

“No one can replace Afande Museveni” The Ugandan Dictator Keeps Going and Going and Going...

On February 9, 2014 Evelyn Anite, a former journalist and then a youth Member of Parliament for Northern Uganda, took to her knees and asked the National Resistance Movement (NRM) caucus to pass a resolution ring fencing the party chairmanship— and subsequent candidature for President— for Mr Yoweri Kaguta Museveni.

Word had gone round that Mr John Patrick Amama Mbabazi, Mr Museveni’s long-time political ally and then Prime minister, the party’s Secretary General and Museveni’s de facto number two, had had a strange dream that time had come for him to lead the Party and had therefore hatched a plan to contest against the septuagenarian leader for the Party Chairmanship and win a slot on the national ballot paper as the NRM Flag bearer.

Being a Machiavellian politician and inherently scared of internal competition Mr Museveni chose to pull a fast one and chose to use a youthful legislator to crash the political intentions of his long time comrade. In using her, he also intended to send a message that the revolution, as he is fond of calling his leadership, is now in the hands of the young people.

“I welcomed the Kyankwanzi resolution in the context of party cohesion because of rumours that there were ‘wanters’ and ‘wanters’ who were conducting themselves in a bad way and also using subversive ways,” Mr Museveni said after winning the Party ticket unopposed.

It immediately became sacrilegious to be associated with Mr Amama Mbabazi. Although he went ahead and contested for President as an independent, he became a political outcast in the party. For her work, Ms Anite was awarded a ministerial position as State Minister for Youth first and now for investment.

How the ring fencing quashed Political hope

Although Mr Mbabazi was not a trusted politician per se— because of his long relationship with Mr Museveni and his fingerprints being all over the repressive legislations and policies in the country—the opposition, weak and divided, had hoped that a challenge from within NRM would be chance at weakening, and probably putting an end to Museveni’s three decade rule. Or at least it would divide a Party so entrenched that there’s a thin line between it and the state.

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Ms Anite’s motion therefore, ensured the maintenance of the political status quo in the lead up to the 2016 General elections: an incumbent with priestly control over the Party and an opposition without any new force other than the usual FDC’s Dr Kizza Besigye.

With the contest for the presidency poised to be with the usual candidates especially after proposals for political reforms before elections were rejected by the majority ruling [party?], in particular the creation of an independent electoral commission, hope for political change was quashed even before the elections.

Just after President Museveni was announced winner, with 5,617,503 votes, or 60.7 per cent, the opposition and the majority youth who had lined up in droves to vote rejected the result.

The voting had been conducted with its fair share of controversies: blocked social media platforms, delayed voting material in most parts of the country like Kampala and Wakiso which had the highest number of voters believed to be opposition.

The opposition declined an invite to the presidential swearing in ceremony. Calls for an international audit of the votes fell on deaf ears. Mr Mbabazi’s election Petition had just been defeated in the Supreme Court and so the ruling party felt they had cemented the win and there was no need for further scrutiny. Frustrated, the youth formed a social media brigade and declared Kizza Besigye, who got 3,270,290 votes (35.37 per cent of the ten million voters that cast ballots) the people’s president. As a nod, the FDC leadership videotaped a mock swearing in ceremony of the ‘people’s president’ and supplied it across social

media platforms.

A politically rudderless youth leadership

Shout and quarrelling on social media is seemingly what the youth can do.

Sometime time back in the ninth Parliament, this writer had short conversation with then Health Minister, now Prime Minister Ruhakana Rugunda, on what the former UPC youth winger and President Milton Obote's protégé thought about the political situation in the country.

Straight up, Ndugu Rugunda, as he is fondly called, responded: "When I was a young man like you, I was politically active. I rose up and spoke against what was wrong with government and we ensured that things changed. Do you expect me to speak against a government I worked to bring in power?"

Unlike in the sixties when then young men like Premier Rugunda benefited from vibrant and powerful students' associations like the Uganda National Students Association and powerful political party youth leagues, today's politically aware youth has been denied a platform for political expression—*barazas* were banned but students associations, especially at universities, which used to be the centers for free political discourse, have largely been monetized.

It used to be lucrative to be an opposition Guild President at Makerere University for one would use the platform to speak to power and push the political youth agenda. Now, it is lucrative because one can easily be identified and taken into NRM fold to eat. Ms Suzan Abbo, who was a vocal Democratic Party member while Makerere University Guild President, crossed to work in State House immediately after graduation.

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Political party Youth Leagues are dead. They hardly issue a statement on the political on goings in the country but become active toward General elections to offer their support for sale to the highest bidder. It is in that period that you see groups like the poor youth coming up demanding money for youth projects then disappear after the elections.

Most of the leaders work to tow their party leaders' line in anticipation of favours. Once, this writer challenged the then NRM Youth League Secretary General, Robert Rutaro (a former Makerere University Guild President) on why the NRM youth league was not as vibrant as that of South Africa's ruling African National Congress' youth league under Julius Malema. His response was to blame poor funding from the party leadership; for a team of young leaders who are not in gainful employment, the focus was on convincing the party chairman to get them jobs.

Little wonder that whenever youth leaders [meet?] from across the country, the fights that are reported in the media are not about ideas but transport refund.

With more than 60 per cent of the population being youth, the lack of a strong youth leadership means that the young people may not have a strong say in the big political transition question, unless their youth representatives in Parliament choose to step forward.

A shot at an inclusive government and a weak opposition

After being sworn in, President Museveni appointed over 80 ministers, among them his wife Janet Kataha Museveni, whom he gave the education docket. He also however, appointed army officers, like former Commanders, Katumba Wamala and Abubaker Jeje Odongo to head works and internal affairs respectively.

A retired army general himself, President Museveni believes in deploying soldiers to do assignments he wants to impact people. He, for instance, disbanded National Agriculture Advisory Services (Naads) a lead agriculture project and renamed it Operation Wealth Creation to supply seedlings and supervise agriculture development. It is now being implemented by soldiers under the leadership of his brother Caleb Akandwanaho, also a retired army general.

However, as if to calm the political pressures and public resentment of an election exercise some saw as unfair and influenced, Mr Museveni, when constituting his government, also appointed individuals from the opposition into ministerial positions and others were appointed by the Government Chief Whip to sit on Parliament committees.

Uganda People's Congress' Ms Betty Amongi, wife to UPC's contested president,

James Akena (himself a son to Uganda's first President and UPC founder, the late Apollo Milton Obote), was given the influential Lands Housing & Urban Development Ministry.

Former FDC member and one time presidential candidate under the little known Uganda Federal Alliance, Betty Kanya, was given the Kampala City Council docket.

Democratic Party's Florence Nakiwala Kiyingi was given State Minister for Youth and Children Affairs.

In Parliament, FDC's Beatrice Anywar was announced, by the Government (and NRM's Chief Whip) as vice Chairperson of the House committee on Gender, Labour and Social Development.

After being declared winner of the 2016 elections, Mr Museveni announced from his Rwakitura country home and announced that he will "wipe out the opposition completely in the next five years".

Although there are several registered political parties, there are only three pronounced opposition political parties in Uganda: The Uganda People's Congress (founded in 1960 and party to the country's founding father the late Apollo Milton Obote), the Democratic Party (the oldest party in Uganda founded in 1954) and the Forum for Democratic Change, the home of Mr Museveni's main challenger, Kizza Besigye.

Apart from the FDC which, thanks to Dr Besigye, manages to keep itself in the news with anti-establishment rallies and is therefore a darling to many youth especially in the city and townships around the country, UPC and DP are shadows of their former selves: dogged in internal political bickering.

In UPC, the Party President, James Akena is accused of trading his father's party to President Museveni in return for political favours. Many in the party see the appointment of his wife as one such favour. Prior to the 2016 General Elections, Mr Akena announced a "party decision" to work with President. By that time, he had already been branded an NRM mole by a UPC faction led by Joseph Bbosa, a long time UPC member, who accused Mr Akena of having received US\$1 billion to hand over the party to Mr Museveni.

The opposition is weak and uninspiring to the young—many of its former Young Turks and high ranking cadres like former DP's vice chairman, Mohammad Kezaala have openly looked for financial help from the President Museveni and willingly crossed the political line to be appointed deputy ambassadors without a substantive station.

In the Democratic Party, the president, N Robert Mao has also faced opposition from within, with many accusing him of being Mr Museveni's project. The Lord Mayor, Erias Lukwago, a strong DP member, for instance shows more loyalty to FDC's Besigye than to his party President.

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The passing of the Public order management bill has continuously made it difficult for the opposition to mobilize or even sit under a tree in a group without the permission of the police chief. Many in the opposition, therefore, have resorted to being vocal at funerals and those who are more daring try to organize rallies around the city but those are usually easily dispersed by a ruthless, usually trigger-happy, anti-riot police.

Therefore, President Museveni's appointment of opposition members in his cabinet, Dr Frederick Kisekka-Ntale, a Kampala based political scientist, argues is not a move to create an all-inclusive government but a move to weaken the opposition more and keep himself in power.

The age limit question

In 2005, when he wanted to prolong his stay in power, President Museveni, just as he was to do with Ms Anite twelve years later, picked a then less known Kabula County representative, James Kakooza, to move a motion in Parliament for the removal of term limits. In what was popularized as Kisanja (term limit) project, Members of Parliament were each given shs5 million to "facilitate" their decision making.

Article 102 (b) of the 1995 constitution of the Republic of Uganda, as then amended, says that “A person is not qualified for election as President unless that person is not less than Thirty five years and not more than seventy five years of age.” Now 71 years old, this should ideally be president Museveni’s last term. However, there is already a popular push among NRM legislators to have the constitution amended to remove the age limit clause. That will essentially mean that without term and age limits, president Museveni could stay in power until the grim reaper decides.

“No one can replace Afande Museveni. He has been our leader from during the war and he has to continue leading us until he dies. The constitution was made by men and we can change it any time we want,” Mr Ibrahim Abiriga, the Arua Municipality member of Parliament told this writer in a recent interview at Parliament. Mr Abiriga, a retired soldier, dresses in all yellow, the NRM party colour seven days a week—he even drives a yellow beetle Volkswagen. He says he would jump on the earliest opportunity to move the motion to remove term limits.

All through the years, President Museveni has always said that the decision to remain in power is not for him to make but for the people through their representatives, the MPs. About the age limit debate, he said in March that he is only concerned about the future of Africa but not “small things like age limit”. This was weeks after his son-in-law, Odrek Rwabogo, wrote a missive calling upon the country to start debating issues of political transition, economic reforms and internal democracy in the ruling party.

President Museveni has a penchant for distancing himself from projects that make him look like he wants to stay in power. He likes the I’m-here-because-you-asked-me-to-and-it’s-for-your-own-good line. However, word in the corridors of Parliament is that he has already given deputy Attorney General, Mwesigwa Rukutana the nod to lead the constitution review team that will eventually deliver an age limit free constitution.

“No one can replace Afande Museveni. He has been our leader from during the war and he has to continue leading us until he dies. The constitution was made by men and we can change it any time we want,” Mr Ibrahim Abiriga, the Arua Municipality member of Parliament told this writer in a recent interview at Parliament.

Coming from the Western part of the country like the President, Mr Rukutana is one of his trusted lieutenants. He has served in cabinet for over 10 years and was part of the legal team that represented him in the Mbabazi Presidential election petition. With a largely NRM dominated Parliament (298 out of the 388 directly seats), the biggest fear by those opposed to the removal of age limits is that the ruling party could easily use the tyranny of numbers to have their way. A number of ruling party legislators this writer has spoken to however say they would have to be paid by Mr Museveni to allow the removal of the age caveat.

An insecure worried population

One mid-morning early this year, Andrew Felix Kaweesi, the Assistant Inspector General of Police and the force's spokesperson was assassinated by unknown gunmen. It was in a similar way that several other Ugandans had been killed. Two people show up on a bike, shoot at the target and ride off.

Suspects are usually arrested, tortured to confess but none is yet to be placed at any scene of crime.

Hit men continue to kill people and general robbery is on the increase across the country, yet the President has continued to renew the Inspector General of Police, Gen Kale Kayihura's contract. He has served since 2005.

In the wake of the much publicised police torture of Kaweesi's murder suspects, the police leadership has continued to give contradicting statements referring to the visibly deep wounds on the suspects as "mild"

Instead of working together to address the security situation and reform the police, Gen Kayihura and cabinet Minister for security, General Henry Tumukunde, are instead engaged in endless catfights, each accusing the other of incompetence.

It is allegedly said that the genesis of this conflict is over the security budget, who should own it and decide on its expenditure. President Museveni feeds off the bickering. He usually sets different agencies against each other by separately asking them to do the same job and have them try to outcompete each other as they fight to win his favour.

In the country side the population is suffering with issues like prolonged drought,

army worm and nodding disease in the north; with increasing market prices for house hold necessities like sugar and food stuff. The common man has increasing become apprehensive and worried about the future. The only hope sometimes lies in Parliament where on almost a weekly basis, speaker Rebecca Kadaga is petitioned at least thrice on issues ranging from a deroofed school in a village far away from Kampala to issues like torture in police cells.

The Speaker has always been responsive, using her seat to give directives to government officials and ministers to put things right.

Sometimes she has succeeded, like in when she ordered for an extension of the phone sim card registration deadline to allow for time for people up country to register, sometimes she simply gets winding stories and excuses from government like in the case of torture of people in police cells.

UGANDA: The Kennedy Doctrine - Matching Debt with Greed instead of Need

A lot has changed since 1960. More than ten African countries gained independence in that year alone, and more than ten more were independent by 1966. It was a time of great expectations. The United States has been through eleven presidents since President Eisenhower first formulated a foreign policy for Africa. The one important constant has been Africa's growing indebtedness and enduring inability to pay the debts.

April 1960, State Department, Washington D.C, USA

On April 7, 1960, a meeting was convened by President Eisenhower's Under Secretary of State, C. Dillon, to discuss American policy in sub-Saharan Africa, with a focus on what they called "assistance" to emerging African nations. What is immediately clear from the memorandum of that conversation is that even then,

there was competition to “assist” in the development of Africa.

The American administration had been trying since 1958 to forge links with newly independent African countries as they were born. The difficulty was that all these approaches had to be very subtle so as not to offend the former colonial powers. The British still had trade agreements with former colonies and sought new ones that would secure them continued access to cheap commodities. The French, well, the French had an arrangement whereby they offered their colonies greater autonomy in the form of indigenous legislature in return for military and trade rights.

In line with their new foreign policy, the Americans offered Guinea 150 scholarships. So when Guinea opted for full independence rather than membership in the French *communaute*, she was ostracised by Europe and the Americans were left with the scholarships and no relations with Guinea. The meeting of April 1960 was convened in part to address this potential source of tension between Europe and America. The meeting’s memorandum is self-explanatory:

‘Assistant Secretary [of State for African Affairs] Satterthwaite set the scene and outlined the events leading to the present meeting; he said that AF’s [State Department Bureau of African Affairs] problem was epitomised by the situation in Guinea, which illustrates the numerous frustrations involved and the dangers of subordinating United States policy to that of the former mother country [....]

‘The Secretary of Treasury had urged that the United States seek maximum effort from the European countries to assist their former dependencies. If the European countries did not supply their needs or if the African territories were unwilling to accept aid from the former metropolises [former colonial powers], and if additional aid were needed, Mr Dillon felt all agencies in NSC [National Security Council] were agreed that the US should fill the gap[....]

‘Mr Dillon.... urged the NSC, in its concentration on language, not to overlook the great political importance of the African area and the vital challenge from the Soviet bloc countries.’

It was only after President Kennedy signed the National Security Action No. 16 in 1961 that the National Security Council policy was altered “to provide **flexibility** (emphasis added) for the United States to supplement Western European support

for newly-independent areas whenever such actions is (SIC) in the United States' interest." From that point on, officials were no longer required to tiptoe around British and European officials before intervening on the African continent.

Back in 1960, the ways and means of securing access to Africa's natural resources were still being explored. It appears from the April 7 discussion that one approach was to tie Africa to the USA by means of indebtedness.

Dillon had raised a problem in another area though: The perceived threat from the Soviet bloc. In 1960, as they do today, the Chinese presented a threat to American interests in Africa. Sekou Touré, the president of Guinea, had turned to the Eastern Bloc for development cooperation. Then as now, the Chinese gained the upper hand over the West by imposing no conditionalities on cooperation.

Satterthwaite had noted this in his opening remarks:

"[Satterthwaite] stressed the need to simplify our aid procedures, and noted the extreme difficulty in obtaining African countries' concurrence to ICA [International Cooperation Administration] umbrella agreements when 'the Chinese ask for no privileges for their people'. This was one reason for the long delays in trying to carry out our modest offer of 150 scholarships to Guinea."

"Assistance", a code word for access to cheap commodities

The main item on the agenda was not really assistance; it was, and still is, commodities.

"Mr Dillon mentioned that ICA had set up a special group to work out a coordinated programme for Africa, including the question of stationing ICA officers in consular posts in Africa. He indicated his readiness to agree after the problem had been thought out.

Mr Dillon mentioned Recommendation 7 in Mr. Satterthwaite's memorandum of March 30, 'Means of assuring friendly single community [commodity] countries a ready market for their exports at reasonable and stable prices'. While not minimizing the difficulties, he thought we should look into this to see what could be done; he mentioned coffee as an example."

By 1973, Richard Nixon's Administration was ready to spell it out. A

memorandum from the Executive Secretary of the Department of State (Eliot) to the President's Assistant for National Security Affairs (Kissinger) dated July 19, 1973 reads thus:

“There is insufficient awareness in the United States of the importance to us of Africa’s natural resources. Africa has significant quantities of the world’s reserves of phosphate rock, copper, cobalt, and other minerals. Africa’s iron ore reserves are twice those of the United States and two-thirds those of the USSR. Libya and Nigeria are among the top oil producing countries of the world. Algeria produces great quantities of natural gas. Access to these resources is important to the United States and to other friendly powers. With the spread of industrialization, these resources will become increasingly critical.”

Back in 1960, the ways and means of securing access to Africa’s natural resources were still being explored. It appears from the April 7 discussion that one approach was to tie Africa to the USA by means of indebtedness. A number of memoranda of the period mention the Development Loan Fund (DLF). This American state-owned bank was not at that time as active as the administration wished and was often ruefully discussed as a potential engine for acquiring leverage in Africa.

A feasibility study by the World Bank might have shown that two parallel projects were not required, but only if the objective of borrowing and lending is development. If, on the other hand, the objective is merely to deepen indebtedness, the \$10 million loan makes perfect sense.

Tanzania (then Tanganyika) presented an opportunity. A highway was being built in that country with local resources. At the April meeting, it was suggested, in the absence of a request from Tanganyika (none was referred to) and without evidence of a feasibility study or any other pre-loan procedures having taken place, that Tanganyika should meet only local costs from their own resources and borrow the rest from the American Development Loan Fund:

“For example, it had been found that Tanganyika was covering both foreign and local currency costs of a highway. It was believed that the DLF could handle foreign currency costs on the two sections of the highway and that Tanganyika could cover local currency expenses on both sections.”

Later on,

“Mr Dillon agreed with Recommendation 10 of Mr Satterthwaite’s paper, that we should encourage the African countries to become members of the IMF, IBRD, and IDA.”

February 2017, Ministry of Finance, Kampala, Uganda

The memorandum of April 7, 1960, came to mind recently when Uganda was reported in the local media as having accepted an unnecessary loan from the World Bank. It was for the purpose of assisting with the development of a One Stop Shop as a vehicle for promoting foreign direct and other investment. Because potential investors have often cited complicated procedures for setting up a business as a barrier to investment, the Uganda Investment Authority came up with the idea of a web-based centre where an investor could carry out all the procedures online and under one roof, so to speak. They called it a One Stop Centre.

A sum of Ush1.6 billion (US\$457,142), which was on hand, was reportedly set aside for the purpose and the Uganda Investment Authority commissioned a foreign expert to do the work. As it neared completion, (the Secretary to the Treasury is quoted as having said the work was 80% done), a World Bank loan materialised for the development of a One Stop Shop under a separate project run by the Ministry of Finance: The Competitiveness Enterprise Development Project (CEDP) slated to run from 2013 to 2019 had US\$100 million (Ush359.9 billion) allocated to it, with the One Stop Shop component costing \$10 million (Ush36 billion).

According to media reports, which the World Bank declined to confirm or deny when contacted, when the time came to account for the loan, the Ministry of Finance sought to present the Investment Authority’s project as evidence of their having implemented the One Stop Shop. This meant transferring the original facility, the UIA’s One Stop Centre project to the Ministry of Finance. By all accounts, the ensuing scenes were not pretty. The head of state is said to have stepped in, rejected the new project and insisted that the UIA Centre go ahead to completion using local resources.

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have grown in frequency and magnitude since 1992.

A feasibility study by the World Bank might have shown that two parallel projects were not required, but it would only have influenced their decision if the objective of borrowing and lending is development. If, on the other hand, the objective is merely to deepen indebtedness, the US\$10 million loan makes perfect sense.

The World Bank Country Assistance Strategy for Uganda

A look at the overall World Bank Country Assistance Strategy (CAS) for 2011 – 2015 throws some light on the seeming absurdity of the CEDP/Uganda Investment Authority saga. Its overall objective (similar to the earlier CAS in the area of service delivery) was *“to create an enabling environment for private sector-led growth by improving the business environment, strengthening physical infrastructure and human capital and raising the functioning of public sector institutions and their capacity for service delivery.”*

The CEDP was evaluated by the Independent Evaluation Group of the World Bank in 2016. As with so many economic recovery and development projects in Uganda, the project was found to have been hampered by poor governance. The Completion Learning Report (CLR) states, *“...the major challenge lay in the area of governance, with the extent of progress in reducing patronage and corruption being unclear.”*

Measures were put in place to mitigate this known risk and protect the investment in the form of regular reviews of government progress in addressing governance issues. However, to quote the report, *“the CLR does not provide any information on how regularly these reviews were undertaken and what impact they had on mitigating risks to the Bank’s programme.”*

The project evaluation ratings should therefore come as no surprise:

- Progress in Focus Area IV: Improve Good Governance and Value for Money is rated: Moderately Unsatisfactory.
- Objective 11: Increased transparency and efficiency of public financial management and public procurement at national and local level: Partially Achieved.
- Objective 12: Strengthened public sector management and accountability

at national and local level: Mostly Achieved.

One might want to argue with the ratings for project objectives 11 and 12. No framework for assessing improvement in these areas was provided, and on close examination, the ratings look to be pure fiction.

Any casual observer of Ugandan public affairs will have formed the impression that losses of public funds through corruption and procurement fraud have grown in frequency and magnitude since 1992. There is ample evidence in the latest report from the Office of the Auditor General (2015/2016) that it is still a major problem.

African countries have two options: to continue to implement development strategies that began in the early 1960s and before, and which have yet to meet the basic needs of their citizens, such as electricity and piped water in all homes by halting the haemorrhage of funds through the servicing of non-performing loans.

The Auditor General lists serious audit concerns that have been recurring in the area of financial management and procurement since at least 1992 when the Economic and Financial Management Programme (EFMP) was launched, at great expense, to increase transparency, efficiency and accountability in the public sector. Irregularities included payroll fraud, pension payments unsupported by documentation, procurement irregularities, lack of accountability in the use of public funds, and so on.

EFMP was followed by the equally costly EFMP Phase II that revisited the same objectives. After that capacity building programmes, again with financial management components, have been carried out in the agriculture and health sectors, while local government capacity building has also been funded by loans. In spite of all the above, public financial management, procurement capacity and quality of service delivery have deteriorated while the number of local authorities has grown from 27 to over 200.

In the last financial year, a number of local authorities were unable to utilise a combined total of Ush94.78 billion (US\$26.4 million) in Capacity Building Infrastructure Development funds transferred to them from the central government owing to a lack of expertise in procuring specialised equipment and

services for surveying, engineering and environmental works. US\$26 million is 17 per cent of the Uganda Support to Municipal Infrastructure Development Programme's capacity-building loan of \$150 million. It is clear that the country is choking on loans while thirsting for basic services.

Elsewhere in the CLR, the World Bank itself notes that eight out of the twelve objectives of their Country Assistance Strategy were either only partially achieved or not achieved at all. The overall Development Outcome of the strategy is rated as "Moderately Unsatisfactory." Curiously, the Bank's performance is rated "Fair", with only four out of twelve development objectives met. When is a project considered a failure?

The Bank's overall assessment is more credible in its conclusion that "*weak compliance with safeguards affected project implementation and the delivery of results*. A reason cited is "*weak oversight on the part of the Bank*."

The way forward

The US State Department's agreed objective in 1960, which was to encourage African countries to borrow from the International Monetary Fund and the World Bank, and the Tanganyika example, in which a loan was agreed even without it being requested or given any formal appraisal, taken together with very poor implementation of the World Bank's Assistance Strategy for Uganda, point to the conclusion that the objective of giving massive, unsustainable and poorly monitored loans and "normalising" project failure is to perpetuate a relationship of indebtedness and not necessarily to promote development.

Alternatively Governments could go on lowering expectations and shift their focus from the reduction of poverty to the reduction of only absolute poverty. They could continue to endorse modest development goals, such as carrying 20 litres of water over a distance of 200 metres rather than a distance of 400 metres twice a day.

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All outstanding public loans need to be audited. Those that are found to have been nugatory expenditure (regardless of the lenders' own self-ratings) should be repudiated. This includes any which were wasted by leaders who are themselves enabled by World Bank negligence in the design, planning and oversight of their projects.

Uganda's progress is often contrasted with Malaysia's owing to similar colonial histories and deriving much of their incomes from the export of raw materials during that time and on in to the 1970s. Like Uganda Malaysia has offered incentives for local and foreign direct investment such as tax holidays and duty free imports of raw materials and capital equipment. Malaysia managed to implement a national development plan focused on import substitution without coercion while Uganda turns initiatives such as these in to discouraging financial scandals. The Auditor-General's last report questioned a tax holiday granted to a hotelier to which, he said, there was no end in sight. The government has been covering the investor's tax obligations for the past five years. Last year the country failed to collect royalties on gold exported from her new refinery, the loss was between USD 1.9 million and 9.7 million.

Uganda is more usefully compared and contrasted with other countries with similar histories of endemic corruption and incompetence. In developing strategies for self-sufficiency we would do better to take as our model two countries that managed to increase their food yields, health care coverage and school enrolment without World Bank loans: Sankara's Burkina Faso and Castro's Cuba.

WOMEN IN POLITICS: Not Just Pretty Faces

The Churchill Show that airs on NTV network is the biggest comedy stage in Kenya. The comedy format show has performed consistently as the highest viewed TV show on Sundays on GeoPoll ratings across the networks, with estimates of 2 million viewers. On the evening of 16th April 2017, the affable host Daniel Ndambuki, known by his moniker Churchill, had special guests. A series of high chairs were arranged on the front stage and strobe lights lit up the background. An excited crowd ushered in the four guests who were aspiring for the women's representative position in Nairobi County.

The aspirants were led by the incumbent women's representative for Nairobi County, Rachel Shebesh, and included contenders Esther Passaris, Karen Nyamu and Millicent Omanga. They took their positions on the high stools that mimicked an American town hall TV debate format to the loud cheers of the rival supporters. The Churchill show is an entertainment show that does not take itself too seriously, so no one was expecting a serious gender policy discussion. The first question was a soft ball thrown to the aspirants:

"What was your most memorable Easter holiday?"

Churchill tried to get serious with questions on the policy priorities in the first 100 days upon election and the challenges female politicians encounter on the campaign trail. Eventually he rounded it off with the burning question of the night:

"Do women love each other? Do guys love each other?"

It was play on an old stereotype: women are their own worst enemies. But the aspirants challenged the sexist context of the question. Shebesh's response was sharp and quick.

"Yes we do and we are tired of this old line that women do not support each other".

Ever since it was enacted in the new 2010 Constitution, the women's

representative position in the National Assembly has been marked by tired old stereotypes.

The women's rep position was introduced to address the underrepresentation of Kenyan women in politics. It was enshrined with a two-third gender rule aimed at ensuring women would have a legally mandated say in the country's political affairs through affirmative action. The membership of the Kenyan National Assembly now consists of forty-seven women, each elected by the registered voters of the counties.

The run-up to the political party nomination provided a good indicator of the attitudes held by Kenyans on social media. Campaign billboards were deemed too sexy or cheesy, depending on who you talked to.

But despite the new political dispensation, media coverage of women politicians has been slow to adjust. The media has prioritised their looks over their policies and put immense pressure on female candidates to be seen as likable. The run-up to the political party nomination provided a good indicator of the attitudes held by Kenyans on social media. Campaign billboards were deemed too sexy or cheesy, depending on who you talked to. The gossip sites played up the physical appearances of women's reps by lining them up on a beauty comparison ladder. Campaign slogans that would have passed as a cool identity reference for Nairobi's urban youth swag, came under sharp criticism. Aspirants were accused of glamming up to draw voter attention instead of selling their policies.

Not that any of the male politicians were reading out their manifestos. Parody campaign posters of sexualised models began doing the social media comedic rounds. Sex appeal became a hot topic of fluff content sites and the tag flower girls turned into a euphemism for the women's position.

Political campaigns are all about swaying public perceptions but those perceptions are constantly shifting. A good example was the flak that met the campaign slogans. Adopting Sheng, Nairobi's urban youth language of choice, and appealing to their touch points is a standard political branding strategy. Rachel Shebesh upped her street credentials in 2013 claiming the title "Manzi wa Nai" (Girl from Nairobi) and she won the vote. For the 2017 election, she toned it down to "Mama Nai, Jenga Nai" (Nairobi Mother, Build Nairobi), perhaps cognisant of her seniority when compared to the younger aspirants. Millicent

Omanga went for the slogan *Supa na Works*” (*Beautiful Woman who Works*). Bernadette Wangui Ng’ang’a, the nominated member of Nairobi County Assembly, hit the campaign trail with the slogan, “*Ms B Tosha*” (*Miss B is enough*). Nairobi County Assembly member Beatrice Kwamboka, formerly of the Mountain View Ward in Westlands constituency, went by the slogan “*Mrembo wa Jiji*” (*The Beauty of the City*). Karen Nyamu was labelled “*Bae wa Nairobi*” (*Babe of Nairobi*) by her admirers and she suffered image nightmares before her campaign strategists put forward the more kosher “*Wakili na Mahustler*” (*Lawyer for the Hustlers*), playing up her professional credentials as a lawyer. The message of the critics seemed clear: to be a women’s representative you have to play the femininity card.

It did not escape keen observers that male candidates are expected to play up their masculinity attributes without the consequences that face female candidates. Every woman entering politics braces for gender bias and stereotypes that are deeply steeped in Kenya’s male-dominated political tradition. The entertainment media storylines and the social media reaction perpetually reduce the women’s rep to a beauty parade, and the level of scrutiny of a female candidates’ moral character is harsher. The female politician would be crucified for the slightest social transgressions where men get away with a slap on the wrist.

The objectification of the female candidate in public office is an occupational hazard, especially when one is perceived as good looking. It is what women’s rep Wambui Nganga termed as having to endure the stereotype of *beauty without brains*.

This mistreatment of women in politics is as old as the republic. A female politician has to fulfil the social requirements of the male gaze to succeed in this dirty game.

All of Nairobi’s women’s reps were drawn into defensive positions battling against character perceptions that were based on their appearances and rumours. Rachel Shebesh’s marriage was subject of running gossip mills. Esther Passaris’s battles with her estranged husband have been played out in the public court. Karen Nyamu endured repeated sexual innuendo and at one point had to defend herself against a cheeky mistaken identity clip of a Rwandese video vixen whose sole

focus was a prominent derriere.

The online *Nairobi News* had a blazing headline: *Beauties for Women Rep seat who Nairobi men can't stop ogling- Photos!!* Tuko.co.ke went with the click bait: , *"Meet the beautiful women's rep aspirants everyone is talking about (photos).*

Columnist, Njoki Chege, who pens the popular City Girl column that runs in the *Saturday Nation*, called the women's aspirants pathetic and did not hide her disdain for campaign posters that positioned them for the male gaze.

This mistreatment of women in politics is as old as the republic. A female politician has to fulfil the social requirements of the male gaze to succeed in this dirty game. The picture-perfect female politician has to be modelled in the image of Mother Teresa - known for her compassion and respected for her quiet resilience amidst criticism. The vocal woman who raises her voice immediately earns the masculine tag "Iron Lady" and only earns respect when she has proven to be as "strong as a man".

Women in Kenyan Politics: Running the gauntlet

The women's rep position, seen through the cultural patriarchal lenses and an established male gaze, is deemed a lesser political office solely because the occupant is female. It is not common knowledge that a women's rep has similar functions to an MP and, unlike an MP who only represents a constituency, she represents an entire county. It is obvious that the role of the women's rep is yet to be understood.

In 2013, a record 86 women parliamentarians joined the National Assembly, a historical achievement by any measure, 47 as women representatives from every county, 16 elected as Members of the National Assembly (MNA), 5 nominated MNAs and 18 nominated Senators. They were not just filling the numbers; many these women had taken up leadership roles and asserted their influence on state affairs. The most prominent was Joyce Laboso, who rose to the rank of Deputy Speaker, the first female deputy speaker in Kenya's parliament. In her wake are the Senate Majority Chief Whip, Beatrice Elachi of the Jubilee party and the Minority Deputy Chief Whip Janet Ongera of CORD on the opposition's side. Not to forget the 8 women listed as committee chairwomen.

The Mzalendo website that tallies parliamentary participation, places women's

representation in parliament at 21%, which though short of the constitutional threshold of 33%, is an incredible testament to work of the pioneering African feminists who fought for the right to representation and equal treatment of women in all sectors of society.

There is more to be celebrated than denigrated but only if one remains aware of the history of the women's movement and the sacrifices of the pioneers. The pioneer leaders of the feminist movement in Kenya bore a heavy cross in their individual attempts to pave the way for numerical presence of women in the National Assembly.

Between 1963 and 1969, there were no women representatives in the Kenyan parliament. The first woman to be elected as MP was Grace Onyango of Kisumu Town, who was a member of the second Parliament in 1969. In the last ten Parliaments, Kenya has had a total of 75 women, 50 of whom were elected while the other 25 were nominated. Therefore, the leap in representation spurred by the new constitution cannot be underscored enough. It is a testament to the steady work of various actors in the progressive feminist movement whose contributions never made the front pages.

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The history of women agitating for political leadership is a lost chapter in Kenya's democratic evolution and shift towards inclusivity for marginalised groups. The contribution of women parliamentarians, whether elected or nominated, has a long historical precedence and we have to look back to understand the distance that been covered. For women in leadership, it has never been a question of competence but rather gender prejudice.

Nairobi's most glamorous years, the Golden Age, when it was known as the Green City in the Sun and the safari capital of the world, was under Margaret Kenyatta, the daughter of the first president Jomo Kenyatta. Nairobi in the 1970s was hailed as a modern and efficient cosmopolitan African city, one that Julius Nyerere of Tanzania described as "*good as going to London*". Margaret Kenyatta served as Mayor of Nairobi from 1970 to 1976. Before that she was elected as Councillor for Dagoretti Ward in Nairobi in 1963 where she served for four

consecutive terms.

She was the first African woman to become the mayor of Kenya's capital city but she was not the first woman to be elected mayor in Kenya. That honour is reserved for Grace Onyango, a school teacher at Kisumu Union Primary. Grace Onyango was the first woman councillor of Kisumu Central ward before she became Kisumu Mayor following the death of the incumbent Mathias Ondiek in 1965. She was elected mayor of Kisumu in 1967 and as Kisumu Town MP in 1969, making her the first woman elected to the Kenyan parliament - the single woman in a club of 158 male parliamentarians. Grace Onyango also served as the first woman Secretary General of the Luo Union (East Africa).

The 1970s saw the emergence of Dr. Julia Ojiambo, who became MP for Busia South in 1974. It was also the decade of a phenomenal force in the name of Chelagat Mutai who got elected in 1973 as the youngest Member of Parliament in Kenya's history at 24 years of age. Mutai, a two-term MP, was a fierce critic of the Jomo Kenyatta and Daniel arap Moi regimes; she embodied integrity in a corrupted system.

The 1980s would see the rise of Hon. Phoebe Asiyo and Grace Ogot. Phoebe Asiyo, who also held the distinction as the first African Chairperson of the Maendeleo Ya Wanawake Organisation, was elected to Parliament to represent Karachuonyo in 1980 and held the seat till 1983. Hon. Asiyo was elected back to Parliament in 1992 in the multiparty system and served until 1997. Grace Ogot, who had already earned fame as a renowned storyteller and post-colonial feminist writer, entered Parliament in 1984 as MP for Gem after a by-election following the murder of the sitting MP, Horace Ongili Owiti. She was the only woman assistant minister in the cabinet of the then President Moi.

There was also Nyiva Mwenda who served three times as MP, the first time in 1974 and then returning after a long sojourn in the multiparty era to win the Kitui West constituency seat in 1992 and 2002. Nyiva Mwenda holds the distinction of being the first woman to serve as Minister for Culture and Social Services under Moi in 1992. The late 1990s into the early 2000s would introduce the formidable characters of Martha Karua, Beth Mugo and Wangari Maathai, who came to embody the greater feminist struggle of gender equity in governance.

Without an acknowledgement of the contribution of the pioneers, the two-third

gender rule could be mistaken for tokenism, which it is not. The road to this representation has been long and hard. The efforts of a collective of concerned women drawn from the legal and academic fields and from civil society and NGOs increased gender sensitivity and awareness that eventually paid off in a gender-sensitive new constitution.

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The momentum towards the liberation of women began in earnest following a United Nations General Assembly proclamation in 1972. It was at this assembly that the year 1975 was chosen as the start of the International Women's Year, back in an era where no one thought an all-women conference would be taken seriously. The first UN Conference on Women in 1975 was hosted by Mexico City and established the period between 1975 and 1985 as the Women's Decade. The close of that decade would be commemorated in the third UN Conference on Women held in Nairobi in 1985.

The outcome of the conference would be the Nairobi Forward- Looking Strategies for the Advancement of Women. The Nairobi Conference declared that gender equality was part and parcel of human activity, not an isolated or fringe issue, and that it was necessary for women to participate in all spheres, not only those relating to gender. The notable contributors of that decade were renowned feminists such as Thelma Awori, then deputy director of UNIFEM and chief of the Africa section and Professor Micere Mugo, who used poetry that drew from a feminist perspective to raise awareness and consciousness about the women's movement. Other prominent names in the women's movement in Kenya were Eddah Gachukia, Julia Ojiambo, Phoebe Asiyo, Wangari Maathai, Jane Kiano, Margaret Kenyatta, Maria Nzomo and Wambui Otieno.

Many of these highly educated women would often be accused of elitism. The Maendeleo Ya Wanawake Organisation (MYWO), then known as an NGO dealing with issues of women's rights and gender equity, would be responsible for changing the perception of the women's movement from just another elitist

agenda to a grassroots movement. MYWO gained ground with its social welfare policies that targeted hundreds of small self-help groups in rural communities. In the 1980s the MYWO suffered an image problem after it became part of the ruling KANU party's mobilisation agenda and a conduit for the populist propaganda that defined the Moi regime.

The real structural change of the political system began to be felt in the 1990s, largely as a direct result of the Beijing Declaration and the Platform for Action that was adopted unanimously by 189 countries. It was an agenda for women's empowerment and the key global policy document on gender equality.

There is more to be celebrated than denigrated but only if one remains aware of the history of the women's movement and the sacrifices of the pioneers. The pioneer leaders of the feminist movement in Kenya bore a heavy cross in their individual attempts to pave the way for numerical presence of women in the National Assembly.

The lobbying and mobilisation for affirmative action began in the 1990s when the push for proportional representation became a global agenda. Kenyan women organised their numbers to demand comprehensive constitutional reform to anchor the feminist struggle in the constitution. The first major light at the end of this long tunnel would be seen in 1996 following a motion moved in parliament by Hon. Charity Ngilu for the implementation the Beijing Platform for Action as envisioned after the Fourth World Conference on Women in September 1995 that served as a roadmap for the achievement of gender equity. Of particular concern to the male parliamentarians was a gender quota that was roundly rejected. The motion did not see the light of day.

The next woman to take a stab at it was Hon. Pheobe Asiyo, who tabled the Affirmative Action Bill in Parliament in 1997, which was also rejected. Hon. Beth Mugo would face the same fate in the year 2000 when she attempted to lobby for an increase in representation of women in Parliament. Concerted lobbying would take feminist activists another five years before the affirmative action agenda became a part of the draft constitution that was rejected at a charged National Referendum in 2005. The activists went back to the trenches, making a stronger case that would see affirmative action become a legally binding principle in the 2010 constitution.

The dream of a critical mass of women in parliament is within grasp. The significant changes in patriarchal political culture have been felt even as we appreciate that there is still much work ahead in the space of gender equity.

But the discourse of the feminist struggle has been waning over the years and the women's movement that was vibrant in the 1970s through to the 1990s and dedicated towards total emancipation of women is now playing lip service to the cause. The conversations around women's empowerment have gotten stuck in a numbers game and the calibre of representatives is worrying in some respects. Many are not guided by feminist grounding principles, which has raised concern amongst activists who question the motivations of the new crop of women leaders. The widespread lack of ideology-based politics means that political leaders become invested only when riding on the crest of a movement that they do not intrinsically support or whose ideals they do not believe in.

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Increasing numbers of women in leadership positions does not necessarily impact directly on women's issues. Electing more women cannot be the give-all solution to women's issues. The wider picture of emancipation is lost in the Kenyan political space where personal gain takes precedence.

Dr. Achola Pala, a feminist scholar and anthropologist warns, "*We are losing the larger war for the battle.*" The battle of the sexes provides a false consciousness partly because it pits tradition against modernisation/Westernisation, she argues. In an article titled *The Ground We Stand On*, she talks about the limitations of adopting a concept of human rights derived from a supposed universalised Western culture. "*So many of us have often accepted the notion of African 'traditional culture' as if it were the enemy of women, and the word 'Western' as if it contained women's rights.*"

The emphasis on political representation and numbers loses sight of the larger

emancipation solution, the cultural contest and the importance of cultivating a feminist consciousness. Many of the new key players lack this consciousness and remain in danger of privatising personal ambition that feeds into a social class disconnect between grassroots women and their representatives.

Feminist writer Lucy Oriang, in an opinion piece, laid out the challenges of the contemporary movement in a column titled “The Liberation is Dead, Long Live the Women of Kenya, *“Talking about women is an industry in itself. A lot of words flow in boardrooms, policy documents and the best of Kenya’s hotels. Much of it is packaged so cleverly that it camouflages the fact that there is nothing new under that particular sun.”*

Perhaps we should draw some wisdom from the bold African feminist voice of Nigerian author Chimamanda Adichie, who wrote “We should all be feminists”, for many seem to have forgotten that femininity and feminism are not mutually exclusive. May the women who seek equity and equality for all stand up.

Sex, Laws and Legal Tape

“No more than two-thirds of either gender”: the legal dimension

Background

The women’s conference in Beijing in 1995 emphasised that what was needed in law making bodies was enough women to have an impact (not just two or three or six), to show that women could really make an effective contribution to public affairs. It popularised the idea that one-third women (33%) should be enough.

Kenyan women picked up the Beijing ball, and ran with it. In 1997 there was an effort to get the law changed to require parties to have at least one-third women candidates. No law was passed, but the failure spurred the establishment of the Women’s Political Caucus who “rejected the role of merely saying prayers, making tea and dancing for politicians during meetings”, as two authors put it.

In the past, there have not been many women in Kenya’s Parliament. Before 2010,

there were 222 MPs: 210 for constituencies and 12 “nominated”. The latter were chosen by parties after the election results were in, and were supposed to be the voice of groups with inadequate representation, including women. For example, in 2007 sixteen women were elected for constituencies, and six nominated – just 10%. One woman elected in a by-election in 2008 brought the total up to 11%.

Now we have 349 MPs and 67 senators. Not more than two-thirds men would mean 117 women in the National Assembly and 23 in the Senate.

At the end of the 1990s, FIDA Kenya (International Federation of Women Lawyers) argued that under a new Constitution 30% of the seats in Parliament should be reserved for women. In fact, they said, law should reserve one-third of the seats in all public bodies for women. (Of course, 30% is not one third. In our current National Assembly of 349 members, the difference between the two is eleven).

Making a constitution

In 2001 the first official body to work on a new constitution started work: the Constitution of Kenya Review Commission (usually called the CKRC). The Act of Parliament setting it up said its task included gender equity. Seven CKRC members were women— 26% of the regular members, not the 50% that FIDA had demanded, or even one third. But they included formidable women such as Phoebe Asiyo who had entered Parliament in 1979 (one of only three women), Nancy Baraza, former chair of FIDA, Professor Wanjiku Kabira, founding secretary of the Women’s Political Caucus, and Salome Muigai, gender and disability activist.

“One-third women” became “not more than two-thirds of either gender” at the Bomas conference. Of course it is logical, but the language reflects the male fight-back against women’s demands.

Between 2002 and 2010, there were about eight versions of a new Constitution. All talked about the need to have one third women or “not more than two thirds of either gender”. The CKRC proposed an electoral system that would have guaranteed that at least 45 members out of a house of 300 (15%) were women. National Constitutional Conference at Bomas in 2003-4 replaced this with something quite like the current system: this could have produced 25% women in

the National Assembly (the percentage was not clear because, while it named each district/county and gave each a woman member, it left it to Parliament to fix the number of ordinary constituencies).

The idea of “topping-up” with extra women to ensure one third women in county assemblies was in draft constitutions ever since Bomas. But the second draft by the Committee of Experts (CoE) included the same system for the National Assembly and the Senate as well as the county assemblies. The Parliamentary Select Committee that reviewed the draft in early 2010 removed this except for county assemblies. This is important because this is the system that Parliament was most recently discussing.

Incidentally, “one third women” became “not more than two thirds of either gender” at Bomas (let’s call this principle “not $>2/3$ ” for short). Of course it is logical, but the language reflects the male fight-back against women’s demands. However, women have sometimes found it useful in argument: not more than two-thirds, they say, means precisely that. There should be no “rounding” of numbers.

The 2010 Constitution

The Constitution seems to make making a clear commitment to not $>2/3$, particularly in elected bodies, with some provisions about “appointive bodies” (like the cabinet, commissions, the public service, judiciary and various boards and authorities). But it is not always really clear what has to be done, and how and when.

Only in county assemblies is not $>2/3$ totally guaranteed. After the ward election results are announced, and four seats assigned to parties to represent marginalised groups, including persons with disabilities and the youth, the question is: will more than two-thirds of the seats be occupied by men? If “Yes”, the Constitution provides that enough women must be selected to ensure not $>2/3$ are men. These extra women are taken from lists of candidates put forward by each party before the election. And the number of these extra members that each party gets depends on how many ward seats the parties have won.

On the Senate, the Constitution has rules making it much easier to achieve not $>2/3$, but not guaranteeing it. Senate must have 16 extra women and two women to represent persons with disability and marginalised groups. So there is a guarantee that just under 27% of the Senate will be women. If only five women

are elected as county Senators, not $>2/3$ would be achieved. But in 2013 no woman was elected county Senator!

The Constitution takes us less far towards not $>2/3$ in the National Assembly. It does guarantee 47 seats for women—county women representatives. Though there are 12 seats for marginalised groups (often called “nominated”), there is no guarantee of how many will be women, though probably not less than four. Progress towards not $>2/3$ could be slow. To get there under the existing rules, 65 women would have to be elected for regular constituencies. In 2013 only 16 of those constituencies (just under 6%) elected women: a smaller percentage than in the 2007 elections. Providing specific seats for county women representatives tended to discourage parties from putting forward women for regular seats: they argued that “women have their special seats”.

“Promote” is not the same as “guarantee” or “ensure”. Incentives, education and persuasion may be forms of promotion, but they do not guarantee representation.

The Constitution also clearly says “Not more than two-thirds of the members of any county executive committee shall be of the same gender” (Article 197). The Governor has a free hand in appointing executive members, so it should be easy to ensure that there are enough women. The same should be true of the President appointing the Cabinet.

Another possible approach is not to require certain behaviour, but provide an incentive – like money. Two early draft constitutions said that Parliament must pass law about how much political parties would get from the Political Parties Fund, and that one factor should be how many women candidates each party had got elected. But the Parliamentary Select Committee removed this, wanting Parliament to have a free hand in deciding how the Fund was used.

Article 81 does not say how the result is to be achieved: the electoral system must comply with several principles— including not $>2/3$ in elective public bodies. But what is a principle? Does it mean “This must happen and must happen now”, or “Later will do” or just “Make an effort”?

Article 27(8) is also important, and equally puzzling: the State must do what is necessary “to implement the principle that not more than two-thirds of the

members of elective or appointive bodies shall be of the same gender”.

Finally, Article 100 says that law “promoting” representation of women and disadvantaged groups must be passed within five years. “Promote” is not the same as “guarantee” or “ensure”. Incentives, education and persuasion may be forms of promotion. In fact, the most sensible meaning of Article 100 is that it is about something different from special rules, like at least one-third women. It is about ensuring that, over time, parties and people are encouraged and educated to accept women and disadvantaged groups as legislators.

After the Constitution

In 2013, the IEBC (Independent Electoral and Boundaries Commission) and the parties had no choice: there had to be 47 women county members of the National Assembly, and 12 extra members of the same body - taken from lists that had to alternate men and women (often called zebra lists); there had to be 18 extra women members of the Senate and top-up members of the county assemblies. Every county’s assembly has been “topped up” this way. So every county has one third women (no less —but also no more). Senate got just the guaranteed 27% women. The National Assembly had 19% women: 16 elected for constituencies, the 47 county women and 5 of the 12 extra members.

And most commissions and other public bodies have one-third women. The same is not always true of government executives: nationally or in the counties. Early on, a FIDA report found that only 16 of the county executives had as many as one third women.

Despite fine words about the Constitution and women’s rights, the Court of Appeal did almost nothing to move the Supreme Court towards not $>$ $\frac{2}{3}$.

In short, appointers to bodies have usually done what they had to and no more—and sometimes not even that.

Most interest (in the media and in the courts) has been in not $>$ $\frac{2}{3}$ in Parliament. So we shall look at that saga in detail. But first, the court cases about appointive bodies.

The Courts on “appointive bodies”

There have been two particularly important cases.

One, in 2011, was brought by FIDA about the composition of the Supreme Court, with two women and seven men (over 70% men). Despite fine words about the Constitution and women's rights, the Court of Appeal did almost nothing to move the Supreme Court towards not > 2/3. The Court of Appeal read 27(8) as though it demanded "progressive realisation" or gradual movement towards not > 2/3, and did not create any immediate duty. But "progressive" is not there. To be fair to the Court of Appeal, teasing out the meaning of 27(8) is not easy.

And it said that the Judicial Service Commission—which selects the judges—did nothing wrong. It suggested that the JSC could do nothing until the government passed law or took some other measures to ensure not > 2/3. But this ignores that Article 27(8) puts the duty on "the State" not just the government, and the JSC is part of the State. Indeed, because the JSC is an independent commission, there is very little the government or Parliament can do to tell it how to work.

In 2017, the issue came up again—brought by the National Gender and Equality Commission. Justice Chacha Mwita was happy to decide that two thirds of seven is five, leaving little room for requiring efforts to make the Supreme Court truly gender equal. He did not explain what the Constitution means when it says the JSC must promote gender equality.

In the second case, in 2017, the make-up of the cabinet was challenged. Justice Onguto held that Article 27(8) did apply to the cabinet, and had been violated because cabinet had more than two thirds men. However, because of the imminent election he said the cabinet did not have to be changed immediately, but a wrongly made-up cabinet after the election would be invalid. He did not accept the idea that this was a matter for progressive realisation.

Trying to get not > 2/3 in Parliament

The IEBC

The IEBC and its predecessor the Interim Independent Election Commission did try to ensure not > 2/3 in Parliament. An expert proposed a novel system: every candidate in a regular constituency would have to run on a "ticket" of a woman and a man. Voters would vote for the ticket not the individual. If a "ticket" won, usually the first name on the ticket—man or woman—would become the MP. But,

after all results were in, if not enough women had seats, the women rather than the men from winning tickets would have been taken, until enough women were taken. The taking-the-women process would have begun with the tickets that had won, but the least resoundingly (by the smallest proportion of the votes cast). It wasn't a perfect system—independent candidates particularly presented a problem. But it would have meant no-one had to give up the chance to stand because of their gender, and women would have had a chance to stand in every constituency, learn about campaigning etc. And it would not have needed a change in the Constitution.

But the IIEC preferred another system: grouping constituencies into fours, and designating one of each four as a “women only” constituency for one election. This could have been done without amending the Constitution. But the idea did not get past Cabinet. Men could not bear the idea of not being able to stand for “their” constituencies.

So in 2013 there was no mechanism to ensure not >2/3.

Enter the courts

The question of not >2/3 in Parliament went to court just before the 2013 elections; the case was brought by CREAM (Centre for Rights Education and Awareness). A majority of the Supreme Court decided that “principles” were not firm rules. And affirmative action, like special measures to get women into Parliament, was something to be achieved gradually. So Parliament with under 33% women would not be immediately unconstitutional. A bit like the FIDA case on the Supreme Court.

Because the JSC is an independent commission, there is very little the government or Parliament can do to tell it how to work.

Chief Justice Willy Mutunga disagreed. He would have insisted on the necessary law being passed then.

The Supreme Court majority seized on Article 100: about law “promoting” representation of women and disadvantaged groups. By 2015, the Court said, the law guaranteeing the gender quota must be in place. This is ingenious, if not perhaps what the drafters intended. But what the Supreme Court says is the law.

The Attorney-General

The Attorney General set up a Task Force. It considered various solutions including the two systems just mentioned, and others, most of which would have needed a change to the Constitution—except financial incentives to parties to strive for women to win their seats.

The MPs

Bills were introduced into Parliament to amend the Constitution to ensure not $> \frac{2}{3}$. The MPs just did not turn up in sufficient numbers to pass the Bills.

Parliament did amend the Political Parties Act to include a provision that says that 15% of the Political Parties Fund must be distributed to parties based on how many “special interest group” members were elected for the parties at the preceding general election. Women are among the “special interest groups”. This may not help much. Last time, only three parties got anything from the Fund. Even with recently changed rules for allocating the Fund, no more than four parties will get money from it after the 2017 elections if the pattern of seats won is like last time. Finally, though the Fund is not small, is it enough to persuade parties to change deep-seated prejudices?

The courts again

In 2015, Justice Mumbi Ngugi held, in another case brought by CREAM, that Parliament must pass the necessary law by the Supreme Court’s deadline. So Parliament extended the deadline. Soon after the National Assembly missed this new extended deadline, CREAM went back to court. Justice Mativo decided this case on March 29th 2017. He ruled that Parliament had failed to do what the Supreme Court had directed. He told them they had to do it by May 29th, otherwise anyone could apply to the Chief Justice asking for an order that Parliament should be dissolved (which means an election). This is because the Constitution says that if Parliament does not comply with a court order to make a law implementing the Constitution, anyone may apply to the Chief Justice. And the Chief Justice must ask the President to dissolve Parliament, and the President must do so.

Bills were introduced into Parliament to amend the Constitution to ensure not $> \frac{2}{3}$. The MPs just did not turn up in sufficient numbers to pass the Bills.

But changing the voting system is not the only way to get more women. One other court case suggested that one way is for parties to put forward enough women candidates, and for the IEBC should pressurise parties to do so. The court agreed. But the judge said that because time was short, he would not order this for 2017. But for next time the IEBC must take this approach. In fact, the IEBC has said that it has tried to do it this time, but it cannot force the parties.

This approach does have shortcomings: a party might nominate women as candidates for half its constituencies, but if these were constituencies the party was least likely to win, it might end up with well under one-third women members actually elected. However, last time, 15% of women ward MCA candidates got elected—the same as men. But a large number of (mostly male) independent candidates might also produce more male members.

Conclusion

We waited for Parliament. Could it push through a constitutional amendment in time? Might it try the women-only constituency system rule, or the two-name ticket approach—so avoiding constitutional amendment? But was there time before the election to do the necessary new nominations? Or would it fail to meet the court's deadline?

Now we know: Parliament discussed amending the Constitution to introduce top-up seats for women. This has been their favourite approach because existing MPs wanted to hang on to their chances. It would have been the least complex system to administer so close to the elections. If it had been passed, and if the results were the same in terms of numbers of seats held by women as in 2013, to achieve not $> \frac{2}{3}$ the National Assembly would have had to have 73 top-up women—and a total of 422 members.

Anyway, Parliament failed. How hard did it try? On June 6th the National Assembly debated the Bill, but after that the members perhaps realised the effort was pointless—despite being on the House's agenda repeatedly, nothing was done before they closed finally on June 15th. And it had not gone to Senate!

No-one seems to have gone to the Chief Justice. Probably everyone realised this would not have helped. There is already to be an election —less than two months after Justice Mativo's deadline. And the IEBC is struggling to be ready by then.

But changing the voting system is not the only way to get more women. One other court case suggested that one way is for parties to put forward enough women candidates, and for the IEBC should pressurise parties to do so.

We have some time to rethink strategies, including whether we want an even more “bloated” National Assembly. And, let’s think about the position of women representatives. In the National Assembly only 16 were elected on the same basis as most men: competing in a constituency. The forty-seven county members have roles less well understood by the public, and with larger constituencies to manage; and five are list members with roles also less well understood. In the Senate: all have unclear roles, not representing counties, unlike most of the men. In the counties, most of the women are list members, without ward responsibilities or support, so again having a role that is not clear to everyone. Is this satisfactory? Do we want even more of these sorts of seats for women? However, many of these women have been active members. One indication may be how well women who have served as “nominated members” in the current Parliament or county assemblies are able to use that experience as a springboard to election for regular constituencies, wards, counties or even governorships.

A report says that this time, 11 women are standing for Governor (there were only six last time), and 42 for Senator (17 last time), but the picture is sketchy so far. However, a final thought: suppose—by a miracle—in August five women are elected Senator and 65 women are elected as constituency MPs, so neither house has more than two-thirds men. Would that not be a better solution? Would it be the end of the story?

The sting in the tail

Now for the bad (or worse) news: some have said that the new Parliament would also risk being dissolved if it fails to pass this law. But, the Constitution (it’s Article 261(8)) says that the period Parliament gets to pass a law begins again when the new Parliament begins its term. For Article 100—the peg on which the Supreme Court hung its ruling in the CREAW case—the implementation period allowed is five years. No Parliament will last more than five years. So the CREAW case technique will never work again.

But the constitutional principles still apply. Article 100 is not an essential aspect of the achievement of the “not more than two thirds” rule. In his minority decision

in the original CREAW case, Chief Justice Mutunga was clear that “any of the elected houses that violate this principle will be unconstitutional and the election of that house shall be null and void.” Will the courts agree?

CHURCH FAILS KENYANS! Big on Charity, Small on Justice

THE POPE THAT REFRESHES

There is something extremely refreshing about the leadership of Pope Francis. He is spontaneous, humble, simple, direct and at times deliberately undiplomatic. His incisive off-the-cuff comments together with his focused acts of kindness to prisoners and the homeless must make his handlers very uncomfortable, yet he touches the hearts and minds of just about everyone.

Francis offers his model of the Church in a clear and frank manner when he says, ‘I prefer a Church that is bruising, hurting and dirty because it has been out on the streets, rather than a Church which is unhealthy from being confined and from clinging to its own security’ (Joy of the Gospel Article 49). He is in fact saying that he wants a church that is relevant in the real world rather than one that is locked up in the security and comfort of the sacristy. He wants engagement rather than caution and rejects the false security of outdated structures that prevent us from seeing the suffering in our midst.

The Pope is just reminding everyone what it means to be light and salt to the world (Mt 6) in the 21st century. However, one suspects that his style of leadership is not welcomed or appreciated by the vast majority of prelates around the world. He visited Kenya in November 2015 and spoke boldly in Kangemi about the dreadful injustice of urban exclusion and the wounds that are caused by ‘minorities who cling to power and wealth, who selfishly squander while a growing majority is forced to flee to abandoned, filthy and rundown peripheries.’ There are hundreds of Kangemis all over Kenya.

Francis's brave words in the Kangemi slum made little or no impact on the civil and religious authorities. His advice and challenges had been forgotten before he got back to Rome. The city of Nairobi did not pursue an urban renewal plan and the Catholic Church did not pressurise them to respond appropriately either

His brave words, however, made little or no impact on the civil and religious authorities. His advice and challenges had been forgotten before he got back to Rome. The city of Nairobi did not pursue an urban renewal plan and the Catholic Church did not pressurise them to respond appropriately either. The chance was gone. The pastoral visit may have encouraged the faithful but did not bring the transformational change that Francis would have hoped for.

Kenya is regarded as one of the most corrupt and unequal societies on the planet and most accept that almost as a badge of honour without demonstrating any outrage or shame. The churches provide services to the victims of inequality but are generally silent on questioning a system that allows such injustices to emerge and develop. Churches are big on charity but weak on confronting the root causes of injustice.

The churches in Kenya are well established professional outfits; however, that same level of professionalism may limit their ability to confront the authorities. They are in fact regarded as part of the establishment and so are hesitant to demand an overhaul or even a review of the status quo. For a number of reasons, church and state are cosy partners in the management of this nation.

Regretfully, the same problems that haunt society in general are also found within the churches and that limits their ability to speak prophetically on the issues that bedevil citizens. Most churches have proved unable to confront the twin evils of ethnicity and corruption because they too are plagued with these problems. This may disappoint us but should not be surprising, as they are human institutions even if they claim to be divine in origin.

It is not unreasonable to expect churches to transcend their ethnic differences and to witness to something bigger than the morass that is found in the political sphere. Weak, generalised statements on matters of national importance indicate a lack of collegiality in their leadership

However, it is not unreasonable to expect churches to transcend their ethnic differences and to witness to something bigger than the morass that is found in the political sphere. Weak, generalised statements on matters of national importance indicate a lack of collegiality in the leadership of the churches. They demonstrate an absence of common ground for the common good on the issues that bedevil the nation.

GENERALISED, VAGUE STATEMENTS THAT ARE FORGOTTEN IN 24 HOURS

Again, there is a great reluctance by churches to identify and speak out on specific instances of theft of public funds. These are never named by the churches nor are the perpetrators challenged to resign and face prosecution. So we get generalised, vague statements that are forgotten in 24 hours. Despite the mega corruption scandals of the past three decades, the churches have not made any significant contribution towards confronting the rot even though they meet the victims of grand corruption on a daily basis in their congregations.

Corruption is rife in every sector of society and the churches too have issues of looting and accountability that they have not addressed in an open and transparent manner. Travel around the country and Christians of all denominations will relate horrific stories of theft of funds with the only penalty being the transfer of the offender to another area where most likely they will commit similar offences. Of course, religion is also a growth industry and a good business venture for those who failed in other spheres.

This is not to suggest that religious leaders as a whole are just as corrupt as the political class. However, their unwillingness to address internal issues of corruption when they do arise means that they lack the dependability and respect to speak consistently and with conviction when the public coffers are looted. Of course the political class are equally aware of religious leaders' inconsistency so they know they are not a real threat to them and that that weakness can even be converted into a resource for the politicians at critical moments.

Many speak of a golden era when the church leadership spoke frequently, consistently and with a single voice on the issues of the day. That, of course, was during the Moi era when the injustices and abuses were more blatant and the state more belligerent

Politicians know that many church leaders have bank debts, skeletons in the cupboard and recurring expenditure needs in their jurisdiction. That is the reason they come for prayers together with a bevy of media and why their large contributions towards church fundraisers buy silence and support. Because overseas funding for church activities is drying up, many religious cannot resist the political handouts even when they have grave suspicions about the origin of these funds. But that is the trap and they lose their integrity even when they use the hand-outs for a legitimate cause.

Many speak of a golden era when the church leadership spoke frequently, consistently and with a single voice on the issues of the day. That, of course, was during the Moi era. Times were different then. The injustices and abuses were more blatant and the state more belligerent. When we recall the political assassinations, illegal detentions, torture chambers, rigged polls, a one-party state, a partisan judiciary and a mute legislature, we realise it took courage to speak as a group and with consistency. However, it was easy to find unity on those horrific crimes and injustices. The outrage and desire for change united the churches and pasted over the many differences that existed within their own ranks.

KIBAKI WINS, THE CLERGY LET DOWN THEIR GUARD

The churches relaxed and let down their guard when Mwai Kibaki came to power in 2002. They felt their job was done and they could return to their houses of worship and do what they were ordained to do. However, their job was only half done as the new Constitution was not in place and corruption and negative ethnicity - the twin legacy of the Moi era - were as rampant as ever, with cartels driving both vices.

Prophetic leadership not only demands that one transcend the issues that prevent development but that the majority are included in the new vision. A pro-poor agenda would unite Kenyans of all faiths and none

Since 2002, the churches have never quite recovered, nor found a voice again in the public arena. Partly, that was because the church leadership had passed on to new, inexperienced and occasionally authoritarian, ambitious hands that were quite comfortable with the way Kibaki led the country. A further reason was that the failure to implement the MOU between Mwai Kibaki and Raila Odinga divided

many religious groupings along ethnic and political lines. Just as the politicians could not hold together, neither could the religious bodies and it has been well-nigh impossible to put Humpty Dumpty together again.

So what is the way forward, particularly around this election period? Of course, the churches will be active in civic education and election observation. However, such activities are often just side shows not impacting on the campaign agenda and lacking the strength and professionalism to give them a credible, independent standpoint if the presidential ballot is contested. So they may appear to be busy but their impact will be limited.

Perhaps a much greater role could be played by churches if they together with other faiths present a pro-poor agenda that impacts on the campaign debates. They can act to offer hope that the masses can receive a proper share of the nation's wealth and in the process reduce poverty drastically

This, of course, would require a well-resourced think tank on social and economic affairs that offers solutions and programmes with regard to employment, taxation, investment, housing, land use etc. An urgent realistic agenda that would be binding on the political parties is required. In the process, issues of ethnicity and hate speech would be cast aside as politicians find themselves compelled to respond to an agenda that has been set outside their circles of influence. Of course such an attractive agenda would also reduce tension and assist in creating national dialogue around the matters that are of everyday concern to citizens.

The corruption agenda is another ever-present elephant in the room. Yet even if faiths cannot fight this malignant cancer alone, they have such large constituencies that they can at least confront the apathy that exists with regards to mega graft

Prophetic leadership not only demands that one transcend the issues that prevent development but that the majority are included in the new vision. A pro-poor agenda would unite Kenyans of all faiths and none.

There are several other issues that churches should address that would bring transformational change. Extrajudicial killings have become a hallmark of the current regime. Its elaborate propaganda machine has also won over public opinion on this subject. The message relayed is that suspects, criminals and

terrorists deserve to die and that the rule of law does not apply to them. However, if Muslim and Christian leaders spoke on the right to life of all suspects they could force the security machinery to be accountable and law-abiding and thus enhance the safety of citizens.

The corruption agenda is another ever-present elephant in the room. Yet even if faiths cannot fight this malignant cancer alone, they have such large constituencies that they can at least confront the apathy that exists with regards to mega graft. They must enlighten their faithful on the destruction that corruption visits on the economy and public services and indeed the soul of the nation.

BYSTANDERS OFFERING MERCY WHEN CALAMITY OCCURS?

So will the faiths be faithful to their mission and calling or will they be left sitting on the fence ready to host those displaced by a disputed election outcome? In other words, will they be proactive in giving leadership and setting the agenda or will they be bystanders offering mercy when calamity occurs? Time will tell.

THE TRUMP PHENOMENON IS REAL: How the Counterculture Inspired Trumpism

“If democracy is someday to regain control of capitalism, it must start by recognising that the concrete institutions in which democracy and capitalism are embodied need to be reinvented again and again.” (Piketty 2014: 570).

During the run-up to the US elections in November, a number of my African colleagues and friends told me that Trump would win the presidency. Several even opined that something good would come out of it in the end. Experience has taught me to treat such counterintuitive observations with a degree of cautious respect. But this particular appraisal was a tricky proposition.

Trump ran more on outrage with the *status quo*, homespun economic nationalism, and anti-Hillary sentiment than workable policies for reversing the domestic malaise framing his rude political rhetoric. The Tea Party crowd flocked to Trump's campaign, presenting Trump with the kind of political stage suited to his unconventional and often reptilian behaviour. The national media feasted on Trump's antics and divisive positions, but the condescending coverage of the campaign of a candidate who started out as an outlier also camouflaged the more clinical aspects of his strategy to defeat Hillary Clinton.

The poll numbers and sophisticated data analyses dismissed the likelihood of a Trump victory. But then the same electorate who twice elected Obama by sizeable majorities propelled his polar opposite into the White House.

For the many millions of Americans and others around the world distressed by the Trump campaign, the implications of his electoral-college victory was like waking up to a collective nightmare. Most of my friends, family and colleagues were stunned. Anger and agitation quickly replaced the shock. Obama's bleak reaction, "Well, it's not the Apocalypse," offered little comfort.

This added up to a lot to think about as I made my way back to the US for the first time since 2004, arriving in the country two days after Trump's inauguration. I was told to expect massive changes. My destination was Salt Lake City, the capital of Utah, socially the most conservative of the red states of the American West.

Exposure to racist theology like that of the Church of Latter Day Saints was a primary motivator for the black power salute at the 1968 Olympics in Mexico. Tommy Smith won the 200 metres in world record time followed by John Carlos in third place. The medallists mounted the podium barefoot, to symbolise the poverty of their African-American community, and raised black-gloved fists in defiance during the raising of the American flag. The protest triggered an explosion of institutional indignation and recriminations portraying Smith and Carlos as Nazis and traitors

For decades, many Americans considered the Mormon-dominated state to be a quasi-theocratic no-go zone with a unique past that set Utah apart from other ultra-conservative Western states like Wyoming, Idaho, Montana, and the Dakotas.

During my two previous trips I had found a large and variegated landscape of rangeland, desert, and mountains, with a large inland sea thrown in to boot. I found many similarities between Utah and Marsabit and the Lake Turkana region, including its traditional spatial and social separation from the rest of the country.

Mormons fleeing religious persecution in the East settled in Utah at a time when almost everyone else was heading to California. The Territory of Utah was officially recognised in 1851. It was the only Western state to allow slavery, and attempted to secede from the Union shortly afterwards. Washington was compelled to send in the army. Brigham Young, who had succeeded the religion's founder, Joseph Smith, capitulated, but with the promise that the government would grant the Mormons autonomy to live according to their religion. The Church of Latter Day Saints has dominated the state's economy and government ever since.

The Book of Mormon stated that the indigenous peoples the white settlers found in their new home originally came from the Middle East, but had divided into two antagonistic groups. The "Lamanites" were idolaters revealed to have extinguished a population of "Nephrite" Hebrews who had migrated to the New World several hundred years before the coming of Christ. Mormon scripture saw dark skin as a curse from God for wickedness, but otherwise taught that peoples of colour who converted and abandoned their culture would become white over time.

Exposure to this racist theology was a primary motivator for the black power salute at the 1968 Olympics in Mexico. Tommy Smith won the 200 metres in world record time followed by John Carlos in third place. The medallists mounted the podium barefoot, to symbolise the poverty of their African-American community, and raised black-gloved fists in defiance during the raising of the American flag. The protest triggered an explosion of institutional indignation and recriminations portraying Smith and Carlos as Nazis and traitors. The firestorm also curtailed the running career of the Australian silver medallist who in solidarity wore the same human rights badge pinned to the Americans' jerseys.

It was a radicalising moment: I compiled a comprehensive report of the protest and the conditions leading up to it for a high school project. The racism of the church of Latter Day Saints added to my impressions of the state based on the gruesome fate of the Westward-bound Donner party caravan and the numerous

massacres of the local Amerindian communities during the early days of the territory. Many of us growing up at that time saw Utah as the American equivalent of Albania or North Korea.

The Civil Rights movement had already done most of the heavy lifting. This in turn provided a platform for the anti-war movement. Before long, what began as a political movement for peace and racial inclusion coalesced into a much broader social upheaval

Utah has evolved during the intervening decades. The US government has resettled refugees of diverse backgrounds in the state. Salt Lake City's industry-friendly environment also attracted the tech companies relocating from California, bringing the formerly isolated state into the American mainstream over the past two decades. Readily available jobs, a reasonable cost of living, and a network of Kenyan friends and family already established in the former no-go zone attracted several of my kids to Salt Lake City.

The growing cultural diversity has not altered the state's bedrock conservatism. Mitt Romney and George Bush Jr still received a phenomenal 72 per cent of Utah's vote in 2012 and 2008. Although Donald Trump's tally did not reach these heights in 2016, the sum of these factors designated this most red of states an appropriate re-entry point for my tour of Trump's America.

Steve Bannon, the Breitbart News executive who became one of the key architects of the Trump campaign, declared that if you want to change politics you have to change culture first. There was the angst on the surface and uncertainty lurking underneath, but was the Republican clean sweep of White House, the Senate, and House of representatives really a marker of far-reaching culture change?

THE COUNTERCULTURAL ROOTS OF THE TRUMP PRESIDENCY

Bannon clearly arrived at his change-the-culture thesis by observing the counterculture that emerged while my generation came of age, a phenomenon that reshaped American society and politics along the way.

The post-World War II period was an era of unprecedented prosperity, middle-class growth and technological progress for the USA. Politics was something that

our parents followed as it came around in four-year cycles. America was a truly great place to grow up, as long as you could keep the fear of nuclear Armageddon, and other industrial-scale threats, at a safe distance.

For the young Americans growing up in customisable bubbles coloured by the scientific advances underpinning the futuristic orientation of American society, that was harder to do as the 1960s wore on. The raised fists in Mexico City — along with other radicalising events like the Vietnam war, the violent suppression of the Yippie protests at the Chicago Democratic Convention, and the river in Cleveland that actually caught fire and burnt for 17 days — confirmed my own doubts about how wonderful everything was or was supposed to be.

The Civil Rights movement had already done most of the heavy lifting. This in turn provided a platform for the anti-war movement. Before long, what began as a political movement for peace and racial inclusion coalesced into a much broader social upheaval. The country entered a state of agitation sustained by an expanding range of worthy causes from the conditions of migrant farm workers to rampant industrial pollution. Much of the conflict was generational, and reflected a polarising explosion of new memes, pheromones, and mind-altering visions.

As the awakening and the activism of the Vietnam era ran its course, American conservatives felt increasingly isolated. Not only had their values been shunted aside, the country's conservative hard core saw the reforms and new liberalism as a direct threat to the sources of their wealth. Conservative partisans like Steve Bannon may have missed the party, but they were taking notes

The sentiment at the time was that only a far-reaching cultural reorientation could triumph against the entrenched political order and the military-industrial complex controlling it. The mix of hot politics and cool culture was always more about challenging the conventional assumptions underpinning American exceptionalism than the political revolution advocated by the far-left fringe.

Waves of new music, innovative lifestyles, radical role models, and more mundane concerns like promoting healthy dietary choices rocked the national *status quo*. People started searching for alternatives to the mindless consumption of the planet's limited resources. Tabs, buttons, and mushrooms opened up new internal vistas that encouraged interest in ancient cultures and their spiritual religious traditions. We probed the mystical symbols adorning the dollar bill and

investigated the esoteric philosophies guiding the new nation's founding fathers.

The combination of protests, new cultural orientations, and developments in the war zones of Southeast Asia shifted public opinion. Withdrawal from Vietnam accompanied progress on other fronts from race relations to female liberation. New legislation addressed discrimination based on colour, creed, and gender, reined in the CIA, and created the Environmental Protection Agency to control serial polluters.

The ship had been righted, the course of the nation redirected, and use of the term "politically correct" offered backhanded acknowledgement of the nation's cultural makeover in politics. In the end, many of the political attitudes engendered by the counterculture followed long hair, frayed jeans, and recreational marijuana use into mainstream America.

The changes, affected over a relatively short period, had made America even more exceptional in our eyes. But some observers disagreed. The eminent anthropologist Marvin Harris opined that the main impact of the counterculture was selling a lot of records. Iconoclastic musician Frank Zappa said that rock music's potential revolutionary impact had been felt mostly in the textile industry. Cultural revolution did little to change the nation's political structures and economy.

As the awakening and the activism of the Vietnam era ran its course, American conservatives felt increasingly isolated. Their champion, the embattled president Nixon, resigned office in disgrace. Not only had their values been shunted aside, the country's conservative hard core saw the reforms and new liberalism as a direct threat to the sources of their wealth. They were still wealthy, but had become dinosaurs inhabiting a political landscape dominated by progressive ideas and proponents of activist government. Conservative partisans like Steve Bannon may have missed the party, but they were taking notes.

IT'S NOT REALLY ABOUT TRUMP

The Koch brothers are ferociously independent heirs to one of the largest private corporations in the United States. Like the Bush family and their cronies, their father, Fred Koch, built up his fortune during the 1930s, training Bolshevik engineers and selling his advanced oil refining technology and refineries to Stalin and Hitler's Germany. His children's nanny was a Hitler sympathiser, and after

the war Fred Koch became a strong supporter of the rabidly anti-Communist John Birch Society to assuage his guilt over aiding the USSR. He transferred his extreme libertarian values to his sons, and after his death in 1967, Charles and David Koch bought out their two more liberal minded siblings.

In Dark Money, a book first released in 2016, Jane Mayer tells the story of how the Koch Brothers assembled a network of 400 über-wealthy industrialists. Mayer's documentation of their activities reads like a virtual symphony of corporate crime in the form of fraud, tax avoidance, violations of workplace safety and employee welfare, foreign bribery, and environmental violations

Under the brothers, Koch Industries became the country's second wealthiest private corporation, and they parlayed their financial muscle into the single most influential political machine in the country. Their first venture, David Koch's run for the presidency on the Libertarian Party ticket in 1980, failed miserably. Plan B was based on a totally different approach. It began with annual summits attended by a handpicked list of like-minded individuals opposed to most forms of government regulation and taxation.

In *Dark Money*, a book first released in 2016, Jane Mayer tells the story of how the Koch Brothers assembled a network of 400 über-wealthy industrialists who leveraged their money and influence to penetrate the American political system for their personal financial benefit. The brothers are the sixth and seventh wealthiest Americans and their combined wealth makes them number one. Most of those they recruited belong to the top .01% of the country's wealthiest billionaires and are known as the "invisible rich" because they operate private companies that shield them from public scrutiny and government rules for fiscal disclosure.

Mayer's documentation of their activities reads like a virtual symphony of corporate crime in the form of fraud, tax avoidance, violations of workplace safety and employee welfare, foreign bribery, and environmental violations. Over several decades, this network, or the *Kochtopus* as it was dubbed by one analyst, spent billions of dollars funnelled through tax-free foundations and charities exempted from public oversight to promote their objectives.

The Koch summits provided the institutional foundation and financial support for a long-term strategy based on three overlapping components: The reformulation

of libertarian ideology in terms of ideas and concepts enabling its propagation within mainstream society; the creation of institutions for translating this free-market ideology into policy positions and legislation; and building political vehicles on the ground for placing politicians aligned with their ideas and policies into public office.

Most of the Koch-networked and -funded institutions and political action committees, like Americans for Prosperity, flew underneath the radar. At the same time, an array of media personalities, talk show hosts, and academic celebrities duplicated the role that rock musicians, intellectuals and artists, political activists, and outspoken athletes like Mohammed Ali played in energising the masses several decades before. They elevated the role of divisive social issues like abortion rights in the political arena, fuelling the culture wars that influenced otherwise politically moderate citizens.

The Koch network funded think tanks based in respected universities to reinforce their anti-government ideology and critiques of public spending. Covertly funded political action committees were used to gain control of executive offices and legislative bodies. Over a period of 40 years, the Koch Brothers and their clique of archconservative supporters patiently cultivated a right-wing movement, often with more power to block and obstruct than to legislate their own agenda.

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But despite the inroads and influence generated by their free-flowing money, the Koch network still lacked a nation-wide vehicle for mobilising grassroots supporters.

ENTER BARACK OBAMA, PURSUED BY MAD HATTERS

Help came from an unexpected source.

The election of Barrack Obama in 2008 triggered the formation of the anti-government Tea Party movement. Its emergence enabled the Koch network to

dedicate their annual summit in 2009 to organise an all-out assault on the Democrats during the 2010 mid-term elections. Tea Party candidates defeated Democrat and mainstream Republican incumbents as the GOP regained control of the House and Senate. The trend continued in 2012, even though Obama retained the White House with a 5.5 million-vote margin of victory.

Despite their growing clout within the federal and state governments, the Koch-Tea Party coalition could not field a viable presidential candidate of their own creation, as demonstrated by the succession of inchoate candidates like Marco Rubio, Ted Cruz, Rand Paul, Rick Santorum, Ben Carson, Michelle Bachmann, and the pizza king Herman Cain.

The problem was about to repeat itself in 2016, until along came the Donald. Trump blitzed the field, reducing both establishment candidates like Jeb Bush and Tea Party aspirants to props in his carnival-style campaign. He proceeded to tweet himself into the White House, portraying himself as a new and independent force in American politics.

That he was. "I even did without a guitar and piano," he quipped, a jibe referring to the star power Hillary Clinton trundled out at the end of her self-satisfied campaign.

Actually, the Trump team had something much better. Cambridge Analytica is a company dedicated to "the use of data to change behaviour," or in the case of the 2016 election, using emotional manipulation based on psychological profiling to induce people to vote against their own socioeconomic interest. [Electoral analysts](#) confirm that CA helped sway the vote in key swing states like Florida, North Carolina, and Michigan, but their advanced analytics arguably required the distortionary prism cultivated by the alt-right players like Breitbart News and Steve Bannon to be effective.

THE REAL HOMELAND INSECURITY

It is easy to denigrate Trump the person. But Trump the politician scored some important points on my political scorecard. I had witnessed the beginning of the decline overtaking rural areas in the American South, and now even communities and people in America's heartland who did everything by the book to adapt to the industrial decline still couldn't [win](#). The economic nationalism agenda clearly spoke to their concerns, even if it was short on viable solutions.

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A Trump versus Bernie Sanders contest focusing debate on the overlapping issues at the core of both candidates' campaigns would have been much better for the country and the eventual winner. That did not happen thanks to the Democratic National Committee's pro-Hillary machinations. Instead, we got a noisy post-truth spectacle that made one candidate look like a sleazy demagogue while the other came across as an opportunistic mannikin compromised by special interests.

The country emerged from the polls more polarised than ever, and the acrimony of the aftermath offered little hope for improvement. The fact that Trump was not part of the Kochtopus and the Koch brothers did not support his campaign offered some hope: Maybe the guy would revert to the former Democrat who was cool with Dennis Rodman on *The Celebrity Apprentice*. But then again, Vice President Michael Pence was a Koch-funded poodle; Trump promptly loaded his Cabinet with Koch partisans like Betsy DeVoss and Ben Carson.

It was not easy to see where my friend's "something good will come out this" would come from with these people in charge.

A few days after I arrived in Utah, Trump announced his Muslim travel ban. A wave of spontaneous protests erupted as airport authorities detained several hundred arrivals from abroad including a former Middle Eastern head of state. The mainstream media went into overdrive and anti-Trump posts proliferated on social media, many of them creative, incisive, and entertaining. This and the breaking news about Russia drove a former State Department official to lament that the US has become a "Banana Republic."

Although a federal judge declared the ban unconstitutional on the first working day following the executive order, a Utah-based friend from Lamu, spooked by the ban, still felt it necessary to travel back to Kenya to escort his wife, who had just received her long-awaited US visa, past airport immigration and security. More significantly, three days later, the LDS church issued a statement opposing the

ban.

I argued that the election was the best thing that happened for progressive forces in decades. It woke people up, and saved the world from a hawkish and dissembling Hillary. At least the decades of drift culminating in the aristocratic takeover of party and state by the Clinton dynasty were over

This was unexpected news, as was a University of Utah study that reported most Muslim immigrants found the state more welcoming and adjusting to the US easier in Utah's family oriented and no-alcohol Mormon culture. I also discovered that the religion's founder and prophet, Joseph Smith, was actually an abolitionist, and that the Utah territory granted women the right to vote in 1870, 50 years before the federal government legislated universal suffrage by passing the 19th Amendment (Congress responded by disenfranchising Utah women with the [Edmunds-Tucker Act](#), which was designed to weaken the Mormons politically and punish them for polygamy).

Red America is not as monolithic as it may appear in media political narratives. I spent Super Bowl Sunday in Salt Lake City with a houseful of Mexican relatives. More of them were more upset with the New England Patriot's last minute Trump-style victory than worried about Trump's wall.

I visited blue America. We convened a large family gathering in Los Angeles, and spent time with friends in San Francisco. There were a lot of Teslas and other electric cars, and a few self-driving vehicles on the freeways, their passengers contently working on phones and tablets.

THE COMING SECESSION OF HOTEL CALIFORNIA?

California is the high-tech future. But it is also the land of a new long-tail market peasantry. Internet-savvy entrepreneurs were surviving by reselling appliances and other recycled items. Co-operatives in the form of Internet-based groups were pooling their knowledge to utilise the online economy.

I have in-laws in LA who subsist by swapping coupons and minimising household costs through scientific shopping for bargains and stocking their freezer with food reduced for clearance.

Despite their struggle to keep body and soul intact, every month they host poetry readings and other cultural events in their home that are attended by dozens of friends and associates more concerned with the fate of the country than their own declining incomes.

The two coasts had emerged as the centre of anti-Trump activism, and some of the protests, like the student protests in Berkeley that forced the administration to cancel an appearance by the Breitbart editor, Milo Yiannopoulos, crossed the line, violating basic constitutional and democratic principles. When I mentioned the retrogressive nature of some of these developments, my friends in California ranted about the new regime and talked about secession in terms that recalled my conversations with the Mombasa Republican Council's leadership.

I responded by arguing that the election was the best thing that happened for progressive forces in decades. It woke people up, and saved the world from a hawkish and dissembling Hillary. Contributions to the American Civil Liberties Union were spiking; at least the decades of drift culminating in the aristocratic takeover of party and state by the Clinton dynasty were over.

Other developments of the past several months painted a much more nuanced picture of the state of the nation. San Francisco 49ers quarterback Colin Kaepernick revisited the spirit of the Mexico Olympic protest by refusing to stand for the national anthem. In pro-Trump Louisiana, the city of New Orleans took down the statue of Robert E. Lee — the state's last remaining symbol of the Confederacy. John McCain penned an incisive op-ed in the *New York Times* underscoring the importance of human rights in foreign policy as an extension of domestic American values. Bob Dylan, the first poet of the counterculture, became a Nobel laureate.

The United States is a highly dualistic nation held together by a strong political centre. The nation's political trajectory has consistently zigzagged between right and left of centre over the course of my lifetime. The transition from Obama to Trump was consistent with this dialectic

After the election, the website for the largest Tea Party PAC crowed that it took the anti-war movement 25 years to elect one of their own to the White House while they had done the same over the course of two electoral cycles. In reality, the success rate of Tea Party candidates peaked in 2012. Now minority politicians

with names like Chokwe Lumumba and Khalid Kamau were winning seats in local government. Unheralded candidates recently won by-elections for seats in New Hampshire and New Jersey districts that had never elected a Democrat.

In his book [*What's Wrong With Kansas*](#), Thomas Frank describes how conservatives used religion and the culture wars to flip the formerly progressive state into a Republican stronghold. A decade later, the economy is tanking, while the state's model education system deteriorates due to the spending cuts instituted by the Koch-supported Governor. Back in another flyover state, there are helped wanted signs everywhere and the Utah economy is booming. The difference is not accidental.

After I returned to Kenya, Bloomberg News published an article entitled [*How Utah is Keeping the American Dream Alive*](#). The writer begins by confessing, "There's no getting around it: For a girl raised on the Upper West Side of Manhattan, Salt Lake City is a very weird place." She then proceeds to detail how the state government is collaborating with Latter Day Saints agencies to provide social protection for the poor while providing job training addressing local demand for skilled and semi-skilled labour. The formula is generating Scandinavian levels of social mobility in a state with a small but committed civil service and the country's lowest per capita expenditure on education.

FACING AN UNEXCEPTIONAL FUTURE?

In 2017, I found a country not so different from the one I left on the brink of electing Barack Obama. Communication was efficient and uncomplicated; people were without exception polite, helpful, and friendly. The malls were filled with new versions of the usual stuff, and if you shopped smart most of it was much cheaper than it would cost in Kenya. Smoking reefer was *laissez faire* or just legal. The junk food was healthier, and the country was awash with innovative ideas and creative content. East Africa has changed so much more during the interim. But appearances can be deceptive.

Truth will make a comeback, and there is a world of well-informed and innovative solutions out there to get things going. Once again, it's looking like my African friends got it right

The United States is a highly dualistic nation held together by a strong political

centre. The nation's political trajectory has consistently zigzagged between right and left of centre over the course of my lifetime. This makes for a lot of contradictions, but also for a more purple Republic over the long run. The transition from Obama to Trump was consistent with this dialectic, which is also a source of American democracy's distinctive pattern of continuous change and incremental reform. President Trump is the latest exhibit in this tradition, but there are caveats.

The problem is not that Trump's diagnoses of the nation's problems were not on target. His vision for making America Great Again, in contrast, is informed by nostalgia, special interests, and backward-looking solutions. Trump's proposed budget and tax cuts will injure the less educated and economically insecure voters who flocked to his rallies. The jobs at the Carrier factory Trump "saved" from being outsourced to Mexico are to be automated. Many elements of the economic nationalism he showcased on the stump are already in remission, and he is retreating from the foreign policy positions he used to whip up the crowds. He turned the government's Middle East foreign policy over to the Saudis in exchange for a large order of weapons.

The future of the middle class is uncertain. The accelerating pace of machine learning and artificial intelligence may bring about the economic singularity within a generation. The country I grew up in was about exploration, problem solving, and optimising potential as we moved forward. Now I sense that for many Americans, the future is as murky as the Great Salt Lake on a cloudy winter day.

EVIL WINNERS WHO INVESTED IN PSEUDO-CHARITIES

The Koch Brothers and their friends tried to manufacture a new political culture based on libertarian values, but are really perpetuating the same financial industrial royalty presidents from Jefferson to Eisenhower warned us about. The likes of Bill Gates and Warren Buffet are following the tradition of other American philanthropists guided by *noblesse oblige*; the super wealthy populating the alt-right are evil winners who invested in pseudo-charities dedicated to advancing their own narrow interests.

Things were humming along until an outsider crashed the party.

Now the Trump presidency is unravelling in the face of problems largely of his own making. Our institutions are engaged, and my only hope is Trump & Co stay

in office long enough to take down the whole prevaricating, alternative fact, toxic waste emitting and hate-mongering circus. We have seen worse, and I don't begrudge the sincere citizens who played their trump card on the Donald having their day in the sun. But now it's time to sort out the unprecedented [crisis of inequality](#) facing capitalism everywhere. Truth will make a comeback, and there is a world of well-informed and [innovative solutions](#) out there to get things going.

Once again, it's looking like my African friends got it right.

Railway Rivalry in the East African Community

Politics rather than economics are driving multi-billion dollar investments in new ports and railways.

Commentators agree that Africa needs huge investment to bridge the 'infrastructural deficit' after decades of neglect. In recent years, East African Community (EAC) members have launched transport projects worth tens of billions of US dollars. A Chinese contractor is building a standard gauge railway (SGR) from Mombasa to Nairobi and (perhaps) Kampala and Kigali (see map). The Mombasa-Nairobi phase of the project is estimated to cost KES327 billion (US\$3.8 billion), 90% financed by China's Exim Bank. The new line will run parallel to the existing meter ('narrow') gauge railway. The proposed Lamu Port Southern Sudan-Ethiopia Transport (LAPSSET) project consists of a new port, a 3,250 km standard gauge railway line, and other projects costing an estimated US\$23 billion. In Tanzania, large projects underway or planned include upgrading Dar es Salaam port (US\$500 million), building a new port at Bagamoyo (US\$10 billion), upgrading the current central railway line from Dar to Isaka (US\$300 million), and constructing a SG railway linking Dar es Salaam with Rwanda and Burundi (US\$7.6 billion).



This map was produced by [Africa Confidential](#). Permission for re-use should be obtained from Africa Confidential.

COST CONCERNS

Although the EAC desperately needs more and better infrastructure, the economic viability of some of the proposed investments has been questioned, given the enormous costs involved and possible cheaper and less risky alternatives in rehabilitation and upgrading existing facilities. Soft loans from China's Exim Bank are financing most of the SG railway projects, while both Kenya and Tanzania have introduced a Railway Development Levy on imports to help cover local costs. Apart from finance, other vital issues that have not been addressed are how the railways will claw back freight from the roads, and, crucially, how the new facilities will be managed and regulated.

Tanzania and Kenya compete to serve the transit trade of Uganda, Rwanda, and Burundi, whose landlocked geography gives all three (and other non-EAC neighbours) a keen interest in the cost, safety and convenience of trading through Dar or Mombasa. 80% of Uganda's imports pass through Mombasa, while Rwanda and Burundi depend on both Dar and Mombasa for imports and exports. Services have improved at Mombasa and Dar es Salaam ports in recent years, but there is still a long way to go to reach international standards. According to the World Bank (WB), inefficiency and corruption in managing Dar port and the Central Railway are estimated to cost EAC countries US\$2.6 billion a year.

FLAWED PROCUREMENT

Large investments in railway upgrading designed to complement port improvements are also underway, but they have been marred by lack of transparency and competent economic analysis. In March 2010, Kenyan transport minister Amos Kimunya cancelled the procurement process that Kenya Railways had initiated for feasibility and design of the SGR, and the contract was awarded to China Road and Bridge Corporation (CRBC). Thereafter, there was no competitive tendering or public oversight of the procurement process. CRBC was involved in 'all aspects of the project', including the feasibility study, project design, cost, and finance, 'and was then handed the contract to build.'

Critical voices included Transparency International Kenya, who ran a campaign to stop the SG project on the grounds that it would 'cripple the country financially';

ignored procurement rules; and was unnecessary given the upgrade option. In January 2014, John Githongo wrote an open letter to President Kenyatta questioning the credentials of the SGR contractor CRBC and the inflated cost of the project. Economist and commentator David Ndiu flagged the likely negative effects of railway duplication on the budget and the national debt. In response to these and other critics, Vice President William Ruto retorted: “No one and nothing will stop us from building the railway...”

In June, the tender to manage the new line when completed was awarded to China Communications Construction Company (CCCC), parent company of CRBC. On completion of Phase 1 of the SGR, Kenya will have competing railway lines from Mombasa to Nairobi. Rift Valley Railways (RVR), the concessionaire for the existing railway, plans to claim compensation from the Kenyan government for loss of custom to the SG line. RVR effectively helps finance SG through the 1.5% Railway Development Levy paid on all imports. RVR’s performance has improved in recent years, but the SGR has put into question the future of the concession, and further investments are on hold.

PARALLEL LINES

The economic viability of the SGR option was challenged in a 2009 study by Canadian Pacific Consulting Services (CPSC), which concluded that the benefit of replacing narrow gauge by SG would be marginal. The conversion of the entire EAC rail backbone to SG was considered ‘cost prohibitive’ using ‘even the most optimistic’ traffic and income projections. On the basis of this report, the EAC Secretariat produced a regional Railways Master Plan that foresaw the growth of rail traffic in the region from 3.7 million tonnes in 2007 to 21 million tonnes by 2030, using the existing track. This Master Plan was superseded by a pro-SGR version that made no mention of the CPSC findings.

Pro-SG lobbies dominate public discourse. Justifications for the SG option include: increased freight carrying capacity, reduced wear and tear on the roads, and greater speed. According to President Kenyatta, the inefficiency of the rail system ‘has placed a disproportionate burden on the slow, cumbersome and more costly road network.’ Thus, ‘the cost of goods and services is unduly high and ... uncompetitive.’

The Tanzanian government also turned to the SG option after first opting to

rehabilitate the existing Central Line. In 2003, the African Development Fund financed a feasibility study for a SG line from Isaka to Kigali and Bujumbura (1,435 km) which declared the project feasible and attractive to private investors. This and subsequent detailed engineering proposals were based on the assumption that a new SGR would be built from Dar to Isaka. When in March 2014 the Tanzanian government agreed a US\$300 million project to upgrade the existing track to Isaka, there was still no public discussion of SGR. In April, the SGR option was proposed publicly for the first time, and finally in March 2015, Minister of Transport Samuel Sitta announced that Tanzania was embarking on a 2,500 km SG railway costing an estimated US\$7.6 billion. In collaboration with the World Economic Forum, the government appointed American financial advisory group Rothschild as a transaction adviser. If both projects go ahead, Dar to Isaka will also have competing parallel railway lines.

NEW RAIL VIABILITY

Apart from the CPCS, the main critical voice in the SG debate has been the World Bank, who insisted that rehabilitation was the better policy option. A WB transport specialist argued that the “Business case for railway depends on the improvement of train availability, reliability, punctuality, and financial sustainability, not the size of track gauge.”

Since politics is driving the SG projects in both Kenya and Tanzania, it is possible that certain categories of goods will be obliged by law to use the railway. There are no studies that would allow an assessment of the economics of transporting goods by rail or road. It is assumed that passenger services will also be provided, irrespective of their economic justification. In 2011, the EAC Secretariat made the following comment on transport policy:

...there is no indication that partner states intend relinquishing their ownership role to the EAC. They will therefore remain responsible for the planning of, investment in and operation of their transport assets.... The role of the Community will be to guide partner states on the components of the transport system that are of regional importance...

Still, the Secretariat’s advice to rehabilitate the existing track was overruled in favour of the SG option. Issues of governance, management and profitability in a context where past PPPs have largely failed are ignored. The enormous costs

involved stretch national budgets and add to the national debt. How rail transport will claw back enough freight from the politically well-connected trucking industry to make rail financially viable is not explained.

POLITICAL DOMINATION

For better or worse, political relations between EAC elites strongly influence which infrastructure projects will be implemented. Since President Magufuli came to power in late 2015, warm relations have been established between Tanzanian and Rwandan heads of state. In April 2016, Uganda decided that a US\$4 billion oil pipeline would go through Tanzania, scrapping a previous agreement with Kenya. In May, Rwanda announced that it planned to build its SG railway through Tanzania instead of Kenya. In turn, Kenya announced that the planned SG project might have to end at the Ugandan border, since Uganda appeared to be no longer committed to its part of the project.

The above discussion suggests that there is little or no effective coordination of transport policy in the EAC. Dar es Salaam and Mombasa ports are being upgraded at considerable cost while new ports are planned with huge additional handling capacities. The decision to invest in SG railways was made in the absence of any plans on how to phase the transition from narrow to standard gauge. The Tanzanian government negotiated with the World Bank to upgrade the Dar-Isaka line while at the same time negotiating with Chinese companies over the SG plan.

There is no public discussion on how policy will encourage (or force) a massive transfer of freight from road to railway. While ruling elites are the ultimate drivers of major rail investments, they are also influential in road transport policy. EAC governments are committed to private investment and management of the new railways, but it is difficult to imagine robust private participation without state protection, meaning further tinkering with the market mechanisms that should be driving the transport sector. For the moment, politics dominates transport coordination in the EAC, with the Arusha secretariat playing little or no significant role.

The author has also written a discussion paper for ECDPM on [*Tanzania and the East African Community: A comparative political economy*](#) and contributed to ECDPM's [*Political Economy of Regional Integration in Africa - East African*](#)

[Community Report](#) with Chapter 3 on Transport Infrastructure.

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WAR GAMES: How repressive regimes in East Africa are playing the Amisom card

On January 15, 2016, [about 209 Kenyan troops](#) posted at the El Adde military camp in Somalia were rattled by sounds of gunfire followed shortly by a large explosion. It immediately dawned on the soldiers that they were under attack by a special contingent of Al Shabaab's infantry specializing in mass raids against isolated Amisom (African Union Mission in Somalia) bases. This was the Al Qaeda-affiliated terrorist organisation's most deadly attack against an Amisom base.

The initial shots in the pre-dawn attack were fired by a Kenyan sentry manning a machine gun post. He was shooting towards an approaching SVBIED (suicide vehicle-borne improvised explosive device - basically a car bomb being driven by a suicide bomber). The suicide bomber behind the wheel was a man called Abdul Qadir Ahmad Ali (nicknamed Farhan by his fellow terrorists). The gunshots did not stop the vehicle; the SVBIED ended up exploding inside the base. The first blast from the explosion incinerated everything within the vicinity, while the second blast wave ricocheted around the adjacent tents, knocking some soldiers unconscious.

The base hosted Kenya Defence Force (KDF) troops from the 9th Rifle Battalion and a few soldiers from [the 5th Kenya Rifles](#). A day earlier, Somalia National Army (SNA) troops had vacated the adjacent base over fears of being attacked by

Al Shabaab which suggested that the Kenyans were aware of an impending raid. However, their defence preparations were not well thought-out, so when the infantry from the *Saleh Nabhan* battalion attacked, they were met [with a disorganised response, with some soldiers trying to flee and others taking cover](#). The attackers also [appeared confused during their raid](#). This is what makes the fall of El Adde so perplexing and tragic.

A propaganda documentary released on April 10, 2016 by Al Shabaab showed a highly edited version of the events that occurred on that fateful day. The video showed that most of the Kenyan soldiers that fell were in their full combat gear, a clear indication that they suspected that an attack was imminent and had prepared for it. However, they appeared surprised by the scale of the attack; [some even ran away](#) and were later rescued after they reached Mandera County in Kenya.

To date, neither Amisom nor the Kenyan government nor the Kenya Defence Forces (KDF) have published an official death toll from the El Adde attack. Yet it was recognized internationally as one of the greatest military disasters to befall a peacekeeping mission in a single day. CNN even [labeled it as a military massacre](#) that was being covered-up by the Kenyan regime. American military officials were also shocked by the scale of defeat that KDF suffered, while a [Kenyan official stated that Al Shabaab had done good reconnaissance](#) on the base before attacking it.

A FRAGMENTED FORCE

Amisom was established in January 2007 by the African Union as a peace-support mission to protect the fledgling government in Mogadishu from the preeminent peace spoiler in Somalia, Al Shabaab. However, to date, Al Shabaab still retains formidable offensive capabilities despite losing considerable amounts of territory. This raises the question of whether there is a disconnect between Amisom's mandate and the reality on the ground?

According to its official profile, Amisom was originally conceived as a transitory UN-backed peace support mission mandated to promote national dialogue and reconciliation, as well as to create a secure environment that would facilitate humanitarian operations. However, from an initial deployment of 1,500 Ugandan troops in 2007, it has grown into the AU's largest multidimensional peace-support

operation, with over 22,000 troops, as well as police and civilian components.

Neopatrimony rarely values meritocracy and competence in military matters; it's only loyalty that counts.

The persistence of Al Shabaab attacks against both Amisom troops and their home countries as well as against the nascent Somali government have also forced Amisom to adopt a more aggressive posture. Following the July 2010 bombings against crowds watching a screening of the FIFA World Cup Final in Kampala which killed 74 people, the AU “reinterpreted” Amisom’s rules of engagement to allow for pre-emptive defence, which allowed Amisom to go on the offensive. Later that year, the UN Security council authorized a 50 percent expansion of Amisom’s mandated troop strength from 8000 to 12000. As a result, in August the next year, al Shabaab were forced out of Mogadishu.

Amisom was allowed a further 5700 soldiers in 2012 as well as an expanded logistical support package that greatly expanded the scope of its military operations in Somalia. In November 2013 the UN Security Council authorised a further surge of 2,500 fighting troops as well as support elements, including combat engineers and logistics personnel, bringing it to its current level of 22,000.

However, Amisom suffers from structural fragmentation in its command chain and realm of control. There are zones where Amisom troops operate alongside non-integrated Ethiopian (and Kenyan) troops who do not take orders from the Force Headquarters in Mogadishu. In addition, Amisom commanders from the various troop-contributing nations must first consult with their respective national militaries before allowing their troops to engage in any military operation in Somalia.

The amorphous nature of Amisom’s command structure not only allows the governments of the troop-contributing nations to exert a direct control over their contingents serving in Amisom, it also disrupts effective communication between the different Amisom contingents. This poor communication has led different Amisom contingents to rely more on their home countries for military support rather than on Amisom. This explains why the Kenyan troops in El Adde first alerted their seniors in Nairobi of the attack before requesting for military assistance from Amisom. KDF was slow to provide any relief and the base had

fallen by noon. There is no evidence that KDF troops in El Adde ever relayed a distress call to their Ethiopian allies in Gabarhaley.

Further, Amisom lack of air capacity to move troops limits its ability to reinforce bases that are under attack. Despite the UN Security Council authorizing deployment of an aviation component of up to 12 helicopters comprising nine utility helicopters and three attack helicopters, these assets must come from the troop contributing countries as the UN has no military choppers of its own. Though several countries, including Kenya, had promised to deploy aircraft under Amisom, this hadn't been done by the time of the El Adde attack. As a result, and as the KDF acknowledged, Amiosom would have been unable to come to the rescue of the beleaguered base.

THE POLITICS OF PEACEKEEPING

Amisom does deserve the glowing commendations it has received from the international community for its sustained efforts at degrading the military capabilities of Al Shabaab, and for stabilising Somalia to the extent that democratic elections have been held and an internationally-recognised government has been inaugurated. Even so, there is a need to analyse the way that Amisom has evolved into a rented peace-enforcement mission that serves to legitimise neopatrimonial political systems - where state resources are used to secure the loyalty of clients in the general population.

Understanding how regional neopatrimonial politics affect the operations of Amisom will help us shed light on why Amisom has been unable of obliterate Al Shabaab, despite fielding a total of 22,000 well-paid and relatively well-equipped troops from Burundi, Djibouti, Ethiopia, Kenya and Uganda who are fighting militants whose numbers are estimated to range between 8,000 and 10,000.

Also, there is a need to assess how Amisom has served to entrench autocratic rule in troop-contributing nations such as Burundi, Ethiopia and Uganda, and whether the Kenyan government is using the Amisom card to retain power and ensure the current regime's survival after the August 2017 general elections.

The Amisom mission has had a detrimental effect on democratic space in troop-contributing nations, and it is becoming evidently clear that to defeat 10,000 Islamic terrorists, nearly 200 million citizens in the East African nations of Kenya, Burundi, Djibouti, Ethiopia and Uganda will see their democratic rights curtailed.

Also, the issue of military incompetence needs to be considered as it is a known fact that neopatrimony rarely values meritocracy and competence in military matters; it's only loyalty that counts.

Furthermore, such governments are likely to engage the international community in terms that favour their regime survival over the stated objective of stabilising a conflict zone. Paradoxically, Somalia was able to conduct a relatively fair-and-free election in February 2017, while citizens in two Amisom-contributing nations were denied the same chance, all under the watch of the international community. In this context, the patron-client relationship between the ruling party and the military informs deployment of peacekeeping missions.

Peacekeeping operations become rent-generating ventures that benefit both the regime and the military while killing accountability.

Basically, rulers deploy their troops to peacekeeping zones that offer the highest dividends in terms of monetary rewards and regime protection. The ruling party acts as the patron that receives financial benefits, and then distributes it to the soldiers. In the process, the ruling party buys the loyalty of the military, and this increases the odds of regime survival.

Reports of KDF's illicit trade in charcoal and sugar in the port of Kismayu have also led many to speculate whether KDF is in Somalia to benefit commercially. In November 2015, a Nairobi-based civil advocacy group named Journalists for Justice published an expose titled [*Black And White - Kenya's Criminal Racket in Somalia*](#) that documented the illicit trading activities that KDF was engaging in while in control of the port of Kismayu. The Kenyan public was enraged, and calls for KDF to exit Somalia increased. However, KDF maintains that its mission in Somalia is critical and untainted with corruption.

Because the financial pay-outs are made monthly to the troop-contributing nation, it is regarded by the regime as rent paid for providing peacekeepers. In return, top military officials benefit from payouts, and they, in turn, ensure that the military remains loyal to the regime. As a consequence, such peacekeeping operations become rent-generating ventures that benefit both the regime and the military while killing accountability. Likewise, without any input from the citizenry, such regimes can conspire to ensure that their peacekeeping operations last for as long as possible.

Rarely do neopatrimonial powers ever relinquish power over their troops even when they are engaged in peacekeeping operations in foreign nations. This is what is happening to Amisom as the troop-contributing governments refuse to allow their peacekeepers to fall wholly under Amisom's control; they ensure that they have direct military control over their peacekeepers, even if they fight under the Amisom hat. This also applies to KDF.

REGIME-BOOSTING DIVIDENDS

The Kenyan government's decision to deploy KDF in Somalia was informed by three main concerns: national security concerns; humanitarian concerns; and the need for enhanced international legitimacy. Humanitarian concerns relate to Kenya's plan to decongest, and eventually close, the Dadaab refugee camp and other camps hosting Somali refugees by repatriating refugees back to safe zones in Somalia. With regards to national security, Kenya had suffered from Somalia's internecine conflict as it repeatedly spilled over into its bandit-prone north-eastern region, and by 2010, the threat of Al Shabaab radicalising Kenya's restive Muslim population was too great to be wished away. A military campaign was then considered a feasible move. Still, was this military campaign planned well?

The answer to this question lies in the quality of military leadership. Starting from 2007, the political elite saw the need to hollow out the Kenyan military and recreate it as a dependable institution that can be relied upon during periods of crises. To achieve this, ethno-political considerations were prioritised over merit and competence. This removed the element of accountability that professional militaries value.

The decision of the Kenyan government to integrate KDF troops in Somalia into Amisom in July 2012 was informed by geopolitical concerns and economic reasons. By March 2012, Operation Linda Nchi had hemorrhaged the [national coffers of over \\$180 million](#), and it was evident that the cost of managing a full-scale war against Al Shabaab in Somalia was quite prohibitive, if not unsustainable, especially as Kenya was suffering from low-grade economic recession occasioned by a difficult-to-manage inflation and a weak and unsteady currency.

Amisom suffers from structural fragmentation in its command chain and realm of control. There are zones where Amisom troops operate alongside non-

integrated Ethiopian troops and these troops do not take orders from Amisom.

Kenya's decision to stay on in Somalia under the umbrella of Amisom also has to do with national politics and the government's desire to retain international legitimacy. Peacekeeping ventures offer lasting regime-boosting dividends. The governments of Burundi, Ethiopia and Uganda gained legitimacy from the international community, notably the European Union and the United States, because of their troop-contribution efforts towards Amisom. The US and the EU, two of the most vocal proponents of human rights and democracy, are also the main donors to the Amisom mission. Their silence on democracy matters is usually interpreted by autocratic regimes as tacit support for the government.

In both Uganda and Burundi, the ruling parties that oversaw the deployment of segments of their national military into Somalia were able to get controversially re-elected in what can best be described as sham elections, and still get their controversial electoral victories stamped as valid by both the US and the EU, despite concerns raised by democracy activists. Both nations have experienced periods of sustained domestic unrest and have used disproportionate force to either kill protestors, or coerce local democracy campaigners to abandon their activism.

Similar socio-political developments have been witnessed in Ethiopia. The ruling EPRDF (Ethiopian People's Revolutionary Democratic Front) regime is accused of fomenting ethnic strife through skewed distribution of national resources and the concentration of political power within a clique of an ethnic-laced elite alliance. This has led to accusations of political marginalisation, human rights abuses, and forceful confiscation of land and other natural resources from underrepresented people.

Also, Ethiopia, despite a decade of sustained economic growth, also suffers from uneven economic development that has left a majority of Ethiopians impoverished and politically marginalised. These grievances led to the sudden eruption of mass protests in August 2016 that were followed by a six-month-long state of emergency in October (which has since been extended). To worsen matters, ethnic nationalism resurfaced, and has been stoked ever since by varied political activists.

When Ethiopia assessed that international condemnations against its protest

management efforts were increasing, it simply withdrew hundreds of non-Amisom-integrated ENDF (Ethiopia National Defense Force) troops from Bakool and Hiiran regions of Somalia in October 2016. This withdrawal was done under the pretext that the soldiers were needed in Ethiopia to help manage the protests. However, the EPRDF had over 150,000 active ENDF troops at its disposal inside Ethiopia, and the troops withdrawn from Somalia were neither the best-trained nor the best-equipped. This shows that the pretext was used to cover up a more nuanced political motive. Interestingly, the withdrawal of these non-integrated soldiers immediately caused concern, with the UN stating that such withdrawals could create an exploitable security vacuum that could lead to the resurgence of Al Shabaab.

THE HUMAN COST

The above-mentioned problems also plague Kenya. Kenya is considered the most democratic nation in East and Central Africa and is also the economic powerhouse in the region. So why would the Kenyan regime need to enhance its political legitimacy?

Kenya sent KDF into Somalia with the thinly-veiled strategic objective of creating a Kenya-backed semi-autonomous administrative region called Jubbaland, which was to serve as a buffer zone between Kenya and Al Shabaab-ruled zones in southern Somalia. This buffer zone was considered essential to securing a new transport corridor that President Mwai Kibaki's government was planning to build to link the Lamu port to South Sudan and Ethiopia. However, what was first touted as a short and quick military incursion has now lasted nearly seven years. Yet, the Kenyan public has not been told about how many Kenyan soldiers have lost their lives in Somalia since 2011.

The Kenyan government's decision to deploy KDF in Somalia was informed by three main concerns: national security concerns; humanitarian concerns; and the need for enhanced international legitimacy.

In 2014, *Operation Linda Nchi, Kenya's Military Experience in Somalia* was published by Kenya Literature Bureau, a state-owned publishing house. This book was written by six primary authors, among them Lieutenant Colonel Paul M. Njuguna, who was later promoted to colonel in August 2016, and served as the KDF spokesman when the KDF base at Kulbiyow was raided in January 27, 2017.

The book provides the official KDF-approved version of *Operation Linda Nchi*. It also serves as an excellent window into the military doctrine that guides military operations vis-à-vis media relations and the publication of casualty figures. According to the book, KDF lost less than 40 soldiers during the entire period of *Operation Linda Nchi*.

This is a surprising figure especially when the fatality count of Amisom is taken into account. In May 2013, Jan Eliasson, the UN's Deputy Secretary-General, [estimated that 3,000 Amisom troops](#) had been killed since 2007. Amisom quickly [objected to this fatality figure](#), but it is interesting to note that in October 2012, Kenya's deputy foreign minister, Richard Onyonka, [claimed that about 2,700 Ugandan soldiers](#) had been killed in Somalia since 2007. Even while this government official was touting the death toll suffered by an allied troop-contributing nation, the Kenyan government remained guarded on divulging how many Kenyan soldiers had been killed.

In January 2017, Al Shabaab raided a KDF base in Kulbiyow and made away with some military hardware. However, the [KDF spokesman, Colonel Paul Njuguna, released a press statement](#) stating that the base never fell and that KDF had managed to successfully repulse the attack, and in the process had lost only nine soldiers. However, subsequent open source analysis [by Africa Defense Review](#) showed that the base was overrun and looted.

According to a policy paper entitled *Exit Strategy Challenges for the AU Mission in Somalia* published in February 2016 by the Heritage Institute for Policy Studies, a Somalia-focused organization, and authored by Paul D. Williams and Abdirashid Hashi, KDF lost about 50 soldiers every month between October 2011 and February 2012. This translates to a death toll of more than 200 in five months, which is far greater than the death toll figures given by KDF in its official version of *Operation Linda Nchi*. In October 2016, the UN, through [SEMG, revealed that about 150 KDF soldiers](#) were killed in El Adde. These two figures give a hint as to the scale of the human cost of Kenya's mission in Somalia.

So why does KDF conceal its death toll in Somalia? One of the official reasons given is the need to maintain the morale of the soldiers. But perhaps the main reasons are to minimise public opposition Kenya's anti-terrorism campaigns both in Kenya and in Somalia and to gain political legitimacy internationally.

Amisom is rated as one of the deadliest peacekeeping missions, yet countries in the region are still eager to contribute troops. Why? One of the main reasons is that contributing troops to Amisom pays financial and political dividends. At the moment, it is evident that Uganda, Burundi and Ethiopia are leaning towards autocratic rule as democratic space gradually diminishes in these nations. The governments of these countries need to deflect attention away from their domestic problems and secure an economic lifeline during periods of economic crises triggered by domestic unrest. So they rely on Amisom for both economic reprieve and political legitimacy.

It is clear that the obfuscation of the death toll figures by the Kenyan government is designed to not only save face, but also to protect the credibility of Kenya as a strong regional peace-enforcer. If the Kenyan government admits to a high death toll, it will face domestic opposition to its mission in Somalia, and this will automatically weaken its legitimacy if it decides to use its Amisom credentials to stay in power after the August 2017 elections.

LEARNING FROM THE PAST: How to shore up the legitimacy of the 2017 Election

Elections are supposed to flip power relations. During an electoral process, a country's political elites remember their fundamental jobs and are - more than ever - the servants of the people. While campaigns are ongoing, the elites need voters' support, their attention...and most importantly, their votes. During this time, it is voters who can sit back and evaluate their leaders, deciding whether or not their actions are deserving of another term in office. Over the years and around the world, however, this power structure has often been reversed. In the quest to win and/or retain power, political elites have managed to shape the electoral process to their advantage, creating loopholes and amending laws that dilute public power.

PUBLIC CONFIDENCE IN THE KENYAN ELECTORAL PROCESS

Kenya is no exception to this rule, and voters have taken note. Over the past fifteen years, the Kenyan public's confidence in elections has dropped precipitously. In fact, between 2005 and 2015, the proportion of Kenyans who strongly agreed that elections were the best way to choose leaders [decreased](#) by more than ten percentage points. Unsurprisingly, faith in the credibility of elections has also suffered. In fact, there has never been a time over the last three election cycles (including the current one) when a majority of Kenyans has felt that the last election was completely free and fair.

With the next general election in Kenya scheduled to take place in less than three months, it is critical to think about how to urgently address this marked dearth in voter confidence. An important first step is the assessment of potential vulnerabilities. Reflection about what went wrong last time and what is at risk of going wrong again is useful, not only for policymakers but also for voters, who can and should take time to critically assess whether or not their electoral processes prioritize their roles and voices.

There are, of course, many issues to consider. These include poorly enforced electoral laws, delayed timelines, the lack of intra-party democracy, incidents of pre-election violence, and shrinking space for vigorous public debate on the most contentious and timely election-related issues. At this stage in the electoral cycle, however, it is most urgent to focus attention on the factors that most significantly impacted the credibility of the last election and which continue to haunt this election cycle. Together, unresolved questions regarding leadership and integrity, the Independent Electoral and Boundaries Commission (IEBC), voter registration and the process of counting and tallying threaten the credibility of the upcoming elections.

LEADERSHIP AND INTEGRITY

To begin, the 2013 election was the first to take place under the guiding principles of the country's new, internationally lauded [constitution](#), itself the result of a decades-long [struggle](#). The constitution included many new provisions that would have a bearing on elections, but one of the most fundamental, overarching issues concerned the qualifications for and conduct expected of state officers. Indeed, Chapter Six of the constitution, devoted to leadership and

integrity, is groundbreaking in the context of Kenyan political history, confronting, as it does, some of the most longstanding and deeply embedded obstacles to good governance.

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Chapter Six fundamentally shifted the relationship between state officers and the people, requiring the former to selflessly serve the latter. Despite the dramatic [weakness](#) of the [Leadership and Integrity Act](#) that was passed to operationalize Chapter Six provisions, the lead-up to election day in 2013 did include bold efforts to test the letter and spirit of the law. The most notable of these was a [lawsuit](#) filed by the International Center for Policy and Conflict and five others, which asked a deeply controversial question: were Uhuru Kenyatta and William Ruto in violation of Chapter Six standards, and therefore ineligible to run for office, based on the International Criminal Court's [indictments](#) against them for their alleged commission of crimes against humanity in the aftermath of the 2007 election?

The High Court's judgment was disappointing, leaving the public doubting that state institutions were in fact committed to the standards of the constitution. Although the Court claimed that it lacked jurisdiction on matters related to the presidential election, its [judgment](#) did [define](#) the standard of integrity required by a person seeking public office. According to the Court, such an office-seeker should be beyond reproach and should not have unresolved questions about his/her character and commitment to the national values in the constitution. On the other hand, however, it also ruled that there is a distinction between appointive and elective positions. For the latter, the Court was of the opinion that it is up to the voters to decide who to choose, based on candidates' "honesty, rectitude, uprightness and scrupulousness." After the judgment was handed down, a lawyer for the petitioners [remarked](#), "Today marks the official death of one of the chapters in the constitution. That is Chapter Six."

Uhuru and Ruto were thus free to run for office, and Kenyans were told that questions about their character related to the indictments against them were "[a personal issue](#)."

More importantly, since the substantive issues of the case were never appealed to the Supreme Court, Kenyans were left with an electoral context that was marked by the severe limitations of the candidate pool. After all, the Court had not considered that by attempting to leave it up to voters to decide how strictly candidates should be judged with regard to factors of integrity, it could well be that voters ended up with little substantive choice. With no enforcement of Chapter Six provisions for elective office-seekers, voters could well be faced with a slate of candidates, all of whose characters were tainted by integrity-related problems. The ruling also made it clear that there was little political will to apply the leadership and integrity laws across the board, thus cementing the status quo of elite impunity.

Unsurprisingly, unresolved leadership and integrity issues continue to plague this electoral cycle. In 2016, PricewaterhouseCoopers conducted a [survey](#) on the prevalence of economic crimes in the world and found that Kenya topped the list of 78 countries in the study. A shocking [one percent](#) of the country's national budget had been properly accounted for in the previous year. Theft and misappropriation was the most common type of crime. As of 2016, there were 17 MPs who had been [charged](#) in court for committing serious criminal offenses, including fraud, forgery, hate speech, rape, corruption and incitement to violence. At least 90 others were under suspicion for graft.

The public has noticed. When asked how much they trusted the ruling party, the opposition and MPs, Kenyans [reported](#) significantly low levels of confidence.

Table 1: Trust in Parliament, the Ruling Party and Opposition Parties

	Not at All	Just a Little	Somewhat	A Lot	Don't Know
Parliament	14.7%	28.5%	36.4%	17.1%	3.2%
Ruling Party	16.3%	21.0%	31.1%	29.9%	1.6%
Opposition	21.8%	28.7%	31.1%	15.2%	3.1%

Source: Afrobarometer R6 2014/2015

Such findings are telling, and they are especially relevant in the context of upcoming elections. Given the lack of political will to seriously implement and

enforce constitutional standards of integrity, the public has little reason to put its trust in the state, or in the electoral process. Without proper enforcement of Chapter Six provisions, voters' choices are always restricted. Over time, such an environment can lead to increasingly low levels of public confidence. In the long run, this endangers democratic resilience.

In an attempt to address the gaps in Chapter Six enforcement, the IEBC recently [convened](#) what is known as the Chapter Six Working Group on Election Preparedness. The group, which includes several state institutions, plans to vet parties' lists of nominated candidates to ensure that they adhere to the Attorney General's recently published [guidelines](#). It is unclear, however, what authority this group has to carry out its stated purpose, especially given that the Court's ruling in the case against Uhuru and Ruto made it clear that the presumption of innocence holds until cases are concluded.

THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

Closely linked to public confidence in elected leaders is trust in the body charged with administering elections, the Independent Electoral and Boundaries Commission (IEBC). In fact, one study found that public confidence in a country's electoral management body (EMB) is tied to public faith in the credibility of the election. Specifically, in a paper on Nigerian elections, Nicholas Kerr [found](#),

The strongest correlate of citizen's perceptions of election quality is the performance of [Nigeria's Independent National Electoral Commission (INEC)]...when citizens are highly satisfied with the performance of INEC, they are thirty-eight percent more likely to consider the 2007 elections free and fair... But even more importantly, it highlights that ordinary Nigerians associate their evaluations of EMB performance more with their assessments of election quality, despite how strong their partisan attachments may be.

In Kenya, public confidence in the IEBC has fluctuated dramatically over the last five years. At the end of 2012, surveys [showed](#) that 70 percent of Kenyans had faith that the IEBC was carrying out its work impartially and 72 percent believed in the Commission's independence. One month before election day in 2013, 91 percent of respondents [said](#) that they had faith in the IEBC's competence to manage the election and 89 percent believed in the Commission's impartiality. 91 percent of respondents also [said](#) they believed the IEBC was independent enough

to conduct the election in a free and fair manner.

These pre-2013 election levels of confidence were a high point for the Commission, which suffered from plummeting levels of public faith after the 2013 election. The drop in confidence was due to a combination of factors, the most notable of which included procurement delays and irregularities in the lead-up to election day, problems with technology during voter registration and on election day, the failure of the electronic results verification system and the subsequent delay in announcing the result. The Supreme Court [case](#) challenging the integrity of the entire process, filed by the Africa Centre for Open Governance (AfriCOG) and the Kenyan Asian Forum, also publicly highlighted the multiple technical and administrative problems throughout the process. Indeed, post-election polls revealed a precipitous drop in public confidence in the Commission. In the immediate aftermath of the election, 44 percent of Kenyans [reported](#) that they were confident in the IEBC. In Nyanza, only 8 percent of respondents felt this way. By 2015, the figures had not changed dramatically, with 43 percent of Kenyans reporting confidence in the IEBC. Among opposition supporters, 71 percent [reported](#) that they did not have confidence in the Commission.

After the judgment was handed down, a lawyer for the petitioners remarked, "Today marks the official death of one of the chapters in the constitution. That is Chapter Six."

The IEBC has experienced significant changes since the 2013 election. Senior members of the Commission were implicated in a corruption scandal, and a series of opposition protests against the IEBC eventually resulted in the dismissal of all the commissioners. New commissioners assumed office in late December 2016.

The changes seem to have made some difference. A recent poll [shows](#) that 72 percent of respondents feel that the IEBC is prepared to conduct a free and fair election. On the other hand, Kenyans are also extremely cautious in their outlooks. In fact, in four of Kenya's former provinces, more than 20 percent of the population is not sure that the Commission will be able to administer a credible election.

While the high level of public confidence is encouraging, the new IEBC stands at an important crossroads. In order to maintain public faith, the Commission will have to work to show Kenyans that it is serious about avoiding the mistakes that

marred the last process and that it is willing to fight to maintain its independence. The signs so far are mixed. The Commission's decision to cancel the tender process for election technology and engage in a direct award of the contract to the same firm that was partially responsible for the previous set of botched technology raises questions about how well the IEBC has learned from past mistakes. This is compounded by a more recent announcement that the IEBC may proceed with a direct award to a ballot-printing firm. Moreover, recent analysis of the last mass voter registration exercise has [revealed](#) serious administrative and technical irregularities. On the other hand, the Commission's stated commitment to enforcing gender parity in party lists and to enforcing leadership and integrity standards in the vetting of candidates is admirable.

The IEBC is making certain attempts to keep the public updated. It does hold press conferences, and it regularly updates its website with relevant press releases. This information is useful, but the Commission must go further with regard to transparency if it wishes to maintain public confidence. There are several outstanding questions at this stage of the electoral process, the most urgent of which are related to procurement, voter registration, the ongoing audit of the voters' register, the use of technology, and counting of results. If the IEBC begins to address some of these concerns, it could go a long way in preserving public faith, especially as it is likely that problems will continue to arise as election day gets closer. No election is perfect, but the IEBC's honest evaluations of its strengths and weaknesses related to current concerns are critical.

VOTER REGISTRATION

In 2013, much of the public's dissatisfaction with the IEBC was rooted in problems with the voters' register. The register was shrouded in a certain amount of mystery, with the total number of registered voters in Kenya shifting throughout the electoral cycle. The first sign of the problems to come appeared in February 2013, when it became clear that the final, gazetted register differed significantly from the provisional register released in December 2012. Overall, the register had [grown](#) by 12,500 voters.

Without proper enforcement of Chapter Six provisions, voters' choices are always restricted. Over time, such an environment can lead to increasingly low levels of public confidence. In the long run, this endangers democratic resilience.

While a decrease in the number of registered voters was expected (because the verification and cleaning process would expunge dead voters, multiple registrations, etc), it was unclear how the register grew in size between December 2012 and February 2013. Moreover, there were significant regional changes in the numbers between December and February. These are detailed in the table below.

Table 2: Internal Changes to the Register of Voters

Region	Changes between December 2012 and February 2013
Coast	+901
Nyanza	-15,026
Central	+1,848
Rift Valley	+67,000
North Eastern	+6,604
Western	+2,938
Eastern	+4,222
Nairobi	-50,102

Source: AfriCOG/KPTJ. 2013. "Voter Registration for the 2013 General Elections in Kenya."

These changes became more worrying when the IEBC could not commit to one total number of registered voters. In fact, there were at least six different totals announced during various parts of the electoral cycle.

Table 3: Shifting Totals of Registered Voters in Kenya

Provisional Register (December 2012)	14,340,036
Principle Register (February 2013)	14,352,545
Special Register (March 2, 2013)	36,236
Election Results Total (March 9, 2013)	14,352,533
Green Book Total	14,388,793

Post-Election Register (July 2013)	14,388,781
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Source: AfriCOG/KPTJ. 2013. "Voter Registration for the 2013 General Elections in Kenya."

This shifting total, in addition to the IEBC's assertion that what was known as the "green book" (**A green book is an unregulated, manually-recorded list of registered voters. It had been severely criticized by experts.**) was being used for purposes of registration, severely compromised public confidence in the integrity of the register. Indeed, the lack of a single, verifiable register breeds suspicion about political influence at worst and basic incompetence of the electoral management body at best.

Doubts around the register have not faded. In fact, the IEBC's two mass voter registration exercises in the current cycle were rife with problems. These included widespread problems obtaining IDs, problems with dysfunctional and nonfunctional biometric voter registration (BVR) kits, unexplained use of the green book, disorganized registration centres and poorly trained IEBC staff, registration bribery, coercive registration practices and massive amounts of transfers. At the end of these processes, the IEBC announced that the total number of registered voters had grown to 19,749,310, representing a 37 percent increase since 2013.

In the immediate aftermath of the election, 44 percent of Kenyans reported that they were confident in the IEBC. In Nyanza, only 8 percent of respondents felt this way. By 2015, the figures had not changed dramatically, with 43 percent of Kenyans reporting confidence in the IEBC. Among opposition supporters, 71 percent reported that they did not have confidence in the Commission.

The elections law also [allows](#) the IEBC to engage a professional firm to conduct an audit of the voters' register. The stated purposes of such an audit are to verify the accuracy of the register, recommend mechanisms to enhance its accuracy and to update it. While an audit may go a long way in promoting public confidence in the register, the process has thus far been controversial. In addition to allegations that there were irregularities related to the decision to hire KPMG, there is [mistrust](#) because of the firm's lack of expertise in conducting such audits. Indeed,

KPMG's proposed methodology does not reflect internationally accepted best practice for the audits of voters' registers, and there has thus far been a lack of transparency with regard to KPMG's progress and therefore its eventual findings.

In addition to these technical problems with registration, the legitimacy of the entire process was cast in doubt when it emerged that the IEBC had cancelled a public tender process for the acquisition of an integrated elections management system in order to give a direct award to a company known as Morpho, the same company that provided the problematic BVR kits in 2013.

The doubts that have arisen as a result of the above issues have been compounded by the IEBC's refusal to make the register publicly accessible. In fact, the IEBC did not even provide the updated register to political parties during their primaries. The lack of the register made it impossible for parties to confirm that voters were in fact registered, and this contributed to the chaos that characterized the primary processes. The IEBC has also refused to give the data to civil society on the grounds that it cannot release it until after the audit is complete. Without access to the pre- and post-audit data, however, it is impossible for the public to conduct its own analyses and understand the changes.

A related issue is that of the integrated election management system (IEMS) itself. According to the IEBC, the system is meant to be wholly integrated, such that voter registration, voter identification and results transmission are linked. Since the IEMS technology did not arrive until well after the conclusion of registration, however, it is unclear how all the components will be linked, if at all.

ELECTION DAY, COUNTING AND TALLYING

Confidence is also, of course, based on the credibility of results announcements. In 2013, the IEBC used an electronic results transmission system, which was designed to allow polling station officers to transmit results to regional tallying centres and to IEBC headquarters in Nairobi via a secure, digital connection. This system was meant to protect the credibility of the count and prevent the kind of manipulation that had been seen in past elections, which often occurred during the time when tally sheets were being physically transported from polling stations around the country to Nairobi. Unfortunately, however, the system was a spectacular failure. Midway through the counting process, Kenyans watched the stream of live results freeze on television screens. Journalists based at the Bomas

of Kenya, which was the national elections centre, [referred](#) to it as the Bomas screen saver.

When the electronic system failed, the IEBC again relied on the paper forms, which had to be ferried from all over the country to Nairobi. As expected, the paper forms were highly problematic. Issues with the polling station-level tallying forms (Forms 34) included:

1. Many Form 34s showed that there were more votes cast than registered voters. In Turbo constituency, Polling Station 69, Stream 2, there were 784 votes cast but only 755 registered voters. In Polling Station 71, Stream 2, there were 741 votes cast but only 716 registered voters. In Kacheliba, Polling Station 112, there were 215 votes cast but only 214 registered voters.
2. In some Form 34s, only some presidential candidates were listed. For example, in Baringo South, Polling Station 91, Stream 1, it was only the names of Uhuru Kenyatta, Raila Odinga and Paul Muite that appeared. Some candidates were also missing from Form 34 in Baringo South, Polling Station 68, Stream 1.
3. Many of the figures on the form did not add up. For instance, one of the most glaring discrepancies occurred in Kacheliba constituency, Polling Station 102. Here, the votes cast are recorded as 0, while there are 170 rejected votes and 170 valid votes. In Baringo South, Polling Station 117, Stream 1, there were 133 valid votes and 0 rejected votes, which should total 133 votes cast. The figure for votes cast, however, was 134. In Cherangany, Polling Station 2, Stream 5, the number of valid votes is 332 and the number of rejected votes is 4, which adds up to 336 total votes cast. The number of votes cast, however, was 340. In Turkana North, Polling Station 12, the number of votes cast (340) did not equal the number of valid votes (340) plus the number of rejected votes (5).
4. There were several instances of changes having been made to various figures on the form, with no authorizing signature next to the change. Such alterations affected individual candidates' results, the total number of votes cast, the number of rejected votes, the number of valid votes and the number of registered voters. This change had the potential to affect other numbers on the form. For instance, a change to the number of rejected votes would necessarily change the number of total votes cast.

5. In some forms, there was no figure indicating the number of registered voters. There was no official Form 34 for Polling Station 19 in Turkana Central. Instead, the results were reported on an ordinary piece of paper, which did not include the number of registered voters.
6. Many Form 34s were missing. There was no Form 34 for Polling Station 84 or for Polling Station 99 in Turkana North. Polling Station 99 did not appear on the list of polling stations published on the IEBC website on February 24, 2013, but it did appear in the paper gazette. Forms 34 for Polling Stations 92 and 113 in Turkana Central were missing.
7. Some forms did not include results for certain candidates. In Turkana Central, Polling Station 55, there were no results listed for Muite and Kenneth. In Turkana Central, Polling Station 65, there were no results listed for Kiyiapi, Karua, Dida, Muite and Mudavadi.
8. There were non-identical duplicates of certain forms. In Turkana Central, Polling Station 89, there are 4 nearly identical copies of Form 34. It is unclear whether the numbers on these forms were counted multiple times. In Kacheliba, Polling Station 2, there were two forms with different entries. There were also multiple copies of perfectly identical forms, and it was unclear whether or not these figures were counted more than once.
9. There were many forms in which it was extremely difficult to determine the exact value of the written figure, either because of the handwriting or because the original figure had been written over with another number. There were an overwhelming number of such cases, and the choice of which number to report was subjective.

The most worrying issues called the very accuracy of the count into question.

The failure of the electronic system was not a complete surprise. In the month before the 2013 election, tests of the electronic systems revealed significant problems. In fact, Sarah Elderkin [detailed](#) how a test of the system “had gone horribly wrong.” After one hour, only one of five mock polling stations could successfully transmit results. In this election cycle, the IEBC again plans to use an electronic system. The IEMS, mentioned above, includes results transmission. It is unclear, however, if and when the IEBC will publicly test the kits and publicly explain its plans for the kits’ dysfunction or failure. In fact, one of the most pressing unanswered questions in this cycle is related to proposed back up systems. New amendments to the electoral law allow for the use of

complementary registration, identification and results transmission mechanisms, to be used in the event that the technology fails. To date, however, the election regulations only provide vague provisions about using the printed out register for voter identification in cases where voters cannot be found in the biometric list. The regulations do not clarify what, if any, complementary systems will be used in case the electronic results transmission system fails.

The lack of a clear definition of these complementary mechanisms is highly problematic, especially given Kenya's political history and context. During mass voter registration, the IEBC used the green book in conjunction with the BVR kits. Does this mean that the green book was the complementary mechanism with regard to voter registration? Will the green book be used in addition to the printed out register to identify voters on election day?

Midway through the counting process, Kenyans watched the stream of live results freeze on television screens. Journalists based at the Bomas of Kenya, which was the national elections centre, referred to it as the Bomas screen saver.

There is one significant difference with regard to the law in the current election cycle. The High Court recently [ruled](#) that constituency level results for all elections are final and can only be appealed through a court process. The decision nullified Section 83(4) of the General Elections Regulations, which empowers the IEBC to "confirm" results before announcing them as final. The IEBC filed an appeal to the decision, with IEBC Chair Wafula Chebukati [stating](#) that constituency level officers could "make mistakes." The IEBC's decision to appeal has sparked some controversy, with the opposition threatening that there will be no election if the IEBC does not abandon its appeal and alleging that it means the Commission wants the power to unfairly change results. Civil society has also [expressed](#) its reservations about the appeal, suggesting that it erodes public confidence in the IEBC's commitment to upholding the law.

Given the extreme controversy and suspicion surrounding the announcement of results in 2013 and in other past elections, the IEBC should acknowledge that there is significant public concern around the potential use of manual systems. To promote public faith, the IEBC should explain its rationale regarding the appeal. If constituency level results are erroneous, as Chebukati fears, a court process to

address such problems would allow the public to see and understand the issues at hand. It would promote transparency. Surely, this option is better than a closed process in which the IEBC changes constituency results at the national tallying centre.

As it currently stands, it is unclear whether the IEBC and other stakeholders have learned from past elections. If public confidence is a priority, these stakeholders must immediately respond - at minimum - to the above public concerns in an honest and open way, remembering that it is voters who hold the power at this stage of the game, and it is voters who will ultimately decide the credibility of the election. The legitimacy of the upcoming election now hangs in the balance, but there is still time to save it...if only we are willing to learn from the past.

THE DEBACLE OF 2007: How Kenyan Politics Was Frozen and an Election Stolen with US Connivance

About 10 years ago, I was preparing to move with my family to Nairobi from the United States just as Kenya was well into the 2007 election campaign. Although I was taking up a temporary job in “democracy assistance” as the resident director for East Africa of the non-governmental International Republican Institute, I was told to expect limited duties specific to the upcoming election.

My job was to step in to manage the office and supervise a small set of ongoing programmes, primarily one involving the training of women and youth in skills to run for office. We were also wrapping up a programme for the State Department training Muslim women regionally for increased political participation and had an agreement with the United States Agency for International Development (USAid) to conduct polling that had started with an exit poll for the 2005 referendum. We had done a survey that spring and would finish the programme with a survey

early that fall, before the presidential race went into the home stretch.

I was on six months' "public service leave" from my job in the States as a lawyer for a Fortune 50 American defence contractor and had previously been a volunteer trainer for IRI in Mongolia late in the Clinton administration and an election observer in Kyrgyzstan in 2005.

HITTING THE GROUND

My first week in Nairobi, I accompanied the consultant I was replacing to meet most of the presidential candidates to privately brief them on the results of our most recent opinion survey, our next to last in the programme. We also called on US ambassador Michael Ranneberger, who expressed his desire to have IRI observe the upcoming election, which my predecessor had been telling me Ranneberger wanted. Any plans for such an observation mission had been disclaimed in Washington the week before, and I had trouble getting anyone back in the home office to take the idea seriously, as they confirmed with USAid that an observation mission was not in the works.

The paperwork with USAid for our public opinion and exit poll programme from 2005 unsurprisingly expressed the agency's concern about the negative trends that had materialised from the seemingly promising democratic breakthrough in the 2002 vote

In preparing for my democracy assistance posting, I had naturally read up on the stillbirth of the promised constitutional reform in the failed "Wako Draft" constitution following the 2002 "Rainbow Coalition" leading to the rise of the Orange Democratic Movement and Kibaki's purge of his erstwhile anti-Moi allies of the 2002 opposition. I also read up on the recent scandals. Of particular concern, of course, were the Anglo Leasing scams involving corruption in important national security acquisitions revealed by John Githongo who was subsequently blocked from carrying forward as "Anti-Corruption Czar" in the Kibaki administration and went into exile in London. Then there was the 2006 raid, only a year old then, on the *Standard* newspaper and the KTN television studios, which evoked the "bad old days" of single-party rule and a tightly controlled press and drew condemnation from the diplomatic community, including the US ambassador at the time, Mark Bellamy. The related "Armenian Brothers" circus made Kenya's security operations look profoundly compromised

by criminals. The paperwork with USAid for our public opinion and exit poll programme from 2005 unsurprisingly expressed the agency's concern about the negative trends that had materialised from the seemingly promising democratic breakthrough in the 2002 vote in which opposition politicians united to support Kibaki against Moi's choice of his predecessor Kenyatta's unheralded son Uhuru.

THE AMBASSADOR WAS SURPRISINGLY UPBEAT

Given this background, I was surprised to find Ranneberger seemingly quite upbeat about the state of things under Kibaki as the campaign started to jell for the upcoming election. He made it clear that he wanted IRI to conduct a blue ribbon election observation mission to feature an "African success story."

My first public event at the embassy residence in the posh Muthaiga neighbourhood was the US Independence Day celebration. The guests of honour were internal security minister John Michuki, representing President Kibaki, and Uhuru Kenyatta, as "the leader of the official opposition." Michuki featured in my mind for taking credit for the infamous *Standard* raid on behalf of Kibaki, saying to the media house, "If you rattle a snake, you should expect to be bitten." "Retired" president Moi, although not in the official receiving line, planted himself front and centre to prominently greet guests. Michuki spoke about his recent "security co-operation" visit to the United States. Vice president Moody Awori was also introduced, but Michuki rather than Awori represented Kibaki.

So the diplomatic tenor had changed for some reason, at least in the approach of the ambassador, who had arrived in mid-2006, although I was perhaps slower than I should have been in fully appreciating the difficulties this would entail for me as an NGO worker engaged in democracy assistance, especially faced with an assertive ambassador who did not formally control our USAid agreement out of Washington, which at the time still involved only the polling and was scheduled to wrap up with a survey in September.

PROCEEDING TOWARDS DISASTER

In August, our office had a distinguished visitor from our board of directors, the late ambassador Richard Williamson, an especially well liked senior figure within IRI. "Rich" took the occasion to visit our Kenya programme while waiting in Nairobi for his visa to Khartoum to travel on to Juba in Southern Sudan. President Bush was to announce his appointment soon as his new Special Envoy to Sudan

and we used the time to take him to meet Raila and Kalonzo as the ODM and ODM-K leaders along with a minister or two, and called on ambassador Ranneberger. Ranneberger again said that he wanted IRI to observe the election. Based on this, Rich was persuaded that we would be doing an observation and afterwards we proceeded to discuss who should be recruited as lead delegate. Rich and my boss who had come out from Washington with him arrived at the idea of Lloyd Pierson, a former IRI Africa director who had been the immediate past USAid assistant administrator for Africa. When I pointed out that I recalled seeing a favourable quote by Pierson in one of Raila's campaign brochures, that idea was nixed. Neither of them had other specific suggestions at the time.

By October the surveys were showing what I sensed to be the conditions 'on the ground' — the opposition under the Orange Democratic Movement had put together in its six-member Pentagon' a broad enough multi-ethnic coalition, building upon the momentum from the unrequited reformist sentiments from 2002, to have a plurality in a divided electorate

Following up afterwards with the USAid Mission, they now said they would “move heaven and earth” to meet the ambassador's wish to fund an election observation mission. Likewise, USAid wanted to extend our polling programme — which started with the exit poll for the 2005 Constitutional Referendum — with an exit poll for the 2007 election. Although I knew that the ambassador was expressing confidence in “an African success story,” expecting a “free and fair” election, and expecting Kibaki to win, USAid told me that the intent of the exit poll, as with the one we had done in 2002, and on this contract in 2005, was among other things to deter election fraud and this was confirmed in our amended agreement.

To cut a long story short, by October the surveys were showing what I sensed to be the conditions “on the ground” — the opposition under the Orange Democratic Movement in the form now of the ODM Party had put together in its six-member “Pentagon” a broad enough multi-ethnic coalition, building upon the momentum from the unrequited reformist sentiments from 2002 and the successful blocking of the insufficient Wako Draft, to have a plurality in a divided electorate. Kibaki was very slow to assent to the start of his re-election campaign and conveyed a vibe that it was beneath him to do such “retail politics.” Formally, Kibaki was the Member of Parliament for Othaya from the Democratic Party, his vehicle since Moi gave in to pressure from activists and politicians like Odinga to allow non-

Kanu parties in 1992. Kibaki had not seemed to want to run as a DP candidate, nor was he willing ultimately to join NARC-Kenya, whose leaders considered themselves the rightful heirs to the 2002 NARC vehicle. The NARC party papers themselves were controlled by Charity Ngilu, a 1997 presidential candidate herself who departed to become the sixth member of the ODM Pentagon. Eventually, Kibaki gave the nod to a new hybrid formation as a re-election vehicle, the Party of National Unity, PNU, both a party through which Kibaki sought re-election to the Othaya seat, and a coalition of various parties associated with politicians in ethnic groups — in other words, a gambit to match up and compete with the regional/ethnic Pentagon.

According to a report published by the US Congressional Research Service in February 2008, during the post-election crisis, by the early fall of 2007, Kibaki's key aides were admitting to their analyst that Kibaki was not going to win the vote. This was supported by the surveys showing a persistent opposition lead. Unlike today, the election then retained the "first past the post" system that had allowed Moi to claim re-election with 40% or less of the vote, officially, in 1992 and 1997. Odinga was consistently polling well shy of a majority but ahead of Moi's 1992 and 1997 numbers, with Kibaki trailing by a few points. As the election date closed in, the race tightened a bit, but the scenario did not reverse, and then ODM opened up a bit more of a lead. Although at the last minute the Gallup organisation of the US came in and did a late poll showing Kibaki trailing by only two points in the national vote - this was trumpeted by Ranneberger as showing the race as "too close to call" - the firms regularly polling the race continued to show Kibaki trailing beyond the margin of error. This included both the reputable Steadman and Strategic pollsters that had had a long relationship with the USAid IRI programme dating back to its inception in the 1990s, including the exit polls from 2002, 2005 and again for 2007.

According to a report published by the US Congressional Research Service in February 2008, during the post-election crisis, by the early fall of 2007, Kibaki's key aides were admitting to their analyst that Kibaki was not going to win the vote

POLL OBSERVATION ON A SHOESTRING

When we got the agreement from USAid for the election observation, funded at a

shoestring amount at the end of the fiscal year, USAid had included descriptions by prior job description of various individuals that the ambassador had mentioned previously that he wanted to have invited. These IRI ignored in preparing for our independent observation as an NGO subject to an international code of conduct for independent election observation. As USAid's right to "substantial participation" in return for their funding, the agreement stipulated its approval of IRI's "lead delegate/s," and it repeated the ambassador's desire for former assistant secretaries of state Chester Crocker and Connie Newman. Ranneberger had worked under Crocker on Angola issues during the Cold War and Newman had served briefly in that role in the first George W. Bush administration, during which time Ranneberger had been her deputy. IRI disagreed with USAid's right to approval of this appointment as a violation of our independence but did invite Crocker and Newman. Crocker was unavailable but Newman, also an IRI board member, accepted. IRI also invited former ambassadors to Kenya Johnnie Carson and Mark Bellamy. Ranneberger in a call to me well ahead of the election had said that Carson "would not be a good idea," and that Bellamy should not be included as he was "considered to be anti-government."

Carson, who was at the time serving as the Africa director for the Office of the Director of National Intelligence had to decline, whereas Bellamy was scheduled to participate. On Thursday, December 13, 2007, two weeks before the election, I got a call from USAid and was asked to fax our final delegation list — due to be released from IRI in Washington that day - to a number for the ambassador. After sending the fax, I was driving to lunch with my wife and a friend, the spouse of another US NGO worker who had been a Carter Centre election observer in another recent African election and had volunteered to help. I received a call from the ambassador who loudly chewed me out to the point that I had to pull over and step out on the roadside. Ranneberger was incensed that we had Bellamy on the list, and said that he was "laying down a marker" that this was not to happen. He said he did not want to hear that it was a decision from my Washington office as he was holding me "personally responsible as the person on the ground." If we did not drop Bellamy he would pull the funding for the observation mission, adding that I should not doubt that he could do this.

Arriving in Dagoretti for lunch, I phoned Washington and my USAid contact in Nairobi. Long story short, IRI's president at the time, who had been assistant secretary of state for democracy, human rights and labour himself during the first

G.W. Bush Administration, called then assistant secretary of state Jendayi Frazer to tell her, as he reported, "to get her ambassador under control," then, on arriving in Thailand for Christmas and Burma meetings, called Ranneberger directly. As a result, I was told to expect that Ranneberger would ask to meet me, and that Bellamy was reluctantly dropped (with a cover story that IRI was not able to secure his plane ticket) but that I was to accept "no more BS" from the ambassador.

The next day, as I was leaving the polling firm, I got a call asking me to come meet the ambassador at his residence the next afternoon. So on Saturday afternoon, December 15, 2007, I drove to the embassy residence in Muthaiga. As it turned out, the purpose of the meeting was more substantive than just smoothing things over after the arm-twisting on Bellamy. I will explain a couple of salient points from this meeting that remain to me significant in trying to learn what happened with the election 12 days later.

I received a call from the ambassador who loudly chewed me out to the point that I had to pull over and step out on the roadside. Ranneberger was incensed that we had Bellamy on the observer mission list, and said that he was "laying down a marker" that this was not to happen. He said he did not want to hear that it was a decision from my Washington office

To start, Ranneberger elaborated on the importance of removing Bellamy from the delegation because of the notion that he was perceived as "anti-government," obviously meaning anti the Kibaki administration. When Ranneberger had originally raised this objection as Bellamy earlier in the month, I had asked for input from our Kenyan programme staff who reported that this did not seem to be Bellamy's general reputation in Kenya and IRI staff had checked this with State Department contacts in Washington and found no support for that view there either.

Ranneberger did let me know that he knew what Bellamy had been told about why he had been dropped from the delegation. In other words, he was letting me know, without taking responsibility for the situation himself, that he knew that "we" at IRI had lied to Bellamy. IRI was in a difficult situation not of our making on Bellamy; would we cancel the election observation (as the only international NGO scheduled to observe, this would raise lots of questions we could not

answer) or let the ambassador interfere with our delegation? Regardless, once the directive from the top was given to lie to Bellamy about why he was off the list, IRI no longer had completely clean hands.

Another thing in particular stands out now from that meeting in light of what I later learned through Freedom of Information Act requests to the State Department after I returned to the US.

The ambassador told me that Saturday that “people are saying” that Raila Odinga, ahead in the polls for president as the vote was nearing, could lose his own Langata parliamentary constituency (which under the existing system would disqualify him from becoming president even if he got the most votes nationally). This was “out of the blue” for me because I certainly was not aware of anyone who thought that. Odinga’s PNU opponent Stanley Livando had made a big splash and spent substantial money when he first announced his candidacy, but he had not seemed to get obvious traction in the race. Naturally, I wondered who the “people” Ranneberger was referring to were. Ranneberger said that a Raila loss in Langata would be “explosive” and that he wanted to take Ms Newman with him to observe voting there on election day.

Ranneberger also went on to say that he wanted to take Ms Newman separately to meet with Kibaki’s State House advisor Stanley Murage on the day before the election, with no explanation offered as to why. I reported all this by e-mail to Washington.

Ranneberger in Nairobi made no disclosure of what he had witnessed but encouraged Kenyans to accept the results announced by the ECK that Sunday and formal congratulations were issued from a State Department spokesman back in the US

Alarm bells went off at IRI’s Washington headquarters when they received my e-mail. I noted Murage’s reputation as “Kibaki’s Karl Rove” (he was also referred to by a former diplomat as “Kibaki’s bagman”). After people were back in the office that Monday, I was called by the top executives present in Washington (in the absence of the then-president in Thailand) in the wee hours of the morning my time. I was instructed that it was imperative that the private meeting with Murage - “absolutely improper” - not take place. Connie was to stay with the rest of the delegation and not go off separately with the ambassador on election day or

otherwise. I was given the option to “pull the plug” on the observation mission based on the concerns about Ranneberger’s approach. The ambassador, rather than either IRI or USAid, had initiated the observation mission in the first place, and IRI was heavily occupied with other, larger observations. Nonetheless, based on assurances that Ms Newman would be fully “on board” in our agreement, that she would steer clear of separate interaction with the ambassador and that the Murage meeting would not happen, and my belief that it would be an “incident” in its own right to cancel the observation, we agreed to go forward with precautions.

A SEPARATE LAST-MINUTE POLL OF THE LANGATA PARLIAMENTARY RACE

I got the idea of commissioning a separate last-minute poll of the Langata parliamentary race. I thought that the notion that Livondo would beat Odinga in Langata seemed farfetched, but objective data from before the vote could prove important. I also made sure that we scheduled an “oversample” for Langata for the national exit poll so that we would have a statistically valid measure of the actual election day results in the parliamentary race.

On to the Freedom of Information releases: On Tuesday, December 18, a Ranneberger cable went to the Secretary of State entitled “Kenya Elections: State of Play on Election.” This cable says nothing about the “explosive” Langata parliamentary race issue that Ranneberger had raised with me on Saturday, three days earlier. It concludes: “Given the closeness of the election contest, the perceived legitimacy of the election outcome could determine whether the losing side accepts the results with minimal disturbances. Our staff’s commendable response to the call for volunteers over the Christmas holiday allows us to deploy teams to all sections of the country, providing a representative view of the vote as a whole. In addition, our decision to host the joint observation control room will provide much greater access to real-time information; allowing a more comprehensive analysis of the election process.”

Next, we have a cable from Christmas Eve, December 24, three days before the election. First thing that morning, the IRI observation delegates were briefed on the election by a top Ranneberger aide. I told him then that we had commissioned the separate Langata poll. He said that the ambassador would be very interested, and I agreed to bring results with me to the embassy residence that evening when the ambassador hosted a reception for the delegation. The results showed Odinga winning by more than two-to-one.

In this cable from the day he learned about our Langata poll, unlike the one on December 18, Ranneberger added a discussion of the Langata race:

“11. We have credible reports that some within the Kibaki camp could be trying to orchestrate a defeat of Odinga in his constituency of Langata, which includes the huge slum of Kibera. This could involve some combination of causing disorder in order to disenfranchise some of his supporters and/or bringing in double-registered Kikuyu supporters of the PNU’s candidate from outside. To be elected president, a candidate must fulfil three conditions: Have a plurality of the popular vote; have at least 25% in 5 of the 8 provinces; and be an elected Member of Parliament. Thus, defeat of Odinga in his constituency is a tempting silver bullet. The ambassador, as well as the UK and German ambassadors, will observe in the Langata constituency. If Odinga were to lose Langata, Kibaki would become president if he has the next highest vote total and 25% in 5 provinces (both candidates will likely meet the 25% rule).

12. The outside chance that widespread fraud in the election process could force us to call into question the result would be enormously damaging to US interests. We hold Kenya up as a democratic model not only for the continent, but for the developing world, and we have a vast partnership with this country on key issues ranging from efforts against HIV/Aids, to collaboration on Somalia and Sudan, to priority anti-terrorism activities.

...

14. As long as the electoral process is credible, the US-Kenya partnership will continue to grow and serve mutual interests regardless of who is elected. While Kibaki has a proven track record with us, Odinga is also a friend of the US . . .

15. It is likely that the winner will schedule a quick inauguration (consistent with past practice) to bless the result and, potentially, to forestall any serious challenge to the results. There is no credible mechanism to challenge the results, hence likely recourse to the streets if the result is questionable. The courts are both inefficient and corrupt. Pronouncements by the Chairman of the Electoral Commission and observers, particularly from the US, will therefore have be [sic] crucial in helping shape the judgement of the Kenyan people. With an 87% approval rating in Kenya, our statements are closely watched and respected. I feel that we are well-prepared to meet this large responsibility and, in the process, to

advance US interests.” END

None of this material about a possible scheme to steal the election in Langata — or the notion that being “forced” to question the election result would be “enormously damaging to US interests” was mentioned in the briefing to the observation delegation or to me that Christmas Eve. Weeks after the election, the *Standard* newspaper ran a piece reporting that the original plan of the Kibaki camp had been to rig the Langata parliamentary race, but at the last minute a switch was made to change the votes at the central tally, supposedly on the basis of the strength of early returns for Odinga in Western and Rift Valley Provinces.

Ultimately, the election resulted in disaster, with at least 1,200 killed and half a million displaced in post-election violence after open rigging.

The Electoral Commission of Kenya had voted earlier in December, according to the subsequent report of the Kreigler Commission, not to use laptop computers that had been purchased as a key feature of the USAid-funded election assistance effort through the International Foundation for Electoral Systems. This decision was never explained and without the computers there was no way to quickly get verifiable results from the voting stations quickly to Nairobi.

The reality of the process was explained to me by a Member of Parliament during the post-election violence (PEV). He said that weeks before the election, when Kibaki had broken the crucial precedent first negotiated between the opposition and Moi back in 1997 to split the authority to appoint members of the Electoral Commission and unilaterally stacked the Commission with 19 of his own choices in the 21 spots, the political players recognised that the process was going to be a no-holds-barred scramble for power and all bets were off on rules.

Also that January, during the PEV, a third-country diplomat explained to me privately that his country had learned that ECK returning officers in key locations had been paid “life changing” amounts of money to turn off their cellphones and drop out of contract with Nairobi so that the vote totals under their jurisdiction could be “marked up” in Nairobi to increase the president’s votes for re-election (consistent with what Ranneberger described in his then-classified January 2, 2008 cable as discussed below). This diplomat explained that his country had discovered the bribery too late, supposedly, to do anything about it. One possible reason for the alleged bribery to be discovered so late would be that the scheme

to mark up the central tallies was a last minute substitute for the “credibly reported” Langata scheme Ranneberger mentioned in his Washington cable of December 24 and his meeting with me on December 15.

I expected that the president’s men would learn that IRI had also undertaken the special poll of the Langata Constituency. After the stacking of the ECK, another fateful turning point seems to me to have been the deployment by the president’s re-election team of the Administration Police in the days before the vote. This was something we all witnessed on live television thanks to broadcast reporting from KTN, but which the government denied. The ambassador’s aide confirmed to our observation delegation that this deployment was in fact a use of government security resources for the president’s re-election. Two of the deployed AP officers were killed by mobs and it seems that the atmosphere of a physical power struggle rather than a contest of democratic persuasion ratcheted up that much more at that point.

The fact is that I never have been able to identify a time when Kibaki actually said in public during my time “on the ground” that he was actually willing to entertain losing the election and giving up office in favour of the opposition. Eventually, shortly before the vote, his foreign minister, Moses Wetangula (now in the opposition) said that such a willingness was there, but he seemed to be conspicuously speaking to foreign diplomats rather than to ordinary Kenyans. To this day, no incumbent president in Kenya has ever been found by election officials to have lost a re-election bid.

DONOR VS. DONOR: THE UNITED STATES AND THE EUROPEANS SPLIT

On Wednesday, January 2, 2008, Ranneberger cabled Washington about witnessing with the head of the EU Election Observation Mission, Alexander Graf Lambsdorf, the changing of the vote tallies at the ECK headquarters over the weekend before, leading to the announcement of a Kibaki win on the evening of Sunday, December 30, 2007. The cable, which was declassified and released to me in redacted form through the Freedom of Information Act, reports “[M]uch can happen between the casting of votes and the final tabulation of ballots, and it did.”

The ECK’s partial review of the irregularities was also of questionable credibility, given that all of the commission members were appointed by the Kibaki

government, and a number of them were suspected of being clearly biased and/or involved in doctoring at ECK headquarters. The Chairman of the ECK, Samuel Kivuitu, who was widely respected, was surrounded by staff of uncertain reliability and competence. It is worth noting that parliamentary results were not disputed because they were tabulated and announced at constituency tabulation centres, thus allowing no interference at ECK headquarters.

Presidential results by polling station never were published. The suppressed media reporting of the election results that disappeared with Michuki's broadcast ban did not resurface except for the admission by the owner of the Citizen network in parliament in December 2016 that the numbers had indicated an Odinga win

Kivuitu had only limited authority as head of the ECK. The ECK worked on a majority vote system. It is also important to note that the ECK was required by law to announce the results as received from the tabulation centres. Some obvious irregularities like reporting unrealistically high turnout or clearly altered results could be rejected. There was, however, only a rejection of the results in one constituency in which violence resulted in destroyed ballots. Other alleged irregularities, such as announcing results that ECK personnel personally inflated, should have been, could have been, but were not corrected. At one point Kivuitu told me that his concerns about the tabulation process were serious enough that "if it were up to me, I would not announce the results." In the end, he participated with other commissioners in an announcement late on December 30.

My team and I, as well as the head of the EU observer mission, were at the ECK vote tabulation centre throughout the tabulation process, and aggressively intervened with Kivuitu and other commissioners and staff to work for transparency. Our judgement is that the tabulation process was seriously flawed but, without having direct access to polling station numbers and doing a polling-station based recount, it is impossible to determine which candidate actually received the most votes. We had consistently predicted a close election. There were accusations of serious irregularities with respect to about 20% of the 210 constituencies. Some ECK insiders have alleged that the purpose of the delay in announcing the results in some of the constituencies was to determine the true count and then rejig it in such a manner as to make up for gaps in the votes for Kibaki.

Announced results differed from results initially received by ECK from the tally centres. We have seen documents that illustrate this. In a close election, with Kibaki winning by about 230,000 votes, such irregularities may have been enough to make a difference.

Nonetheless, Ranneberger in Nairobi made no disclosure of what he had witnessed but encouraged Kenyans to accept the results announced by the ECK that Sunday and formal congratulations were issued from a State Department spokesman back in the US. Live broadcasting was shut down by order of Michuki. Eventually, I received on appeal of a FOI Act request originally from 2009 a copy of a document prepared by the State Department in Washington as “talking points” for the media on election day itself that “spins” an acceptance of an announcement of a Kibaki win with opposition objections.

European foreign ministries and diplomats in the meantime criticised what was obviously a highly irregular process with the suspect tallies and the hurried, secretive swearing-in of Kibaki. On Monday, the State Department changed position through its main spokesman in Washington, saying that “we are not congratulating anyone.” On Tuesday, New Year’s Day, the EU observation mission held a press conference and released its preliminary report, making clear that the election process had fallen [“far short of key regional and international standards for democratic elections. Most significantly, they were marred by the lack of transparency in processing and tabulating presidential results, which raises concern about the accuracy of the final result in this election.”](#) The EU observers and other Europeans called for remedial measures, including an immediate independent investigation and audit, with all results openly published. Ranneberger, however, instead of supporting the European calls for remedial action, was immediately promoting “power sharing” for Odinga with Kibaki instead.

The EU seemed to switch positions and come around to support the State Department’s posture, abandoning remediation in favour of “power sharing.” In that time of heightened sensitivity, trying to decipher what was happening, I tied this contemporaneously to reports that secretary of state Condoleezza Rice called EU head diplomat Javier Solano on Thursday, January 3. My 2009 FOI Act request for documents related to that call identified that there was such a document but it was classified and remained too sensitive to release in any form at all. I appealed to no avail, and then last year submitted a request for Mandatory Declassification

Review, which was also denied on the same grounds. My latest appeal of that decision has been pending for a few months now.

Many years later, a former senior diplomat was willing to tell me that the US policy was not to assist Kibaki over Raila, and that the US expected consistent relations going forward either way — which fits with the pre-election Nairobi to Washington cables I had got from FOI — but that the policy was to support whatever the ECK announced. A blunter take on what Ranneberger claimed in his cable of December 18, that it would somehow damage US interests if we were “forced” to question the ECK’s results. Assuming it to be true that the State Department was going to back whatever the ECK announced regardless, it was unlucky for me that no one told me about this before the election, as I surely would have taken the opportunity to cancel the IRI election observation mission since the State Department was not supporting the democracy assistance purposes of our agreement with USAid in working for free elections and observing independently in order to, among other things, oppose fraud.

EXIT POLL TOO HOT A POTATO

This policy would also suggest a reason that the exit poll that we conducted for USAid, which indicated a win for Odinga rather than Kibaki, was such a “hot potato” that it was held without public comment by IRI until a statement of January 15, responding to leaks of the results, that the poll was “likely invalid”, then on February 7, after it became a topic of inquiry in a US Senate hearing, definitely “invalid,” then released as valid in August, the day before the experts from the University of California, San Diego who had been heavily involved in the poll design and execution were to testify about it to the Kreigler Commission, having released it themselves in July after a six-month embargo imposed in their consulting contract with IRI.

Ranneberger insisted, though USAid, over my objection, on getting preliminary results of the exit poll on the afternoon of the voting before the polls closed, but clearly did not want the results released to the public as the other exit polls for USAid had been. Ranneberger answered questions from Kenyans and others in an online State Department Q&A on March 12, 2008 while the exit poll was still officially “invalid” and claimed that the poll had just been a “capacity building programme” and never intended to be released.

The USAid contract documents, which I of course had myself and of which I also obtained copies of through FOIA, show the contrary, and I also got a copy of the plan for public release by IRI of the first poll under that agreement, the exit poll from the 2005 Wako Draft referendum. If the State Department policy was to affirm whatever the ECK decided, the exit poll with a contradictory result was decidedly inconvenient.

I did not get anything about this from my FOIA requests, but in the fall of 2010, *Daily Nation* ran a story reporting that *Wikileaks* had published documents indicating that three members of the ECK itself had been slapped with “visa bans” by the United States in February 2008 on the basis of evidence that they had accepted bribes. Although Ranneberger had tweeted that former Attorney General Wako was subject to a visa ban at some point, nothing has ever been said publicly by the State Department to my knowledge about the ECK bribery issue.

At the end of the day, Kibaki stayed in office throughout for his second full term. On February 28, he signed his deal with Odinga for “power sharing,” against the active resistance of many on his side. From his unilateral Cabinet appointments of January 8, Kalonzo Musyoka stayed on as vice president and Uhuru Kenyatta was promoted to deputy prime minister from local government minister when the Cabinet was expanded to include various opposition figures in the “Government of National Unity,” including Odinga as prime minister and his running mate Musalia Mudavadi as the other deputy prime minister. Of the two lions who faced off at the Kenyatta International Conference Centre as the drama over the late and missing election returns played out, Martha Karua stayed on for a time as justice minister before resigning, and agriculture minister William Ruto realigned politically after he came under fire over corruption allegations, as well as the ICC charges for the PEV that also stuck to Kenyatta.

THE POLITICIANS FORGIVE THEMSELVES

Collectively, Kenya’s leading politicians agreed to forgive themselves for the election fraud, and for the post-election murder and mayhem. The Kreigler Commission made recommendations for the future, but stayed off the crucial machinations at the ECK. Presidential results by polling station never were published. The suppressed media reporting of the election results that disappeared with Michuki’s broadcast ban did not resurface except for the admission of the owner of the Citizen network in parliament in December 2016

that the numbers had indicated an Odinga win. With much shuttle diplomacy and artful stonewalling of requests for phone, banking and property records — along with a lot of extraordinary misfortune and changes of heart by witnesses, the ICC was thwarted and no local tribunal ever convened to address the violence.

Early during my time in Kenya, Moi and Kibaki made up after their 2002 rift, with Kibaki appointing Moi as his envoy for the Sudan/Southern Sudan negotiations and Moi endorsing Kibaki's re-election. For 2013, Kibaki completed what had been Moi's original intention of handing off to Uhuru Kenyatta from 2002, with Ruto back in the fold after his brief time in opposition in 2007-08. Again, in 2013, USAid financed a results transmission system for the electoral commission through IFES. The procurement was botched and the system was not workable, but rather than being shelved from the outset it was set up and used initially to show up on a big screen at Bomas of Kenya some partial results indicating a large lead for Kenyatta before being shut down.

Weeks after the election, the Standard newspaper ran a piece reporting that the original plan of the Kibaki camp had been to rig the Langata parliamentary race, but at the last minute a switch was made to change the votes at the central tally

Without knowing the background of the botched procurement, “experts” told the media this slice of results indicated a “commanding lead” for the Uhuruto ticket from the onset.

The local civil society think tank AfriCOG (disclosure: I consulted briefly with AfriCOG on “observing the election observers”) petitioned the High Court to enjoin the electoral commission from announcing “final” results with the results transmission system shut down but was turned down on jurisdictional grounds, even though the High Court found the petition to raise significant questions. In the absence of the legally prescribed system to transmit the results to Nairobi, there was once again physical drama at the central headquarters, with observers excluded and no backup system in place to obtain verified results from each polling station — the only location where the paper ballots are counted.

Once again, observers were excluded as noted in the final reports of the Carter Centre and Election Observation Group (ELOG) funded by the donors as international and domestic observations respectively. The electoral commission

announced final results six days after the vote, with a day to spare on the deadline, even without all the polling station results. Coincidentally, I am sure, the Uhuruto ticket was determined to have .07% more votes than needed to avoid a runoff. The Supreme Court held a truncated hearing quickly following the election, consolidating the challenges to the electoral commission by AfriCOG and by the opposition. The court excluded much of the evidence submitted by the opposition and ignored much of that submitted by AfriCOG; it ordered a recount of votes from a sampling of boxes, but then went ahead and ruled, declining to upset the announced commission verdict without the limited recount being completed and in spite of the fact that significant discrepancies materialised.

Significantly, the Supreme Court found that the botched procurements of key technology, the results transmission system and voter registration and identification systems, smacked of fraud and ordered that they be investigated on that basis. A mere ruling by the Supreme Court was not enough to actually prompt any such investigation in Kenya, unfortunately. Months went by without publication of alleged election results and the electoral commission even refused to testify to parliament. What was eventually published later was incomplete. The electoral commission members were eventually swapped out once again, early this year, after the opposition was willing to expend a small number of lives to protest the inaction of the incumbent government in regard to issues that now included convictions in the UK for bribes paid to Kenyan election and education officials in the scandal known as "Chickengate." Like the old ECK, the members of the commission were bought out rather than fired, and of course there has been impunity for the bribery even though it was proven in court in the UK.

HERE WE GO AGAIN

So here we are again, in 2017, and I am waiting for answers to my questions as to who is paying for the acquisition of this year's version of the results transmission system, the so-called Kenya Integrated Election Management System, or KIEMS. I hope it is straightforward and transparent and handles the simple task of sending the results of the vote counting at the polling stations to Nairobi this time.

As an American, it is none of my business whom Kenyans vote for, but with all the investment of Kenyan blood, sweat and tears, and American and other donor funds, I will be disquieted until Kenyans are able to count on knowing how they have voted and be in a position to move their frozen politics forward with the kind

of hope that existed before the debacle of 2007.