

BTI 2016 | Kenya Country Report

Status Index	1-10	5.80	# 58 of 129	
Political Transformation	1-10	6.25	# 57 of 129	➔
Economic Transformation	1-10	5.36	# 73 of 129	➔
Management Index	1-10	5.00	# 64 of 129	
	scale	score	rank	trend

This report is part of the Bertelsmann Stiftung's Transformation Index (BTI) 2016. It covers the period from 1 February 2013 to 31 January 2015. 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	44.9	HDI	0.535	GDP p.c., PPP \$	2954.1
Pop. growth ¹	% p.a.	2.6	HDI rank of 187	147	Gini Index	48.5
Life expectancy	years	61.7	UN Education Index	0.515	Poverty ³	% 58.9
Urban population	%	25.2	Gender inequality ²	0.548	Aid per capita \$	74.1

Sources (as of October 2015): The World Bank, World Development Indicators 2015 | UNDP, Human Development Report 2014. Footnotes: (1) Average annual growth rate. (2) Gender Inequality Index (GII). (3) Percentage of population living on less than \$3.10 a day at 2011 international prices.

Executive Summary

The configuration of Kenya's institutional and political framework is undergoing significant change as the country implements the 2010 constitution. Some of these changes have begun to take shape, while others have been delayed and/or undermined. Charges brought against Uhuru Kenyatta (now president) and William Ruto (now deputy president) by the International Criminal Court (ICC) for their alleged role in organizing violence against each other's communities and support bases in the 2007/2008 post-election turmoil, has lost its profound impact on the country's national power configurations and the government's foreign policy since the ICC dropped the charges against Kenyatta following the death, disappearance and withdrawal of key witnesses.

The biggest success in the implementation of the 2010 constitution 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.

The transition from a highly centralized to a devolved form of governance, which started after the March 2013 general elections, is one of the most ambitious such transformations worldwide, as it not only transfers significant executive and fiscal powers to the county level, but simultaneously establishes a new layer of governance. The county governments are vested with strong legal safeguards against interference and infringements by the national government. The governors, particularly through their council of governors, have emerged as a strong force determined to defend the new local governance space. Devolution is highly popular among citizens throughout the country. Nevertheless, there is significant criticism of the costs involved, the increased competition between officers and the localization of corruption and ethnic competition, which has arisen across much of the country. A repetition of the experience of the independence decade where the new ruling national elite recentralized a similarly decentralized system appears unlikely,

attempts by the national government to expand its control and influence to the county level notwithstanding.

At the same time, crucial commissions on corruption and human rights have been incapacitated through delays in the appointment of commissioners, who have subsequently been held hostage by key political forces (both in and outside of government). Key laws, like the Leadership and Integrity Act, were substantially diluted. In addition, police reform was slow to start and the new police command was not solidly in place before the elections, while police vetting has proved incapable of dealing with allegations of human rights abuses (such as extra-judicial killings) due to the difficulties involved in providing sufficient evidence.

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 that parliament draws on to varying degrees. The Kenyatta government particularly holds advocacy civil society organizations as responsible for the prosecution of Kenyatta and Ruto by the ICC. It has therefore launched several, so far unsuccessful, attempts to legally significantly restrict their activities, and has simultaneously engaged in a more successful populist attack on their legitimacy by casting them as stooges of Western donors. Generally, the Kenyatta government has moved to limit the freedom of speech and assembly through legislative initiatives and some violent and drastic police action against demonstrators. However, the courts have revoked such laws and defended the pluralistic public space as foreseen by the constitution.

Political forces remain organized along ethnic lines, while coalitions continue to emerge and collapse. Alliances usually serve short-term purposes and generally do not survive long beyond election day. The current ruling coalition between Kenyatta and Ruto and their ethnic groups is a marriage of convenience formed after the 2007 opponents united in an attempt to evade trial at the ICC, an alliance that was never made public, but subtly put across the threat to unleash new violence in case of failure. With the dropping of the charges against Kenyatta by the ICC in March 2015, the alliance has outlived its immediate usefulness and given the fact that no reconciliation between the communities mainly responsible for, and affected by, the 2007 post-election violence has taken place, the Rift Valley may be inflamed again, particularly in the run-up to and aftermath of the 2017 general elections.

The economy is growing, but the majority of the population have enjoyed only limited benefits. Economic growth has recovered to pre-2008 levels (the year of the post-election violence). It averaged 6.2% annually between 2010 and 2013, is estimated to have been 5.4% in 2014, almost 1% above the average growth for sub-Saharan Africa (5.2%). The World Bank expects it to grow on annual average of 6.5% between 2015 and 2017. The rebasing of the economy revealed that the country's economy is considerably larger than previously thought, making it the fifth largest economy in sub-Saharan Africa and allowing it to enter the club of low middle-income countries. This growth is broadly based with stimulations by several sectors, including agriculture, the banking sector, which among other things eased access to credits for broad parts of the population,

and also increased and substantial borrowing by the government over the years. As a result, private and government consumption have increased and supported the growth path. Massive investments into huge infrastructure projects (i.e., road, railway, energy) also strengthen economic growth. However, the growth has yet to positively impact those in poverty, which still stands at 45% of the population, only a marginal improvement from 2006 (47%), while the collapse of the tourist industry following increased terrorist attacks has had a disproportionate impact on the already marginalized coastal area. This situation is not helped by the extent and depth of large-scale corruption. The first two years of the Kenyatta government saw the loss of almost \$4 billion (KES 370 billion) due to corruption, an amount equivalent to 22% of the country's 2014/2015 budget and more than was allocated to the counties in the same financial year.

History and Characteristics of Transformation

Political transformation in Kenya remains shaped by its colonial legacy (1896 – 1963). Questions of land allocation, which are ultimately linked to questions of wealth and inter-ethnic group relations, have never been 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), strong ethnic undercurrents have shaped how politics are conducted. All four presidents in the country's 50 years of independence (Jomo Kenyatta 1963 – 1978, Daniel arap Moi 1978 – 2002, Mwai Kibaki 2002 – 2012 and Uhuru Kenyatta since 2013) have favored their own ethnic communities and regions, leading to considerable discontent among the remaining 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 and remain a latent source of conflict between the two communities. The demand for 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, which started to take shape following the 2013 general elections with the creation of 47 elected county governors and county assemblies.

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 opposition leader and former 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, and differences over trickle down versus redistributive policies, culminated in the 2007 election when the Orange Democratic Movement (ODM) alliance competed with Kibaki's Party of National Unity (PNU) pitting 41 groups (including Raila Odinga's Luo and William Ruto's Kalenjin communities) against one (namely Kibaki's Kikuyu community). Kibaki was sworn in as president for a second and final term. However, widespread allegations that Kibaki had stolen the election triggered unprecedented violence, which led to the death of around 1,300

people and the displacement of almost 700,000. It required an international diplomatic intervention, led by former U.N. Secretary General Kofi Annan, to end the crisis.

The Annan-brokered peace accord in March 2008 resulted in a government of national unity with Kibaki as president and Odinga as prime minister, an agreement that to a large degree mirrored the 2002 pre-election agreement between Kibaki and Odinga, which had never been implemented.

The coalition, marred by major in-fighting, proved unwilling to prosecute perpetrators of the 2008 post-election violence. Instead, the ICC 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 later came together in the Jubilee Alliance and, in the 2013 election, were elected president and deputy president respectively. The candidacy and Kenyatta's and Ruto's first two years in office were heavily affected by the ICC cases. However, withdrawals of testimonies by witnesses, the disappearance and deaths of others, and technical mistakes by the ICC weakened the case to such a degree that the new prosecutor could not uphold the charges against Kenyatta and dropped the case in December 2014. The case against Ruto continues, even though it has also been weakened by witness withdrawals.

The grand coalition 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 implementation process became a new battle ground between anti-reform forces and pro-reform actors with the former trying to manipulate the lawmaking process in order to sabotage the spirit, direction and meaning of the 2010 constitution.

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, in principle, a monopoly on the use of force, but it is not always fully exercised throughout its territory. Particularly in the arid and semi-arid areas of the north and northeast, police presence is low and the ability and possibly determination to maintain law and order minimal. Secessionist tendencies along the coast, engineered by the Mombasa Republican Council, a militant, largely Muslim secessionist movement, reached its peak in the run-up to the 2013 elections, but have since subsided. Kenya's borders with Somalia, Ethiopia and Sudan are porous, leading to an influx of weapons and Al-Shabaab 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. This includes a divided and largely defunct Kikuyu based Mungiki sect, as well as relatively small groups in the slum areas of Nairobi and Kisumu, which de facto replace 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, far below the United Nations recommended ratio of 220 to 100,000.

Kenya remains affected by the state crises of its immediate neighbors. Kenya currently provides shelter for thousands of refugees from Somalia, which have become targeted by the government as potential hiding and breeding grounds for Al-Shabaab terrorists.

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, led to complaints from various ethnic, religious and nomadic groups regarding real or perceived marginalization. The 2010 constitution contains mechanisms to reduce regional imbalances through devolved government. The activities of the now defunct Mombasa Republican

Question
Score

Monopoly on the
use of force

5

State identity

8

Council (MRC) around the 2013 elections, though, indicated the extent of discontent about the neglect of the coastal region and the discrimination of the Muslim community with its possibly explosive implications.

In principle, all groups and individuals have the right to acquire citizenship without discrimination. However, in practice, members of certain groups – such as ethnic Nubians and Somali – face significant problems gaining identification documents and are required to provide additional evidence. As a result, individuals are often denied full citizenship rights at least for a part of their lives while they try to negotiate these specific and discriminatory layers of bureaucracy.

Since independence, religious dogmas have not interfered with the state’s legitimacy. However, the 2010 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 because of 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. 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 since the constitutional debate.

No interference of
religious dogmas

8

At the same time, the last two decades have witnessed a neo-pentecostalisation of political culture and informal institutions. Politicians regularly seek to mobilize support and legitimize their positions through displays of religiosity. This includes the “laying on of hands” by clergy at political prayer meetings, rallies and political inauguration ceremonies.

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 past failure to provide services and to treat regions equally. The March 2013 establishment of 47 counties, each with its own governor and assembly, with new functions and responsibilities (leaving security and education as the only main services that are not devolved), is an attempt to bring service delivery closer to the people. Despite some organizational deficiencies during the transition to the devolved governance system and some inconsistencies in the provision of key public services, such as health care, the county governments have brought

Basic
administration

6

government structures closer to people, especially in peripheral areas such as Turkana and other parts of northern Kenya.

The new constitution grants such rights as free education, safe housing and access to clean water, but in practice, people do not enjoy those rights. 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 any of those in displaced persons' camps. Under the judicial reform framework, the judiciary has substantially reduced its case backlog and makes its services better accessible through the establishment of more High and Magistrate Courts throughout the country. Certain administrative structures simply are not functioning because of corruption.

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 because they degenerated to a contest between incumbent Mwai Kibaki (PNU) and Raila Odinga (ODM). The elections can be regarded as an ethno-political violent struggle for the presidency accompanied by violence.

Free and fair
elections

8

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 two-third of elective seats, though a failure to initiate appropriate legislation early enough delays 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. However, the principal opposition coalition, CORD, and prominent civil society activists, questioned the credibility of the elections through the Supreme Court. Among other things, these petitions alleged turnouts of close to or even above 100% in several polling stations, a substantially different turnout in the

presidential and governors' elections, and the failure of the electronic result transmission system. The petition was dismissed unanimously by the Supreme Court, who declared the elections free, fair, transparent and credible, and the ruling was begrudgingly accepted by the political opposition.

Thus, in contrast to 2007, the legal system was used to challenge the election outcome. This in itself is a major achievement and indicates the extent to which the reformed judiciary had gained credibility as a result of new appointments and public vetting processes. However, while 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, CORD and several prominent civil society activists have continued to question the credibility of the 2013 polls and call for a complete overhaul of the IEBC, alleging manipulations and mismanagement.

Questions also surround the evenness of the political playing field. For example, anecdotal reports suggest that it is much easier to gain identification documents and to register to vote in some parts of the country than in others, while rumors also abound of direct interference with the country's media through threats, for example, of moving government advertising to competitors.

There are no traditional veto powers in operation, but the effectiveness of governance was substantially hampered by frictions, tensions and infightings within governments since 2003, aggravated by ICC charges against four figures allegedly responsible for the post-election violence of 2007 to 2008. In its first two years, the Kenyatta government devoted much time and energy to fight off the ICC prosecution. Corrupt, self-seeking politicians interfere more with legislation and the anti-corruption institutions (Ethics and Anti-Corruption Commission, parliamentary committees) 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 secretly undermine and derail legislative processes. This group mainly consists of the political elite and beneficiaries of the current Kenyatta and former Moi era. They are particularly concerned with land acquired illegally which may be re-appropriated under the new constitution.

Effective power to govern

6

There are no legal constraints on the right of any group to assemble or associate freely. 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. The Kenyatta government has continued that path, violently dispersing peaceful civil society demonstrators outside parliament in 2013 and 2014. In addition, there is a fear that the government is using the threat of terrorism to fight civil society groups with several human rights organizations required, for example, to prove that they are not terrorist entities against the norms of natural justice.

Association /
assembly rights
5

Substantial 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. Nevertheless, some of the gains of the Kibaki era have been undermined in recent years. This includes the passing of a new Media Act, as well as reports of increased efforts by politicians to interfere with press freedoms through threats, for example, of removing state advertising and of pressure placed on media houses' broader business interests.

Freedom of
expression
7

During the 2013 election, media houses generally abstained from reporting incidents and speeches that might inflame inter-ethnic tensions, 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 and it was particularly weakened by the grand coalition formed by the three strongest-performing parties of the 2007 elections.

Separation of
powers
6

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. Subsequent changes to some acts (like the Police Service Act) only marginally strengthened and maintained the role of the president, for example the vetting through a panel constituted by representatives of the main relevant bodies.

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. Although public confidence in the judiciary was undermined in some opposition areas following the Supreme Court's ruling on the 2013 presidential election, it is unclear whether opposition parties would opt to take a similar petition before the courts in the future.

The judicial reform process is one of the major achievements of the constitutional implementation process. Under the first three presidents, the judiciary had been one of the most corrupt and least trusted institutions in Kenya, but the new constitution initiated substantial reforms.

Independent
judiciary
6

The 2010 constitution established the Supreme Court as the highest court in the country and among its responsibilities is protecting the integrity of the constitution. Under the stewardship of former chair of the Law Society of Kenya, Willy Mutunga, 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, led to a surge in public approval ratings for the judiciary. However, the judiciary's positive reputation suffered particularly among broad sectors of civil society after the dismissal of the presidential election petition in 2013 despite numerous deficiencies, and it is unclear whether losing parties will opt to take presidential petitions to the court in future elections.

Under the Kenyatta government, the judiciary has been subjected to several attempts to infringe on its independence and to undermine the reputation of its leading judges, but has by and large protected its integrity and independence as several rulings prove (e.g., the High Court ruling in February 2015 declaring the Constituency Development Fund Act unconstitutional and the High Court finding that several sections of security laws amendment bills were in contradiction to the constitution).

Despite countless promises to fight corruption made by the last three Kenyan presidents – Moi, Kibaki and Kenyatta – 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 offenses nor human rights violations.

Prosecution of
office abuse
4

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 officeholders and political aspirants. Furthermore, since its inception in September 2011, the EACC has been deliberately weakened and compromised in the fight against corruption. EACC

Chairman Mumo Matemo, a grand coalition appointee, is the target of a pending corruption court case and is prone to pressure by persons with vested interests in derailing the fight against corruption. Court injunctions questioning his suitability dragged on until mid-2013 when the Court of Appeal confirmed his appointment, ending a two-year leadership vacuum. In the meantime, the EACC had seen an exodus of qualified staff. Several reports in the media show that the EACC and the anti-corruption committees of parliament, the Public Accounts and the Public Investment Committees have been targeted by individuals paying bribes to have their lists removed from investigative reports.

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.

Civil rights
6

A lack of sufficient civic education means 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. However, through its decentralization process the judiciary has established more court locations easing the access to justice from the supplier side. An important role is also played by the Court User Committees that are now anchored in the respective act of parliament and are seen as the best vehicle to improve public participation in the judicial process.

Since 2002, there has been significant progress in fostering a culture of respect for civil rights. Nevertheless, international organizations continue to criticize random arrests and extra-judicial killings, illegal confinement, extortion, physical abuse and fabrication of charges by the police forces. Women are disadvantaged in all aspects of public and civil life. This applies in particular to rural areas. In addition, human rights abuses have occurred as a result of the “war against terror” as security services respond to terrorist attacks with screenings of ethnic Somali and arbitrary arrests, while there is a widespread belief that a number of radical clerics have been killed by the Anti-Terrorism Police Unit, which is supported by the Israeli Mossad. Finally, while the ICC dropping its charges against President Kenyatta was presented by the government as proof of his innocence, the ICC Office of the Prosecutor continues to cite the death, bribery and intimidation of key witnesses and the non-compliance of the Kenyan government in handing over requested records as insurmountable hurdles to a successful prosecution.

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 parliament and establishing several independent constitutional commissions. 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. Reforms have increased parliamentary independence, however, partisan politics and the level of political polarization ensures that the government maintains substantial control.

The new governance system, with the Senate as a second house of the National Assembly and with its elected county governors and county ward representatives taking over the provincial and district administration and local authorities, started in March 2013. In contrast to the independence constitution of 1963, where the federal governance structures were not strongly safeguarded, the 2010 constitution precludes the abolition of the devolved system. The expected jostling for power and influence between and among the different arms of the executive and legislative is still not concluded, but the governors through their Council of Governors have emerged as the new gravitation center of power vis-à-vis the national government. So far, they have proved fairly effective at protecting devolution against real and perceived attempts to strengthen the national governments role at the county level.

While under the old constitution parliament did not have wide-ranging powers as a counterweight to the executive, the 2010 constitution has clearly upgraded its role and functions (e.g., the right to impeach the president, its key role in the drafting of the national budget). However, parliamentarians have so far not used their old and new powers to exert their strengthened legislative and oversight roles. Rather, they are struggling to arrive in the new dispensation that has greatly reduced their role as development focal points in their constituencies, a role that so far has been the source of their legitimacy and the rallying point of their electoral campaigns. The High Court ruling of February 2015, which declared the Constituency Development Fund Act unconstitutional, confirmed this new role, as it stipulated that development initiatives are driven by a two-tier system, consisting of the national and the county governments with no space for an additional tier.

Performance of
democratic
institutions

6

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

Commitment to democratic institutions

7

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 2010 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. This lack of respect for democratic institutions became evident through the various attempts to bribe members of parliament in key parliamentary committees and members of the EACC to remove names from incriminating reports.

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 multiparty 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. Uhuru Kenyatta, William Ruto 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 do not 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 representatives will start working with different opposition members of parliament, with the result that the boundary between government and opposition becomes completely blurred.

Party system

4

The 2010 constitution and its laws attempt to foster political party 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 for so-called party hopping until the day that 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 less difficult for the public to accept politicians' decisions to switch parties at the last minute.

The new Political Party Act required parties to register afresh with mandatory representation across the country, reducing the number from 300 in 2007 to 59 in 2012, 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 that could potentially use their sheer size for 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 issues of national importance. 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 (a government body), the Law Society of Kenya and the Kenya Private Sector Alliance (KEPSA), have genuinely and constructively engaged with the government. This was particularly apparent during the protracted constitutional drafting process. Some organizations had been actively engaged, for example, through public consultations with stakeholders over the development of new pieces of legislation and implementation of devolution following the inauguration of the 2010 constitution.

Interest groups

6

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 is a democracy with major problems. On the other hand, 42% see Kenya either as a full 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 2010 constitution has increased trust in democratic norms.

Approval of
democracy

8

A large number of social and self-help organizations exist, although without effective division of labor. Networks are also limited by financial and infrastructural constraints. Social trust remains limited to family, clan or ethnic networks, while levels of inter-ethnic mistrust remain high across much of the country. This is particularly true in areas characterized by strong communal histories of injustice and marginalization, and by histories of violence either during election cycles or as a result of other forms of insecurity such as cattle rustling. Consequently, trust within the population is higher in largely ethnically homogenous areas than at the national level or in many cosmopolitan/border areas. 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 (EAC). In September 2014, the country's economy was rebased, increasing its GDP by 25.3% and making it a middle-income country and Africa's ninth largest economy (up from 12th). Its GDP per capita, up from \$833 in 2012, is now estimated at \$1,246 and remains the highest in the EAC region. However, according to the Gini Index Kenya has a value of 0.45, the most unequal society in the community, though it has considerably improved since 1992 (0.63). According to statistical data from 2009, 45.2% of the population live below the poverty line, only a slight improvement from 1997 (51%), thus putting the Millennium Development Goal of halving poverty by 2015 out of reach. Some 25 of the 47 committed counties have poverty levels above the national average. Women and youth are still disadvantaged. The 2014 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.

Question
Score

Socioeconomic
barriers
3

Poverty is more pronounced in rural areas, with a 2005 rate of 49.1%, as compared to an urban rate of 33.7%. 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.

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

Out of Kenya's estimated labor force of 19.67 million in 2013, 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.

Economic indicators		2005	2010	2013	2014
GDP	\$ M	18737.9	39999.7	54930.8	60936.5
GDP growth	%	5.9	8.4	5.7	5.3
Inflation (CPI)	%	10.3	4.0	5.7	6.9
Unemployment	%	9.5	9.3	9.2	-
Foreign direct investment	% of GDP	0.1	0.4	0.7	1.5
Export growth	%	9.4	8.7	-0.6	2.3
Import growth	%	14.9	8.1	0.3	9.7
Current account balance	\$ M	-252.3	-2368.7	-4871.7	-6339.4
Public debt	% of GDP	48.3	44.4	44.2	52.6
External debt	\$ M	6482.9	8801.2	13471.5	-
Total debt service	\$ M	539.7	400.6	619.8	-
Cash surplus or deficit	% of GDP	1.5	-4.7	-	-
Tax revenue	% of GDP	18.7	15.7	-	-
Government consumption	% of GDP	17.4	14.2	14.2	14.0
Public expnd. on education	% of GDP	7.3	5.5	-	-
Public expnd. on health	% of GDP	1.8	1.7	1.9	-
R&D expenditure	% of GDP	-	0.98	-	-
Military expenditure	% of GDP	1.7	1.6	1.6	1.3

Sources (as of October 2015): The World Bank, World Development Indicators 2015 | International Monetary Fund (IMF), World Economic Outlook, October 2015 | Stockholm International Peace Research Institute (SIPRI), Military Expenditure Database 2015.

7 | Organization of the Market and Competition

Since independence, Kenya has in theory been led by free-market principles, while in fact it has been subject to major state interventions 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 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*, or “under the sun” 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). Developed following extensive consultation with relevant stakeholders, the Micro and Small Enterprises Development Act was drafted after long delays in January 2013. It aims at easing access to credit and regulates the sector for the first time, promoting it as part of the Vision 2030 strategy. The Kenyatta government is in principle committed to this approach and tries to facilitate linkages between the *jua kali* sector and the new counties.

The long overdue reform of the institutional and legal framework for regulating competition got underway under the 2010 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

Market-based
competition

5

Anti-monopoly
policy

6

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. So far, there has been no evaluation of the impact of the new act.

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. A recent World Bank study pointed out that between 1995 and 2004 the above market prices paid by the National Cereals and Produce Board (NCPB) inflated the national maize prices by 20%. Action by the Competition Authority improved the competition environment for sifted flour. The authority is also looking into the banking sector, investigating if coordination takes place to prevent lower interest rates. 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 anti-cartel moves by the Competition Authority.

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 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. However, after the EAC failed to sign the Economic Partnership Agreement, in October 2014 the European Union removed Kenya from its list of duty exporters, leading to additional levy costs of 100 million Kenyan shillings per week. Kenya is one of 40 countries covered by the U.S.-African Growth and Opportunity Act (AGOA), which provides for quota and duty-free market access to the United States on a variety of goods until 2015.

Liberalization of
foreign trade

7

Despite numerous reforms over the past 15 years, including the 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 foreign direct investment (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.

Nevertheless, the success of Kenya's debut Eurobond issue in June 2014, which raised \$2 billion, together with the negotiation of Chinese loans to finance a new railway and the signing of a new country partnership strategy with the World Bank in June (for the disbursement of loans and financial guarantees worth \$4 billion over five years), underlined the country's ongoing ability to attract external funding when

required. This was despite growing concerns regarding insecurity, and was generally attributed to Kenya's diversified economy and status as East Africa's regional hub – with East Africa predicted to have the strongest growth of all of sub-Saharan Africa's four sub-regions – and the burgeoning attraction of emerging or frontier markets to international investors.

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 judiciary's complacency 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 since Kibaki took power in 2002, with significantly less political intervention and greater regulation.

Banking system
8

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 “market-based competition”) is also reflected in the large number of informal banks. The majority of Kenyans are members of a private savings and credit association (SACCO) organized by individuals or groups, and also transfer money by telephone. A telephony infrastructure allowing for connections to a savings and credit system was introduced in 2012.

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.

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, homegrown 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 been fluctuating (9.2% in 2009, 4.1% in 2010, 14% in 2011 and 9.4% in 2012), but destabilized in the single-digit range since 2012 (5.7% in 2013 and estimated at 6.6% in 2014). Those items, however, that matter most for the citizens remained above average (food at 8.4% and transport at 10.4%) and were the main inflation drivers. However, the drop in world market oil prices in 2014 – together with a reduction in electricity tariffs after the country became increasingly reliant on cheaper geothermal power – eased inflationary pressure and had a positive impact on many economic sectors although it has negative implications for high public expectations surrounding the exploitation of newly discovered oil reserves in northern Kenya.

The Kenyan shilling is not fixed. Following the post-electoral violence, the shilling lost 13% value relative to the U.S. dollar in 2008, but later bounced back (the dollar to shilling exchange rate was 1:69 in 2008 and 1:86.1 in 2013). However, there was a gradual depreciation of the Kenyan shilling in 2014 due to low inflows of foreign exchange from tea and tourism, and the strengthening of the U.S. dollar. 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, fueling inflation, but the Kibaki and Kenyatta administrations have not followed this practice.

Like its predecessor, the Kenyatta 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, but have been back on the growth promoting path. 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 Kenyan 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.

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

Anti-inflation /
forex policy

8

Macrostability

6

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 2010 constitution aims to lay a new foundation for property rights. Since independence, right to land has been the country's most contentious topic. 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 repossessioning 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 may be the real reason why large segments of the political elite either openly opposed the new constitution (Ruto, former President Moi) or tried to secretly undermine it (Kenyatta, Musyoka), as it represents a threat to their wealth. Similar to other commissions with "problematic" mandates, like the Ethics and Anti-Corruption Commission, the establishment of the National Lands Commission (NLC) has been severely delayed. The commissioners were only appointed by the outgoing Kibaki government in February 2013 and it took until June to recruit a CEO/secretary general to set up the commission's structure. Since then, the commission has been stuck in protracted battles over competencies and responsibilities with the Lands Ministry

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.

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

Property rights
5

ownership. Houses on illegally acquired property, such as land reserved for roads, are often demolished without prior notice.

Corruption and impunity from prosecution mean that land grabbing by politicians and others is very common. The NLC at least cancelled some dubious title deeds in Lamu and the Kalenjin parts of the Rift Valley (Eldoret and Cherengani) in late 2014.

According to the International Property Rights Index, it currently takes nine procedures (eight in 2010) and an average of 72 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.

Private enterprise
7

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. It has been facilitated by continuous reorientation of the legal framework toward facilitating investment opportunities and improving the business climate, including the Privatization Law, which came into force in January 2008, and the legislation provided for by the new constitution. The establishment of the Privatization Commission under the 2005 Privatization Act, however, had been delayed by several years up 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. The privatization process for the latter was completed in mid-2014.

Given that most 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. 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 two of the key threads that 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 two-thirds of elective positions. However, the legislature failed to enact this constitutional requirement in time for the 2013 elections. The Supreme Court in December 2012 declared that the gender rule shall only be implemented gradually, giving the legislature time to prepare necessary provisions. This has not occurred, however, as the deadline for implementation

Social safety nets

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Equal opportunity

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(August 2015) looms. With 67 members of parliament (47 elected county women, 16 elected constituency members of parliament plus four nominated members of parliament) women represent about 19% of the National Assembly (349 seats), far short of the minimum one-third required by the constitution. No women were elected to the Senate, but 18 were nominated on a proportional list basis. As the constitution had been less ambiguous about the County Assemblies, women here represent 736 members of County Assembly (MCAs).

11 | Economic Performance

The decade of Kibaki's administration (2003 – 2013) saw higher economic growth rates than the last decade of Moi's rule. Under the Kenyatta government, the economic expansion has accelerated again, although insecurity has led to significant problems in the tourist industry, which has had a disproportionate impact on the already marginalized coastal area. In the last Kibaki years and the first Kenyatta year (2010 – 2013), the economy registered an average growth rate of 6.2%, clearly above the Sub-Saharan Africa average of 5.3%, and with 5.7% in 2013, it was also above the average rate for lower middle-income countries.

Output strength
6

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. However, in 2012 its credit ranking was categorized as highly speculative, the lowest of all categories. The rebasing of the economy lifted Kenya up into the category of lower middle-income countries.

Kenya's middle class is growing fast, 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, banking and manufacturing sectors, have more than compensated for low growth rates. There is a lack of 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 and terrorist attacks. 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. FDI reached a record high in 2007, totaling 2.7% of GDP. Since that time, FDI levels have decreased dramatically (0.3% in 2008 and 0.5% in 2009).

Following huge debt-financed government investments in large-scale infrastructural projects like the Standard Gauge Railway Mombasa-Nairobi, the country's public debt registered in 2013/2014 with 24.9%, its sharpest annual increase since 2000/2001. Domestic debt went up to 25.6% (23.3% previous year) and external debt from 18.7% to 21.6 in 2013/2014. The 2014 ratio of total debt to GDP of 43.1% (compared to 42.5% in 2010 and 77% in 2000) has been within the government's medium-term debt sustainability threshold of 45%. However, these calculations were done before the rebasing of the economy in September 2014, which lowered the debt ratio considerably and increased Kenya's international credit rating.

12 | Sustainability

Kenya's most pressing environmental issues include deforestation, poaching (due to increased demand for ivory from China and other Asian countries in the past six 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 preservation and rehabilitation. The enactment of the corresponding legislation is trailing somewhat behind schedule. Policies addressing water management, air pollution and wastewater management are 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 2014 Environmental Performance Index, Kenya ranks 140 out of 178 countries with an Environmental Performance Index (EPI) of 36.99, an improvement from 2002 when it stood at 32.46.

Environmental
policy
4

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 medium middle-income country.

Education policy /
R&D
5

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. The outgoing Kibaki government left a shortage of 80,000 teachers and had plans to fast-track the recruitment of 40,000 and later up to another 100,000, which was, however, not prioritized by the Kenyatta government.

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.

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. In 2014 it ranked 147th worldwide on the HDI (out of 187 countries), and though its HDI improved to 0.535, this has not yet moved Kenya into the category of medium human development (greater than 0.55). 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 still has one of the fastest growing populations in the world. If the current fertility of 4.6 children per woman prevails, 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 2013 it had increased again to 6% of the population, with the urban educated affected at a higher rate (7.2%) than the national average, while 4.6% of the rural poor are affected. There is also a strong regional variation with counties in Nyanza significantly more affected than the rest of the country (e.g., Homa Bay with a prevalence rate of 25.7%). 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.

Recurrent droughts continue to haunt Kenya. The most recent ones in 2009/2010 and 2011 meant that 4 million Kenyans were reliant on food aid.

Civil society has played a crucial role in building a democratic public sphere, especially during the period of transition to a multiparty democracy in 1991, prior to the 1997 elections, during the constitutional conferences of 2003 and 2004, and during the implementation of the new constitution post-2010. 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 overwhelmingly

Civil society
traditions

4

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 is still being felt. Moreover, in the run-up to the 2013 election and its aftermath, there was a concerted campaign spearheaded by Jubilee supporters to demonize prominent civil society actors as part of an “evil society” and to delegitimize them as stooges of their foreign donors. This campaign resonated with a significant number of Kenyans, highlighting the dangers of extraversion in contexts where anti-neocolonial sentiments remain understandably strong. The mainstream and evangelist Christian churches have lost their moral high ground, having become increasingly partisan in the 2007 and 2013 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.

The legalization of political parties immediately brought 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 multiparty 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 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, 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. 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

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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.

In addition to such national level dynamics, many areas are troubled by resource and border conflicts that regularly become violent clashes. This includes Tana River and large swathes of northern Kenya, which is troubled, for example, by retaliatory cattle raids between neighboring pastoralist communities such as the Pokot and Turkana.

Finally, religion is becoming an increasingly important fault line, as a longstanding sense of historical marginalization among the country's Muslim community translates into radicalization in the context of burgeoning religious divisions at the regional and global level.

II. Management Performance

14 | Steering Capability

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, a goal the country has already come closer to when, after the rebasing of the economy, it entered the ranks of low middle-income countries. Resting on four pillars (economic, social, political and enablers, and macro), the government pursues a wide range of projects with varying links. Its aim is to achieve sustainable economic growth of 10% for more than 20 years to eradicate poverty by 2030. A key precondition is the continued rehabilitation and expansion of the country's physical infrastructure, which has seen huge investments in road, railway (Mombasa-Nairobi) and port (Lamu) systems in the past six 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.

Within the executive, three groups can be distinguished, none of which is an unrestrained driver of the reform agenda. The first group comprises those around former President Kibaki, which is conservative and business oriented in nature, generally more reserved toward reforms, but not unsupportive as long as their own vested interests remain untouched. Since Kibaki's exit, this group has lost clout. The second group consists of defenders of the (old) status quo. This is made up of President Kenyatta, his Deputy Ruto, former President Moi and a large group of the old Kenyan African National Union (KANU) elite that benefitted from illegal land

Question
Score

Prioritization
6

deals under Kenyatta's and Moi's reigns. They fear losing part or all of those lands once the new land policy comes into full effect. The business interests of these first two groups often converge. The third group clusters around the loser in the 2013 presidential election, Odinga, who is seen by many in diplomatic circles as a more genuine reformer. In general, he has actively supported the reform agenda while opposing specific reforms that would undermine his interests (as prime minister colluding with Kibaki, for example, in delaying the 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 members of parliament, 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.

Both Kibaki administrations and the current Kenyatta government 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 2010 constitution was passed despite strong opposition, initially from within the government itself. Continuous in-fighting within the former grand coalition has delayed full implementation of the constitution and diluted some of the acts meant to operationalize its provisions. This course of using the legislative process as a means to undermine the implementation of the constitution has been further and more strongly pursued by the Kenyatta administration, 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. It is still not concluded and is partly resisted by forces from within the National Police Service. Both the Kenya National Human Rights Commission and the EACC have been marred by problematic appointment processes and have not lived up to its mandates since.

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 the executive and legislature have been less eager to bring the document to life. Moreover, there appears to be insufficient learning in security provisions with many alleging that current strong-armed tactics simply contribute to the further radicalization of some of the country's Muslim population.

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 2010 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 of 2012 fundamentally alters the budgeting process, assigning a greater role to parliament and the public. In 2013, the Kenyan government introduced the public financial management reforms (PFMR) strategy for the period from 2013 to 2018. According to donors supporting this scheme, the results are mixed: despite some progress in resource allocation and budget execution, weak accounting and record keeping in government ministries, and a lack of transparency can be observed.

Devolution has also raised new questions. Concern grew in 2014 regarding the size of Kenya's public sector wage bill, which rose to over 55% of government revenue, or about 13% of GDP. This was due, in part, to the large number of "ghost workers," who were estimated to be paid at least \$1 million per month, as well as the large number of politicians and government advisors who enjoyed extremely high salaries. However, it was also exacerbated by devolution, which prompted the hiring of staff across the 47 new counties. This included unnecessary duplication in many areas, as county governments hired staff with similar skills to those seconded by the national government. Indeed, the costs of devolution – and the fact that many county governments imposed new or higher levies at the local level, but seemed to spend

Policy learning
6

Efficient use of
assets
4

most of their budget on salaries, “sitting allowances,” foreign trips, offices and cars – was the main source of public dissatisfaction with this new tier of government. Public perceptions reflected realities.

The disbursement of new resources to county governments, competition between local leaders, use of power by MCAs to impeach governors and to remove county executives to leverage for contracts, and the weakness of county-level auditing processes and oversight also meant devolution increased the ability of politicians and state officials to allocate jobs, procurement and other resources as patronage. In turn, devolution was widely associated with the localization of endemic corruption from the national level down to new county governments.

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 second Kibaki administration, the grand coalition, was frequently split. Many ministries headed by PNU party 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 state-owned companies increased during Kibaki’s second tenure and continues under Kenyatta. A report by the Public Service Commission in early 2015 revealed that four ethnic communities (Kikuyu, Kalenjin, Luhya and Kamba) dominate the civil service, occupying 58% of all positions and Kenyatta’s Kikuyu taking the lion share (23%).

A new need for effective coordination arose through the devolution of government structures. The Ministry of Devolution & National Planning has the mandate to coordinate county and national government action while the Council of Governors is both a horizontal policy coordination body and an interest group. Particularly the retention of the provincial administration, remodeled as the national administration and responsible for coordinating activities of national government agencies at the local level and for cooperating with the county governor and his administration, has opened up a new theatre of conflict.

The personalized and ethnically oriented nature of Kenyan politics is also an additional obstacle to policy coordination. This is reflected in new struggles between different layers of government as governors, for example, sought to defend their position against the national government, ambitious senators and members of parliament, and truculent MCAs. Similar struggles were witnessed at other levels as many MCAs, for example, seek to position themselves to vie for parliamentary seats in the next election, which increasingly brings them into direct conflict with sitting members of parliament.

Policy
coordination
5

Attempts by the Moi, Kibaki and Kenyatta governments to fight corruption have merely been superficial public relation exercises to calm and comfort the public.

Anti-corruption
policy

3

Some individuals, generally low-level perpetrators, were brought to trial, but even they were exceptions. No high-ranking politician has been sentenced to prison so far over the country's major financial scandals. Cases where ministers under investigation step aside or 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. Instead, allegations or investigations are often denounced by the accused and their supporters as ethnic "witch hunts" and as an attempt to remove popular community leaders from power. The prosecution of thirteen suspects in connection with the Anglo Leasing scandal in February 2015 is a new sign of hope.

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.

The body tasked with fighting corruption, the Ethics and Anti-Corruption Commission (EACC), has largely been ineffective and like its predecessors, troubled by profound in-fighting among the commission's senior staff and a weak leadership with severely damaged legitimacy due to the chairman's own pending corruption case. The EACC has pursued several low- and mid-level corruption and abuse of office cases, their credibility, however, hinges on high-level corruption cases. Sensing public discontent over the underperformance of the fight against corruption and media reports about new abuses of public funds and power, in March 2015 Kenyatta instrumentalized the fight against corruption, presenting a dubious list of corrupt cabinet secretaries, governors and others, thereby cleaning the ranks of among others a number of allies of Deputy President Ruto, indicating a possible shift of alliances within the ruling coalition.

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. 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 plus the corresponding strong ethno-regional polarization makes any consensus-building difficult.

Consensus on goals

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The aforementioned groups as well as the vast majority of Kenyan citizens agree in principle on 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 includes ideological differences (i.e., in preference of growth with trickle down or growth fueled by redistribution) and practical differences as to which development projects should focus where and why, and who the principal beneficiaries should be. This currently becomes highly visible in the implementation of the constitution, which affects vested interest of the old and current elites. 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.

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 current President Uhuru Kenyatta. 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. Despite several attempts to strengthen the national government at the expense of the county governments, a full onslaught by the Kenyatta side of the government against devolution has not yet taken place.

Kenya remains deeply divided along ethnic and to a lesser extent religious lines. Political leaders of all major groups continue to organize interests along ethnic lines. Political leaders transform personal power struggles into conflicts 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 possible between the last violent ethnic clashes in the area in 1994 and the 2007 elections. Kenyatta and Ruto formed an

Anti-democratic
actors

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Cleavage /
conflict
management

5

alliance for the 2013 elections 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.

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 a neo-pentecostalisation of Christianity and specific opposition to Khadi courts, which are recognized by the constitution. The war against terrorism and Kenya's military intervention in Somalia to stop Al-Shabaab attacks in Kenya have also contributed to these tensions, particularly after several of those attacks in Nairobi and its environs killed altogether more than hundred people and injured many more in 2013 – with the attack on the Westgate shopping mall being the most devastating one (more than 60 killed). The weak and non-conceptual counter-terrorism strategy of the Kenyatta government, with its random round up of alleged Somali nationals, has further aggravated tensions.

Traditionally, civil society has been opposed to the government, playing a watchdog role. 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. After the 2007 and 2013 elections, civil society organizations attacked the government and parliament for their lackluster fight against corruption, the continued impunity enjoyed by perpetrators of past crimes, the undermining of the 2010 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 through various channels, including parliamentary committees. 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 strongly influencing the political agenda. The Kenyatta government sees parts of Kenya's advocacy CSOs as responsible for their ICC trials, as several provided key information and witness testimonies to the ICC prosecutor. The government is clearly on a course to curtail CSO activities, and has been relatively successful at casting them (at least in the eyes of their supporters) as part of an "evil society" and as stooges of Western donors.

Civil society
participation
5

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.

There is also a sense among many government critics 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 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. Despite severe internal fighting and disputes, the commission was able to compile a relatively comprehensive report that was eventually handed over to Kenyatta in May 2013. The report does not only name many of those responsible for past crimes and those who benefitted from them, but it also contains detailed recommendations on how these crimes should be addressed by the government, stakeholders and society. However, parliament subsequently changed the TJRC act and assigned itself the right to alter the report, ostensibly with the intention to soften it and exonerate some of those implicated. By March 2015, parliament has not shown any inclination to put the report on the House's agenda, obviously, so that it dies a similarly slow death as many previous explosive reports.

Many Kenyans reject 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 internally displaced persons that 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 Department for International Development (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 awarded the government substantial credit facilities several times, in November 2014 it released the fifth tranche (\$109 million) of its Enhanced Credit Facility, bringing the disbursement since 2011 to \$628 million out of a total of \$760 million. Multilateral donor efforts such as poverty reduction strategies suffer from poor data collection, lack of qualified personnel and an absence of political will.

Efforts under the Kibaki and Kenyatta administration to counter the ICC's intervention in Kenya included casting the court as a neo-liberal body that was interfering in Kenyan politics at the behest of opposition politicians and Western donors. Efforts to "counter-shame" the court in this way strained relations with traditional donors – most notably the United Kingdom and the United States. Relations were then further strained by questions surrounding donor support for human rights activists with USAID, for example, which was accused by the National Security Advisory Committee of funding mass protests with the aim of toppling the Kenyatta government in February 2014.

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. The country initially lost some credibility toward Western countries when Kenyatta and Ruto became running mates for the 2013 Presidential elections. However, soon after their inauguration, initial reservations and credibility issues no longer mattered as particularly the U.S. and the U.K. governments sought a strong foothold in the country in light of the continued Al-Shabaab threat and the advancement of China. The withdrawal of charges against Kenyatta by the ICC in March 2015 did not rehabilitate him since he did not receive a non-guilty verdict, which leaves room for the case to be later reopened, though it makes it easier for world leaders get back to normal business with the Kenyan government even though the Ruto case is still ongoing. At the same time, however, the government's efforts to counter the ICC's intervention by casting the court as a neo-colonial body, allegations of intimidation and harassment of witnesses, and reports of efforts to curtail political freedoms have strained relations especially between political officers/diplomats and the government.

Credibility
5

On the economic front, the country is receiving international recognition for its initial steps toward 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.

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 African Union (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.

Regional
cooperation
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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.

Strategic Outlook

In the next few years, Kenya will face three principal challenges, the management of which will determine if and how the economic growth path will sustain itself and eventually reach the poor, comprising almost half of the population. These challenges are, first, the full implementation of the fundamental devolution reform, second, the national security crisis, and third, grand scale and endemic corruption. The case against Deputy President William Ruto at the International Criminal Court and the internal conflict management of the ruling Jubilee coalition will strongly influence how the Kenyatta government will address these challenges.

Devolution appears to be largely on track due to three factors: 1) its high popularity among the country's citizens, leading to – among other things – strong pressure on the governors to protect devolution against national government's (perceived and real) attempts to undermine it; 2) strong constitutional safeguards; and 3) the governors' readiness to use their legal powers to protect devolution. However, the opening up of new political arenas at the local level is clearly a threat to effective planning and implementation, and has led to unnecessary duplication and increased ethnic tension and conflict in some areas. At the same time, the fact that some historically marginalized counties are beginning to experience improved health services and more responsive local administration is already a success. In addition, the devolution reform with its relatively powerful position at county level helps to stabilize and infuse new legitimacy into the political system, as those losing out at national elections (like CORD in 2013) can still win locally (like CORD in Nairobi, Mombasa, Kisumu and other significant places).

Corruption remains deeply entrenched in the country's political culture. Under Kenyatta, grand scale corruption has reached a new peak with the equivalent of 22% of the country's national budget (2014 – 2015) having been misappropriated within just two years. Kenyatta's recognition of this corruption through his state of the nation address in March 2015 is a double-edged sword. It was a populist move that enjoyed broad public support as the citizens demand action against corruption. It also potentially served political ends, as the Ruto wing of the Jubilee government has been particularly targeted by Kenyatta's "list of shame." Though the report was prepared by some members of the Ethics and Anti-Corruption Commission, the developments around its compilation exposed strong in-fightings and a disintegration of the Commission. At the same time, other parliamentary committees that mandated the examination of possible cases of public fraud have themselves been implicated in corrupt deals, leaving the anti-corruption fight without any credible institution to execute it at a time when new evidence in the Anglo Leasing case, the signature corruption case of the Kibaki era, has become available. The corruption cases and schemes of the Kenyatta administration, together with the localization of corruption under devolution, prevents substantially higher growth rates and undermines efficient service provision and poverty reduction efforts.

The Kibaki, and particularly the Kenyatta government's failure to reform the national security agencies in the spirit of the constitution, is proving highly dangerous and potentially destabilizing for the country. For a long time threats to stability and national security stemmed from internal, domestic conflicts like in the 1990s and after the 2007 elections when they were ethno-regional in character. The recurrence of those threats cannot be entirely discounted, as they ultimately depend on the power configurations of the national political landscape. The current Jubilee alliance, which brings together some of the main opponents of 2007, is experiencing some cracks following Kenyatta's anti-corruption drive in 2015. With Kenyatta off the ICC hook and Ruto still on trial, some rearrangements within the coalition could become an option, possibly including the replacement of Ruto by the Council of Governors Chair Isaac Ruto or Baringo Senator Gideon Moi, son of former President Daniel arap Moi. Only in the case of a breakup of the coalition could the old lines of conflict between the Kalenjin and the Kikuyu in the Rift Valley be revived again. If that would lead to new political alignments in the run-up to the 2017 or 2022 general elections, those elections could become highly polarized and potentially violent again. However, in the short term the main security threats emanate from the Al-Shabaab attacks in Kenya, and local resource-based and border conflicts. The latter are largely concentrated in the peripheral and historically marginalized parts of the country, however, these areas are becoming increasingly politically and economically significant as a result of devolution and the development of new natural resources and infrastructure projects. The April 2015 attack on the Garissa University by supposed Al-Shabaab terrorists (all locally recruited Kenyan Somalis), which left almost 150 people dead, exposes the weaknesses of the Kenyan security apparatus. Despite clear warnings in the previous weeks about an imminent attack on an education institution and some hints that Garissa could be the target, the national security council, the relevant ministries and the police command proved not only incapable of initiating the appropriate counter measures before the attack, but also of reacting swiftly enough to end the attack as soon as possible. The repeated attacks since 2012 have already brought the tourism industry to its knees and are clear impediments to stronger foreign direct investment.