



**A road less travelled:  
Parliamentary approaches to conflict prevention,  
reconciliation, and peace building**



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## **Kenya: conflict prevention through constitutional and institutional reforms**

**Background to conflict:** In December 2007, Kenya experienced its worst post-independence crisis. Claims of vote rigging after the presidential and parliamentary election results were announced and low levels of trust in the Electoral Commission of Kenya (ECK) led to an outbreak of violence, which resulted in approximately 1,300 people being killed, over 600,000 people displaced, and widespread destruction of land and property. Violence occurred between government officers and supporters of the opposition, between members of the two main political coalitions, and between various ethnic communities often over longstanding land disputes.

Following the visit of President John Kufuor, the then Chair of the African Union, a panel of Eminent African Personalities, led by former UN Secretary General Kofi Annan, was established and was charged with helping Kenyans find a solution to the conflict.<sup>1</sup> By February 2008, Kofi Annan had brokered a power-sharing agreement involving the establishment of a grand coalition with President Mwai Kibaki retaining the presidency and the challenger Raila Odinga taking on the newly-created post of Prime Minister. The grand coalition government also included representatives from the two main political coalitions, and was tasked with writing a new constitution and pursuing other necessary reforms, investigating the shortcomings of the ECK, formulating a new land policy, and establishing a truth and reconciliation commission. Under the agreement the Waki Commission was established to investigate the violence, identify the causes, context and question of responsibility and recommend a course of action. It released a report with the recommendation that a Special Tribunal for Kenya be formed, failure to which the International Criminal Court (the ICC) would take over the case. It subsequently submitted the names of the presumed perpetrators to Kofi Annan, who, in turn, passed the list to the International Criminal Court.<sup>2</sup> An Independent Review Commission on the General Elections (the Kriegler Commission) was also established to assess shortcomings in the electoral process and to make recommendations for improvements. It concluded that the weak constitutional, institutional, and legal framework for Kenya's elections required an overhaul and that the ECK, which was unable to maintain confidence in the election procedures, had to be disbanded.

**Achievements:** Later in 2008, the Parliament fast-tracked the Agreement into law as the National Accord and Reconciliation Act. A most important step of the government of national unity was the promulgation of a new Constitution in August 2010. Kenya's parliament, pursuant to the above-mentioned roadmap made a crucial contribution to the drafting of the new Constitution. The Constitution decentralizes political decision-making and introduces a bicameral legislature, with stronger power, including more accountability by the president to the parliament as well as the

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<sup>1</sup>The panel consisted of former UN Secretary General Kofi Annan, former President of Tanzania Mr. Benjamin Mkapa, and former South African First Lady Mrs. Graca Machel.

<sup>2</sup> The Kenyan Government was given one year, beginning July 2009, to set up a special tribunal with a mandate limited to try crimes committed following the last elections.

parliament's right to impeach the president. It furthermore introduces electoral reforms for the presidential elections and quotas to ensure greater female parliamentary representation. The Independent Electoral and Boundaries Commission (IEBC), which replaced the ECK, enjoys high levels of trust and confidence among Kenyans, which is largely derived from the fact that Commissioners are hired through a competitive process and vetting by the relevant parliamentary committees. Similarly, the Parliament nominated Judges to sit on the Electoral Dispute Resolution Court.

**Parliamentary involvement in conflict prevention:** To assist national reconciliation, the IPU convened a high-level seminar in Nairobi already in 2008 to assess the parliament's role in reconciliation and institutional reform process. The seminar adopted a roadmap which set out a number of time-bound actions to be taken by the parliament. A high-level commission was established to oversee the implementation of the roadmap with support from the IPU.

By January 2010, the Parliament had carried out most of the actions included in the roadmap in terms of legislation and institutional reform. It had also worked on its own internal processes, adopting new Standing Orders to allow, among other things, for equal opportunity. It had instituted live broadcasting of its proceedings in order to introduce transparency and increase the people's trust in parliament. It had also passed the Truth, Justice and Reconciliation Act paving the way for the appointment of the members of the relevant Commission. Parliamentarians contributed financially and in a highly symbolic way to efforts to resettle persons displaced during the post-election violence, by contributing Ksh 50 000 each from their emoluments. The Speaker of Parliament has been acknowledged as having played a strong role in leading the parliament in these efforts. In 2010, he was voted the most popular institution in the country for his firm and impartial stewardship.

Furthermore, in 2011, the parliament passed the Political Parties Act in a bid to professionalize and institutionalize political parties, which have traditionally been fragmented. Under this law, persons are not allowed to join more than one political party, and political parties are required to recruit no fewer than 1000 members who are registered voters in more than half of the counties, and they are required to promote the participation of women, youth, and persons with disabilities in their structures and political processes.

Generally, the speed at which parliament has acted to enact the reforms called for in the reconciliation agenda has been seen as crucial for the implementation of this agenda in view of elections in 2013.

**Unresolved issues:** In order to ensure the application of the gender quota, the Parliament still needs to pass the 2011 Constitution of Kenya (Amendment) Bill. Although the Political Parties Act has been enacted, implementation remains weak and political party registration often does not follow the given requirements. Furthermore, political organization in view of the upcoming elections continues to be along ethnic lines, suggesting that this root cause of conflict has not been resolved yet.

The Truth Justice and Reconciliation has been bogged down by internal squabbling. Both the government of Kenya and the Parliament attempted to stop the ICC process. The Parliament voted in favor of removing Kenya as a state party to the Rome Statute, the international treaty which established the Court. The parliament itself has to pursue efforts to enhance public trust in the institution. The outcome of the 2013 elections will be determining as to how far Kenya has gone in fostering inclusion which has been historically elusive.

***Questions:***

- What measures has Kenya's parliament taken to prevent an outbreak of violent conflict as a result of the upcoming elections in 2013? What mechanisms that the parliament established are directed at parliamentary behavior vis-à-vis mechanisms that are external to parliamentary processes?
- What measures has Kenya's parliament taken to make the decision-making processes on how to prevent future violent conflict inclusive?
- How important were the mediation efforts by the international community for establishing political stability? How could the process have been strengthened through greater engagement of parliament?