



CONFLICT/ANDERS SJÖGREN

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A supporter of reforming the Kenyan constitution participates in a rally in Nairobi, Kenya, on August 1, 2010.

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CONSTITUTIONAL REFORM IN KENYA:

TOWARDS A NEW ORDER?

A turning point in Kenya's long struggle for a new, democratic constitution came with the overwhelming approval of the proposed new constitution in last summer's referendum. Yet the work of democratizing the Kenyan state has only just begun.

WHEN, AT 8:45PM ON 5 AUGUST 2010, the chairman of the Interim Independent Electoral Commission, Issack Hassan, officially declared that the Kenyan electorate had in a referendum approved the proposed new constitution, celebrations were already under way throughout the country. There was no uncertainty about the outcome. The victory was resounding: with 6,092,593 votes against 2,795,059, the Yes-side had decisively defeated the No-side by 66.9 per cent to 30.7 per cent (the remaining 2.4 per cent of votes cast were invalid). The impressive turnout (around 72 per cent of the 12.6 million registered voters) further strengthened the mandate.

The struggle for a new, democratic constitution has been at the centre of Kenyan politics for the last two decades: ever since, in fact, it had become clear that the mere reintroduction of multiparty politics was insufficient to safeguard democracy. The old constitution, inherited from colonial times and repeatedly amended to further concentrate power in the hands of the presidency, had served Kenya poorly. All key institutions – the judiciary, public service, security forces, provincial administration and parliament – had over time been reduced to instruments of authoritarian domination.

THE PUSH FOR CONSTITUTIONAL REFORM started in the mid-1990s, but has been beset by a series of subversions and manipulations. The NARC government came to power in 2002 after campaigning on a platform for a new constitution. This promise was to be betrayed, too. After a popular-driven draft was torpedoed, the diluted proposal of the conservative wing of the divided government was rejected in a referendum in 2005.

Following the post-election crisis of 2008, the grand coalition government was mandated to implement a number of fundamental reforms, including delivering a new constitution. After a lengthy process, including intensive political bargaining, the committee of experts presented a draft constitution to parliament at the beginning of 2010. In the meantime, the parliamentary consensus on constitutional reform had begun to crack. By the time parliament passed the draft, an opposition grouping had emerged.

The No-side, allocated the colour red as their symbol, was an amalgam of a few cabinet ministers, former President Daniel arap Moi and a number of Christian leaders. They

campaigning on a cocktail of issues centred on moral concerns, but also land: they claimed – erroneously – that the government would be able to confiscate private land arbitrarily. The Yes-side, green in colour, spanned most of the political establishment, including both the president and prime minister. Most groups in civil society, including both labour and employer organizations, sided with the Yes-camp.

THE POLL FINALLY WENT AHEAD ON 4 AUGUST. With the violent aftermath of the 2007 elections still fresh in people's minds, everyone was acutely aware of the stakes. To everyone's relief, the voting, counting and tallying went ahead

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transparently and peacefully. The Yes-side won in seven of eight provinces, with Rift Valley being the only exception.

The acceptance of the constitution was clearly a key milestone. It is just as evident, however, that the work of democratizing the Kenyan state has only just begun.

The vested interests opposing a democratized state and policies for social justice remain extremely powerful. Certain politicians, including some nominally on the Yes-side, can be counted on to obstruct the implementation process as much as possible. Parliament, the civil service, the judiciary and the security apparatus will be critical arenas in the battles over the implementation of the constitution and related reform processes.

THE HISTORY OF KENYA has been marked by false dawns. Conservative forces hijacked earlier achievements, such as independence in 1963, the transition to multiparty politics in 1991 and the ousting of KANU from power in 2002. Constant and sustained vigilance by democratic forces in political parties and civil society will be needed to prevent a repetition of that pattern, not only by blocking attempts to subvert the intentions hinted at above, but also by realizing the potential of the constitution by giving effect to its words. ■