

“[T]he country has bought a short amount of time in which to entrench the new constitution, wield it for reform, and battle ghosts of the past.”

## Kenya Struggles to Fix Itself

JACQUELINE M. KLOPP

Kenya is at a turning point. It either builds a new foundation for its society, one based on democratic, constitutional principles, or it is likely to join other countries in East Africa—Ethiopia/Eritrea, Sudan, Somalia, and Uganda—that have succumbed in recent times to war followed by enduring authoritarianism.

Until the post-election violence in 2007–08, many observers, including Kenyan citizens, perceived the nation as an island of stability, peacefully absorbing refugees and remaining a solid regional base for the United Nations and the broader diplomatic community. Optimism stemmed also from Kenya’s visible and rapid democratization process. This was especially evident in the capital, Nairobi, which hummed with open political talk, heated debates in parliament, critical editorializing in the media, and overt lobbying for more reform. Before December 2007, it was easy to be lulled into believing that Kenya’s reform project, seemingly so vibrant and on the right side of history, would march reliably onwards.

The violence that brought Kenya to the brink of civil war at the end of 2007 thus shocked many inside and outside the country. The toll was heavy and it endures as an ever-present reminder of that horrible time: 1,300 lives lost, 600,000 people displaced, with many livelihoods and homes destroyed, and large numbers of people physically and psychologically maimed.

The country’s economy, which relies on complex webs of interethnic cooperation and trust, also was damaged. Many Kenyans lost markets for their goods; capital, infrastructure, and businesses were destroyed; people skilled in business and trades were killed, maimed, or displaced.

All this led to more unemployment; and land issues, already divisive, grew more complicated. Agricultural production declined as farms went up in flames and farmers fled, many never to return. Tourism and regional trade took a blow.

The damage was immense in less tangible ways too. The violence created trauma, mistrust, layers of unaddressed grievances, and hatred that still simmers under Kenya’s seemingly peaceful surface. Despite a few inadequate and opaque programs for the displaced and sporadic efforts by nongovernmental organizations, this damage has yet to be seriously addressed.

Today the fate of the country’s reform project is precarious. As Antonio Gramsci wrote in his prison notebooks, a crisis “exists precisely in the fact that the old is dying and the new cannot be born: in this interregnum a great variety of morbid symptoms appear.” The violence and large-scale land grabbing and corruption scandals we have seen in Kenya since the 1990s are very much the result of a narrow clique within the political class trying to hold onto power by any means necessary.

To maintain the old order, this clique is fighting against pressures for democratization and the rule of law. It is trying to find, through corruption, ever more resources to buy votes and loyalty. And it is using violence when these means do not suffice. Pressures for change give rise to such counterstrategies by the establishment, creating “morbid symptoms.”

At this point it is unclear who will win the struggle: whether Kenya will succumb to violence again in its next election or witness the triumph of the reform project. What we can say is that Kenya is neither condemned to repeat its neighbors’ terrible past nor assured that reforms will inevitably succeed. Much will be determined by ongoing political struggles over a new form of constitutional rule and efforts to free the country from the

---

JACQUELINE M. KLOPP is an associate research scholar at the Center for Sustainable Urban Development at Columbia University.

grip of ethnic nationalist ideologies that elite factions have manipulated to retain power.

## CLASS WARFARE

Many observers focus on the ethnic dimensions of Kenya's struggles. The mobilization of ethnicity for narrow political agendas, what historian John Lonsdale aptly calls "political tribalism," is indeed a major problem that Kenya's newly created National Cohesion and Integration Commission is trying to address. However, it is also important to look at Kenya's often ignored class dynamics and how the country's top "one percent" (probably less) fight over control of the state and its power. At one moment leaders within the elite urge their followers to kill each other; at another they play golf or sip drinks together, dreaming up new alliances and strategies. Ordinary Kenyans—and their country—bear the cost.

Kenya's deep reform project challenges the perverse sharing of concentrated presidential power and its wealth-capturing possibilities by a small group of families. It challenges the ability of a small, fractious clique to bring the country down through rivalries with other factions over who gets to "eat" its resources next.

Kenya's reform effort aims to dismantle the old system by imposing a cost for violating a new constitutional order. It aims to puncture the clique's impunity with the help of a revitalized judiciary and the International Criminal Court (ICC). It also aims to bring to life the country's new institution-altering constitution—a charter that dilutes and disperses presidential power, empowers the parliament, enables a more professional cabinet, and changes the rules of political competition. Whether these new rules can be in place and enforced before the next election, which is set for March 2013, remains an open question.

If there is one silver lining to the violence that occurred in 2007–2008 between the two main political parties—incumbent President Mwai Kibaki's Party of National Unity (PNU) and opposition leader Raila Odinga's Orange Democratic Movement (ODM)—it is that the mayhem brought Kenya's deep-seated, historical, and structural problems out in the open.

Thanks to international mediation (especially the efforts of a Panel of Eminent African Personalities, including former United Nations Secretary General Kofi Annan, former Tanzanian President Benjamin Mkapa, and Dame Graça Machel of Mozambique), a deal between the

feuding parties cleverly bound them into committing to political reform as a means of addressing the violence. The resulting National Accord and Reconciliation Agreement of February 2008 was fitting atonement for the fact that the parties and the cliques who run them as personal vehicles nearly killed Kenya's reform project altogether through a conflict that no one could win.

After the violence of 2007–08, it was no longer possible to deny the need for profound institutional change. The constitutional reforms, which the executive had repeatedly blocked after they were conceived and developed within a number of remarkably inclusive processes, go beyond power sharing between Kibaki and Odinga's parties, and are essential to fixing Kenya. Now part of "agendas" articulated in the National Accord, they document an explicit promise—long unfulfilled—to the Kenyan people. The parties have agreed to the reforms on paper, and many eyes are watching.

## HISTORY OF VIOLENCE

The National Accord not only stopped the bloodshed. It bought time to examine and reflect on what happened in 2007–08. In a nutshell, the 2007 presidential election, deeply flawed from the party nomination processes to the vote counting, was a trigger for the violence. The incumbent PNU government used and abused the police to massacre innocents at protest rallies. It also mobilized a militia called Mungiki to kill (including by burning alive) and terrorize citizens deemed opponents because of their name or language. In the same way, high-level politicians from the opposition ODM organized mass killings and displacement of citizens, similarly deemed opponents because of their name or language.

The full story and painful evidence are well captured in human rights reports and an official commission's report mandated by the National Accord. The details will become even more vivid and hard for Kenyans to forget as the ICC proceeds with trials of chief protagonists from both sides—Uhuru Kenyatta (the PNU deputy prime minister), Francis Muthaura (the PNU chief of civil service), William Ruto (an ODM former cabinet minister), and Joshua Arap Sang (an ODM propagandist and radio announcer). After all the years of arbitrary use of violence, including the blatant abuse of the police by the political class, this is the first time that some of the leaders will have to account for their crimes before a court of law.

Ironically, the same people facing trial worked to subvert a local tribunal, some chanting “let’s not be vague, let’s go to The Hague,” under the impression that the ICC was slow and ineffective and hence was a way to sweep aside the issue as they carried on with their power rivalries. The situation is now surprising and new for them. They do not quite know how to manage the altered game involving an international trial and scrutiny, the new constitution, and all the ensuing implications.

So far the former “combatants” from 2007, now together at The Hague, have joined forces across previous party divides. They are mobilizing supporters through “prayer meetings” designed to bring the previously opposing ethnic communities together in this political project of impunity. Their aim is to form a new coalition along ethnic lines to win the next election, stay in power, and stem change. They also are activating old repertoires—preaching hatred against Odinga’s Luo people (who remain in the old ODM party), now characterized as in opposition to the ruling coalition.

The ongoing public examination of the recent violence and previous episodes of strife, including through conflict-ridden Truth, Justice, and Reconciliation Commission proceedings, shows that while the country’s history—a remarkably violent one—is unique, Kenya has always faced and continues to confront many of the same challenges of nation building and state reform as its neighbors. Kenya inherited repressive colonial institutions that concentrated enormous powers in the presidency, powers used by the executive to undermine and corrupt the civil service, police, and judiciary; to accumulate vast tracts of land and wealth in a small number of hands; and to repress opponents, often brutally. The recent violence, in sum, has a rather long genealogy.

## THORNY LEGACIES

Kenya also inherited uneven development, with Nairobi becoming an ever greater economic pole conferring advantages to communities in proximity to it or able to navigate its networks, most often through political access. In addition, before colonial rule Kenya consisted of many complex, culturally diverse but interactive small-scale communities. Fashioning a coherent and viable nation within this context has proved a challenge.

The challenge has been made more difficult still by the legacy of authoritarianism—a political history that reads as a palimpsest of accumulated, partially forgotten, and often deliberately misremembered injustices. These narratives of injustices often appear to pit peoples against each other rather than emphasize the web of cooperation that was weaved through the region’s long history before national boundaries were drawn.

Rather ironically, since political liberalization and the opening of independent newspapers and radio shows in the 1990s, the political class—a product of this history—has tended to resort to crudely opportunistic ethnic ideologies. These ideologies rely on selective memories of injustice, and on discourses of victimhood and marginalization that silence those who are truly marginal.

Political parties tend to serve as lobbying groups for leaders looking for their “turn” at the presidency. Many of the leaders’ ethnic cohorts in turn sign on as a rational way to try to get ahead in the system as they experience it. The idea is that if one of “our community” gets into power, it will be

our turn to “eat”—that is, to reap the benefits of the state, which is viewed as a giant patronage machine, as in fact it has been.

This ideology and discourse obscure the reality that the current system has produced massive inequalities not only among regions, but within every ethnic community. The poor, including the 47 percent of the population who exist below the very low national poverty line, are found everywhere—in the arid pastoral regions as well as the expanding slums in cities. They struggle to find food and employment. They send their children to crowded and poorly equipped schools that are called “free” but require many fees. For most of them, the path to social mobility is hard if not impossible to find.

In contrast, members of the wealthy political class intermarry, live in Nairobi, golf at the Muthaiga Golf Club, and send their children to elite schools and universities abroad. At the same time, competing factions within this class enclose themselves in small ethnic cabals, as described by Michela Wrong in her book *It’s Our Turn to Eat*. All three presidents since independence—Jomo Kenyatta (1964–1978), Daniel arap Moi (1978–2002), and now Kibaki—have played this game. All have been part of the inbred, wealthy elite with

---

*It is unclear whether Kenya will succumb to violence again or witness the triumph of reform.*

---

extensive land holdings in a country that faces chronic hunger and food insecurity. *Forbes* magazine ranks Kenyatta's son Uhuru, who inherited his father's wealth and political mantle, as one of the richest men in Africa. His wealth is derived from 500,000 acres of land that his father accumulated.

## THE BOURGEOIS REVOLT

Kenya's "stability" under these circumstances (the one coup attempt failed in 1982) was initially linked to an educational system that afforded some social mobility; an ability to air some grievances by supporting different candidates of the dominant political party, the Kenyan African National Union (KANU), in single-party elections; and the army's insulation from politics (helped by the absence of war).

A remarkable drive for education throughout the country led thousands of communities to build their own schools and scrape together money by pulling together (expressed in the Swahili slogan "*harambee!*") to give their children educational opportunities at home and abroad. As a result, Kenya boasts a savvy, highly educated middle class and an extensive diaspora—some in high-level positions in various professions in all corners of the planet. This middle class, including in the diaspora, has played an increasingly important role in Kenyan politics.

In the late 1980s and the 1990s, during the wave of democratization that swept the globe, members of the middle class, including prominent lawyers, led Kenya's reform project. Backed by masses of people—especially the urban poor, who braved police bullets to come out for rallies in Nairobi—the movement aimed to reform the state, which since independence had reinstated draconian public order laws and installed a torture chamber in a government building, Nyayo House, to enforce coercive rule. The idea of the project was, in consultation with citizens, to reconstitute the state's legal and institutional structure and rewrite its social contract. This was to be a "bourgeois revolution," to use the words of the late Harvard sociologist Barrington Moore—led by a middle class aspiring to join much of the rest of the world in enjoying civil and political rights.

At the same time, the project relied on the support of the masses, largely poor and desperately needing a fairer distribution of the country's wealth and opportunities, not just along ethnic lines but along class lines. If the majority would

come to have political force—the force of numbers—some redistributive correcting would have to take place. Such a correction would make good policy sense as well, by stimulating local economic demand and increasing productivity, employment, and social inclusion and cohesion.

The time was ripe for such a project, and in the 1990s it began receiving support from the US government and international human rights networks. Under external and internal pressure, Moi's KANU regime opened up the country to multiparty competition in 1991. But at the same time, Moi raised the specter of chaos and "tribal" warfare, playing on Western media images of Africa.

No one in Kenya at the time thought anything close to war was possible. Kenyans had been living together peacefully. This was despite the accumulating injustices perpetrated, in continuity with colonial times, by a largely unaccountable state and a voracious political class that manipulated and abused its problematic institutions.

## THE ELITE STRIKES BACK

The increased competition for access to state power that emerged with multiparty politics provoked KANU stalwarts to generate a counter-project to hold on to power and to the massive wealth they had accumulated through the government. This project, called "majimboism," rejuvenated a notion of ethnically pure territories, where communities perceived to be supporting opposition parties were to be purged. Kenyans who listened to speeches at the first series of "majimbo" rallies were shocked. The exhortations marked a dramatic break in official nationalist discourse, and they came from the very top of the government and KANU.

Meanwhile, Moi initiated what looked like steps for reform to appease the relentless movement for constitutional change. He started a review of the constitution, which involved extensive consultations across the country. The process revealed a broad consensus that overly centralized power, and in particular presidential power, needed to be curbed and dispersed.

Additionally, in response to widespread anger at land grabbing linked to buying loyalty and financing election campaigns, Moi appointed a commission on land laws. The commission recommended substantive reforms aimed at introducing oversight and stemming rampant abuses. The government in 1997 also agreed to (but did not fully implement) some basic political reforms

that in theory would make the electoral playing field more even.

Even so, multiparty elections in 1992 and 1997 were marked by mass displacements and violence because key KANU politicians organized “ethnic clashes.” The leaders formed and armed informal militias and purged voters from areas that they wanted to control. The most virulent form of this displacement occurred unsurprisingly in the home region of the president and his cronies, who came from a collection of Kalenjin-speaking peoples in the Rift Valley. They had been in power and on the gravy train since 1978, and they particularly targeted Kikuyu and Luo people, whose leaders were seen as their chief rivals for state power.

At the time, despite human rights reports and government commission probes, the violence did not draw much attention. This was because it mostly affected rural people, and it died down after the elections, albeit leaving deep injustices and large numbers of displaced people in its wake. Crises elsewhere in Africa then were drawing attention. Few were interested in rocking the boat in a country that was a home for refugees in the region, and anyway reform appeared to be moving forward in fits and starts.

Besides, the 2002 election seemed to offer change. A coalition of parties led by Kibaki, a former KANU cabinet minister turned opposition leader, defeated KANU’s Uhuru Kenyatta, the son of the first president. The 2002 election did not unleash the same large-scale violence as before. Kibaki rode to power on a reform platform and promised to enact a new constitution.

## BROKEN PROMISES

It would soon be clear that, while Kibaki reduced the degree of direct presidential meddling in government, he had very limited interest in anything but superficial reform. After all, Kibaki, Kenyatta, and Moi were all part of Kenya’s one percent of outrageously wealthy families. They were associates from KANU’s long rule and intertwined as business partners. As a result, they shared a common interest in protecting and accumulating wealth and avoiding scrutiny. Moi doubtless watched the 2002 election calmly knowing that, regardless of who won, he would be protected.

President Kibaki broke his promise to quickly change the constitution, largely refusing to dilute presidential power. He also reneged on a pledge to create a prime minister’s post to share power with one of his key allies, Odinga, and systematically marginalized the dynamic Luo leader. Odinga would later join with disgruntled political forces in the Rift Valley, creating the division that shaped the violence of 2007–08. Like his predecessors, Kibaki also came to rely on a small upper-class cabal from his ethnic community, in his case the Kikuyu. As Wrong chronicled in *It’s Our Turn to Eat*, this group would be implicated in a series of corruption scandals, just like Moi and his cabal, and Kenyatta and his men before them.

This lent a certain credibility to the opposition claims against the Kikuyu—that is, if you ignored class politics and the exclusion of the vast majority of Kikuyu from any benefits from these machinations. The perceived ethnic grievance helps explain how the ODM built an anti-Kikuyu movement, much as Moi had in the 1990s. Indeed, many of the KANU organizers of mayhem from the Moi period joined the ODM fold.

One of the reasons many people were shocked by Kenya’s post-election violence in 2007–08 is that little attention was paid to the

fact that KANU hawks had split and joined both the PNU and the ODM, and some took their informal militias and violent tactics with them. The violence around the elections in the 1990s was state-instigated and fairly controlled. It stopped when KANU stayed in power and it was no longer necessary or politically useful. It resumed when another election triggered competition for state resources.

Thus, the handing over of power from Moi to his fellow former KANU minister Kibaki, and Kibaki’s subsequent but predictable failure to reform the institutions that were corrupted to protect his narrow political class, led inevitably to the crisis of 2007–08. If public security reforms had moved forward, police would not have shot and killed innocent men, women, and children with live ammunition and allowed informal militias to thrive. If the judiciary had been reformed, politicians would not have felt so free with their hate speech and links to militias. If the electoral commission had been independent, it would have

---

*After the violence of 2007–08, it was no longer possible to deny the need for profound institutional change.*

---

caught vote rigging and other fraudulent practices, instead of aiding and abetting them. Overall, the state would have been reconstructed to protect citizens, arrest criminals high and low, and provide a credible civic and legal process for resolving disputes and transferring power.

It is this realization, together with the public and international pressure it created, that has pushed the reform project forward since the latest post-election violence. The government convened a panel of experts to draft a new constitution. The panel crafted the new charter from tragically rejected previous drafts, and very clearly in response to the forces that provoked the violence in 2007–08.

Perhaps trying to salvage the wreck of his historical legacy, Kibaki campaigned with Odinga for the new constitution. On August 27, 2010, after extensive negotiations and after receiving 67 percent of the popular vote in a countrywide referendum, the long awaited charter was born and signed into law. If it can be implemented, it would represent not just a thorough overhaul of the legal and constitutional order, but a radical reconstruction of Kenya's state and society.

## THE STRUGGLE AHEAD

The new constitution is not perfect. It is long and complex, and like most constitutions it has tensions embedded in it that can only be resolved through political negotiation. However, it creates a legal basis for devolution of some power to new entities, called counties. It removes oversight of land from presidential appointees, shifting it to a national commission. It blocks some of the usual avenues for patronage politics (though politicians will no doubt creatively find new ones). And it reaffirms basic social and economic rights, while establishing key civil and political rights.

The constitution calls for a civilian body to oversee the police force. Current legislation to implement the charter's restructuring of the police creates the possibility of radically reforming the institution. The judiciary also is on its way to reform. Overall, the constitution finally—in accordance with popular wishes—dilutes presidential power substantially. And it creates inclusive and more accountable mechanisms for important appointments, while affording appointees security of tenure. If only this had happened sooner.

The constitution will be constantly tested and will only be as good as the continuing struggle

to give it life. One recent skirmish was won with great symbolic significance. Doubtless worried about the ongoing ICC investigations, which may yet implicate his close associates and raise the question of his own role in the violence, President Kibaki has attempted to engage in the usual politics of corrupting institutions in order to protect himself. Kibaki wanted to appoint his own man as chief justice. The constitution stipulates that the Judicial Service Commission is to present a nomination to the president, who would then pass it (under the National Accord) to the prime minister, who would then forward it to the parliament for approval.

The Judicial Service Commission cleverly allied with media outlets to broadcast interviews of candidates for chief justice. It became starkly clear to most viewers which candidates cringed in the limelight when asked about their past, and which ones did not. The democracy and human rights activist Willy Mutunga emerged as the clear front-runner, and his nomination was eventually accepted by the parliament and later by the prime minister and president, who were forced to confirm it or precipitate a constitutional crisis. In this skirmish at least, the new order held.

In the end, whether this fragile democratic, constitutional order takes permanent hold is the key to Kenya's future. The outcome will very much depend on continued resolve at every step to dislodge and outmaneuver the old order and a clique desperately determined to retain the power that guarantees its ill-gotten wealth.

Leaders of the old order have many tactics still to deploy, including subverting key legislation for implementing the constitution, withholding financing for new institutions, and resorting to violence once again. To counter such tactics, reformers will need to remain nimble and persistent, and citizens will need to see through the fog of violence and ethnic ideology.

Thanks to the National Accord, the country has bought a short amount of time in which to entrench the new constitution, wield it for reform, and battle ghosts of the past. If Kenya can manage to keep enough of the constitution in place to control the violent factions of its political class during the next election, it may just win the most critical battle yet in its long, difficult, and historic struggle for freedom. The alternatives—civil war and enduring authoritarianism—are awful to contemplate. ■