

Polity IV Country Report 2010: Kenya

<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%;">Score:</td> <td style="width: 15%;">2009</td> <td style="width: 15%;">2010</td> <td style="width: 15%;">Change</td> </tr> <tr> <td>Polity:</td> <td>7</td> <td>8</td> <td>+1</td> </tr> <tr> <td>Democ:</td> <td>7</td> <td>8</td> <td>+1</td> </tr> <tr> <td>Autoc:</td> <td>0</td> <td>0</td> <td>0</td> </tr> <tr> <td>Durable:</td> <td></td> <td>8</td> <td></td> </tr> <tr> <td>Tentative:</td> <td></td> <td>Yes</td> <td></td> </tr> </table>	Score:	2009	2010	Change	Polity:	7	8	+1	Democ:	7	8	+1	Autoc:	0	0	0	Durable:		8		Tentative:		Yes		<div style="text-align: center;"> <p>Authority Trends, 1963-2010: Kenya</p> </div>
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SCODE	KEN	CCODE	501	Date of Report	1 June 2011																				
Polity IV Component Variables																									
XRREG	XRCOMP	XROPEN	XCONST	PARREG	PARCOMP																				
2	2	4	7	2	3																				
Date of Most Recent Polity Transition (3 or more point change)																									
End Date		29 December 2002		Begin Date																					
				30 December 2002																					
Polity Fragmentation: No																									
Constitution																									
1963/1997/2001/2010																									
Executive(s)																									
President Emilio Mwai Kibaki (PNU); initially directly elected 2002, most recent reelection, 27 December 2007, 46% Prime Minister Raila Amolo Odinga (ODM), appointed 17 April 2008																									
Legislature																									
Unicameral: National Assembly (224 seats; 210 members directly elected, 12 members appointed by president in proportion to parties' parliamentary vote totals, and 2 <i>ex-officio</i> members; most recent elections, 27 December 2007) Orange Democratic Movement (ODM): 99 Party of National Unity (PNU): 43 Orange Democratic Movement-Kenya (ODM-K): 16 Kenya African National Union (KANU): 14 Other parties: 35 Undecided: 3 Appointed members: 12 Ex-officio members: 2																									
Judiciary																									
Court of Appeal; High Court																									

Narrative Description:¹

Executive Recruitment: Transitional or Restricted Elections (7)

Prior to the election of Mwai Kibaki in December 2002, executive recruitment within Kenya was a designative act within the ruling party. For almost forty years Kenya had been dominated by a single political organization, the Kenya African National Union (KANU), which controlled both the executive and legislative branches of government. Between 1982 and 1991 Kenya was a *de jure* one-party state in which all opposition parties were outlawed. However, beginning in 1991 KANU chose to try and retain its hegemonic position within a multiparty setting. President Moi, who led KANU and served as President between 1978 and 2002, attempted to maintain his grip on Kenya's political process through a delicately balanced system of coercion, co-optation and the systematic manipulation of the electoral process.

Under the guidelines of the Kenyan constitution, President Moi could not stand for re-election in the 2002 presidential contest. Unlike the recent trend in other African pseudo-democracies, Moi did not seem interested in re-writing the constitution to allow for a third term in office. Instead, he repeatedly stated that, when the time comes, he would hand over power to one of the "Young Turks" within KANU. Despite these proclamations, efforts by Moi to control the electoral process in favor of his chosen successor, Uhuru Kenyatta, indicated that he was not truly committed to the establishment of democracy in Kenya. Despite these efforts to subvert the democratic process, Moi was unable to control the outcome of the 27 December 2002 elections in which Mwai Kibaki won a landslide victory over Moi's chosen successor.

Presidential elections, held concurrently with legislative elections on 27 December 2007, were highly controversial and provoked widespread communal violence in their wake. President Kibaki, who ran for re-election as the candidate of the ruling Party of National Unity alliance (PNU), was declared the winner with a slim margin over the Orange Democratic Movement (ODM) candidate, Raila Amolo Odinga, and was sworn in on 30 December 2007. Legislative elections resulted in an opposition victory with the ODM controlling 102 of 224 seats and the PNU with 78 seats. Ethnic Luo and Kalenjin supporters of Odinga responded to the announcement of Kibaki's victory with a wave of intense communal violence against the traditionally, politically and economically advantaged Kikuyu that resulted in 1500 deaths and 300,000 forcibly displaced. Concerted international engagement mediated a power-sharing agreement that was signed by Kibaki and Odinga on 28 February 2008 that allowed Kibaki to retain the presidency with Odinga serving as prime minister, effectively ending the communal violence. The new government was sworn in on 17 April 2008.

Executive Constraints: Executive Parity or Subordination (7)

Up until the December 2002 legislative elections, Kenya had been a republic dominated by a strong presidency. With the collapse of the political hegemony of KANU at the end of 2002, the new political system constituted a much higher degree of horizontal accountability. In these elections Kibaki's National Rainbow Coalition (Narc) won a majority of seats. The new parliament was convened on 9 January 2003.

Much of the government's time and energy in 2003 was dedicated to the task of demarcating the powers of the executive and legislative branches of government in this new political order. The constitutional draft process, which had not produced a final document by the end of the year, triggered high levels of political posturing and rancor throughout the political system. In addition to calls by KANU MPs to reduce the powers of the executive president, voices of discontent were also heard within the ruling Narc coalition itself. In particular, one of the main parties of the ruling coalition, the Liberal Democratic Party, repeatedly called for the implementation of a pre-election pact with Kibaki that would strengthen the powers of the prime minister. In April 2004 the Kibaki government withdrew from the national constitutional conference, the body mandated with the task of drawing up a new constitution, following a decision by its delegates to adopt a draft document reducing presidential powers and establishing a stronger executive prime minister. Most of the 629 delegates to the constitutional convention, including three government ministers, voted to trim presidential powers against the government's wishes. In its place, the delegates proposed the creation of a prime minister's post after the 2007 election in 2007. The turmoil following the 2007 election produced a power-sharing arrangement between rival personalities promoting contentious ethnic-groupings. Under this ad hoc arrangement, the authority and responsibilities of the dual,

¹ The research described in this report was sponsored by the Political Instability Task Force (PITF). The PITF is funded by the Central Intelligence Agency. The views expressed herein are the authors' alone and do not represent the views of the US Government.

or dueling, executives remains somewhat ambiguous, further accentuating their rivalry. It also places serious constraints on executive action as both the President and the Prime Minister make claims to authority over important policy decisions and, thus, command informal “veto power” over the policy agenda and the implementation of policy initiatives. Under the mandate of the power-sharing arrangement, the government was tasked with the job of drafting a new constitution that would weaken both the powers of the presidency and role of ethnic tribalism in Kenyan politics.

Political Participation: Factional Competition (7)

The political hegemony of KANU from independence until late 2002 was the by-product of both political intimidation and electoral fraud as well as the failure of the democratic opposition to organize an effective challenge to the ruling order due to the high degree of inter-party factionalism found within the opposition camp. While some of this fractionalization can be attributed to the government’s active policy of sowing division within the opposition, nevertheless, the political opposition was, and continues to be, deeply divided by personal animosities and ethnic-based rivalries. Political parties in Kenya tend to be institutionally weak and, with only a few exceptions, tend to have extremely narrow constituency bases. While the victory of Kibaki’s National Rainbow Coalition (NRC) in 2002 was a promising sign, nevertheless, ethnic-clientelism continued to work to undermine the institutionalization of political parties in Kenya. Relatively few political observers expected that the new political order would diverge fundamentally from KANU’s pattern of ethnic-based patronage rule.

Indeed, cracks within the ruling NRC coalition became increasingly apparent in 2003. Political infighting within the NRC, a coalition of sixteen opposition parties that united to unseat President Moi in 2002, produced significant political discord and policy gridlock during Kibaki’s term in office. While President Kibaki pressed for the creation of a more unified single party structure, many members of the NRC coalition resisted this transformation, fearing a loss of their political identity and power. Many of these parties complained that Kibaki had tended to favor his own National Alliance Party of Kenya in the distribution of top cabinet positions and worried about any further efforts to weaken their hold on power. The most vocal opponent to Kibaki’s rule inside the NRC came from Raila Odinga’s Liberal Democratic Party. Odinga’s followers pressured Kibaki throughout 2003 to honor an agreement reached before the December 2002 election in which Kibaki promised to appoint Odinga (who was minister of transportation) to the post of prime minister in exchange for his party’s commitment to join the coalition. However, under pressure from his own party, Kibaki reneged on this promise. Political tensions escalated in September 2003 when a member of the national constitutional conference, Crispin Mbai, was murdered. Mr. Mbai, like Odinga, was an ethnic Luo. The killing of Mbai threatened to destabilize the entire constitutional review process, which had already become bogged down in deep tribal and political divisions. Many Luos believed that his death was meant as a warning to their most prominent politician, Raila Odinga. Between 2002 and 2004, when he was over-ruled by parliament, President Kibaki, a member of the Kikuyu ethnic group, fought against plans to decentralize executive power.

Increasingly troublesome to the health of Kenyan politics in recent years has been the rise of ethnic-based political violence throughout the country. Kenya is a multi-ethnic society divided between Kikuyu (6.6 million), Luhya (5.3 million), Kalenjin (4.9 million), Luo (4 million) and Kamba (3.8 million) peoples. Ethnic violence in Kenya has a historical record of peaking around the holding of national elections. Recent violence in the Kibera slum of Nairobi (between Nubian landlords and Luo and Luhya tenants), in the Tana River District (between Orma herdsmen and Pokomo farmers) and in other areas across the country, have led political observers to express concern that Kenya is once again falling prey to a pattern of election related violence. Election violence in 1992 resulted in over 1,000 deaths and the displacement of over 100,000 residents in western Kenya and in the central Rift Valley while Kenya’s second multiparty elections, held in 1997, were also plagued by ethnic violence and government intimidation. In 1997 an estimated one million eligible voters were denied registration and over 100,000 people were displaced in the Coast Province following ethnically-driven attacks on groups largely affiliated with KANU opponents. These trends came to a head with the hotly disputed December 2007 elections; widespread ethnic-based violence and intimidation following the government’s announcement that President Kibaki had won reelection very rapidly resulted in some 1500 killed and 300,000 displaced. International mediation led to acceptance of a power-sharing government that retained Kibaki as president and named Odinga as prime minister. The institutionalization of the Kibaki-Odinga rivalry and the continuation of strong international engagement appears to have calmed the situation over the short-term but the government seems incapable or unwilling to implement reforms and reconciliation policies that

could defuse the rivalry and prevent future flare-ups among Kenya's constituent groups. However, the process of writing a new constitution, which has been in the works for over 20 years but finally gained momentum in 2009, may finally begin to resolve some of these issues.

In a constitutional referendum held on 4 August 2010, a majority of Kenyans voted to accept the new constitution, passing the document with 67% of the vote. While retaining the presidential system of the old constitutional order, the new constitution introduced greater legislative oversight of the chief executive and devolved significant powers to the sub-national level. Under the old system the president held significant powers and was able to make government appointments without parliamentary oversight. This system allowed Kenya's presidents to create bloated cabinets filled with parliamentarians who were beholden to the chief executive for access to state largess. Also, by concentrating political power in the hands of the president and his political associates, competition for control of the federal government took on a zero-sum quality and ethnic cleavages became more intense as politicians became increasingly reliant on tribal patronage networks to mobilize the vote. Supported by both President Kibaki and Prime Minister Odinga, the new constitution included the following changes: (1) parliamentary oversight of most presidential appointees; (2) constitutional limits on the number of cabinet posts that the president is allowed to fill and the prohibition of all sitting parliamentarians from holding these posts; (3) the establishment of a Senate to review parliamentary decisions; (4) the replacement of powerful provincial governments with a network of smaller counties; (5) the creation of a Judicial Service Commission to strengthen the rule of law in the country; (6) the formulation of a citizens' Bill of Rights; (7) the creation of a land commission to return stolen property and review past land tenure abuses which have been a constant source of ethnic tensions in recent years; and (8) the abolishment of the temporary post of prime minister that was created as part of the power-sharing arrangement after the ethnic violence of 2007. The only region in which there was significant opposition to the new constitution was in the Rift Valley. While the new constitution was passed into law in late August 2010, it will take more than five years to fully implement.