

BTI 2008 | Kenya Country Report

Status Index	1-10	5.89	# 61 of 125	
Democracy	1-10	7.00	# 40 of 125	↗
Market Economy	1-10	4.79	# 87 of 125	➔
Management Index	1-10	5.03	# 60 of 125	

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

This report is part of the Bertelsmann Transformation Index (BTI) 2008. The BTI is a global ranking of transition processes in which the state of democracy and market economic systems as well as the quality of political management in 125 transformation and developing countries are evaluated.

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Key Indicators

Population	mn.	34.3	HDI	0.49	GDP p.c.	\$	1,103
Pop. growth ¹	% p.a.	2.3	HDI rank of 177	152	Gini Index		42.5
Life expectancy	years	49	UN Education Index	0.69	Poverty ³	%	58.3
Urban population	%	20.7	Gender equality ²	-	Aid per capita	\$	22.4

Sources: UNDP, Human Development Report 2006 | The World Bank, World Development Indicators 2007 | OECD Development Assistance Committee 2006. Footnotes: (1) Average annual growth rate 1990-2005. (2) Gender Empowerment Measure (GEM). (3) Percentage of population living on less than \$2 a day.

Executive Summary

Since returning to multiparty politics in 1991, Kenya has made considerable progress in its political transition toward democracy, particularly in terms of press freedoms, the right to assembly, and active and passive suffrage. The general elections of 2002 represented a major step in consolidating Kenya's democracy, proving that democratic change is possible and fueling public faith in democracy. The former unity party, Kenya African National Union (KANU), suffered a major electoral setback that has prevented it from regaining its dominance. However, no major reforms have been initiated by the government during the period under review. The Kibaki government has failed to deliver on its promise of providing a new constitution within 100 days of taking office. Political divisions are the primary culprit here as few legislative initiatives pass parliament. Within the NARC (National Rainbow Coalition) coalition, former coalition partners are now pitted against each other as ethnic divisions have come to shape politics. As a result, no political agenda is set. By incorporating KANU hardliners within the cabinet, President Kibaki demonstrated a lack of respect for the electorate's wish to keep KANU out of power. In addition, this move weakened the opposition and curbed the checks and balances within the democratic system. Kenyans have thus grown increasingly disappointed in the state of affairs. During the legislative period of the ninth parliament (2002-2007), almost all parties of the National Assembly had been part of the government to some extent. There are divisions running through most parties, which leads to a complex system of shifting alliances within individual parties, across the party spectrum and within the conglomerate of those parties currently in opposition to the government. Starting with the referendum campaign on the draft constitution and Raila Odinga's resulting dismissal from the cabinet, Odinga and his followers have effectively taken up an oppositional role. They have left the NARC coalition, returned to their individual party platforms and have formed a new umbrella organization, the Orange Democratic Movement (ODM), which until mid-2007 included those parts of KANU that were led by Uhuru Kenyatta. Political parties

generally continue to serve the purpose of organizing and shifting ethno-regional coalitions. In contrast, Kenya's economy performed well during the review period, showing solid growth rates. But widespread poverty and inequality continue to be a major challenge for broad-based development. Corruption has increased at all levels, especially since former Transparency International Chief John Githongo has left the country.

History and Characteristics of Transformation

Kenya continues to suffer the legacy of almost 70 years of colonial rule (1896-1963). Conflicts over land and property issues as well as the question of a legal system that combines British law and tribal traditions have never been addressed properly and lead to violence. Victims of both colonial misrule and the autocratic rule of Jomo Kenyatta (1963 – 1978) and Daniel arap Moi (1978-2002) have never been compensated for their suffering. Thirty-nine years of autocratic rule under Kenyatta and Moi's ruling party Kenya African National Union (KANU) effectively prevented traditions of democratic conflict resolution from developing. As a result, Kenyan politics have been dominated by strong ethno-political undercurrents. Under Kenyatta, the informal ruling coalition was based on the Kikuyu. Once Moi assumed power, however, Kalenjin groups and other smaller ethnic groups gained power as the Kikuyu were pushed to the margins. After a failed coup in 1982, Moi's style of governance grew increasingly authoritarian as he implemented a system of terror and torture. Since Kenya was strictly anti-communist, Moi managed to secure the support of the Western world, which turned a blind eye to human rights abuses and anti-democratic tendencies in the country. Hiring and firing judges, Moi ruled through his notorious roadside announcements, in which he would travel the country, stop somewhere along the road and explain one of his newest presidential decrees. After the end of the Cold War in 1989, the regime remained authoritarian and continued its divide and rule approach, but the political sphere began to open up when a temporarily united opposition of civil society, churches, academia and NGOs gained strength, successfully pressing for a return to multiparty politics. Led by new and long-term KANU dissidents and supported by governments of the major donor countries, the new opposition forced Moi to allow multiparty elections in 1992. Against a fragmented opposition, Moi took advantage of the British first-past-the-post system and won the 1992 and 1997 elections relatively easily with well below 50%. KANU secured a majority in both elections, in 1997 through rigging the results in several constituencies. In the 1992 and, to a lesser extent, in the 1997 elections, Moi and KANU acted to incite ethnic clashes, obstructing and intimidating the opposition in several parts of the country. Having learned from past experience, the opposition united behind former Vice President Mwai Kibaki and his newly formed NARC coalition for the 2002 elections. Moi – adhering to the constitution (2 term limit, effective as of 1992) – did not run again, but, in attempt to

mend fences with the Kikuyu, he named the son of his predecessor, Uhuru Kenyatta, as his preferred successor. Kibaki and the NARC won with comfortable majorities in what were considered to be the best-organized and least-interfered-with elections in Kenyan history. However, in the midst of public euphoria, it was noted that some of the NARC coalition's political heavyweights had been pillars of the Moi government. This had immediate implications for any attempt to deal with past human rights violations (ethnic clashes and political murders in the 1990s) and major corruption scandals (Goldenberg). Though a number of commissions were initiated to shed light on these crimes, none of the perpetrators have been prosecuted. Kibaki and his inner, Kikuyu-dominated circle also failed to honor pre-election agreements, including the promise to fight corruption seriously and complete the constitutional reform process. A major disagreement over the latter between Kibaki and an ethno-regional subcoalition led by cabinet minister Raila Odinga eventually led finally to a dissolution of the coalition after nearly three years in power. Odinga's group lost its portfolios in the cabinet as members of the former ruling party KANU and a smaller regional party (FORD-People) were given an expanded role, thus shifting the regional balance of the government. Incorporating KANU politicians decreased the likelihood of Moi era crimes being addressed through juridical means. This also pointed to a desire to remain in power at any cost. At the end of Kibaki's five years in office, political developments underscore a highly fluid party system. However, in contrast to the 1990s, ethno-regional bonds no longer override political interests in several parts of the country, as the referendum against the government's draft constitution illustrated. The government also initiated a number of far-reaching economic reforms that unleashed economic capacities and stimulated four consecutive years of growth rates between 5 and 6%. However, though corruption no longer has the devastating effect on the economy as it had under Moi, the government still lacks the will and commitment to fight corruption.

Transformation Status

I. Democracy

1 | Stateness

The situation in Somalia and the Ethiopian military's invasion of Somalia at the beginning of 2007 have raised tensions along the Ethiopian and Somali borders in the northeast. The northeastern border to Somalia has been closed to prevent radical Islamists from entering Kenya. Nevertheless, Kenya is not experiencing threats to its territorial integrity, but rather finds itself having to deal with spillover from neighboring conflicts, in the form of various incursions ranging from small bands of armed fighters, to crashing Ethiopian army helicopters. The government still fails to effectively counter the smuggling of small arms coming into the country from Somalia. Armed groups or gangs challenge state sovereignty in several areas, including the western part of Kenya, the border area with Ethiopia and Somalia and in the Rift Valley Province. Conflicts with nomads from Uganda because of cattle theft and conflicts over land in the Mount Elgon region have led to the deterioration of security in certain areas. Violent crime is also rampant in the capital Nairobi and hampers foreign investment.

Monopoly on the use of force

The highly centralized system in Kenya leads to the exclusion of and discrimination against certain regions and ethnic groups, but citizenship is not denied to specific groups. All groups in society agree on the basic rules underlying citizenship and accept the Kenyan state as legitimate.

State identity

There is no interference in the state's legitimacy by religious dogmas. Churches are very active members of civil society and do act as interest groups.

No interference of religious dogmas

Although there are state administrative organs in all parts of the country, the level of functioning is very low. Reforms aimed at increasing the efficiency and transparency of the administration are urgently needed. The government's highly publicized reform plans seem to have come to a standstill, particularly measures against corruption, which have remained largely ineffective.

Basic administration

2 | Political Participation

In contrast to the elections held in 1997, the last national elections held in December 2002 were regarded as largely free and fair. Election day was generally peaceful and Kenyan voters remained patient despite some organizational deficits. The opposition won an overwhelming victory over KANU – which had governed the country since independence – in the 2002 elections. Whereas opposition leader Kibaki received 61.3% of the total vote in the presidential race, his opponent Uhuru Kenyatta scored only 19.2%. The parliamentary elections brought 56.1% for the opposition alliance NARC and only 29% for KANU, providing NARC with a comfortable majority of 132 of 212 elected seats in the unicameral parliament. The National Assembly consisted of 20 different movements and parties, 16 of which were included in NARC before it fell apart, and a total of five play an important role. The next regular elections are scheduled for December 2007.

Free and fair elections

There are no veto players hampering the elected rulers' ability to govern. The Kenyan army does not play a role in politics. It is relatively small and professional, when compared to its regional counterparts. The inclusion of KANU politicians in the ruling government in 2004 has slowed the reform process.

Effective power to govern

There are no legal constraints on parties or social organizations to assemble freely. The World Social Forum 2007 took place in Nairobi, boosting the confidence of Kenyan civil society organizations. In 2006 the government announced that all nongovernmental organizations should be registered.

Association / assembly rights

Government efforts to intimidate the media have had limited effect, but in some cases there is pressure on the media to make reporting more government-friendly. Press freedom is a reality, but journalists are exposed to all kinds of political violence in singular cases. Some politicians have even called for more regulation of the media by the state. In a rather curious incident in May 2005, the wife of President Kibaki, Lucy Kibaki, stormed into the office of a Nairobi-based national newspaper, demanding the arrest of one of its journalists. The media is having a hard time providing reliable and accurate information to the wider public, since it faces increasing reluctance to cooperate on the part of the government, and even repressive measures. The media watchdog Reporters Without Borders stated at the end of 2006 that press freedom in Kenya had deteriorated in comparison to 2004. It fell from a rank of 82nd (out of 168 countries) to 109th. Although the group maintains that press freedom is a reality in the country, it does say that journalists are exposed to all kinds of political and public violence.

Freedom of expression

3 | Rule of Law

The separation of powers is guaranteed by the constitution, but the executive dominates politics. The Kenyan constitution provides the president with vast powers. The Kibaki government promised to reduce presidential powers and to introduce a prime minister, a position that was expected to be filled by political heavyweight Raila Odinga. However, after coming to power, Kibaki and his inner circle sought to do away with this agreement. The government prepared a draft constitution in which the prime minister position was erased and in which many of the previously criticized and unreasonable presidential powers were kept. The draft constitution was put before the public in a referendum in November 2005. Raila Odinga successfully organized a broad transethnic coalition against the draft constitution. Kibaki's constitutional reform was clearly defeated: Only 43% of the population supported the reform but the majority of 57% rejected it. The referendum meant the end of the NARC-coalition. Kibaki has been accused of non-democratic tendencies. Examples include his appointment at the end of 2006 of nine commissioners to the Electoral Commission without consulting other parties, as required under the Inter-Parties Parliamentary Groups pact of 1997. The inclusion of opposition members from KANU in his current cabinet has also led to accusations of him trying to hinder the democratic process by "bribing" these parliamentarians with ministerial or other posts. Due to its fragmentation, parliament is not able to fulfill its oversight function and constitutional checks and balances are weak.

Separation of powers

Although the judiciary is institutionally differentiated, it does not function properly. Cases that eventually are brought to court often have to be dropped for a lack of evidence, and court procedures suffer from a lack of capacity. Kenya does not suffer from a lack of judges or legal experts, but it is hard to find non-corruptible ones. The saying among business people in Nairobi that it is "not necessary to pay an attorney when you can buy a judge for less" is telling. As a result of investigations into the legal system in 2003, the situation with respect to judges has improved. A recent report by the Centre for Law and Research International claims that none of the 10 indicators that were set by the government's Public Service Integrity Program have been met, leaving it to conclude that the war against corruption has not even begun. Numerous complaints about public officials' behavior have been filed with the Kenya Anti-Corruption Commission (KACC) – so many that the organization lacks the capacity to effectively investigate them. It also lacks the power to prosecute, handing instead cases over to the Attorney General's office.

Independent judiciary

Despite the government's lip-service to anti-corruption measures, its purported ongoing "war against corruption," and the existence of several laws and

Prosecution of office abuse

regulations against the abuse of office, rampant corruption continues and undermines the proper functioning of both the judiciary and the police in Kenya. It is clear that government efforts are failing. The situation has deteriorated since the Director of the KACC, John Githongo, fled into exile after having received death threats. In addition, enforcing the rule of law is hindered by the fact that the police force has received insufficient training, is poorly equipped and badly paid. Corruption is raging in the police apparatus: in December 2005, a large recruitment drive for police cadets had to be terminated when it was found out that 80% of new recruits had either paid bribes or used their connections to get the job. Corruption watchdogs have so far not been able to ameliorate the situation. In 2006, the head of the Kenyan office of Transparency International faced allegations of financial irregularities and was removed from office

Civil rights are guaranteed by the constitution. Although the human and civil rights situation has improved since the 2002 change in government, civil rights are sometimes violated by the police. Demonstrators are often injured by harsh police action. Kenyan human rights group also report cases of torture and other ill-treatment during detention including physical abuse, suspects being detained without access to a lawyer or relatives, suspects being held in degrading and unhealthy conditions without access to medical care. Women are often disadvantaged by customary law.

Civil rights

4 | Stability of Democratic Institutions

The problem is not the absence or acceptance of democratic institutions, but the non-performance of these institutions.

Performance of democratic institutions

All relevant actors accept democratic institutions in general. But institutions are often misused by elite actors for their personal gain and corruption.

Commitment to democratic institutions

5 | Political and Social Integration

Kenyan political parties are vehicles to power for strongmen rather than organizations with a political agenda and vision. Clear, distinguishable programmatic ties do not exist. Parties are built around regional and ethnic loyalties. The party leaders must be understood as “political entrepreneurs” using ethnic divisions and media campaigns as a means to rally support. There is no public source of funding for Kenyan political parties and contributions or donations for election campaigns are not bound to any rules. Support can be bought and this is why the financing of the political process is largely a matter of a limited amount of wealthy individuals. Running costs for a political party and costs of an election campaign are high, which threatens to distort the democratic

Party system

process. Leading members contribute to the parties, but on a lower level the flow of money is towards party members, rather than the party register. Money from abroad and donations from the private sector are two other important factors in financing election campaigns. The parties, in particular the party elites, are responsible for the stalled reform process. The National Rainbow Coalition (NARC) fell apart in 2005 – without ever having functioned properly – with the removal of the LDP from the coalition after events concerning the new draft constitution. In November 2005, a large majority of the Kenyan electorate defeated this draft, which had the support of parliament and President Kibaki. This prompted Kibaki to reshuffle his entire cabinet, curiously including some politicians from opposition party Kenyan African National Union (KANU) as cabinet officials. Government defectors and ex-KANU members formed a new opposition party in the Orange Democratic Movement. President Kibaki went on to lead the group that calls itself NARC-Kenya. Thus, little is left of the original NARC, though some politicians still affiliate themselves with it.

Kenya has many societal groups, interest organizations and networks but these have little influence in the political arena. Whereas employers' organizations are relatively well organized, trade unions have not yet recovered from many years of corruption and weak leadership. The government is actively discouraging NGOs from what it calls "meddling in politics." One of the measures it is taking to this effect is an auditing effort involving all NGOs in the country. The government defends this approach by pointing to the many NGOs that seem to exist only for self-enrichment. That is sometimes true; the level of governance within some NGOs is low or virtually nonexistent. But its current approach links regulation with politics in a way that raises suspicions of a hidden agenda. The government recently accused several organizations of having been used by foreign donors and political parties to "destabilize" the country.

Interest groups

Citizen's consent to democracy is surprisingly high, given the Kibaki government's poor performance. According to the last Afrobarometer survey (2005), Kenyans reject all authoritarian alternatives to democracy with clear majorities between 74 and 85%. Political institutions such as the parliament, elections and even political parties, are supported by solid majorities. But compared to 2003, the number of Kenyans dissatisfied with the actual state of democracy has grown considerably and 28% judge Kenya as a democracy with major problems (2003: 15%). The behavior of the political elite has led to massive disappointment.

Consent to democratic norms

There is a large number of social and self-help organizations in the country, but communications and the division of labor amongst them is lacking. The building of networks beyond the capital Nairobi is, given infrastructural and financial limits, difficult. Trust is mainly limited to family and ethnic networks.

Associational activities

II. Market Economy

6 | Level of Socioeconomic Development

With a per capita income of 40, Kenya is ranked as a low income country. But it also scores high on indices of inequality, meaning that social exclusion is extensive and embedded in society. Over 40% of Kenyans live on less than per day. Most Kenyans survive on cattle herding and subsistence farming and a lot of economic activity takes place in the informal sector. Poverty, droughts and the HIV/AIDS pandemic (prevalence rate app. 7% of the age group 15-49 years) are largely responsible for the low life expectancy of 47.5 years. Kenya has suffered a severe drought every four years, and predictions for 2007 are bad. Aside from the effects this has on tea and coffee crops, as well as tourism, the means of subsistence for many people in drought-stricken areas in the north and east are threatened. These people are dependent on international relief agencies. Kenya's rank of 117th on the Gender-related development index puts it rather at the bottom of the ranking.

Socioeconomic
barriers

Economic indicators		2002	2003	2004	2005
GDP	\$ mn.	12,915	14,636	16,199	18,730
Growth of GDP	%	0.6	3.0	4.9	5.8
Inflation (CPI)	%	2	9.8	11.6	10.3
Unemployment	%	-	-	-	-
Foreign direct investment	% of GDP	0.2	0.6	0.3	0.1
Export growth	%	3.4	7.4	13.2	4.7
Import growth	%	-2.7	0	12	14.3
Current account balance	\$ mn.	-117.7	146.2	-352.9	-495.0
Public debt	\$ mn.	5,244.7	5,837.1	6,099.1	5,519.9
External debt	\$ mn.	6,127.8	6,881.9	6,947.0	6,169.2
External debt service	% of GNI	4.1	4	2.1	1.3

		2002	2003	2004	2005
Cash surplus or deficit	% of GDP	2.0	-2.2	-1.5	-
Tax Revenue	% of GDP	17.6	16.1	16.9	-
Government consumption	% of GDP	17.4	18.5	17.6	17.1
Public expnd. on edu.	% of GDP	6.1	6.5	6.7	-
Public expnd. on health	% of GDP	2.0	1.7	1.8	-
R&D expenditure	% of GDP	-	-	-	-
Military expenditure	% of GDP	1.6	1.6	1.6	1.7

Sources: The World Bank, World Development Indicators 2007 | UNESCO Institute for Statistics | Stockholm International Peace Research Institute (SIPRI), Yearbook: Armaments, Disarmament and International Security

7 | Organization of the Market and Competition

Kenya has always had a market economy, although the state sector played an important role, in particular with respect to the provision of basic services (electricity, water). The informal sector (in Swahili Jua Kali – “under the hot sun”) in Kenya takes up a large chunk of the economy, an estimated 50% of entrepreneurial and technological businesses in the country operate in this sector. The informal sector employs 37% of the urban workforce and its growth rate remains higher than that of the formal economy. A large proportion of the surplus labor that the economy generates works in the informal sector, which therefore keeps expanding. The government’s Economic Recovery Strategy for Wealth and Employment Creation (ERS) prioritizes the creation of 500,000 jobs annually. In order for this to happen, employment in the formal sector would have to grow 17% per year, as opposed to the 3.6 percent annual growth we have seen over the past decade. Therefore, the pledge remains unrealistic. With the change of government in 2002, there has been a policy shift. Under a document titled “The Economic Recovery Strategy” the new government has committed itself to enacting and enforcing laws supportive of competition and harmonizing competition law with sectoral regulatory laws. The government is doing little to reduce bureaucracy, which remains an instrument in rewarding political loyalty rather than one facilitating business activities.

Market-based competition

There is a mechanism for monitoring monopolies, the Monopolies and Prices Commission (MPC), but the established laws are enforced only occasionally. In May 2006, plans by Shell to take over British Petroleum (BP) Africa Limited

Anti-monopoly policy

were disapproved by the government. It was the first time that the Monopolies and Price Control department used its power to prevent an acquisition, arguing that the buyout would make Shell the dominant player in the local oil industry.

Under the Common External Tariff, the East African Community (EAC) began to lower its maximum tariff rates in January 2005. Kenya's maximum tariff rate went down from 35 percent to 25%. This measure should increase trade between the EAC members. Kenya's account balance remains negative and even deteriorated throughout 2005. The return of peace in the horn of Africa enhanced economic performance, but recent developments might reverse this trend. The Kenya shilling is freely convertible and relatively stable. In January 2007, the U.S. dollar was at 69.7 shilling, the euro at 90.6 and the British pound at 135.9 shilling.

Liberalization of
foreign trade

Efforts to liberalize the banking system, which consists of over 50 commercial banks, have been undertaken but the market remains restrictive. The government has prepared a comprehensive effort to improve efficiency in the financial sector. It aims to privatize state-owned banks, an effort led by the Bank Restructuring and Privatization Unit set up in 2005. Various amendments to the Banking Act and the Central Bank Act – that is, the transfer of the regulatory role from the Ministry of Finance to the central bank – has improved governance in the banking sector. International banks have branches and operate in Kenya. The Central Bank of Kenya is nominally independent but not free of political interference.

Banking system

8 | Currency and Price Stability

An official inflation rate between 10 and 20% is a long-standing structural problem in Kenya. Average (annual) inflation rose from 7.6% in 2005 to 15.4% in January 2006. The sharp increase was directly related to soaring food prices resulting from severe droughts. Excluding food items, inflation rates are actually quite stable, with a monthly average of between 5.5 and 6%. Clearly, the anti-inflation policy has not been very effective so far.

Anti-inflation /
forex policy

The Kibaki government has three main goals in its fiscal policy. First, it wants to keep domestic revenue at more than 21% of GDP. Second, expenditures should be lowered as a percentage of GDP and at the same time allow investments in poverty reduction. Third, the budget deficit should be reduced to less than 3%, down from the current 4%. Tax administration has improved and the declining trend of the domestic rate/GDP ratio has been reversed, inter alia because of a modernization of the Kenya Revenue Authority. Other important elements include the simplification of custom rules and the integration of the Income Tax and VAT departments. The tax revenue system has been successfully reformed. Since the government has decided that tax auditors will be rewarded by a certain

Macrostability

share of the taxes they collect, the system has become much more effective and reduced Kenya's dependence on foreign credits. In order to fund development projects and the expanded wage bill (the government has not yet found a way to reduce the high civil service wage bill, which currently accounts for 8% of GDP), the government increased borrowing by 19.4 billion shillings in December 2006 alone. The government justifies the increase by pointing to the high expected increase in the intakes from parastatals, believed to bring double the expected dividends. Total foreign debt in 2004 stood at .8 billion. Kenya transfers about 0 million in debt payments annually.

9 | Private Property

Property rights are guaranteed by law. There are serious problems surrounding the issue of land ownership. In the current environment, the ownership of a small piece of farmland is worth a lot to people who seem to have no other form of social security. The purchase of land or real estate in Kenya has, however, become a rather high-risk investment, since the question of land ownership is one of the most contested issues at both the local, as well as the national level. The authenticity of many deeds has been questioned, and several other cases, the land has purportedly been acquired through illicit or illegal means. The Masai and other ethnic groups want to reclaim land that was arguably taken from them during the colonial period and many of the disputes resolve around ethnic groups accusing landowners of being in possession of tribal land. Land purchases and handouts of farmland during the Kenyatta and Moi eras are in some cases heavily disputed now, as are the properties of descendants of large-scale British farmers. The government has made use of the security forces to end farm invasions. Such an approach does little to solve the problem and can only be seen as a temporary matter. The number of court cases concerning false or questionable deeds runs into several hundred thousands, a number that the courts cannot cope with. Many cases are still pending.

Property rights

The private sector is regarded as the main creator of employment and wealth and therefore the engine to fight poverty. Medium and long-term private sector promotion efforts were formulated in the Private Sector Development Strategy. The government set the priorities at expanding security, improving infrastructure, removing unnecessary bureaucratic rules and licensing procedures, and improving business and land administration. But several government efforts have stalled since it does seem prepared to accept the importance of private sector development, and it fails to establish the structural conditions needed. The recent surge in parastatal revenues will delay or even cancel the privatization of industries. Should the current trend slope off, delays in privatization will negatively affect the competitiveness of the Kenyan economy. Privatization of

Private
enterprise

state-owned companies is postponed for political reasons. In some cases (e.g., Kenyan railways) privatization is disastrous as the companies buying state enterprises are not capable of leading a business.

10 | Welfare Regime

The only part of the population with access to some kind of welfare regime are employees working in the public sector. These people have some access to health care and pensions, which cannot cover serious risks. The standard of health care services is abominably low; it is sometimes worthwhile considering whether visiting a doctor is a good idea or not. This government has made health care and education its two most important areas of social investment and has achieved some progress. More people are now working in health care and more health care centers have been opened. Treatment for malaria and tuberculosis in small children is free at the state hospitals and HIV/AIDS treatment costs have been heavily cut. An earlier attempt to install a basic health service provision for all Kenyans, at the instigation of the health ministry, failed to materialize. President Kibaki personally played a large role in the abandoning of this attempt. One troubling development is the use of so-called “Constituency Development Funds” (CDF). These are meant for development projects and are administered by members of parliament. The funds are to be used by these parliamentarians to develop projects in their own constituencies. Substantial funds are available, so far about 2 million euro was put to this use. In practice, it turns out that these projects are often undertaken without consulting other projects or local government representatives in the area, leading to duplication efforts and obsolete projects. In addition, parliamentarians are suspected of using the CDF funds as campaign monies. The effectiveness of these funds is to a large degree dependent upon the personality of single parliamentarians. Despite all arguments to the contrary, the money designated to be used in CDFs has been tripled recently. Especially in rural areas, family networks are the most important form of social safety.

Social safety nets

Equality of opportunity is guaranteed by law and the constitution, but is not guaranteed in practice, particularly in the case of the disabled, HIV positive and women. Although there are government programs to reduce unequal opportunities, inequalities persist. NGOs play an important role in the fight against discrimination and aim to empower disadvantaged groups.

Equal opportunity

11 | Economic Performance

The Kenyan economy has shown average annual growth of 2.7% between 2000 and 2004, in 2005, economic growth was 5.8%. In 2007, 7% growth is expected. This positive outlook is largely accounted for all the sectors of the economy, but in particular in tourism, transport and communications. At the same time, absolute poverty has risen slightly and the rise in inequality has been substantial. These contradictions make it difficult to judge the performance of the Kibaki government on issues regarding the economy. Parastatals are performing far above expectations, after having underperformed for many years. For the fiscal year 2007, the government reported that expected dividends were 4 billion shillings, which is twice the amount expected before. Kenya is at the top of the East African list when it comes to the economy's business competitiveness but it ranks only 83rd globally.

Output strength

12 | Sustainability

Environmental protection is not an issue in Kenya. Despite legal regulation it is largely ignored by the government. The country's forests are endangered because of population growth. Farmers and cattle breeders need additional land. Today, only 2% of Kenya's territory consists of forest. A coherent environmental policy is largely absent and the few attempts to pass legislation (Forest bill) have failed. The territories around Mount Elgon and the Mau-Escarpment are threatened. Environmental protection is functioning in the over 30 national parks because they are extremely important for tourism. Global climate change has negative effects on Kenya, for instance devastating floods are more often reported than ever before.

Environmental policy

Free primary education was introduced at the start of 2003 and is beginning to bear fruit. Nevertheless, the capacity problems resulting from the increase of students have not been solved and the gross enrollment rate is still high, but no longer at the 2004 level. This means that many children are still not included in the system. The quality of education has not kept pace with the increase of students. In many cases, school classes have more than 100 pupils. The government is reluctant to provide schools with additional funds. The share for education in the national budget is impressive, but 70 to 80% of the entire educational budget is spent on teacher salaries. Currently there are six public universities and 13 private ones. The latter are mostly religious universities. Enrollment in the university system is increasing, but as is the case in many other African countries, the quality is low. Universities, even the famous Jomo Kenyatta University of Nairobi are characterized by poor library and computer facilities and weak R&D capacities. The university system is underfunded and staff salaries are low.

Education policy / R&D

Transformation Management

I. Level of Difficulty

The blockade of democratic and economic reforms and the continued plundering of state and other resources over previous decades have made Kenya one of the poorest countries in the world, despite its development potential. Kenya boasts a comparatively well-educated work force, strategically important harbors, some industry, and a strong agricultural sector and is seen as a haven of peace in an otherwise war-torn region. In 1970, Kenya's social and economic status was at the same level as Singapore. Today, Kenya ranks 154th in the United Nations Development Program's (UNDP) Human Development Index, behind Haiti, while Singapore is among the top 30 in the world. Many years of development were lost in an attempt to stem the effects of the exploding population growth. Today there are four times as many people living in this mostly semi-arid country than in 1963. The HIV and AIDS pandemic spread for nearly 20 years without any effective government policy to curb it. The pandemic was not declared a national disaster until 2000. Of the 2 to 3 million HIV positive Kenyans, a mere 100,000 receive treatment. Due to recurrent extreme weather conditions such as droughts or floods, between 2 to 4 million Kenyans depend on food aid every year. The World Food Program feeds more people in Kenya than in neighboring South Sudan after nearly 40 years of civil war. Although the Moi era ended in 2002, the current government continues to struggle with the legacy of poor governance. After taking office in 2002, the Kibaki government was not able or willing to implement substantial political and economic reforms. Although Kenya made undeniable progress in terms of improving human rights and democratic institutions but bad governance continued to mar politics and state administration. Power struggles within the government coupled with various structural problems that weaken the government's capacity are the main problems in terms of policy. These structural problems, which are difficult to overcome, include poverty, the HIV/AIDS pandemic, as well as severe and continuing droughts. Huge investments are needed to repair crumbling infrastructure and restore effective delivery of social services. Increased basic poverty and limited opportunities for generating income have contributed to the majority of rural Kenyans becoming exceedingly dependent on natural resources. As a result, Kenya's wildlife, forests, water and marine resources are being overexploited, resulting in degradation of the environment. The

Structural
constraints

transportation sector, well-developed in comparison to other East African countries, has been deteriorating over the past years, as a result of poor quality of maintenance combined with intensive use. Long-term planning would include concerted efforts to raise the funds needed to repair and uphold the system and even expand it. Obviously the state lacks the necessary funding, but the fact that responsibilities are shared between multiple ministries, departments and agencies, without proper linkages between all actors exacerbates the situation.

There is a wide and active field of civil society in Kenya, but it fails to have an effective impact. The organizations have grown substantially in size and members, but their involvement in public life is not adequate to facilitate a democratic system of government. The opposition parties only partially act as a watchdog, and civil society also cannot fulfill this function properly as many civil society actors have been integrated within the government and state administrative structures (see Civil society, 16.4). However, civil society did play a vital role in bringing about democratic progress in the 1990s and before the 2002 elections.

Civil society
traditions

One of the things that has set Kenya apart from its neighbors is the absence of a long history of civil wars. After a guerrilla war against British colonialism and settlers, Kenya gained independence in 1963 and the presidents Kenyatta and Moi managed to maintain peace and stability, although through authoritarian means. Nevertheless, nation-building in an ethnically heterogeneous country was successful as Kenyans lived in relative peace and calm until 1992. To be sure, there have been ethnic tensions and violent incidents in Kenya over the past 40 years. In the 1990s, the Moi government instrumentalized or even tolerated ethnic strife to demonstrate to Kenyans and the international community that only his rule could guarantee stability. The fact that 2007 is an election year will tempt political entrepreneurs, of which there are many, to rally support on the basis of ethnicity. According to local government officials, in January 2007 alone, some fifty people were killed in clan violence in the west of Kenya. The clashes were directly related to land disputes and the government reacted by deploying security personnel. The scarcity of land and social disparities produce conflicts that need to be addressed by future governments.

Conflict intensity

II. Management Performance

14 | Steering Capability

The government generally employs an ad-hoc approach in addressing structural problems. Kenya's transportation sector is one of the most salient examples of this approach. As Kenya is a regional transportation hub, this sector is crucial not only to the Kenyan but also the wider economy of East Africa. However, the Kenyan government has never developed a comprehensive strategy for the sector. The fight against corruption is another example. Elected on the promise of rooting out corruption, the Kibaki government developed an action plan that stipulated enhancing the effectiveness of key anti-corruption agencies, improving the investigation of corruption cases and expanding the prosecution capacity. However, the campaign lost momentum and corruption has not been curbed substantially (see Anti-corruption, 15.3). The interests of the country and the general public are often surrendered to the leadership's short-term interests, or they are drowned in political infighting. Shortly after the initial euphoria in the wake of the 2002 elections, the political situation began to deteriorate. As 2007 is an election year, the government will find it difficult to latch on to a long-term view of things.

Prioritization

Though the government is willing to formulate long-term strategies, it fails to implement them. Although the capacity for implementation in Kenya is much greater than in neighboring countries, political attention and the will to push for changes is lacking. The government's willingness to provide deadlines, planning and specific targets is laudable, but it must be pointed out that only few of these dates are kept. Long-term strategic considerations are often thrown overboard when the government hits a rough tide.

Implementation

Kenya's political leadership shows little acumen in learning from past mistakes and it has demonstrated unwillingness to be flexible in formulating and executing policy.

Policy learning

15 | Resource Efficiency

In general, the government uses only some of the available resources efficiently. A positive example of the government's ability to use resources properly is evident in its HIV policy. The countries' current HIV/AIDS policy was developed in a highly participatory fashion and encouraged local ownership of the process. Its progress is reviewed each year in the Joint AIDS Program Review, but this oversight mechanism is not yet fully in place. Steering capacity has greatly improved since the National AIDS Control Council has been recognized as the one agency responsible for coordination of AIDS issues. A typical example of wasting resources is the overextended cabinet. Kenya has 30 cabinet ministers, 39 assistant ministers and 33 permanent secretaries. This largesse results in a heavy burden on the state budget, not the least because of their sometimes extravagant lifestyle and an unnecessary high amount of resources available to these government officials. At the end of 2006, it was decided that senior officials should return luxury cars that had been made available to them, resulting in an estimated saving of million. Since the ratio of drivers to cars was one driver for every four cars, the measure seemed reasonable. Besides, most of the vehicles were not necessarily used for official purpose, but rather for personal matters.

Efficient use of assets

The Kenyan government was largely unable to coordinate divergent political interests. From the outset, the NARC coalition did not work well. Whether or not government coordination efforts would have had a chance is debatable. Coalition partners, particularly political leaders of the various parties and movements, proved unwilling to compromise and more interested in enhancing their political position than in formulating and implementing policy.

Policy coordination

Kenya fell from a rank of 129th (2004) to 142nd (2006) on the annual Corruption Perception Index published by Transparency International. The Kibaki government came into office in 2002 with a promise to wipe out corruption, but has thus far failed to be effective in achieving this goal. In 2006, the chairman of the local chapter of Transparency International Kenya was replaced after having been linked to a corruption scandal. Furthermore, Kenyan government officials are currently implicated in several large-scale corruption cases. A landmark example of the spread of corruption in Kenyan politics is the affair popularly known as the "Anglo leasing" scandal. The scandal evolved around a nonexistent company that was given the assignment to provide new, tamper-proof passports as well as build police forensic laboratories. The total amount of the passport project alone was million. The tendering process did not follow due procedure, and the company never delivered. In January 2006, the scandal resurfaced when the report by Kenyan corruption fighter John Githongo

Anti-corruption policy

leaked his graft report to the British press. Among other cases, the report also dealt with Anglo leasing. Githongo stated that the company had never existed and that it was in fact a vehicle to embezzle government funding by nonexisting business deals and overpricing of services. Several senior politicians from the Kibaki government were accused of involvement in the corruption scandal. Allegedly, part of the money paid to unscrupulous businesspeople was kicked back to representatives of the NARC alliance, as back-door financing for the 2007 election campaign. In addition, the closeness between the civil society sector and the new government also led to government pressure on civil society organizations to limit their criticism, most evident in the forced exit of the chairwoman of Transparency International after an argument with the first lady. While the chairwoman had followed the line of John Githongo, who had been appointed in January 2003 as the government's focal point in the fight against corruption, there have been precious few critical reports from Transparency International on the government's corruption scandals and the paucity of will to investigate them.

16 | Consensus-Building

There is a general consensus on the importance of democracy and a market-economy among the major parties and other stakeholders. Aside from the general consensus in favor of democracy and against all forms of autocratic government, it is difficult to find agreement over concrete goals. Issues such as privatization are regarded as possible tools, not ultimate goals, as, for instance, the cancellation of the privatization of Mombasa Port shows. The worrying retreat into ethnic policies, rather than political vision as a basis for decision-making and coalition-building could, certainly in an election year, prove a highly combusive dynamic. Although trade unions in Kenya are weak, strikes do have an impact, largely because the government cannot formulate a clear position and thus signals contradictory goals to potential strikers, that is, it signals a willingness to give in to their demands and warns that there will be repercussions.

Consensus on goals

There are no veto actors in the strict sense of the term since no political forces challenge reforms. Opponents to reform can be found both in the ruling coalition NARC and within the opposition ranks. These opponents do not oppose reforms in principle but they are able to postpone or even sabotage reforms mostly because of their egoistic self interests. In addition, it is the lack of consensus orientation on most sides that hampers reforms. The overall political landscape is rather blurry, in part because the cabinet consists not only of ministers from NARC-Kenya, but also includes several from the KANU opposition. In addition, individuals within the same party might have completely different views, since policies are seldom based on concepts and ideas.

Anti-democratic veto actors

The political leadership tries to prevent the escalation of conflicts. There is a general understanding that the potential conflicts are a threat to democratic stability, but political short-term interests lead to inactivity or half-hearted de-escalation efforts. Political leaders in Kenyan politics are far too obsessed with power and status in order to engage in a give-and-take relationship that usually defines a coalition.

Cleavage / conflict management

Consultation of civil society by the government takes the form of approving pre-determined decisions, rather than a process in which the genuine exchange of different views takes place. Nevertheless, Kenyan civil society does have the potential to have an impact. The constitution referendum result is a case in point: campaigning and voter education efforts by civil society organizations were important in getting the electorate to turn down the constitutional agreement. Under the Moi regime, entire regions (Central & Nyanza Province) were neglected by the government and careers within the civil society sector were the best alternative to a government for many highly qualified personnel. However, after Kibaki assumed power, the sector was drained as many prominent members of civil society organizations received government appointments at different levels. It is not exaggerated to say that large parts of civil society have been co-opted into the administration by the government.

Civil society participation

In Kenya, though it is generally accepted that the past regime's actions harmed much of the population, there have been no concerted government efforts aimed at reconciliation. The fact that former President Moi was granted amnesty in exchange for his retreat from power serves as an obstacle to dealing with the past and the aforementioned incorporation of KANU into the cabinet makes any attempt to investigate the authoritarians' past unrealistic. This "deal," common in many transition states, precludes a process of transitional justice from the start. Reconciliation efforts by the government are largely aimed at its neighboring countries, especially Somalia. Kenya's involvement was crucial in organizing the Somali National Reconciliation Conference held in Nairobi in 2003.

Reconciliation

17 | International Cooperation

Kenya receives large amounts of foreign aid. The absorptive capacity in the development sector is lower than the money available and there continues to be an overall mismatch between budget allocations and actual expenditures. Expenditure arrears are high and many, as is the number of stalled projects. Although it does not make full use of all donor funds available, Kenya does make use of international assistance wherever possible. This is, however, not necessarily linked to policy learning and improvement, since many programs

Effective use of support

rely on donor money and have to be abandoned when the supply of funds is halted. Donor money is too often used for ad hoc funding, rather than a basis for long-term development. For instance, international donors are providing the bulk of funds available for HIV/AIDS programs. If these efforts are to be sustained, the Kenyan government should increase its share in the expenditures. There is widespread popular support for the current HIV/AIDS program, which creates momentum to incorporate it into Kenya's medium and long-term financial planning. There is a danger that Kenya could miss this opportunity due to a lack of will.

The main issue in Kenya's relations with multilateral and bilateral donors is, without doubts, corruption. The government has often come under fire from bilateral and multilateral donors because of widespread allegations of fraud, graft and embezzlement, which several times led to cuts in international donor support. The fact that senior government officials names have appeared in one of the country's largest corruption scandals so far merely adds fuel to the fire. In the Anglo leasing affair, a finance minister and his colleague from the justice department resigned under public pressure following their alleged involvement in the scandal. It was telling that the minister of justice was later reinstated as minister of energy. In the same scandal, a vice-president was implicated but refused to resign. Doubts by international donors about the reliability of the Kenyan government in fighting corruption therefore seem plausible. In general, donors' influence is strong: Struggling to cut its wage bill, government laid off several thousands of civil servants in June 2005, giving in to donor demands.

Credibility

Kenya is a member of all relevant regional organizations and is considered a regional powerhouse for the East African region. Its relatively stable past, its professional and nonpolitical military and its relatively large economy allow Kenya to act as a stabilizing factor in the otherwise troublesome area. It was an important supporter of the Somali peace talks and continues to be involved in the political process there. The military activities by Ethiopia in Somalia might harm Kenya's status as a local peace broker, but even more importantly, Kenya is vulnerable to continuing insecurity in Somalia. Immediately after Ethiopian troops appeared in Mogadishu at the beginning of 2007, the Kenyans undertook a major mobilization effort to secure its borders with Somalia in order to stop an influx of Somali militants – and refugees, which got it into trouble with the UN High Commission for Refugees. After that, it was trying hard to get other African countries to mount a peacekeeping force to be deployed in Somalia. At the beginning of February, only Uganda had kept its promises to send 1,500 troops in contrast to South Africa and Nigeria. Besides Somalia, the Kenyan government is also involved in peacemaking efforts in Sudan, as chair of the ministerial mediation committee of the Intergovernmental Authority on Development (IGAD). Since it is also the 2007 overall chair of IGAD, Kenya is

Regional cooperation

in the perfect position to retake the lead in searching for sustainable peace in Somalia. In October 2005, Kenya deployed 820 soldiers to southern Sudan in support of the UN mission there. It is unlikely that it will contribute troops to Darfur, given the already existing extensive commitments of the Kenyan army in UN peacekeeping forces. Corruption, lack of resources and capacity, transparency and violations of human rights by the security forces remain important difficulties. Kenya was instrumental in the revitalizing of the Common Market for Eastern and Southern Africa (COMESA). Over 40% of Kenya's exports are destined for the COMESA region. Kenya is part of the tri-partite East African Cooperation (with Uganda and Tanzania), which aims to become a free trade area by 2010. Kenya is also active outside of the region. It is one of the founding members of the Indian Ocean Rim Association for Regional Cooperation (IOR-ARC), involving 18 full-member countries along the Indian Ocean.

Strategic Outlook

The current problems that Kenya faces are aggravated by the mere fact that 2007 is an election year. Long-term thinking – which is all too often absent – will not be a priority among political aspirants before elections are held in December. Kibaki has proven fit enough to complete his first term and has announced that he will try for a second. Clearly, given his government's record on corruption, he will not be able to win the election by promising to end all graft in Kenya. To the surprise of many observers, major opposition blocs have managed to agree on Raila Odinga as the presidential candidate for the Orange Democratic Movement (ODM). Kibaki and his allies have formed a new party umbrella, the Peoples' National Union (PNU), as an alternative platform to the now-defunct NARC. No candidate in the 2007 elections enjoys enough nationwide popularity to win the presidency, which points to the ethno-regional base of politics in Kenya. No single ethnic group has a majority position; five ethnic groups (Kikuyu, Luhya, Kalenjin, Kamba and Luo) make up between 10 to 22% of the population. Building on the lessons from the previous elections, the three major candidates, Odinga (Luo) with ODM, Kibaki (Kikuyu) with PNU and Kalonzo Musyoka (Kamba) with the ODM-breakaway faction ODM-Kenya, have tried to build broad coalitions. Looking beyond the elections, three issues should be addressed if Kenya is to advance democratization and strengthen a functioning social market economy. First and foremost, corruption should be rooted out in Kenyan society. The government's own five-year plan against corruption constitutes a start, but it should be implemented vigorously and without delays. Individuals like John Githongo, the anti-corruption official currently unraveling the Anglo leasing scandal, should be protected, encouraged and supported in carrying out their investigations. Second, structural challenges need to be addressed. Reducing poverty and inequality and improving a deteriorating security situation are major challenges to be faced by future Kenyan governments. In addition, the health and education sectors are in urgent need of reform. Third, external assistance should focus on democratic institution-building and political parties. International assistance, which has been directed mostly at civil society, has failed to yield much in the way of results in recent years. Assisting current political parties in becoming more issue-based and in developing actual programs would be more effective as it would diminish the role of parties as vehicles for political strongmen pursuing personal interests. In addition, more support should be given to efforts at making parliament more effective. Parliament has been weak in terms of fulfilling its legislative and monitoring functions.