991 to the present), politics has been characterized by strong ethnic undercurrents. All three presidents in the country's 50 years of independence (Jomo Kenyatta 1963 – 1978, Daniel arap Moi 1978 – 2002 and Mwai Kibaki 2002 – 2012) have favored their own ethnic communities and regions, leading to considerable discontent among the other 40 or so ethnic groups. In the fertile Rift Valley, both Kikuyu and Kalenjin claimed land previously under colonial occupation. Competing ethno-political demands for land have never been resolved, thus becoming a latent source of conflict between the two communities. The demand for a greater equity in the country's resources among the regions became one of the dominant issues during the constitutional reform process (1999 – 2010). This led to a complete restructuring of the state's political and administrative framework, now taking shape following the 2013 general elections, with 47 newly

elected county governors and county assemblies replacing local authorities and powerful provincial and district administrations.

In addition to tensions between the Kikuyu and the Kalenjin, political antagonism developed between the Kikuyu and the Luo over the 1966 dismissal of Kenyatta's Luo vice president Oginga Odinga (father of current Prime Minister Raila Odinga) and the mysterious assassination of the senior Luo politician Tom Mboya – a potential contender for the presidency – in 1969.

These lines of conflict culminated in the 2007 election when the Orange Democratic Movement (ODM) alliance dominated by Raila Odinga's Luos and William Ruto's Kalenjin lined up against Kibaki's and Uhuru Kenyatta's Kikuyu, organized around the Party of National Unity (PNU). Kibaki was sworn in as president for a second and final term, but in the eyes of many Kenyans as well as national and international analysts the elections were inconclusive, marred by major irregularities in the result aggregation process. The violent protests which accompanied Kibaki's swearing-in affected different regions of the country until an international diplomatic intervention, led by former UN Secretary General, Kofi Annan, restored calm.

After five years, 1,300 deaths and around 500,000 displaced persons, the 2002 alliance partners, Kibaki and Odinga, finally implemented their pre-election pact. While Odinga was initially supposed to assume the role prime minister in recognition of his leading role within the coalition, Kibaki did not honor this agreement. Other key campaign promises, particularly the fight against corruption and the conclusion of the constitutional reform process, failed to materialize. These points were subsequently formed part of the agenda of the 2008 conflict resolution which gave birth to the Grand Coalition with Kibaki as president and Odinga as prime minister, a position created for a transitional period only.

The coalition, marred by major in-fighting, proved incapable of prosecuting perpetrators of the 2008 post-election violence; the International Criminal Court in The Hague assumed jurisdiction over the cases and confirmed charges against four suspects. Two of them were leading politicians, Uhuru Kenyatta and William Ruto, who eventually contested the 2013 presidential elections.

The grand coalition, however, managed to complete the constitutional review process. The new constitution was ratified by a referendum and its implementation, to unfold over five years, began in late August 2010. The review process became a battle ground, with anti-reform forces attempting to sabotage both key components and the overall ethos of the new constitution.

Economically the government has focused on attracting private investment 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. During the review period there were no significant changes 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 1 (worst) to 10 (best).

## Transformation Status

### I. Political Transformation

#### 1 | Stateness

The state has a nationwide monopoly on the use of force in principle, but it is not always fully exercised throughout its territory. Particularly in the arid and semi-arid areas of the north and north-east, police presence is low and the ability to maintain law and order minimal. Kenya's borders with Somalia, Ethiopia and Sudan are porous, leading to an influx of weapons and Al-Shaabab insurgents. Political interference, a lack of proper police oversight and high levels of corruption, as well as technical and organizational deficiencies within the police force, are the main reasons for these gaps. Local militia groups have exploited these gaps, including the Kikuyu based Mungiki sect, until the 2007 elections, as well as groups in slum areas of Nairobi and Kisumu, de facto replacing law and order with violence and fear. In rural areas, the police have failed to curtail armed banditry. The 70,000-strong police force is, at 160 officers per 100,000 citizens, way below the UN recommended ratio of 220 to 100,000.

Kenya does not face threats to its territorial integrity. However it remains affected by the state crises of its immediate neighbors. Kenya currently provides shelter for thousands of refugees from Somalia.

Since independence more or less all major groups in society have respected the Kenyan state as legitimate. However the push toward centralization under the first three presidents (1964 – 2012), with clear biases in regional resource allocation, infrastructural projects and government appointments, has led to complaints from various ethnic, religious and nomadic groups regarding real or perceived marginalization. The new constitution contains mechanisms to reduce regional imbalances through devolved government. It remains to be seen whether the reform can quell widespread discontent, particularly in the northeastern region and the coast, where the Mombasa Republican Council, a militant, largely Muslim secessionist movement, exploits dissatisfaction with the centralist state for political purposes.

Question  
Score

Monopoly on the  
use of force

6

State identity

9

Since independence, religious dogma has not interfered with the state's legitimacy. However the referendum campaign on the proposed constitution ushered in a new dynamic. Christian churches, including the mainstream (Catholic and Anglican) and evangelical churches, rejected the new constitution because of an abortion clause which was allegedly too liberal, and the retention of the Khadi courts (Muslim law courts dealing with limited personal status issues). Church leaders campaigned heavily for a "no" on the referendum, and influenced their congregations by grossly distorting the contents of the proposed constitution. Both abortions on medical grounds and the constitutionality of Khadi courts have long been a reality in Kenya. The Khadi courts' jurisdiction is confined to personal status issues for Muslims, such as marriage, divorce and inheritance. They have far less power than Kenya's magistrates' courts and High Court. Both parties to a given case have to consent in order for it to be heard in a Khadi court. The Christian churches have considerably impaired relations between Christian and Muslim communities, but having lost some of their moral clout as a force above politics, the churches have been unusually silent in public debates.

No interference of  
religious dogmas  
8

In the restructuring of the state's administrative framework through devolved government, based on the new constitution and ensuing laws, there is an implicit recognition of the state's failure to provide services and to treat regions equally. At time of reporting it is too early to assess the impact of this devolution.

Basic  
administration  
5

The new constitution grants such rights as free education, safe housing and access to clean water. But, in reality, people do not enjoy those rights in practice. For example, primary education provision is fraught with corruption. Clean and safe drinking water is delivered in urban areas, but not to the extent required. Adequate housing for all is far from reality as the government has been unable to resettle those who live in informal settlements or displaced persons' camps. The judiciary doesn't have the capacity to deal with its huge caseload. Certain administrative structures simply are not functioning because of corruption.

The March 2013 establishment of 47 counties, each with its own governor and assembly, with new functions and responsibilities, represents an attempt to bring service delivery closer to the people.

## 2 | Political Participation

Kenya has conducted regular elections since independence, usually every five years. With the reintroduction of the multiparty system in 1991, the presidency was contested by competing parties for the first time. The 2002 elections also resulted in the country's first peaceful and democratic transfer of power. The 2007 elections reversed those democratic gains in a number of ways. The contest between incumbent Mwai Kibaki (PNU) and Raila Odinga (ODM) was largely an ethno-political struggle

Free and fair  
elections  
7

for the presidency. While the elections themselves were peaceful, both the governing PNU and the opposition ODM rigged the election results in their respective strongholds.

Following an independent review commission led by South African Justice Johan Kriegler, the entire election administration framework was reformed on the basis of the new constitution. The Independent Electoral & Boundaries Commission (IEBC) replaced the disgraced Electoral Commission of Kenya (ECK), electoral boundaries were redrawn, expanding the number of constituencies from 210 to 290, and a Senate, representing the newly created 47 counties, was introduced to the National Assembly. Neither gender is to occupy more than 2/3 of elective seats, though a failure to initiate appropriate legislation early enough will delay implementation of this reform for the National Assembly and the Senate until the 2017/2018 elections.

The 2013 elections saw deputy prime minister Uhuru Kenyatta, son of the country's first president, elected with 50.07% of the vote, around 8,400 votes over the mandatory 50% threshold. Prime minister Raila Odinga received 43.31% of the vote. National and international observer groups declared the elections credible and in line with international standards. But their statements came before the conclusion of tallying, giving a clean bill of health to an unfinished process. Odinga contested the election result before the Supreme Court on the basis of alleged late changes to the voter register, turnouts of close to or even above 100% in several polling stations, substantially different turnout in the presidential and governors' election, calculation errors, the failure of the electronic result transmission system and the delay in result forms from polling stations. In contrast to 2007, the legal system was used to challenge the election outcome. This in itself is a major achievement and indicates that the reformed judiciary has gained credibility. The Supreme Court ruled unanimously that the elections were fair, free, transparent and credible, much to the surprise of many members of the public and those who had followed the court proceedings closely. Calls by Odinga and other CORD leaders to abstain from violent protests and the heavy presence of special police units in critical parts of the country prevented a repeat of the 2007 riots. Key stakeholders (IEBC, the judiciary, domestic and international observers), the vast majority of the media and the general public seemed to accept significant deficiencies in the electoral process as the price of stability and peace.

There are no traditional veto powers in operation, but the effectiveness of governance has been substantially hampered by friction, tension and infighting within governments since 2003. The ICC's prosecution of four figures allegedly responsible for the post-election violence became the key issue of the political divide since 2010 and has affected the capacity for effective governance. Corrupt, self-seeking politicians interfere more with legislation than do those with veto powers from outside. Attempts to apply veto powers are not done openly, but in secret. Those likely to be negatively affected by full implementation of the constitution try to

Effective power to govern

7

secretly undermine and derail legislative processes. This group mainly consists of the political elite and beneficiaries of the Kenyatta and Moi era. They are particularly concerned with land acquired illegally which may be re-appropriated under the new constitution, once the National Land Commission is fully functional and all related legislation enacted. The outcome of this struggle remains open. However the lines of conflict are not clear, as some members of this interest group have been in government (Kenyatta, Ruto) and pursue their cause secretly while officially toeing the government line.

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 and will likely do so again in times of political destabilization. The police reform which commenced in late 2012 will take some time to become fully effective. During the 2013 elections police largely prevented demonstrations in order to maintain law and order and avoid violence. While this was broadly accepted by the public and media it constituted a clear infringement on the right of assembly.

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 the past, draconic penalties for libel led to a level of self-censorship by the media and publishing houses. This part of the penal code, however, is regarded as incompatible with the new constitution, which makes explicit reference to freedom of expression as well as freedom of assembly. Freedom of religion is also guaranteed.

Freedom of  
expression  
8

There have been reports of security forces harassing and threatening media workers, allegedly for reporting on issues such as corruption and the 2007-08 post-election violence. During the 2013 election, however, media houses generally abstained from reporting incidents and speeches which might inflame inter-ethnic tension, which compromised their mandate to inform the public. It is also worth noting that the government does not restrict access to the Internet.

### 3 | Rule of Law

Separation of powers was not emphasized in the old constitution, with members of the legislature, such as ministers and even the president, also members of the executive. Separation of powers was particularly weakened by the grand coalition formed by the three strongest-performing parties of the 2007 elections (Mwai Kibaki for the PNU, Kalonzo Musyoka for ODM-Kenya, and Raila Odinga for the ODM), leaving only an ensemble of fragmented fringe parties incapable of exerting appreciable legislative power as a check and challenge to the executive. Of 210

Separation of  
powers  
7

members of parliament almost 150 are also members of the executive. This has made the separation of powers almost impossible.

The new constitution, however, allows for a maximum of 22 cabinet secretaries (formerly ministers) and stipulates that they must come from outside parliament. The president is required to seek parliamentary approval for his cabinet secretaries. Parliament can dismiss ministers, which was previously the exclusive prerogative of the president. Appointments by the president to national commissions, the positions of attorney general, auditor general, budget comptroller and public prosecutor are based on nomination by special panels. Parliamentary approval is required here to keep panels largely free of Presidential influence. In the new constitution the powers of parliament have generally been strengthened and those of the president curtailed.

The judicial reform process under Willy Mutunga, chief justice since 2011, has substantially strengthened the role and independence of the third power, reflected in rising approval rates for the judiciary in public polls and surveys.

The judicial reform process is one of the major achievements of constitutional implementation. Under all three presidents the judiciary had been one of the most corrupt and least trusted institutions in Kenya, but the new constitution guarantees its independence.

To a certain degree the 2007/08 post-election crisis was caused by a failed judiciary, with the ODM party choosing not to contest the presidential election result in the courts, a position accepted by the public and stakeholders due to the judiciary's reputation.

The constitution establishes the Supreme Court as the highest court in the country and among its responsibilities is protecting the integrity of the constitution. Willy Mutunga, who boasted impeccable credentials, was appointed Chief Justice in 2011. A former chairman of the Law Society of Kenya and the Kenyan chapter of the International Commission of Jurists, Mutunga had not taken sides in political conflicts since Kibaki's assumption of the presidency in 2002 and so was acceptable to both coalition partners. Under his stewardship the reform of the sector started with a comprehensive vetting process of all Supreme Court, High Court and Court of Appeal judges, followed by the vetting of magistrates in the first half of 2013. This vetting process, under which 13 judges and a significant number of magistrates were dismissed, along with Mutung's widely acknowledged independence of Mutunga, led to a surge in public approval ratings for the judiciary. The courts' independence and positive reputation was put to the test when the presidential elections were given a clean bill of health despite numerous deficiencies.

Independent  
judiciary  
6

The judiciary has not yet tackled corruption. It does, however, depend on the public prosecutor and the Ethics and Anti-Corruption Commission to bring forth cases, though neither of these have done so in recent months.

Despite countless promises to fight corruption made by the last two Kenyan presidents, Moi and Kibaki – and their governments – there has been no real effort to break the culture of corruption and impunity and bring perpetrators to trial, neither for financial offences nor human rights violations.

The governments' efforts to tackle corruption have taken various institutional forms over the past decade and a half, but none of them were meant to succeed. They were often accompanied by much fanfare and hope, and headed by well-intentioned, well-regarded figures, including Richard Leakey (head of the civil service in 1999/2000, with a mandate to cut down the service's size) John Githongo (former head of Transparency International Kenya, Permanent Secretary for Ethics in the Office of the President under the first Kibaki government) and Patrick Lumumba (head of the Kenya Anti-Corruption Commission). But their work was aborted when it appeared to be making an impact.

The new constitution dedicates a full chapter to the issue of integrity and defines appropriate conduct of office for public office holders, as well as conditions for removal from office. The constitution also ascribes constitutional status to the Ethics and Anti-Corruption Commission (EACC). However subsequent legislation, particularly the Leadership & Integrity Act 2012, did not operationalize constitutional provisions in a way that allows appropriate vetting of public office holders and political aspirants. Furthermore, since its inception in September 2011 the EACC still doesn't have a chairperson, with the appointment of Mumo Matemo revoked by the High Court in September 2012. The Court concluded that neither the legislature nor the executive had properly vetted the candidate. There had been a serious court case pending against him, which cast grave doubts on his integrity. Without a chairperson the EACC lacks the political clout to take on high profile cases. The leaders of the grand coalition clearly want the new anti-corruption body to be as toothless as its predecessors.

Chapter four of the new constitution contains a comprehensive bill of rights, including civil rights. Any citizen who feels that his or her fundamental human rights have been denied or violated now has the right to initiate court proceedings.

A lack of sufficient civic education mean that the vast majority of the population remains unaware of these provisions. Moreover, there are structural limits to the enforcement of these rights, with most citizens lacking the financial means to institute a court case. As important as their support is, institutions like the Federation of Women Lawyers (FIDA) and Kituo cha Sheria remain limited in their outreach.

Prosecution of  
office abuse  
4

Civil rights  
6

Since 2002 there has been significant progress in fostering a culture of respect for civil rights. Nevertheless, international organizations continue to criticize random arrests carried out by security forces. Civil society groups report that the police engage in illegal confinement, extortion, physical abuse and fabrication of charges. Women are disadvantaged in all aspects of public and civil life. This applies in particular to rural areas, where respect for civil rights is particularly uneven.

#### 4 | Stability of Democratic Institutions

The new constitution reconfigures the ensemble of democratic institutions and the relations between them. It gives them a new foundation by introducing a devolved level of government, curtailing presidential powers, strengthening of parliament and making several constitutional commissions independent. Parliament had previously struggled to control government effectively. This was due to the extensive constitutional powers allocated to the presidency, the undermining of democratic principles by personal and ethno-regional interests, and the frequent realignment of political blocs as a result of political power games. The new constitutional dispensation is, however, still taking shape as the five-year implementation phase will not be complete until August 2015 (five years from its promulgation).

The new devolved government only started its work after the 2013 March elections, with the elected governors and county ward representatives taking over from the provincial and district administration and local authorities. It is too early to assess their performance as democratic institutions.

The tenth parliament (2008-2013) has been unable to perform its role as counterweight and check of the government due to the bloated grand coalition government. The coalition comprised the three leading parties which emerged from the 2007 elections, depleting the opposition benches. Many parliamentarians, but also ministers and assistant ministers, were confounded by the wide ranging constitutional reforms and used the legislative process to undermine them through laws which clearly contravened the spirit of the constitution (Leadership and Integrity Act, amendments to the Elections Act). The eleventh parliament is in its early stages, with a new house, the Senate.

The last Kibaki government was to a large extent paralyzed by the implications of the ICC cases and preparations for the 2013 elections, particularly in the second half of its term. Delays in implementing police reform and the failure to appoint the heads of the EACC and the Kenya National Commission on Human Rights were evidently politically motivated steps intended to undermine these bodies' independence during the electoral process. There was also an additional aim of keeping control of the Kikuyu-dominated leadership of the police.

Performance of  
democratic  
institutions  
6

The reformed judiciary has revived citizens' confidence in the rule of law. It plays a crucial role in the electoral process with a large number of election-related cases expected.

All actors accept the value of democratic institutions and rules in principle, but many try to influence or even manipulate them for their own interests.

Elections results tend to be more acceptable when the winning side comprises key representatives of all major ethnic groups, as was the case in 2002, and less acceptable when bigger ethnic groups are not represented in the winning coalition as was the case in 1992, 1997, 2007 and 2013. In 2013 the public's desire for peace and the strong presence of special police forces in potential hotspots helped to contain potential violence.

The new constitution provides key institutions with better protection from external influence, utilizing transparent and competitive appointment processes independent of the executive and accountable only to the legislature. However there are no safeguards against attempts to buy influence as such. The judiciary is currently developing an internal code of conduct which should to make them less prone to this kind of influence in the future.

Commitment to  
democratic  
institutions

7

## 5 | Political and Social Integration

Parties continue to serve the interest of strongmen, built around ethnic loyalties and patronage rather than platforms or principles. Party politics are characterized by a high degree of polarization and volatility. The introduction of multi-party politics in December 1991 led to various cycles of parties forming, splitting, merging and forming once more that continues to this day. Consequently, the party system remains unstable. Some politicians would rather establish a new party than contest leadership positions within their existing party. Both Uhuru Kenyatta and Musalia Mudavadi opted for new parties ahead of the 2013 elections as they were not guaranteed candidacy by their previous parties. Relations with interest groups are limited and ad-hoc at best. Parties don't aggregate interests which are expressed in social, cultural or economic terms. Instead, leaders use political parties to channel and re-engineer their ethno-regional interests and rally the support of their ethnic communities around them. It is only around election time that parties are vibrant and relevant, when leaders need to aggregate and consolidate their political following. A government may be based on a coalition, but soon after elections the constituent parties will become dormant and informal alliances between individuals emerge. Various government elements will start working with different opposition figures, with the result that the boundary between government and opposition becomes completely blurred.

Party system

4

The new constitution and its laws attempt to foster party political consolidation, requiring, for example, that each party's candidates for public office be members of at least three months' standing before it submits its list of candidates to the Registrar of Political Parties. The Electoral Act, however, was amended by parliament to allow so-called party hopping until the day parties hand in their lists. This allowed losers of party primaries to find new party tickets from which to contest elections, thus undermining the intention of party consolidation. However, the change must be seen in the broader context, with parties once again unable to conduct fair and transparent party primaries which, in turn, makes it more difficult for the public to accept politicians' decisions to switch parties.

Prior to the 2007 elections, Kenya had 300 registered parties. The new political party act required parties to register afresh with mandatory representation across the country. In 2010 47 parties were registered, in 2012 59, of which 53 fielded candidates for the 2013 elections.

Social interests are not just organized along Kenyan society's economic divisions, but also along ethno-regional lines, meaning that social groups often fail to include certain social strata or professional groups. Organizations which could potentially use their sheer size as significant political leverage, such as the Central Organization of Trade Unions (COTU) and the Kenya National Federation of Agricultural Producers (KENFAP, successor to the Kenya Farmers' Union), remain hampered by corruption and weak leadership. They are unable to address social issues for their members, let alone on a national scale. Nonetheless, there are numerous professional and interest groups covering a variety of fields, including human rights, gender equality, business interests, fair trade and environmental protection. These are mostly confined to the urban centers, and so fail to represent the interests of rural populations, such as farmers. Their impact varies. Some, such as the Kenya Human Rights Commission (an NGO), the Kenya National Commission on Human Rights (governmental, but constructively critical), the Law Society of Kenya, the Kenya Private Sector Alliance (KEPSA), have genuinely and constructively engaged with the government. This was particularly apparent during the protracted constitutional drafting process, when a wide variety of organizations submitted proposals to the Kenya Constitutional Review Commission (2000 – 2002), 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.

Despite the post-election violence and the persistence of corruption, support for democratic forms of government remains high. The preference for democracy over any other form of government has fluctuated between 70% and 80% in the last three Afrobarometers (2005, 2008 and 2012): from 75% in 2005 to 78% in 2008 to 72% in 2012. Nevertheless, overall survey results indicate that support for democratic values remains high. Only 8% do not consider Kenya a democracy while 39% define it as a democracy with major problems. On the other hand, 42% see Kenya either as a full

Interest groups

7

Approval of  
democracy

8

democracy (9%) or as one with minor problems (33%). Satisfaction with Kenyan democracy runs at 47%, with 43% dissatisfied or not very satisfied. The launch of the new constitution has increased trust in democratic norms.

A large number of social and self-help organizations exist, although without effective division of labor. Beyond the capital, networks are limited by financial and infrastructural constraints. Social trust remains limited to family, clan or ethnic networks. Consequently trust within the population is higher at the local level than the national level. Locally initiated self-help projects were popular in the first two and a half decades of independence, fostering trust among the local population and political leaders, before they fell victim to manipulation by political interests. Informal savings associations are still popular throughout Kenya, especially in rural regions where access to the formal banking sector is limited. Informal cooperatives and self-help groups are difficult to monitor but they exist all over the country, especially in rural regions and informal settlements of urban centers. They can be considered the backbone of Kenyan society.

Social capital  
6

## II. Economic Transformation

### 6 | Level of Socioeconomic Development

Kenya has the largest and most diversified economy within the East African Community. At \$833 it also has the highest GDP per capita, yet it remains the most unequal society in the Community with a 2012 Gini coefficient of 47.7. Kenya is also categorized as a low-income country. According to the statistical data from 2007, 45.9% of the population live below the poverty line, thus putting the Millennium Development Goal of halving poverty by 2015 out of reach. Women and youth are still disadvantaged. The 2012 gender gap in Kenya remains considerably higher than in Uganda, Tanzania or Burundi. Kenyans generally perceive inequality in terms of unequal regional distribution rather than class.

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, Kenya remains the most unequal society within the EAC. 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). These discrepancies are now being addressed

Question  
Score

Socioeconomic  
barriers  
2

by the devolution of government which started after the 2013 elections and which gives the 47 counties more responsibilities and control.

Out of Kenya's estimated labor force of 18.39 million in 2011, only 2.127 million, or 11.5%, are waged employees in the formal sector (681,100 in the public sector and 1.446 million in the private sector). Women only account for 30% of employees in the modern private sector. About 8.3 million are thought to work in the large informal sector, with a greater number of women confined to non-paying occupations.

According to UNDP Kenya, the post-election violence and its broader impact, as well as the global economic crisis of 2008/09 and global increase in fuel prices, have led to a further increase in poverty.

Economic indicators		2009	2010	2011	2012
GDP	\$ M	30600.2	32230.6	34329.9	<b>37338.1</b>
GDP growth	%	2.7	5.8	4.4	<b>4.6</b>
Inflation (CPI)	%	9.2	4.0	14.0	<b>9.4</b>
Unemployment	%	-	-	-	-
Foreign direct investment	% of GDP	0.4	0.6	1.0	-
Export growth	%	-9.3	17.4	6.6	<b>4.7</b>
Import growth	%	2.8	6.1	15.6	<b>12.5</b>
Current account balance	\$ M	-1688.5	-2368.7	-3333.2	-
Public debt	% of GDP	47.5	49.9	48.5	<b>48.2</b>
External debt	\$ M	8589.5	8801.2	10257.9	-
Total debt service	\$ M	387.4	400.6	428.2	-

Economic indicators		2009	2010	2011	2012
Cash surplus or deficit	% of GDP	-5.3	-5.9	-4.5	-
Tax revenue	% of GDP	18.8	19.5	19.5	-
Government consumption	% of GDP	16.2	17.2	16.4	<b>17.2</b>
Public expnd. on edu.	% of GDP	-	6.7	-	-
Public expnd. on health	% of GDP	2.0	1.8	1.8	-
R&D expenditure	% of GDP	-	-	-	-
Military expenditure	% of GDP	1.9	1.9	1.9	<b>2.0</b>

Sources: The World Bank, World Development Indicators 2013 | International Monetary Fund (IMF), World Economic Outlook 2013 | Stockholm International Peace Research Institute (SIPRI), Military Expenditure Database 2013.

## 7 | Organization of the Market and Competition

Since independence, Kenya has in theory been led by free market principles, while in fact subject to major state intervention under its first two presidents, who used the economy as a political instrument to safeguard power. Once driven by the government, the economy is now essentially propelled by the private sector, although politicians and political dynasties (such as the Kenyattas, Moisi and Kibakis) play a major role, often using or abusing political power to buttress their economic interests. The Kibaki government largely eliminated the export and import licensing system and both streamlined and reduced tariffs, leading to the waiving of export duties and restrictions on current accounts. The government still intervenes in the market from time to time, for example in December 2010 when it introduced fuel price controls to assist the fledgling economic recovery.

Despite considerable corruption, political interference in the economy has subsided, allowing ministers and staff to conduct their work in a more professional, technocratic way.

A large and growing part of the working population is employed in the informal sector (known as the *jua kali* sector). Most enterprises start off in the informal sector, as they cannot afford the comparatively expensive process of registering with the government. 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. However, structural constraints remain high (including limited access to markets, inadequate skills and technology, poor product quality, inadequate business skills, limited access to information, and the lack of an institutional framework). After long delays the Micro and Small Enterprises Development Act came into force in January 2013. It aims at easing access to credit

Market-based  
competition  
5

and regulates the sector for the first time, promoting it as part of the Vision 2030 strategy.

The long overdue reform of the institutional and legal framework for regulating competition got underway under the new constitution with the Competition Act 2010, which came into force in mid-2011. It has been streamlined with Vision 2030. The act creates two new agencies: the Competition Authority is an autonomous body, assuming the functions of the Monopolies & Price Commission, previously part of the Ministry of Finance; the second is the Competition Tribunal, which replaces the Restrictive Trade Practices Tribunal. The Competition Authority is vested with wide-reaching powers, intended to bring together various industrial regulatory bodies and organizations responsible for consumer protection. While regulations previously allowed mergers if they remained under a certain threshold values (similarity, market share, size of the companies), all applications for merger or acquisitions are now vetted. Some analysts fear that the organization may be overloaded with applications, which may drop off if waiting times become impractical. So far there has been no evaluation of the impact of the new act. According to analysts the act has been modeled on competition regulations used by the European Union.

Anti-monopoly  
policy  
6

These laws are essential for fostering real competition. Monopolies and cartels in Kenya and throughout the EAC currently cause unnecessarily high prices for consumers, affecting staples such as maize, sugar and dairy products. Members of the political elite with significant shares in these sectors play a crucial role in maintaining monopolies and cartels, and are likely to resist the new laws.

Kenya was one of the founding members of the WTO in 1994 and has signed all WTO agreements, including the General Agreement on Tariffs and Trade (GATT), the Agreement on Agriculture (AOA), the General Agreement on Trade in Services (GATS), the Agreement on Textiles and Clothing (ATC) and the Agreement on Trade-Related Intellectual Property Rights (TRIPS). Kenya is also a key member of 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 Union. Joining in 2001, Kenya is now one of 40 countries covered by the US African Growth and Opportunity Act (AGOA), which provides for quota and duty-free entry into the US market for a variety of goods until 2015.

Liberalization of  
foreign trade  
7

On 11 October 2007, Kenya signed an economic partnership agreement with the European Union.

Despite numerous reforms over the past 15 years, including abolition of export and import licenses (with the exception of some items listed in the Imports, Export & Essential Supplies Act), liberalization of the exchange rate, rationalization and

reduction of import tariffs, and abolition of export duties and account restrictions, Kenya has been much less successful in attracting FDI than neighboring Uganda and Tanzania (between just 0.3% and 0.6% of GDP between 2008 and 2010). Domestic investment far outstrips FDI, making it the real driver of national development.

With the establishment of the East African Customs Union in January 2005, the EAC common external tariff (CET) has become Kenya's main trade policy instrument. The judicial system's lack of credibility and corruption in the port of Mombasa are among the reasons cited for Kenya's failure to enforce WTO anti-dumping, countervailing or safeguard measures. Non-tariff measures include costs associated with the recently introduced Import Standardization Mark and fees for import declarations. According to the WTO, Kenya follows international norms for standard-setting.

Once fragile and subject to exploitation for political gain, the banking sector has become far more robust over the last decade of the Kibaki administration, with significantly less political intervention and greater regulation.

Banking system

7

There are currently 43 commercial banks in Kenya, 30 of which are domestically owned. The remaining 13 foreign-owned banks account for roughly 40% of the commercial banking sector's core capital with the two longest-standing institutions, Barclays and Standard Chartered, accounting for 30% of the sector between them. In addition there is one mortgage finance company, six deposit-taking microfinance institutions, five representative offices of foreign banks, 115 foreign exchange bureaus and two credit reference bureaus.

The large informal sector of the economy (see 7.1) is also reflected in the large number of informal banks. Almost every Kenyan is member of a private savings and credit association (SACCO) organized by individuals or groups. Almost every Kenyan transfers money by telephone. In 2012, the requisite telephony infrastructure allowing for connections to a savings and credit system was introduced.

The financial sector is one of the key drivers of economic growth. Banks are supervised by the Central Bank of Kenya (CBK). In 2010, the CBK claimed that the majority of Kenyan banks were aware of the Basel II guidelines, allocating medium importance to them. The share of nonperforming loans has decreased substantially from 34.9% in 2006 to 13.1% in 2009. The capital-to-assets ratio has remained between 11% and 12% for some years.

Under President Moi, banks frequently served 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 new regulations provided guidelines on this information-sharing. Long after independence from Britain in 1963, Kenyan banking remained dominated by local subsidiaries of international banks such as Barclays and Standard Chartered. Even though foreign-owned banks dominate the sector, home-grown institutions targeting the lower end

of the market have begun challenging them. In the last three years, pan-African banks such as Nigeria's United Bank for Africa have also entered the market, along with the Islamic banks Gulf African Bank and First Community Bank. The banking sector was not adversely affected by the recent global financial crisis.

## 8 | Currency and Price Stability

Post-election violence in 2008 drove inflation to 26.2%, the highest rate since the aftermath of the 1992 elections and its Goldenberg scandal (46%). The rate has fluctuating from 9.2% (2009) to 4.1% (2010), 14% (2011) and an estimated 9.4% (2012) with a reduction in month/year inflation between December 2011 and December 2012 to 3.1%. In 2011, the failed harvest (caused by poor weather conditions), together higher crude oil prices and a weakened Kenya shilling, drove up food prices and inflation. By contrast, 2012's bumper harvest and more favorable international conditions, supported by the central bank's tighter fiscal policy, significantly reduced the inflation rate.

The Kenyan shilling is not fixed. Following the post-electoral violence, the shilling lost 13% value 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. The shilling has subsequently remained near the 2008 rate (the 2009 exchange rate was 1:76, the estimated 2010 rate 1:79). The shilling is supported by relatively robust 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. The Moi administration was known to print extra money in election years in order to finance its campaigns, fuelling inflation, but the Kibaki administration has not followed this practice.

The Kibaki government is committed to macroeconomic stability in principle, navigating the right balance between stabilizing the economy and stimulating growth. After budgets to boost economic growth, the government and central bank enacted anti-inflationary policies to curb the inflation rate which had reached 20% by the end of 2011, and to stabilize the currency, which reached an all-time low of KSH 107 KSH to the dollar (whereas it generally fluctuates around 84:1). The central bank restricted monetary policies and eventually succeeded in stemming inflationary pressure, leading to shrinking demand for credit. This led to the envisaged growth rate for 2012 falling to 4.3%. However higher interest rates attracted an inflow of short-term foreign exchange, with the desired effect of stabilizing the Kenya Shilling. This helped the Kenyan economy regain the trust and confidence of market forces. By the end of 2012 the central bank had eased monetary policy once more to stimulate local demand for credit and investment.

Anti-inflation /  
forex policy

8

Macrostability

6

During the review period, government consumption remained stable at 17% or 18% of GDP. The government's development expenditure has more than doubled since 2004/2005 from 3.4% of GDP to 9.1% in 2011/2012 while recurrent expenditure remained stable at around 19% of GDP for that period. Kenya regularly has 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 specifically designed to stimulate economic growth. External debt has increased from \$6.4 billion in 2005 to \$ 9.6 billion in 2012, the equivalent of 23.4% of GDP, while domestic debt totals 26% of GDP; together, this makes slightly less than 50% of GDP, and thus lower than the previous review period (52%), but well above the government's 40% target. The current account deficit increased by \$1 billion within one year (2011/2012) to \$4.3 billion, equivalent to 10.5% of GDP. This is largely a result of increased imports of machinery for oil and gas exploration. Foreign exchange reserves stand at a relatively healthy \$5.680 billion.

## 9 | Private Property

The new constitution aims to lay a new foundation for property rights. Since independence, right to land has been the country's most contentious topic. Although there have been numerous categories of land, the former constitution only acknowledged Trust Land. The new constitution classifies three different types of land: private land, community land (including the former trust land) and public land. Foreigners are now only permitted to lease land for a period up to 99 years. The constitution also prescribes that legislation shall specify maximum and minimum acreages of ownership and introduces options for repossessing illegally acquired land. These provisions target the excessive land ownership by the ruling elite and their cronies. The Land Act of 2012, however, does not determine those limits but requires the government to commission an academic study to this effect. These provisions were the real reason why large segments of the political elite either openly opposed the new constitution (Ruto, Ex-President Moi) or tried to secretly undermine it (Kenyatta, Musyoka), as it represents a threat to their wealth. However, the Land Commission had not been constituted by March 2013 and the law has not come into effect yet.

Both old and new constitution allow for land ownership in any part of the country. Since independence, however, property security has been highest in those regions considered the homeland of the buyer's ethnic community and much lower in the homelands of other ethnic groups. Owners from different ethnic groups have often been viewed as "outsiders" by those who considered themselves "indigenous" with an assumed moral right to control over that land, implying an ultimate right to dispel others.

Property rights  
4

With the use of fake land title deeds and the regular disappearance of registered title deeds from the Registrar, possession of a land title does not guarantee property ownership. Houses on illegally acquired property, such as land reserve for roads, are often demolished without prior notice.

Corruption and impunity from prosecution mean that land grabbing by politicians and others is very common.

According to the International Property Rights Index it currently takes nine procedures (eight in 2010) and an average of 73 days (previously 64 days) to register private property.

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.

Under the first two presidents the economy was to a large extent state-driven. The privatization process started in the early 1990s and has since experienced three waves: 1992–2002, 2003–2007, and the third one which started at the end of 2012.

The first and largest privatization wave saw the partial or full privatization of 186 of the 207 companies listed as non-strategic, including Kenya Airways, one of the success stories. The second wave focused on the 33 companies initially listed as strategic. The privatization process has been facilitated by continuous reorientation of the legal framework towards facilitating investment opportunities and improving the business climate, including the Privatization Law, which was enacted in 2005 but only came into force in January 2008, and the legislation provides for by the new constitution. The establishment of the Privatization Commission, however, had been delayed by two years to the end of 2012. As privatization was meant to fill gaps in the national budget, in the meantime the government had to resort to borrowing on the domestic market. The commission has now listed 23 state-owned companies earmarked for privatization, of which three hotels, five sugar factories and the Kenya Wine Agency have been approved by parliament. Plans for a 75% divestment of the revamped New Kenya Cooperative Creameries were shelved after protests from milk farmers.

Given that all leading Kenyan politicians are also successful businessmen, privatization is ultimately seen as a means of promoting individual business interests, rather than as a political goal per se. But although the privatization process has been manipulated, private businesses remain the backbone of the economy and economic growth.

Fair and equal competition between private and public enterprises is the rule, but there are exceptions where state corporations are protected by either guaranteed

market share, lower marketing hurdles, or preferential access to government credit with lower interest rates.

## 10 | Welfare Regime

Although the new constitution guarantees 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 any potential benefits are restricted to those who are employed and therefore 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 for different sectors, in which membership is compulsory for relevant employees. These include the National Social Security Fund (NSSF), the Civil Service Pension Fund and the National Hospital Insurance Fund (NHIF). The NSSF is known to be one of the most corrupt institutions in the country, although it underwent a drastic change of personnel in November 2010. NSSF and NHIF have minimal contributions fees of KES 200 and KES 320 respectively and therefore do not provide adequate compensation for social risk. Employees of the formal sector are additionally provided with a compulsory private health insurance and pension scheme which provides more realistic security against social risks. The required monthly contributions are split between employee and employer.

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. 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 and asylum seekers. Access to health institutions varies significantly throughout the provinces. Remittances from Kenyans working in other countries play an important role in social security.

The concept of corporate social responsibility has started to gain ground with companies donating toward health and medical services as well as education & training, HIV/Aids programs, food security and underprivileged children.

Kenya suffers from gross social differences that have a negative effect on women, youth and the disabled. These three groups are supported by a variety of NGOs and development agencies, but their situation has not markedly improved.

Non-discrimination and equality are one of the key threads which run through the new constitution. Discrimination against women in relation to inheritance and unbiased access to landownership have been corrected. The new constitution also states that no gender shall occupy more than one-third of elective positions. However the legislature failed to enact this constitutional requirement in time for the 2013

Social safety nets  
3

Equal opportunity  
5

elections. Faced with the very real possibility of a parliament elected in contravention of this principle being declared unconstitutional, the attorney general sought an advisory opinion from the Supreme Court which in December 2012 declared that the gender rule shall only be implemented gradually, giving the legislature time to prepare necessary provisions.

Youth (aged between 15-35 years) constitute 35.4% of the population (according to the 2009 census) and are most affected by the failure of the economy to provide sufficient jobs. Youth who neither study nor work constitute 38% of this population sector.

The World Bank Poverty Atlas and the U.N. Human Development Report (both from 2005) confirm that poverty is particularly prevalent in the North Eastern, Western, Coastal and Nyanza Provinces. The Kikuyu-dominated Central Province is comparatively better off.

## 11 | Economic Performance

The decade of Kibaki's administration (2003 – 2013) saw higher economic growth rates than the last decade of Moi's rule (1992 – 2002 with an average of 2.1% annual growth). Kibaki's first term (2003 – 2007) – despite the impact of the Anglo Leasing financial scandal – saw higher growth (with an annual average gain of 5.44%) than the second term (2008 – 2013) with a rate of 3.74%, mainly attributed to the impact of the post-election violence and the global financial crisis (2008: 1.7%; 2009: 2.2%). However, the economy recovered quickly with a growth rate above population growth: 5.8% in 2010, 4.4% in 2011 and an estimated 4.3% in 2012.

An anti-inflation policy set in reaction to high inflation rates (2008: 26.2%, 2009: 9.2%, 4.1% in 2010 and 14% in 2011), weakened global demand and higher costs for fuel and food on the world market meant the envisaged growth rate above 5% remained out of reach. However the World Bank confirms the high growth potential of the Kenyan economy due to a global easing of food and fuel prices, decreased inflation and consequent loosening of fiscal control. The government managed to restore trust in the economy, resulting in Standard & Poor's 2010 upgrade of Kenya's sovereign debt rating to B+/B (long-term/short-term), which was reconfirmed in 2011. Risks for the robust economic recovery include elections (since 1992 all elections except those 2002 resulted in turmoil with negative impact on economic growth) and government expenditure increasing to meet the demands of the new constitution, particularly with regard to devolution and external shocks (global recessions, hikes in food and fuel prices). However Africa's overall economic revival has not been as strongly felt in Kenya. While the country has the highest GDP per capita (795 US \$) in the EAC, it has not yet made it into the category of middle-income countries with a per capita above \$1,000, which already includes 22 African

Output strength

6

countries. Nevertheless, Kenya's middle class is growing fast, already encompassing already about 10% of the population, leading to increased domestic purchasing power.

Although the agricultural sector remains the backbone of the economy, other sectors, particularly the service manufacturing sector, have more than compensated for low growth rates. There is consensus for calculating unemployment. The official unemployment rate is 21%, while some analysts estimate the real rate at around 40% or even 50%. According to the World Bank, on the other hand, real unemployment is relatively low (7% urban, 2.5% rural). Youth unemployment is considered the most pressing issue for the labor market.

The government has sought to stimulate growth to combat the effects of international recession and the domestic recession which followed post-election violence. The budget deficit for 2010/2011 is 6.8% of GDP, while the 2009/2010 deficit was 5.1% of GDP. 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 dramatically (2008: 0.3%; 2009: 0.5%).

Public debt increased from June 2009 to June 2010 by 22.2%, while domestic debt accounted for 47.2% of total debt. The 2011 ratio of total debt to GDP of 43.7% (compared to 42.5% in 2010) is within the government medium term debt sustainability guidelines.

## 12 | Sustainability

Kenya's most pressing environmental issues include deforestation, poaching (due to increased demand from China and other Asian countries in the past four years), soil erosion, water mismanagement and degraded water quality. The main forces leading to resource degradation are population growth, low agricultural productivity, inadequately designed and managed settlement programs, and the lack of a comprehensive land policy prior to the new constitution. The National Environment Management Authority (NEMA), founded in 2002, has a mandate to coordinate all environmental matters. However, NEMA is hampered by a lack of capacities, persistent conflict between its mandate and previously existing laws, insufficient funds for environmental plans, and corruption. Unlike the previous version, the new constitution spells out principles, obligations and guidelines for environmental management, reflecting a strong commitment to environmental issues. However, the environmental laws which are meant to operationalize these provisions are only due in the fourth year of implementation (2014). Policies addressing water management,

Environmental  
policy  
4

air pollution and wastewater management are also urgently required, but there is a lack of political will to prioritize them.

The government does not pursue a coherent environmental policy. Environmental protection is only a reality in areas significant to tourism. On the 2011 Environmental Performance Index, Kenya ranks 83rd out of 132 countries with an Environmental Performance Index (EPI) of 49.3.

Since Kibaki assumed power in 2002 the country has spent more than 6% of GDP on the education sector. The country's literacy rate is 87.4%, which makes it a top performer on the African continent and the frontrunner in the EAC. The level of education of the workforce is high and one of Kenya's assets in pursuing the goal of becoming a middle-income country.

Kibaki fulfilled his campaign promises of removing fees for primary education (2002) and secondary education (2007). Free primary education increased enrolment from 6 million to 8 million within two years. The government underestimated the additional cost of this move, leading to a drop in the quality of primary education exacerbated by a skills shortage and the misallocation of education funds. Ancillary expenses, such as school uniforms, remain a severe obstacle. Private schools outclass public schools year after year in the Kenya Certificate of Primary Education examinations. After free secondary education was introduced, enrolment increased by 30%. Under the proposed program, the government promised to cover tuition fees while parents would cover boarding costs. However the government only provided a quarter of the funding needed to make free secondary education a reality. Schools have drastically increased boarding fees to cover the shortfall. Overall, the quality of secondary education has been compromised. This is particularly true for densely populated areas where class sizes have increased. 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. Reforms in the primary and secondary education sector have led to a decrease in the quality of education which the government has promised to address.

The number of universities is increasing rapidly, with many colleges upgraded to university status. There are currently 39 universities in Kenya, of which 16 are public and 23 private.

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 educated workforce, Kenya remains one of the poorest countries in the world. It ranks 147th worldwide on the Human Development Index (HDI), and though its HDI improved slightly from 0.443 in 2000 to 0.509, economic growth since 2002 has not sufficed to move Kenya into the category of medium human development (> 0.52). It still has the highest HDI in the EAC, but has made the least progress. Despite a decrease in population growth from 3.8% per year in the early 1980s to 2.6% in recent years, the country is still one of the fastest growing countries in the world. If the current fertility of 4.6 children per woman prevail, Kenya's population will be about 82 million by 2040 (up from 9.1 million in 1964); if fertility falls to the envisaged 2.1 children per woman, it will be around 65 million.

Structural  
constraints

7

By 2008, the HIV prevalence rate had dropped from a high 14% to a relatively low 5%, but by 2012 it has increased again to 6.2% of the population, with the urban educated affected at a higher rate than the national average (7.2%) while 4.6% of the rural poor are affected. About 70% of those affected now receive treatment, a huge improvement compared to ten years ago. The general decline in prevalence is due to extensive donor and government efforts in fighting the disease and raising awareness.

Droughts continue to haunt Kenya. The droughts in 2009/2010 and 2011 meant that 4 million Kenyans were reliant on food aid. The displacement of 600,000 people after the contested 2007 election has required enormous expenditure for rebuilding basic infrastructure, although a significant proportion of these costs was covered by the international community.

Civil society has played a crucial role in building a democratic public sphere, especially during the period of transition to multiparty democracy in 1991, prior to the 1997 elections and during the constitutional conferences of 2003 and 2004. Civil society has been greatly engaged in civic education, particularly in the 1990s and around the constitutional conferences. Kenya has a long history of grassroots organizations around the country, engaged in community work and opening fora for people to engage in local public life. The grassroots organizations and the

Civil society  
traditions

4

overwhelmingly Nairobi based CSOs, however, have never really connected. The latter managed to reach the grassroots through cooperation with the Christian churches which, particularly in the last years of the one-party state (1988 – 1991), provided shelter for those criticizing the government. While civil society has constantly sought issue oriented political debates and decisions it did not prove immune to the political importance of ethnicity, as rifts and splits along ethnic lines affected the clout and coherence of civil society, particularly around the highly polarized 2007 elections. This impact was still being felt in later years. The mainstream and evangelist Christian churches have lost their moral high ground, having become increasingly partisan in the 2007 elections and during the 2010 constitutional referendum where large segments of the churches supported the No campaign for superficial reasons. Civil society traditions are relatively strong, but in times of heightened political polarization, such 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 agreement at the highest levels along with the use of force (Kenyatta era), and later almost solely through 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 take action has changed their character. While it does not play a major role in normal day-to-day life, Kenyans have become more ethnically conscious and cautious in the multi-party era, as continuous mobilization along ethnic lines during election periods has left its impact on the self-conception of Kenyans. So as well as the distribution issue, these conflicts now have a clear ethnic component. This applies particularly to Luo-Kikuyu and the Kikuyu-Kalenjin relations. The manifestation of these conflicts are still strongly dependent on the policy directions taken by the political elite. This has been powerfully demonstrated by Kikuyu-Kalenjin relations, seen in the discontent over land distribution in the Rift Valley. While containing this issue through an elite pact between political leaders sometimes had political advantages (Kenyatta and Moi in the 1960s, Moi and Kibaki in the 1980s, and Uhuru Kenyatta and Ruto for the 2013 elections) at other times there has been political capital to be gained from accentuating the land question when the political leaders of both ethnic groups stood on opposing sides (Moi and Kibaki/Matiba in the 1990s, Ruto and Kibaki/Uhuru Kenyatta around the 2007 elections). The new alliance between Kalenjin leader Ruto and Uhuru Kenyatta as the Kikuyu leader during the 2013 presidential campaign comes as a result of their prosecution by the ICC. It is a pure elite pact for personal gain with no prior reconciliation between their hostile communities in the Rift Valley.

Conflict intensity  
5

It has helped, though, to prevent major outbreaks of violence and clashes in the Rift Valley, though it should be noted that the absence of violence does not necessarily imply the prevalence of peace, as indicated by hateful messages as well as mutual accusations based on ethnic stereotypes on social media during the elections.

The traditional Kenyan political culture, characterized by the bestowal of financial or material rewards in return for ethnic loyalty, stands in the way of political change which would overcome ethno-regional divisions.

In form and partly in substance, the main conflict lines are 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 arena in their true form, and has instead led to the exploitation of ethnicity.

## II. Management Performance

### 14 | Steering Capability

Question  
Score

After more than two decades under former President Moi (1978 – 2002), where most strategic planning served merely to preserve the government's power, leaving the country's growth potential unrealized, the Kibaki government managed to set and pursue a course of economic recovery towards transformation. At the same time, however, this government endangered this course with its disdain for the political reform agenda, especially the fight against corruption.

Prioritization  
5

The Kibaki government demonstrated an ability to set strategic economic targets. The Vision 2030, launched by the president in 2008, aims at transforming Kenya into a middle-income country by 2030. Resting on four pillars (economic, social, political and enablers & macro) the government pursues a wide range of projects with varying links. A key precondition is the continued rehabilitation and expansion of the country's physical infrastructure which has seen huge investments in the past four years. However, little or no progress has been made where reforms have touched on vested interests of the old established elite around the former three presidents, particularly with regard to land reform and the fight against corruption.

Under the Vision 2030, 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 sustainable annual economic growth of 10% for more than 20 years to eradicate poverty by the year 2030.

Within the executive, three groups can be distinguished, none of them an unrestrained driver of the reform agenda. The first group comprises those around former President Kibaki, which is conservative in nature, generally more reserved toward reforms, but not unsupportive as long as their own vested interests remain untouched. The second group consists of defenders of the status quo. This is made up of the incoming President Kenyatta, his running mate Ruto, former president Moi and a large group of the old KANU elite which benefitted from illegal land deals under Kenyatta's and Moi's reigns. They fear losing part or all of those lands once the new land policy come into full effect. The third group clusters around the loser in the presidential elections, Odinga, who is seen by many in Kenyan diplomatic circles as a genuine reformer. He has actively supported the reform agenda in general, while opposing specific reforms that would undermine his interests (colluding with Kibaki, for example, in delaying appointment of the head of the Anti-Corruption Commission and diluting the Leadership and Integrity Act).

The more genuine reform drivers are civil society organizations, a number of backbench MPs, the body tasked to oversee and guide the transition from the old to the new constitution, the Committee for the Implementation of the Constitution (CIC) and the reforming judiciary. However lack of coordination between these groups limits their impact. In addition, all of these groups suffer from ingrained structural constraints that prevent them from properly championing the reform agenda.

Both Kibaki administrations have shown determination in putting the economy back on course and preparing it for a comprehensive transformation process toward industrialization and expansion of the service sector. They have also shown a degree of commitment to fighting poverty. Despite early promises of wide-ranging reforms, however, this goal has been subordinated to the immediate interests of key political players. Results have been mixed. The economy has shown remarkable gains despite continued corruption, and the new constitution was passed despite strong opposition, initially from within the government itself. Continuous infighting within the former grand coalition has delayed full implementation of the constitution and diluted some of the acts meant to operationalize its provisions, but has not, as yet, derailed the implementation process.

The reform of the judiciary is a major milestone, though the sole government input was the appointment of the reform minded Chief Justice Mutunga who then shaped the reform. The police reform was deliberately delayed, leaving the unreformed Kenya police force to control the elections. The Kenya National Human Rights Commission did not become fully operational before the elections as the executive and legislature deliberately delayed the appointment of its head. The same goes for the Anti-Corruption Commission and the Land Commission.

The fact that all ministries have ministers from one party and assistant ministers from the other coalition partner has made implementation difficult. Significant enmities

and open conflict between partners have to a certain extent rendered ministries ineffective.

The new constitution is the result of a long and hard learning process. Devolution is a direct result of the failure of the central state to guarantee a broadly equal regional distribution of resources, services and government jobs. The constitution addresses most of the issues listed under Agenda 4 of the National Accord (long-term solutions to structural triggers of the post-election crisis) after the 2007 elections. It shows a clear, positive learning curve, with its promise to curtail presidential powers, strengthen parliament and the judiciary, create a comprehensive and progressive bill of rights, and ensure a more equitable gender balance throughout society. However, it should be noted that a Committee of Experts was responsible for drafting the constitution, and that any changes subsequent to its review by a parliamentary select committee needed the approval of two-thirds of parliament, too high a threshold for a divided parliament. Executive and legislature have been less eager yet to bring the document to life.

Parliament has in its various committee stages continuously welcomed and to a certain degree used the expertise of civil society and specialized NGOs and companies.

## 15 | Resource Efficiency

The government is in the process of improving the efficient use of available human, financial and organizational resources. Though there is still a large number of politically motivated appointments in all ministries, and recruitment for top positions is still driven by personal and ethnic loyalties, the vetting procedures provided for under the new constitution are coming into effect, providing a better framework for more efficient use of resources. While there was little transparency in previous government budgets, the Public Finance Management Act 2012 fundamentally alters the budgeting process, assigning a greater role to parliament and the public. CSOs, citizens, service providers and donors have not yet fully appreciated and understood the new opportunities for shaping and scrutinizing the government budget. The groundwork for more efficient use of resources has been laid. It is too early to evaluate how effective it will be.

As is typical for a neo-patrimonial system, various coordination styles prevail. The hierarchic-bureaucratic approach officially dominates, but is often undercut by informal networks and the personalization of functional relations. The outgoing government, the grand coalition, was frequently split realigned. The sheer size of the cabinet (42 ministers) made coordination difficult. Ministries have been split, and related responsibilities artificially separated in order to accommodate all of the coalition partners' key figures in the cabinet. Many ministries headed by PNU party

Policy learning

6

Efficient use of assets

4

Policy coordination

4

members often had ODM assistant ministers, and vice versa, as a means of establishing mutual checks and controls. This made it almost impossible to plan for related sectors in an integrated manner. Efficiency, coordination and the prioritization of policies and goals were deliberately sacrificed for the equilibrium of power, always subordinated whenever political power considerations were affected. The tendency to appoint members of one's own ethnic community to head state-owned companies increased during Kibaki's second tenure. 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 board members. Coordination and prioritization has been more effective with regard to economic policies. The personalized and ethnically oriented nature of Kenyan politics is an additional obstacle to policy coordination.

Attempts by the Moi and Kibaki governments to fight corruption have merely been superficial public relation exercises to calm and comfort the public. Both Moi and Kibaki have at times appointed highly respected public figures as anti-corruption officials, who were sincere in their commitment to fight corruption. They were, however, never given the clout, the human and financial resources, the institutional and legal backing needed to effectively combat corruption. Some individuals, generally low-level perpetrators, were brought to trial, but even they were exceptions. No high ranking politician has ever been brought to trial over the country's major financial scandals (Goldenberg in the 1990s and Anglo Leasing during Kibaki's tenure). Cases where ministers under investigation resign are regarded as signs of progress, though investigations are never concluded or brought to trial and there are no long-term ramifications for the politicians' careers.

The new constitution places great emphasis on integrity; public officers under investigation must resign until they are cleared. The rules for politicians, however, are more ambiguous. The Leadership and Integrity Act, which was meant to operationalize these constitutional principles, was watered down by parliament. While the constitution and relevant laws have little power to bar any political candidate from contesting the elections because of integrity issues, a president elect may face impeachment if there are "serious reasons for believing that the President has committed a crime under national or international law" (Art. 145 1b of the Constitution of Kenya). It is, however, not clear how "serious reasons for believing" would be defined.

The body tasked with fighting corruption, the Ethics and Anti-Corruption Commission, is still not fully operational more than a year after its establishment by an act of parliament, and many staff members of its predecessor organization left out of frustration. Two of the three commissioners were only appointed in September 2012, while appointment of the chairperson was still pending at time of writing. As with other government institutions which are supposed to monitor the use of power, these delays must be seen as politically motivated and deliberate, as almost every

Anti-corruption  
policy  
3

member of the government has been involved in cases of corruption in one or the other way.

It can therefore be stated that there is no political will to curb corruption.

## 16 | Consensus-Building

Kenyan politicians, the business community, civil society, Christian churches and mainstream Muslim groups, as well as the vast majority of Kenyan citizens, agree in principle on democratic norms, the need for development and the importance of a free-market economy. There is also a clear consensus about the importance of education in ensuring a place for individuals within such a society. This is embedded in a general consensus on the country's direction and is formalized in the government's Vision 2030, by which Kenya aims to become an industrialized middle-income country by 2030. However, there are often irreconcilable differences with respect to translating these principles into practice. This currently becomes highly visible in the implementation of the constitution, which is likely to affect vested interest of the old and current elite. Implementation is therefore a contested field in which members of those elites attempt to undermine and soften constitutional provisions through the legislative process. Many political and administrative positions are designed to target the well-being of ethnic groups. This further hampers attempts at consensus-building. Even though no leading Kenyan politician openly doubts the merits of democratic electoral contests and basic human rights, the 2007 and 2013 elections demonstrated how difficult it is for candidates to concede defeat. This has raised major doubts on the internalization of basic democratic norms. The significance of ethnicity and personalities in Kenyan politics makes any consensus building difficult.

There is no political force openly opposed to democratic reform per se. However self-interested individuals attempt to sabotage democratic policies if they believe their interests are threatened; such actors can be found in every political faction, but are particularly prevalent in the circles around the two former presidents Moi and Kibaki, and presidential contender Uhuru Kenyatta. At the time of this writing, it is unclear how this will play out. On the one hand, the more reform-minded group around Odinga, civil society organizations, key government commissions and the public have been successful in building momentum for the successful conclusion of the constitutional reform process, a force that anti-reform actors have been unable to withstand or openly oppose. On the other hand, anti-reform actors have successfully delayed implementation and have used the legislative process to undermine the accountability foreseen by the constitution. The next stage in the struggle over the reform process is devolution. The issue is likely to split the Jubilee alliance as the Kalenjin have been very much in favor of a devolved state structure while the Kikuyu elite has always preferred a strong, centralized state. This conflict is likely to lead to

Consensus on goals

7

Anti-democratic actors

5

realignments between the various alliances in the current legislative period, with the more reform-minded group around Odinga in favor of devolution.

Kenya remains deeply divided along ethnic and to a lesser degree religious lines. Political leaders of all major group continue to organize along ethnic lines. Political leaders transform personal power struggles into conflict between ethnic communities over access to resources and thereby politicize, engineer and exploit differences between ethnic groups. In times of decreased polarization, politicians are disinterested in resolving conflicts arising from the exploitation of ethnicity, preferring to keep them simmering for exploitation in the future. This is particularly evident in the use of land conflicts in the Rift Valley, which largely pits the Kalenjin against the Kikuyu. Neither side has shown an interest in fairly or substantially resolving the conflict, which might have been between the last violent ethnic clashes in the area in 1994, and the 2007 elections. For the 2013 elections, Kenyatta and Ruto formed an alliance because of their pending ICC cases. They therefore prevailed upon their followers to refrain from violence, because peace and cooperation between the two communities served their purposes at the time.

Cleavage /  
conflict  
management

5

Religious cleavages are not as pronounced as ethno-regional cleavages, but have increased within the past decade, partly due to growing radicalization among Muslims on the coast who feel marginalized by the central state, and partly because of Christian opposition to Khadi courts, which are recognized by the constitution. The war against terrorism and Kenya's military intervention into Somali territory to stop al-Qaeda attacks in Kenya have also contributed to these tensions. The Mombasa Republican Council, which has become more significant over the past three years, is calling for secession from Kenya as a result of these developments.

Political decision makers sometimes encourage escalation of these cleavage-based conflicts for personal gain.

Traditionally, civil society has been opposed to the government, playing a watchdog role. This was true particularly of the Moi era. During the Kibaki administration this role changed, partly because the government was at first more open to civil society concerns and expertise, particularly as large numbers of civil society activists were absorbed by the new administration. Key, vocal civil society organizations have become more critical of the government, first during the 2005 constitutional referendum when the government presented a draft at the Bomas constitutional conferences which was stripped of key input from civil society, and then after the 2007 elections. They attacked the government and parliament for their lackluster fight against corruption, the continued impunity enjoyed by perpetrators of past crimes, the undermining of the new constitution through watered down legislation, the failure to appoint heads of crucial commissions, and attempts to sabotage ICC proceedings. At the same time the civil society sector has become more diversified and specialized in a broad range of fields that government and parliament are utilizing

Civil society  
participation

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through various channels, including the Parliamentary Select Committee. This applies to issues not directly related to questions of power, corruption and human rights. Political decision makers do not seek dialogue on these important issues, and in most cases simply ignore civil society's recommendations. This has been particularly true since the formation of the grand coalition, which civil society rejected in principle. Overall, the impact of civil society has decreased over the past decade and it is now much less capable of setting or even influencing the political agenda.

There is widespread consensus that the one-party state, as well as the Moi regime between 1992 and 2002, caused harm to large sections 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.

Reconciliation  
6

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 forced hundreds of thousands of Kenyans to flee their homes, should be prosecuted.

The government has established a Truth Justice and Reconciliation Commission (TJRC) with a mandate to investigate, analyze, and report all cases of injustice, marginalization of ethnic groups and violence that occurred between 12 December 1963 and 28 February 2008. This is the longest time frame any truth and justice commission has ever been tasked with addressing.

Local hearings began in August 2009. However the commission's mandate is too broad given its timeframe and resources. The TJRC's term had been extended, but at time of writing the commission had not yet presented its final report, and few have high hopes for its content or impact.

Many Kenyans reject the option of providing amnesty to perpetrators. To date none of those responsible for the major corruption scandals (Goldenberg and Anglo Leasing), political assassinations (of Tom Mboya, J.M. Kariuki, Robert Ouko and others) or ethnic clashes have been sentenced. The government has never addressed past injustices, despite its stated commitment to do so. Resettlement of IDPs which favored the Kikuyu have exacerbated 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, sued a handful of politicians for hate speech during the 2010 referendum campaign as a warning to others. However the commission has been criticized for a failure to clearly and decisively censure hate speech.

## 17 | International Cooperation

Kenya has continuously reduced its aid dependence. Only 15% of the government's budget is financed by donors (in Uganda and Tanzania, for example, donors provide more than 40% of the national budget). Donors tend to bypass government structures and fund non-government programs and projects directly to avoid government abuse of funds. The misappropriation of around \$40 million of DFID support for the Free Primary Education Fund (FPE), channeled through the Ministry of Education, is one of many examples.

Effective use of support

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With Vision 2030 the country has a roadmap for its economic, social and political development in which donor support is integrated. The implementation of Vision 2030, however, lacks timely government budget allocation, causing procurement delays as well as bottlenecks in absorbing donor funds. Donor support centers largely on social welfare and public health. This latter field lies largely outside government structures, meaning programs are barely sustainable beyond their duration as they are not streamlined into government portfolios. Depending on their points of view, past donors have arrived at different conclusions on the government's reform performance. Both the European Union and the United States stress the governance sector and have at various stages threatened to withdraw development aid either because of a failure to pursue political reforms or large-scale diversion of funds. On the other hand, the World Bank and the IMF have concentrated on the institutional reforms in the economy and expressed positive views on the government's performance in the last few years. 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, lack of qualified personal and absence of political will.

Starting from a relatively low base, Kenya's international credibility has improved in the last few years due to the implementation of the constitution and economic reforms. For decades, the donor community has criticized various government offices for corruption in the public sector. The situation remained unchanged during both Kibaki administrations.

Credibility

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The ethnic clashes of 2008 illustrated that Kenya's leading politicians are not only highly corrupt but also willing to jeopardize national cohesion through organized ethnic conflict and the excessive use of police force. The introduction of the 2010 constitution restored some credibility. So too the 2013 elections; despite considerable polarization the political elite acted with more caution and responsibility, particularly in the latter stages of the campaign, and prevented immediate post-election escalation. The current fault line is the ICC trials. The US and a number of European countries indicated that there would be consequences if the Kenyan people elected

Uhuru Kenyatta as president. There was no immediate response from key cooperation partners (USA, UK, France) after the elections, but they did issue congratulatory messages once the Supreme Court confirmed Kenyatta's election.

On the economic front the country is receiving international recognition for its initial steps towards economic transformation after having received praise for several years from the IMF and World Bank. A note of caution remains due to the persistence of widespread corruption. 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 east African region. Kenya's unilateral intervention in Somalia began in 2011 in response to deteriorating security conditions along Kenya's coast and in several refugee camps (e.g. Dadaab) close to the Somali border, caused by insurgents from the Islamist terror group Al-Shabaab. This intervention has since been integrated into the African Union Mission in Somalia (ANISOM). The government has been backed by other African countries and the AU in its various attempts to either defer the ICC trials or bring them to Kenya. 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 been further 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  
8

## Strategic Outlook

In the next few years, Kenya will face two principal challenges. First of all the country needs to implement the new constitution and come to terms with the ICC cases against three of its prominent citizens among them president-elect Uhuru Kenyatta and his running mate William Ruto (the case against a fourth, Muthaura, was closed after a witness's testimony was compromised). The ICC cases were looking much weaker by March 2013 as key witnesses withdrew and refused to testify in court. The ICC prosecutor has denounced Kenyatta and Ruto's bribery of witnesses, but has not initiated any action against them despite having the legal leverage to do so. As long as the ICC cases drag on the international legitimacy of the new president, his deputy and by extension the whole new government is limited and severely compromised. Domestically these factors do not infringe on the new government's legitimacy, as Kenyans tend towards pragmatism. Many voters remained undecided until the last stages of the 2013 campaign, but uncertainty about the implications of ICC cases (coupled with the dismissal of the Muthaura case) as well as seemingly limitless campaign resources lured many from outside the presidential candidates' strongholds to Kenyatta's side.

The next decisive step in implementing the constitution is the transition to a devolved governance structure, which started after the 2013 March elections and must be finished by August 2015. This reform could resolve many structural deficiencies within the country, particularly real and perceived inequality between regions. It is this inequality which many Kenyans particularly hope devolution will address.

The Kenya National Human Rights and Equality Commission as well as the Ethics and Anti-Corruption Commission need to be fully staffed from the top down, and fully resourced so that they can fulfill their mandates. Further resistance from the new Kenyatta government is likely, as key members are themselves involved in corruption cases.

A new land commission must be established and put to work to address, among other things, past injustices and illegal allocation of land. The commission is likely to encounter many obstacles as it will infringe on the vested interests of members of the new Kenyatta administration, and they may undermine this process which will likely focus on their accumulated land titles and wealth.

The police reform must be completed. The responsibilities of the Independent Police Oversight Authority, the Police Service Commission and the Inspector General need to be carefully clarified in order to facilitate the reform and transformation of the Kenya Police Force into the Kenya Police Service.

The market economy reforms begun under the Vision 2030 must be continued. The role of donor contribution should be further streamlined and harmonized. Furthermore it is important that the

dominance of Kenyan and regional cartels be reduced in order to create fair conditions for emerging SMEs.

For the sake of ensuing generations free primary education must continue and truly free secondary education must be introduced. More public secondary schools are required to ensure the access to secondary education. The government must also create jobs for youth in order to prevent poverty and the violence which results from it.