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## After the Count...

*François Grignon, Marcel Rutten*

As in 1992, Kenya woke up from the 1997 general elections with a serious political hangover. Once again President Moi was sworn in to protect the lives and property of all in Kenya and once again this oath, taken in front of the Tanzanian and Ugandan Presidents, Benjamin Mkapa and Yoweri Museveni, respectively, proved to be nothing more than a meaningless ritual. The two neighbouring presidents asked Kenyans to avoid chaos and bloodshed at all costs. However, by the end of January operations of ethnic cleansing had resumed in Njoro and Laikipia (Chapter 20) while, on the political front, half of the opposition was negotiating its co-operation with the newly formed government. Even Mwai Kibaki's DP, which had initially rejected the results together with Raila Odinga's NDP, finally took up its seats in parliament. Still, Kibaki filed a petition to challenge Moi's election and another 26 election petitions were taken to court by people looking for the nullification of the election results (see Appendix 5). However, despite the well documented rigging of elections in at least seven constituencies, which invalidated KANU's majority, the international community led by the United States lauded President Moi's re-election and acknowledged the formation of his government. Still, the foreign countries, especially the Europeans, aired a more critical opinion than the domestic observers who in a surprising report had claimed as early as 3 January that the 'results represented the wishes of Kenyans despite numerous anomalies'. Only opposition politician Kenneth Matiba, who had opted not to join the 1997 presidential race and declared these elections as rigged from the start, called for a constitutional review to be followed by fresh elections. He also registered a new party Saba Saba Asili.

Over the following two years, Kenya appeared to shrink a little more in a state of economic, political and administrative decomposition that will be remembered as the trademark of the last years of the Moi era. Even three successive reshuffles and the appointment of a World Bank-inspired 'dream team', led by Richard Leakey at the helm of the civil service, could not shake off the status quo and the image of gloom and doom.

'If you can't beat them, join them'. This popular saying became, with the opening of the eighth parliament, the guideline of two opposition parties:

FORD-Kenya and NDP. KANU's tiny majority in parliament was quickly reinforced by roughly three dozen MPs and managed to have its incumbent speaker, Francis ole Kaparo, easily re-elected. As a reward for its collaboration, the NDP had its own candidate, Joab Omino, elected as a deputy speaker. He is a former football player and executive of the Kenya Football Federation turned businessman and MP for Kisumu Town East.

Despite the few skirmishes that welcomed the opening of the debates of the eighth parliament, as early as February 1998, it became obvious that the main political battle in the country did not take place within the national assembly, but within the government over the succession to President Moi. The rift between KANU-A and KANU-B leaders quickly resurfaced even though the latter had been humiliated by the electorate and beheaded by the non-reappointment of Prof. George Saitoti as vice-president. KANU headquarters were repeatedly pressed by their backbenchers to have party polls to line up a leadership in accordance with the supporters' wishes, but that became another of President Moi's empty promises.

By February 1998, Joseph Kamotho, one of the main contenders of the KANU-B faction, was re-appointed to the cabinet as minister for Trade, together with Shariff Nassir, the long-time hawkish and sabre-rattling 'king of Mombasa', who was given the home affairs ministry. On the other side, KANU-A's Simeon Nyachae, who was apparently given the Ministry for Finance so that he could be blamed for the non-resumption of international aid to Kenya and therefore become unpopular while raising taxes and laying off civil servants, managed to do away with his KANU-B watchdog, permanent secretary Sally Kosgei who was transferred in February back to the Office of the President over personal differences with her minister.

Two months later, after a meeting convened in Mombasa by an independent NGO on the strategy to be adopted for the economic recovery of the country, daggers were drawn in public. Nyachae, one of the key speakers, led a government delegation to confess to the nation that the government was 'broke'; that it would have to reduce public expenditure by roughly Ksh. 20 billion in the coming months; and that this could only be achieved through the tightening of every civil servant's belt. The latter would not only lose most of his/her allowances and the use of 'GK' cars for private business but would have to accept a drastic review of President Moi's pre-electoral promises to increase civil service salaries.

Indeed, the financing of the budget deficit through treasury bills and bonds had brought the stock of government domestic debt to Ksh. 158 billion (26.7 per cent of the estimated GDP) which alone consumed 15 per cent of the national revenue (EIU 1998:14). On target for cancellation was also the 150-200 per cent salary increase promised by the government to its teachers over

three years. With an overall civil service salary slip amounting to 35 per cent of government revenue, and the current vicious circle of financing debt service though more endebting, Simeon Nyachae rightly predicted that the government would go bankrupt before the end of the just opened parliamentary term.

This bold and straight talk, together with the confession that corruption was rampant within the government, made in front of the opposition, the diplomatic community and three quarters of KANU MPs, enraged Daniel arap Moi, who claimed he had not been informed of the meeting, had not authorised it and would not enforce its recommendations. According to the president, the state of the economy could not be discussed publicly, 'with every Tom, Dick and Harry'. The president summoned the KANU Parliamentary Group (PG) to an urgent meeting in Nairobi. Yet, over the subsequent PG meeting, more than 80 KANU MPs refused to condemn Nyachae for his speech in Mombasa and strongly expressed their support for drastic economic reforms in the country. In a face-saving public relations exercise, President Moi officially reached the same conclusions at a meeting hurriedly organised in Mbagathi, Nairobi, which recommendations were to become the government's programme of action for the months ahead. Desperate for cash and for the resumption of international support for its balance of payments, the president finally gave in to the international community's agenda. It started the process of privatisation of key public assets, such as the posts and telecommunications services and Kenya Commercial Bank, and re-activated the Goldenberg trial, and re-launched the activities of the Kenya Anti-Corruption Authority (KACA), led by former 1992 PICK presidential candidate, John Harun Mwau. The media was also partially liberalised. For example, the BBC was granted a frequency to broadcast on FM and the Nation Group (publishers) finally received its TV and radio licences despite some initial reluctance. In order to render broad-casting services, the Nation Group first acquired the East African Television Network, which organisation was granted an operating license by the government. However, when the group took over its subsidiary that license was revoked. However, after a few months of legal tussle and protest, the Nation Group was finally granted the rights to broadcast in the Nairobi area.

This goodwill attitude was acknowledged by the Paris donor's club, which agreed in June to reschedule Kenya's loan payment of Ksh. 4.2 billion in foreign aid and grants after a three-year grace period. In July, the World Bank also decided to advance a Ksh. 2.4 billion loan to deal exclusively with El Niño-related destruction of public infrastructure in 23 districts. Already in January 1998, Central Bank governor Micah Cheserem had called for reopening the talks with the IMF to guarantee loans to repair the country's devastated infrastructure. The government had, nevertheless, to agree that the loan would be administered by an independent body and not by the Ministry for Public Works.

Six months after his appointment, Finance Minister Simeon Nyachae looked as if he had managed to establish himself as the strongest candidate for the Moi succession. His tight monetary policy, control of post-electoral inflationary trends and good working relations with Central Bank Governor Cheserem and the IMF began to build an international statesman's credibility which was threatening the interests of KANU-B which in response launched desperate attacks against him within and outside the ruling party.

The first one came from John Harun Mwau's anti-corruption team which claimed to have uncovered mismanagement by close Nyachae aides at the Treasury, including Samuel Chebii, the respected former commissioner of customs whose removal from office in July 1997 had triggered the suspension of IMF and World Bank support. An enraged Nyachae displayed a rare show of power when he quickly dropped all charges against his associates by Attorney General Amos Wako and managed to have Mwau suspended from his job and submitted to a public investigation in the misuse of his powers. One of Nyachae's wives was then accused of obtaining favours to market tea bags privately, but the combative Nyachae easily sailed through these attacks. By September, he had even demonstrated that he could efficiently flex his political muscle and that he was seriously committed to his Budget Day promises of streamlining public expenditure. The successive labour actions in August and September of the bankers and the teachers had to abort and they had to accept government's increased taxation and a salary freeze without any compensation.

Second on the list of possible successors was the minister for Agriculture Musalia Mudavadi who had improved his credentials in September by successfully mobilising the unhappy backbenchers of the party against a motion of no-confidence brought against the government by rebel FORD-Kenya MP James Orenge. A possible leader of a KANU-C faction, composed of young Nandi and Luhya leaders and other backbenchers from the Rift Valley, Western and North-Eastern provinces he mobilised for a change of guard within the party. Mudavadi also positioned himself as a possible alternative to Nyachae or Saitoti for vice-president. With co-operation between KANU, NDP and FORD-Kenya bringing obvious benefits and minimum costs to the regime in parliamentary matters, the chances of KANU-A's front runner, former VP George Saitoti regaining his automatic successor's seat looked dimmer and dimmer.

This intense politicking nevertheless looked increasingly cut off from the reality of the country. In addition to the coffee, tea, rice, dairy and sugar industries being in total disarray owing to mismanagement, there were other problems such as corruption and violent actions of desperately impoverished farmers, the road network being in shambles after the horrendous El Niño rains, and the 7 August bomb blast, thought to have been executed by Muslim

extremists from outside the country. The blast destroyed the American embassy and neighbouring buildings, killing some 250 people and brought an extra economic disaster by heavily undermining the recovery chances of the tourism industry. GDP growth for the year 1997 had already fallen to 2.3 per cent from an expected 5.0 per cent, and it did not climb higher than 1.7 per cent for 1998. Tight monetary policies followed by the government eased the control of inflation but the high cost of credit and high interest rates made it impossible for other than speculative investments to take place and revive the economy through national consumption.

Moreover, with time the reformist credentials of the government appeared to be closer to a public relations exercise than a strong commitment. The constitutional review process was initially launched by Attorney General Amos Wako within the limits of an Inter-Parties Parliamentary Group (IPPG) in accordance with the flawed Act voted the previous year. It was then opened to other stakeholders (churches, NCEC, NGOs) during all inclusive internationally-funded negotiations at Safari Park Hotel in Nairobi, after heavy protests and international pressure. But they were finally stalled by the government once an agreement had been reached on a three-tier consultation and power-sharing review process between district, parliamentary and civil society representatives. After months of silence on the issue, President Daniel arap Moi finally announced, at the end of April 1999, that the process should once again be referred to the KANU-dominated parliament. By the end of 1999, Raila Odinga had taken over the mantle and was leading consultations over the necessary reform process, assisted by a team of NDP and KANU colleagues. An IPPG flawed scenario was slowly taking shape.

Similarly, in June Daniel arap Moi had announced his commitment to establish the truth on the ethnic clashes by instituting a presidential commission of inquiry chaired by the respected Judge Akilano Akiwumi. Yet, even though the proceedings of the commission's hearings confirmed a number of public suspicions on the involvement of the KANU leadership in the Coast and Rift Valley violence over the past few years, the report submitted to the president in June 1999 was never published and no prosecutions were ever attempted against the culprits. Surprisingly, nominated KANU MP Rashid Sajjad had confessed that the funding of 'KANU youth activities might have led to the violence' and Catholic Father John Kaiser directly incriminated cabinet ministers William ole Ntimama, Nicholas Biwott and Julius ole Sunkuli in the clashes of Narok and Trans Mara districts. After a few months of proceedings, Bernard Chunga, the director of public prosecutions (DPP), had even been rushed to lead the cross-examinations in Nakuru, apparently because his young predecessor appointed to assist the commission was giving too much leverage to the victims. Old habits of violence and graft die hard

and the hopes that the final mandate of Daniel arap Moi would be different from the two previous ones clearly vanished.

In February 1998, Prof. Kivutha Kibwana, one of the NCEC co-convenors had been kidnapped for a few hours, physically threatened by individuals identified as special branch officers and told to mellow his stand on constitutional review. In May 1998, opposition and KANU MPs who had teamed up to diffuse ethnic tensions in the Rift Valley were violently attacked by the police and KANU youths. Then, as Lamu West MP Fahim Yasin Twaha was accused of stealing and dumping 160,000 bags of sugar from Say Enterprise in Shimanzi, Mombasa, and was subsequently sacked from the government, a serious financial crisis hit the country and once again damaged its credibility. In August, the Central Bank of Kenya had to put five political banks under statutory management for failure to respect their cheques' clearing requirements (Trust Bank, Bullion Bank, Reliance Bank, Prudential Bank and City Finance Bank) due to insider lending and loan defaulting from politicians or politically connected directors. By November, the two biggest countrywide banks, Kenya Commercial Bank and National Bank of Kenya (NBK) were shaken by revelations on the amount of their non-performing loans, most of them having been attributed to politicians or politically connected individuals. In December NBK, the second banking operator in the country, announced a loss of Ksh. 2.8 billion and a total of outstanding non-performing loans of Ksh. 18.8 billion, close to 84 per cent of its loan base. By April 1999, the government had to bail out NBK twice, amidst public outcry, injecting a total of Ksh. 4.5 billion into the financial institution to keep it afloat.

As the list of the most important debtors was presented in parliament and included names such as Prof. Sam Ongeru the minister for Local Government, Kipkalya Kones, minister for Public Works, KANU Baringo secretary Hosea Kiplagat, former State House comptroller Abraham Kiptanui and presidential aide Joshua Kulei, the government decided to cover for them, endorsing once again the misappropriation of public resources and the impunity of the culprits. The released names of other bank debtors provides an interesting who's who of the KANU establishment crossing widely through the civil service, the judiciary, the ruling party and the politically connected private sector (for full list of names see *Daily Nation* 28/11/98).

Meanwhile, Kenya had also woken up to the Karura forest land-grabbing saga. In October 1998, the revelation of an allocation of 80 ha of Nairobi prime forest land to private interests as a reward for electoral funding sparked a heated debate in parliament, demonstrations and violent confrontations in the city centre and on the developer's allocated site, close to the Gigiri United Nations Centre. After the Karura files had mysteriously disappeared from the registry, Land Settlement Minister Noah Katana Ngala exacerbated the

tension when he refused to name the allottees *in personae*, and only provided the public with the list of companies fronting for individuals suspected to be June Moi, Rashid Sajjad and other KANU financiers. Yet, despite the national outrage, Natural Resources Minister Francis Lotodo remained unmoved and announced the de-gazetting of 930 ha additional land across the country in January 1999.

By the end of 1998, the unbreakable Kamlesh Pattni of the Goldenberg scandal was again in the news. He publicly denounced an extortion of Ksh. 20 million organised against him by the former limelight of Kenya's radical opposition, Kikuyu MP Paul Muite, to keep secret damning evidence in the Goldenberg trial. The indebted politician, incapable of exonerating himself from the allegation soon became a parliamentary outcast. Yet, Kamlesh Pattni also suffered from his outbursts. In March, the former executive of Goldenberg International was re-arrested as new evidence was brought against him in the never-ending trial that saw his lawyers sinking in more paperwork. Nassir Ibrahim Ali, the owner of the Duty Free Complex, which was supposed to have received the gold exports, swore in an affidavit presented to the court that he had never received any shipment, confirming that the claims made by Pattni to the Treasury for export compensation were indeed fake. Pattni blamed Muite for this new development.

Throughout 1998, the Kenyan government had seemed totally paralysed by its internal wrangles on the presidential succession. Despite the success over no-confidence motions brought against the government, the absence of internal party elections due since 1993 and the persistent domination of a highly unpopular KANU-B establishment at the helm of the party had caused regular outbursts of protest from the KANU backbenchers who threatened to undermine the action of the government.

The only political will Daniel arap Moi finally managed to display at the beginning of 1999 appeared to be the continuation of his past choices despite their electoral failure and a total retreat on any commitment to reforms. In February, an attempted reshuffle turned into a battle. Simeon Nyachae resigned from the government after refusing to be demoted to a junior ministry and he was replaced by Francis Yekoyada Masakhalia, a former civil servant and MP for Butula, who was close to Moi's long-time aide, Nicholas Biwott.

Similarly, the youthful mayor Najib Balala had to resign from office in Mombasa after KANU councillors blocked his widely acclaimed plan to revamp the city. Two months later, on 2 April 1999, scandal-ridden George Saitoti was finally re-appointed vice-president, and his leadership endorsed by the party. In July he survived a motion of no-confidence brought by rebel NDP MP Otieno Kajwang'. Saitoti's reappointment ended a period of over 15 months during which Kenya had been without a vice-president.

From January to June 1999, KANU increased its strength in parliament through its usual use of force and bribery to win three consecutive by-elections, Makueni, Kitui South, and Tigania West. It subsequently also won two more in September, Nithi and Siakago, to increase its share of the National Assembly to 118 MPs (see Appendix 4). As the severe public beating of Rev. Timothy Njoya and other NCEC demonstrators by *Jeshi la Mzee* men on Budget Day revealed, the regime had again come back to its old habits, resolved to deal violently with its opponents and guaranteed total impunity to its troops. It similarly deported Nassir Ibrahim Ali at the end of July after the controversial Pakistani businessman had presented to the press an affidavit directly implicating President Moi, Joshua Kulei, and George Saitoti in the Goldenberg scandal. In addition to being the official Dubai recipient of the gold shipment, Ali claimed that he had a letter from President Moi asking him to seek funding for KANU's 1992 electoral campaigns from the Middle East and Far East political leaders.

Yet, the reassertion of KANU-B front men's influence in national politics proved to be short sighted for the management of the economy. In March, Kenya had defaulted its debt repayment only for the second time in its history. Bankruptcy was looming and this finally prompted President Moi to engage in secret negotiations with the IMF and the World Bank on the conditions to resume international support of the country and its weakened balance of payments. Richard Leakey, the Safina-nominated MP (re-appointed head of the Kenya Wildlife Service in October 1998), was sent by Moi and brokered the deal with World Bank President James Wolfensohn whom Moi met secretly in London in May. On 7 August 1999, President Moi announced his third reshuffle in two years. Richard Leakey was appointed head of the civil service with the mission to trim down public expenditure, reduce the 250,000-strong civil service by at least 60,000 and eradicate corruption. He brought with him what was quickly castigated as a reformist 'dream team' composed of Martin Oduor-Otieno, a former banker at Barclays Bank Kenya who was appointed permanent secretary in the Treasury; Mwaghaza Mwachofi, a resident representative of the World Bank group's International Finance Corporation in South Africa, who was appointed financial secretary in the Treasury; Titus Naikuni, managing director of Magadi Soda Co., appointed permanent secretary in the Ministry for Transport; Dr Shem Migot-Adholla, a World Bank official in Washington was appointed permanent secretary in the Ministry for Agriculture. In addition to these international technocrats, Leakey engineered an extensive reshuffle of permanent secretaries in key ministries. Among them were the replacement of Crispus Mutitu, permanent secretary in the Ministry of Energy, Philemon Mwaisaka, permanent secretary in the Ministry for Health, Francis Awuor, permanent secretary in the Ministry

for Trade, Stanley Murage, Ministry for Transport and Communications. The shuffles were quickly followed by a swap between the ministers of Finance and Energy (Chris Okemo, a Canada trained economist with experience in the oil industry and outgoing incumbent minister for Energy took the position of minister for Finance Francis Masakhalia and vice-versa.

Yet, if Richard Leakey proved, upon his arrival at the head of the civil service, to be more determined than Justice Aaron Ringera, the former director of public prosecutions appointed head of KACA at the beginning of the year, it was not certain that he had the necessary political clout to seriously implement his programme of reforms. KACA had indeed been paralysed initially by lack of staff and funding. But even after it managed to constitute a 35-strong investigating team, it remained almost toothless as it lacked obvious determination and its mandate proved to be extremely limited. It could only deal with the cases of bribery through lengthy public prosecutions and had no authority to refer individuals for indictment for theft, fraud, embezzlement or tax-evasion as demanded by the IMF (EIU 1999).

Leakey began his term in office by bringing in new managers at the Kenya Tourist Board (Eliud Mahihu replaced by Uhuru Kenyatta), and the National Hospital Insurance Fund (Paul Lang'at replaced by Peter Matui). Yet, the long-expected reshuffle that took place in September illustrated how vain Richard Leakey's efforts could be when he had to deal with KANU-B. All but one minister was re-appointed and squeezed into an officially reduced government of 15 ministries. They were 27 before, which now had three to four heads each. Nicholas Biwott was given the influential Ministry for Trade and Industry; George Saitoti was reverted to the vice-presidency and Joseph Kamotho was put in charge of the Ministry for Local Government which controls all allocations of trust land in the country.

Newly appointed Chris Okemo quickly showed the kind of pressures he was under, when he announced that the reduction of the number of ministries would not lead to budget cuts and subsequently refused to reveal the list of the Kenya Commercial Bank's Ksh. 9.6 billion loan defaulters to parliament. The only result the reshuffle had reached was to have 15 incumbent permanent secretaries retired. Moreover, when Bernard Chunga, a hawkish former public prosecutor was appointed chief justice, thus replacing the deceased Zacchaeus Chesoni, it became obvious that the regime was protecting itself against any misadventure. Kamlesh Pattni could legitimately seek the nullification of his trial as, in addition to Chunga's removal from the prosecution, the judge presiding over his case, Uniter Pamela Kidullah, was appointed the new DPP.

In 1998 and 1999, there were additional signs of the total decomposition of Kenyan administration and of the need for radical change. In April 1999 the *Daily Nation* revealed that passports, birth and death certificates, log-

books, primary school slips, and other official documents were freely on sale in downtown Nairobi, barely one year after it had uncovered that Kenyatta University degree certificates, abstracts and diplomas were also put on sale by unscrupulous officials. Even the intelligence, judiciary, police and security services seemed paralysed by graft. In January 1998, CID officers had been arrested over the systematic rackets of Asian businessmen. By August, speculations were rife that corruption within the immigration department had tremendously eased the work of the terrorists, some of them having left the country with Kenyan passports. In September, a raid from Ethiopian Oromo pastoralists on their Somali neighbours in Dagalla claimed close to 300 lives. The capture of more than 1,000 young girls and the seizure of 15,000 head of cattle without a single reaction from the security forces days after it had been reported were all surprising.

In October, Justice Richard Otieno Kwach released a damning report on the situation of the judiciary in the country, revealing how corruption and favouritism had deeply compromised the administration of justice. The report called for radical reforms and the dismissal of the most corrupt judges. In February 1999, intelligence services handed over Kurdish rebel leader Abdullah Ocalan to the Turkish government, after being tipped off by Israeli intelligence of his presence in the country. Rumours circulated that the Turkish government had paid a 'delivery fee' of Ksh. 270 million to State House and security individuals. By May 1999, an explosion of a land mine on the Marsabit-Moyale road confirmed that the Ethiopian army's conflict with the Oromo Liberation Front was freely taking place on Kenyan territory. The department of defence had to send a troop of 2,000 soldiers to secure the area and remove minefields from the road, suspected to have been put there by the Ethiopian army to block the OLF retreat into Kenya. Finally, in August, Somali warlords freely came into the country and attacked isolated posts of the Kenyan army to steal its materials, weapons and ammunitions. President Moi threatened to retaliate and officially closed the border with Somalia. Through negotiations with the warlords, the military equipment was recovered.

By the end of the 1999, and despite the public relations efforts of Richard Leakey, few reliable indications had been given that his recovery programme would indeed be implemented and it was not clear the IMF would resume its funding in the months ahead. Believing that nothing but violence, graft and politicking would be achieved as long as Daniel arap Moi was in power, Kenya was impatiently waiting for his retirement.

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