

EVOLVING POLITICAL ACCOUNTABILITY IN KENYA

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ABSTRACT: In adopting the democratic principle of multiparty elections in 1992, Kenyan politicians entered a new political world where accountability, a key characteristic of a functioning democracy, would be expected from leaders. Throughout this paper I will analyze the evolving political accountability in the country from a historical perspective. I will argue that the push for accountability by the voting public, the media and other civil society groups, and international donors and actors has been a highly contested and evolving battle as entrenched politicians have abused power in order to avoid being held accountable, thus allowing them to engage in politics as usual. The evolution of political accountability in the Kenyan context will be judged based upon developments in the media, the judicial court system, and the involvement of international actors in domestic politics in the country.

The political structure of Kenya changed dramatically in 1992 when multiparty elections were held for the first time in the country's history. This development was a divergence from the country's history as a one party state in which public dissent and oppositional politics were dealt with by violence, detention, and loss of access to political patronage. In adopting the democratic principle of multiparty elections, Kenyan politicians entered a new political world where accountability, a key characteristic of a functioning democracy, would be expected from leaders. Throughout this paper I will analyze the evolving political accountability in the country from a historical perspective. I will argue that the push for accountability by the voting public, the media and other civil society groups, and international donors and actors has been a highly contested and evolving battle as entrenched politicians have abused power in order to avoid being held accountable, thus allowing them to engage in politics as usual. The paper opens by indentifying a working definition of what political accountability is and its importance to democracy, followed by a discussion of accountability (or lack thereof) in Kenya. Next, I turn toward different arenas where the game of political accountability manifests itself: the media, the judicial court system, and the involvement of international actors in domestic politics in the country.

DEFINING ACCOUNTABILITY

Before analyzing political accountability in a particular context it is important to identify just what accountability is, and the role that it plays in a democratic political system. An encyclopedic definition of the term indicates that it is “the ability to ensure that officials in government are answerable for their actions”¹. This definition is beneficial in

¹ Schedler, Andreas. 1999. Conceptualizing accountability. In *The self-restraining state: Power and accountability in new democracies.*, eds. Andreas Schedler, Larry Diamond and Marc F. Plattner, 13-27. Boulder, CO: Lynne Rienner Publishers.

that there is definitely a correlation between “accountability” and “answers”, but there is also a lot more that goes into the word and processes surrounding it. In the book The Self Restraining State: Power and Accountability in New Democracies, Andreas Schendler argues that there are two key concepts that are essential to political accountability: answerability (as mentioned above) and enforcement. Schendler argues that answerability is defined by “the obligation of public officials to inform about and to explain what they are doing”². When “informing”, leaders must provide reliable facts on a given topic, whereas when “explaining” they must provide reasons for their actions. Enforcement is “the capacity of accounting agencies to impose sanctions on powerholders who have violated their public duties”³. In other words, it is the ability to reward good and punish bad behaviors. In a democracy, this is most closely associated with citizens’ ability to cast a ballot in the upcoming election. However, these elections must be accepted by the population, oppositional parties, and international observers to be “free and fair” for enforcement to have any meaning. Schendler states that accountability that exposes misdeeds, but does not (or lacks the ability to) impose consequences on guilty parties is comparable to acts of window dressing rather than real restrains on power. In addition to identifying the different connotations of accountability (answerability and enforcement), Schendler recognizes two major types of accountability: vertical and horizontal. Vertical accountability is a relationship between unequal parties as powerful actors (elite politicians) are held accountable by inferior groups such as citizens, civil society groups,

² Schendler, Andreas. 1999. Conceptualizing accountability. In *The self-restraining state: Power and accountability in new democracies.*, eds. Andreas Schendler, Larry Diamond and Marc F. Plattner, 13-27. Boulder, CO: Lynne Rienner Publishers.

³ Schendler, Andreas. 1999. Conceptualizing accountability. In *The self-restraining state: Power and accountability in new democracies.*, eds. Andreas Schendler, Larry Diamond and Marc F. Plattner, 13-27. Boulder, CO: Lynne Rienner Publishers.

and the mass media. Vertical accountability can also occur within the political system when higher ranking officials hold subordinates accountable. Horizontal accountability concerns actors on a level playing field. In democracies this occurs via the separation of powers between different branches of government that are able to enforce a system of checks and balances on one another. In other words, the judiciary can hold the executive branch accountable, which has the same power over the legislative branch, and vice versa. These actors are all essentially equal and are thus able to police each other, possessing the ability for enforcement through use of impeachment, veto, etc.

ACCOUNTABILITY AND DEMOCRACY

Another key issue that needs to be addressed is the relationship between accountability and different political systems. In authoritarian regimes (arguably what Kenya was as a one-party state before 1992) rulers are not held publicly accountable for their actions by the populace. Ultimately, the authoritarian system prevents this from happening as there is a clear distinction between rulers and ruled that does not allow citizens to question their leaders. This occurs because citizens living under authoritarian regimes often lack political rights such as the freedom of speech and suffrage that allow for questions to be asked, thus promoting accountability. All that being said, accountability is not completely lacking under an authoritarian regime and is therefore not limited to democratic governments. In fact, authoritarian leaders are accountable to various actors also. For example, they are accountable to whoever put them in power (possibly international actors), and to those who have the capacity and power to remove them from power (often the military) if they deem it fit⁴. The lack of accountability in authoritarian

⁴ Baker, Bruce. 2000. Who should be called to account for good governance in Africa? *Democratization* 7, (2): 186-187.

regimes is in sharp contrast to the role and importance of accountability in a democratic political system. The level of accountability in a country is often used by researchers to assess democratic quality and its long term viability in a particular context⁵. Further illustrating the importance of accountability is the recent tendency by international organizations like the World Bank and IMF to tie economic aid with adoption of democratic principles of “good governance” such as transparency, a result of multimillion dollar corruption scandals that have plagued the African continent. Ultimately, if democracy is accepted as “rule of the people” then the ability of those same people to exert influence (by maintaining accountability) onto their leaders is of upmost importance. “Without accountability ‘the rule of the people’ is emptied of all meaning for it is through this process that citizens ensure that all those who make decision for the whole community are able to justify those decisions as being in the interests of the community”⁶. In other words, if elected leaders are inaccessible to citizens through two- way communication then accountability is lacking. Furthermore, if the voting population is faced with a situation whereby all candidates have a history abusing power, then the strength of the democracy has to be seriously questioned. In fact, many democratic theorists claim that the solitary use of elections to ensure accountability is not enough⁷. Speaking on the matter, Baker claims that

“It is not clear how effective the threat of punishment in a future election is on current government policy in situations where a degree of continuity among party

⁵ Introduction. In 1999. *The self-restraining state: Power and accountability in new democracies.*, eds. Andreas Schedler, Larry Diamond and Marc F. Plattner. Boulder, CO: Lynne Rienner Publishers.

⁶ Baker, Bruce. 2000. Who should be called to account for good governance in Africa? *Democratization* 7, (2): 186-210.

⁷ Introduction. In 1999. *The self-restraining state: Power and accountability in new democracies.*, eds. Andreas Schedler, Larry Diamond and Marc F. Plattner. Boulder, CO: Lynne Rienner Publishers.

alternatives does not exist, party policies are not well defined and voting is highly volatile. In addition, where incumbents have been dreamed to abuse the electoral system to their own advantage, it has proved relatively easy to manipulate results despite observers and commissions”⁸

Another example detailing the faults of relying solely on elections is if politicians are able to campaign on what is politically popular, but then divert from these campaign promises with the only sanction being not reelected after their term is over. In this case, the will of the people has been put off until the next election, and there is no guarantee that the next candidate will uphold his promises either. Thus, accountability has to be an ongoing, everyday process whereby politicians are subject to questions of “answerability” and possible “enforcement” on a continuing basis.

ACCOUNTABILITY AND IMPUNITY IN KENYA

Kenya is a glaring example of the need for improved accountability as the political history of the country since multiparty elections in 1992 is one that has been plagued by “bad governance, divisive ethnic based politics, tribal clashes, massacres, gross violations of human rights, gender violence, dehumanizing poverty, high-level corruption, economic stagnation, and impunity”⁹. Following a failed coup attempt in 1982, President Daniel arap Moi consolidated his power over the three branches of government through a series of laws that allowed him to dominate the political system. The Constitution was amended the same year establishing KANU, Moi’s party, as the only legal party in the country. Furthermore,

⁸ Baker, Bruce. 2000. Who should be called to account for good governance in Africa? *Democratization* 7, (2): 203-204.

⁹ Maathai, Wangari. “Scrap Constituencies and Empower Local Authorities.” *Daily Nation*, November 16, 2009, .

dissent of the government was severely repressed through arrest, detention, torture, and killings that resulted in a culture of “silence and fear”¹⁰ that plagued society. Repression was not limited to citizens, as media sources were censored and several publications that were critical of the regime were simply outlawed or their editors intimidated into compliance. Human rights abuses during this time period are alleged to be significant, and were not helped by the fact that Moi possessed the ability to dismiss judges at will via a constitutional amendment¹¹. This situation persisted until international and domestic pressures forced Moi to repeal Section 2A of the constitution that had declared Kenya as a one party state, resulting in the first multiparty election in the country being held in 1992. However, Moi did not agree to do this on his own merit as he repeatedly refused to accept the idea of multiparty elections. He repeatedly claimed that multiparty elections would lead to chaos¹² up until international donors finally suspended financial aid to the country. Thus, the transition from a one-party authoritarian regime to a multiparty democracy began, and resulted in an increased demand for accountability of political actors. Moi was able to win the 1992 and 1997 elections despite widespread irregularities that undermined the idea of a free and fair process. Specifically, he enjoyed the ability to choose the members of the Electoral Commission of Kenya (ECK), and political boundaries were gerrymandered to the benefit of KANU. For example, the Rift Valley Province (a KANU dominated area) which had 1,920,390 registered voters in 1992 was allocated 44 parliamentary seats. On the other hand, the opposition strongholds of Central and Nyanza Provinces with populations of 1,224,930 and 1,206,586 respectively were apportioned only

¹⁰ Haugerud, Angelique. *The Culture of Politics in Modern Kenya* . Great Britain: Cambridge University Press, 1995.

¹¹ Kenya. In 2008. *Africa south of the Sahara 2009.*, ed. Iain Frame. 38th Edition ed., 586-620.

¹² Haugerud, Angelique. *The Culture of Politics in Modern Kenya* . Great Britain: Cambridge University Press, 1995.

25 and 29 parliamentary seats. Furthermore, nearly four million youth, an opposition support group who had recently become eligible to vote were denied registration and thus marginalized. Moi was also quick to intimidate and silence media members who were critical of his regime, and was able to use the state owned Kenya Broadcasting Company to highlight his party and disregard competitors. Finally, outright fraud was alleged as voter turnouts exceeded 100% in some regions, and Moi even extended the amount of time to vote by one day, thus providing more time to ensure victory. Clearly, these fraudulent elections do not speak well to the level of democracy or accountability in the country in the 1990s (without even mentioning the widespread corruption). Moi was essentially able to do whatever he had to do to win the election. Despite no longer being an authoritarian state, Moi still enjoyed a monopoly on power as he was able to silence critics, and thus avoid questions of “answerability”. Furthermore, the lack of any consequences (“enforceability”) for his actions, and his ability to manipulate the process gives credence to Baker’s argument that elections on their own are not enough to ensure accountability. In many ways, “the government neither made nor allowed any steps in the pursuit of democratization, other than holding by-elections as required”¹³.

Ultimately, fast forwarding toward the present day (with different political actors) does not provide much different results. Mwai Kibaki was elected in 2002 under an anti-corruption campaign, and elections went relatively well in comparison to previous examples. However, not long after taking office allegations of widespread corruption involving high ranking members of government began to leak out. John Githongo, a

¹³ Brown, Stephen. 2001. Authoritarian leaders and multiparty elections in Africa: How foreign donors help to keep Kenya's Daniel arap Moi in power. *Third World Quarterly* 22, (5): 732.

journalist appointed to an anti-corruption position in the government uncovered what came to be known as the Anglo-Leasing scandal in which hundreds of millions of dollars were embezzled through a contract that was given to a fake company. Citing a lack of commitment to fight corruption by the government and threats to his life, Githongo was forced to flee in exile to the United Kingdom. This development is both encouraging and troubling from an accountability standpoint. On one hand, the fact that Githongo's position in government even exists illustrates a commitment towards at least appearing to adhere to principles of accountability and transparency. Furthermore, the fact that he refused to be bought off or silenced indicates there are individuals who are willing to take a stand against entrenched politicians. That being said, nothing has become of Githongo's allegations as those implicated have not faced any sort of negative consequences. Additionally, the fact that Githongo received death threats points to the fact that politicians are committed to maintaining the status quo by any means necessary. Baker argues that "the greater the neglect of public political aims, incompetence, corruption, and weakness, the more reason there is to evade accountability. There is widespread reluctance to conduct their business in the open"¹⁴. This statement sticks like glue to Kenyan political actors as there is a long and rich history of corruption scandals across multiple regimes, and a vested interest to stay in the good graces of international governments and organizations that provide the country with so much economic support. Politicians understand that every time a corruption scandal is disclosed international investors become uneasy about exactly where their

¹⁴ Baker, Bruce. 2000. Who should be called to account for good governance in Africa? *Democratization* 7, (2): 206.

money is going and often threaten to suspend aid. Furthermore, they demand that measures be taken to ensure economic transparency in order to pacify their own shareholders.

The country's most recent presidential election in 2007 was arguably a step backwards on the accountability spectrum as highly contested elections took a turn for the worse following relative peace on election day. After the ECK delayed the election results amid widespread allegations of vote rigging, a sense of frustration and desire for victory in a winner take all system boiled over as widespread violence erupted across the country. Furthermore, there were allegations that much of the violence was politically orchestrated by members of the government. The chaos resulted in the deaths of over 1,000 people and over 500,000 were internally displaced. The violence only ended when the two main candidates, Kibaki and Raila Odinga, agreed to form a power sharing coalition government in an agreement mediated by Kofi Annan of the United Nations. However, Jacqueline Klopp argues that creation of this power sharing government ensured impunity "since both parties include people guilty of corruption and violence, the grand coalition creates a common interest in perpetuating impunity and opposing the forces of accountability and transformation"¹⁵. Ultimately, a Commission of Inquiry into Post-Election Violence, also known as the Waki Commission, was formed and recommended the creation of a special tribunal in Kenya to prosecute those individuals who were responsible for orchestrating ethnic clashes. However, in actions that are all too familiar in Kenya, politicians repeatedly haggled over and delayed the process until the deadline to create such tribunal had passed. As a result, Annan handed over a fateful envelope filled with the names of those responsible for inciting the violence to the International Criminal Court¹⁶. Politicians

¹⁵ Klopp, Jacqueline M. "Kenya's Unfinished Agendas." *Journal of International Affairs* 62, no. 2 (2009): 144.

¹⁶ "Kenya Police Ran 'Death Squads'." *BBC News*, February 25, 2009, .

have clearly demonstrated their desire to repress the push for accountability based on their refusal to enact legislation that would indict those responsible. In fact, some individuals who initially supported the idea of relying on the ICC for prosecution have flip-flopped¹⁷, and hope to create a local tribunal that can be manipulated to achieve their desired results, in other words continued impunity. Some politicians have even argued that enforcement of accountability in the form of indictments and criminal trials would create a renewed threat of violence that could plunge the country into a civil war¹⁸. This argument sounds similar to the one used by Moi that adoption of multiparty politics would lead to chaos, and it is evident that politicians are keen to use the fear card as a way of controlling the population when they dare to challenge the status quo. Furthermore, politicians argue that handing the case over to the ICC would create the illusion that Kenya was a failed state which would have drastic consequences as the country attempts to attract foreign investors and tourists¹⁹. This argument is interesting as Kenya is not even comparable to the neighboring failed state of Somalia in terms of lacking a functioning government that can enact legislation, mobilize a military, and provide border security. However, from the accountability perspective there is some merit to the classification of Kenya as a failed state. For example, this exact same scenario occurred in the 1990s as the country had two other Commissions of Inquiry that named cabinet ministers as being responsible for inciting ethnic violence. However, the recommendations of the reports “were never fully implemented, and those responsible were not held accountable²⁰. Time and time again

¹⁷ Gaiho, Macharia. “Big Two Fail to Give Nod to ICC’s Forays.” *Daily Nation*, November 6, 2009, .

¹⁸ Wafula, Ken. "Special Tribunal Only Way Out." *Daily Nation*, November 16, 2009, .

¹⁹ Warah, Rasna. "After the Events of 2008, We Can't Claim Sovereignty." *Daily Nation*, November 16, 2009, .

²⁰ Klopp, Jacqueline M. 2009. Kenya's unfinished agendas. *Journal of International Affairs* 62, (2): 150.

politicians have proven that are not willing to adhere to the democratic principles of transparency, judicial independence, and acceptance of the rule of law. Politicians have continued to act as if they are above the rule of law, and ensure impunity by manipulating the system to their benefit. Ultimately, Kenyans politicians enjoy living in an environment that is lacking accountability as corruption scandals, political violence, and a lack of meaningful constitutional reform does not result in any significant consequences for anyone. Politicians have essentially been able to engage in politics as usual that rely on the use of political patronage and divisive ethnic tribalism to ensure the voting population is busy fighting each other over access to valuable resources, rather than unifying to demand accountability from their leaders.

THE MEDIA AND ACCOUNTABILITY

Now that we have analyzed accountability as a concept, and addressed its history in Kenya it is helpful to examine an arena where the struggle for increased accountability manifests itself. Undoubtedly, one of the most important actors in the push for accountability is the media. However, there is an important distinction that needs to be made between the state owned media, and a free and independent press. State owned media in an authoritarian regime often performs the function of cheerleader and provides a forum for distribution of propaganda materials for the ruling regime. Furthermore, neutrality by the state owned media is not enough, as they are encouraged to attack and refute those who criticize the government. This practice is obviously a result of the fact that the government as owner of the organization possesses the ability to hire and fire journalists, and is the main means of economic support. On the other hand, independent and free media sources perform the role of watchdog over governmental actors as they

report on instances of abuse of power such as corruption. Some have even taken to comparing the press to a house-fly based on its habit of showing up when things start stinking²¹. Ultimately, an independent media is an ally of citizens in a democracy as it asks critical questions of politicians on behalf of the entire community that demands them to provide information on recent developments and accompanying justifications for their actions. When discussing the role of the media in a democracy Meiklejohn argued that:

“democracy is based on the notion of popular sovereignty. This requires that citizens be well informed if they are to participate in the political process and effectively play their role as the ultimate decision makers. A free and diverse press allows them to perceive a variegated view of issues on the basis of which they can make informed political decisions”²²

Furthermore, the media provides a market place for ideas whereby different views and claims can be made, but are then subjected to contestation which increases the chance for the truth to emerge and shape politics²³. In simple terms, the media educates the population about ongoing political developments, provides a forum for civic engagement, and works to promote accountability by demanding answers from political actors. That being said, the media is engaged in a form of vertical accountability that lacks power of enforcement on those determined to have abused their power. The media can only provide public disapproval, and are thus reliant on actors such as the judiciary (an equal to the executive) to sanction wrongdoing.

²¹ Tetey, Wisdom J. 2001. The media and democratization in Africa: Contributions, constraints and concerns of the private press. *Media, Culture, and Society* 23, (1): 5-31.

²² Tetey, Wisdom J. 2001. The media and democratization in Africa: Contributions, constraints and concerns of the private press. *Media, Culture, and Society* 23, (1): 8.

²³ Tetey, Wisdom J. 2001. The media and democratization in Africa: Contributions, constraints and concerns of the private press. *Media, Culture, and Society* 23, (1): 5-31.

In the 1980s all but nine of Africa's ninety daily newspapers were controlled by state governments, and the electronic media was fully in their control²⁴. However, the independent media saw substantial growth corresponding with the widespread transition towards democracy across Africa, and in turn helped to further accelerate the adoption of democratic principles by promoting accountability. However, as mentioned earlier independent media sources in Kenya were often the victim of widespread repression under the Moi regime as journalists who were critical of government policies were arrested and often charged with sedition. Additionally, some publications were outright banned. Countless journalists were silenced through indictments that took them to court under a guise of protecting state security that essentially undermined existing freedom of expression laws²⁵. Furthermore, journalists in Kenya that were lucky enough to have their case heard in court (the alternative being violent intimidation) were faced with a judiciary that continually ruled in favor of the executive branch. In yet another example of state power, the government was also able to influence press policy by withdrawing advertising revenue from the publications which provides a key source of income for any media organization. Media organizations that brought the ire of the President often were faced with diminished access to potential advertising customers as the government would pull their own advertisements in order to financially cripple and starve media organizations. Moreover, private businesses were made to understand that advertising in a newspaper that was critical of governmental policy was sure to bring unwanted results when these same businesses applied for necessary licenses and contracts which the state had control over. In

²⁴ Tettey, Wisdom J. 2001. The media and democratization in Africa: Contributions, constraints and concerns of the private press. *Media, Culture, and Society* 23, (1): 5-31.

²⁵ Adar, Korwa G. 2000. Assessing democratization trends in Kenya: A post-mortem of the Moi regime. *Commonwealth and Comparative Politics* 38, (3): 103-30.

some cases the government was even been able to prevent a newspaper from ever being printed as they had strong influence over the media organization's printing company²⁶.

Despite their beneficial role as a watchdog for political accountability there have been situations whereby the actions of members of the media have been counterproductive. Some of the new "alternative" media sources that appeared following the transition to democracy did not uphold high levels of professionalism as journalists printed stories that lacked factual evidence, or were essentially personal attacks that had nothing to do with important issues. Furthermore, there have been instances where journalists have attempted to extort politicians by threatening to print damaging stories unless a bribe is paid. These actions diminish the integrity of all media organizations, and give credence to the government's argument that the press is involved in a personal vendetta against the state. Finally, some of the organizations further divide the populace by appealing to ethnic interests which does not promote a unified population committed to demanding accountability. Another issue with the media is the fact that much of the population cannot afford a radio or television. Even the cost of a single magazine exceeds the daily wages of urban workers, and is definitely out of reach for significant sections of the rural population²⁷. Not surprisingly, the majority of print and electronic media is consumed by the urban elite. Furthermore, the portion of the population who is illiterate is marginalized, and thus unequal access to media sources hinders the idea of an informed electorate who can hold politicians accountable.

²⁶ Tettey, Wisdom J. 2006. The politics of media accountability in Africa. *The International Communication Gazette* 68, (3): 229-48.

²⁷ Tettey, Wisdom J. 2001. The media and democratization in Africa: Contributions, constraints and concerns of the private press. *Media, Culture, and Society* 23, (1): 5-31.

INDEPENDENCE OF THE JUDICIARY

As witnessed by the refusal and inability of the judicial branch to uphold freedom of expression rights involving the media there are issues involving the “enforcement” aspect of accountability in Kenya. The media has done a commendable job at promoting “answerability”, but true accountability is not realized if horizontal institutions such as the judiciary cannot impose sanction on wrongdoing.

“If a police officer kills someone in custody without due cause and still walks free, it does not satisfy the principle of accountability if a journalist documents this abuse of authority.....Unless there is some punishment for demonstrated abuses of authority, there is no rule of law and no accountability”²⁸

In a 1996 report the International Bar Association determined that there does not seem to be a proper degree of independence between the judiciary and the main executive arm in Kenya²⁹. The ability of Moi to manipulate the judiciary in the past ensured that impunity would remain constant. As a result of the power enjoyed by the Executive branch, cases were brought before “politically correct judges” who because of their desire to protect their jobs and secure state favors, were willing to do everything possible to rule in favor of the presidency³⁰. Furthermore, those judges who placed judicial integrity above the interests of the state were punished as evidenced by the transfer of a Chief Magistrate 130 km from

²⁸ Schedler, Andreas. 1999. Conceptualizing accountability. In *The self-restraining state: Power and accountability in new democracies*, eds. Andreas Schedler, Larry Diamond and Marc F. Plattner, 13-27. Boulder, CO: Lynne Rienner Publishers.

²⁹ Adar, Korwa G. 2000. Assessing democratization trends in Kenya: A post-mortem of the Moi regime. *Commonwealth and Comparative Politics* 38, (3): 103-30.

³⁰ Adar, Korwa G. 2000. Assessing democratization trends in Kenya: A post-mortem of the Moi regime. *Commonwealth and Comparative Politics* 38, (3): 103-30.

Nairobi in 1994 after he demanded an investigation into a suspect's claims of police torture³¹. Baker argues that the courts should ensure that the executive, public officials, and powerful private institutions and individuals are subject to the law and the constitution, and must have the capability to guarantee impartial justice³². This can be accomplished if the judiciary is elected or appointed independently so that it can act without executive interference. In the end, political actors must be forced to be accountable to both the people and the rule of the law. In order for horizontal accountability to be realized, judges cannot defer to the state and leading politicians in matters that interest them.

INTERNATIONAL ACTORS INVOLVEMENT IN DOMESTIC POLITICS

Increasingly, international actors have played a more important role in domestic politics in the Kenyan state. For example, organizations like the Catholic Church, NGOs, and other civil society groups have increasingly demanded that the state fulfill its obligation to its citizens. Many of these organizations have fearlessly brought attention to human rights abuses, and provide an important and powerful voice to the accountability concept of "answerability". Furthermore, international organizations such as the World Bank and IMF, in cooperation with other national governments, provide a substantial amount of economic funding to the country. Therefore, they have a vested interest in the politics of the country, and have often threatened to suspend aid upon discovery of corruption scandals or abuse of human rights. Due to the government's dependency on this money, these international actors have a valuable bargaining chip on their side that they can play to dictate policy. However, some have argued that this relationship has made

³¹ Adar, Korwa G. 2000. Assessing democratization trends in Kenya: A post-mortem of the Moi regime. *Commonwealth and Comparative Politics* 38, (3): 103-30.

³² Baker, Bruce. 2000. Who should be called to account for good governance in Africa? *Democratization* 7, (2): 186-210.

leaders in fact more accountable to external agencies than to their own electorate³³.

Stephen Brown argues that in Kenya, international donors actually discouraged measures that could have led to more comprehensive democratization during the 1992 and 1997 elections which were plagued by instances of election fraud as discussed earlier. Brown states:

“They did this by knowingly endorsing unfair elections and subverting domestic efforts to secure far-reaching reforms. In the face of anti-regime popular mobilization, donors’ primary concern appeared to be the avoidance of any path that could lead to a breakdown of the political and economic order, even if this meant legitimizing and prolonging the regime’s authoritarian rule”³⁴

Brown argues that donors had spent 2.1 million dollars on the 1992 elections, and were determined to see them take place (even under unfair conditions), and felt that their procedural success outweighed the unfairness of the campaign³⁵. He even goes as far to claim that donors deliberately suppressed evidence that highlighted the irregularities of the election as an internal donor report named eight constituencies where the poll could not be considered valid (and thus the results of the entire election), but in the public release of this document this information was deleted. In rationalizing these actions Brown states that “in Kenya donors advocated a more democratic government hoping it would lead to better economic governance. Yet they also feared instability that might accompany the transition

³³ Baker, Bruce. 2000. Who should be called to account for good governance in Africa? *Democratization* 7, (2): 186-210.

³⁴ Brown, Stephen. 2001. Authoritarian leaders and multiparty elections in Africa: How foreign donors help to keep Kenya's Daniel arap Moi in power. *Third World Quarterly* 22, (5): 735.

³⁵ Brown, Stephen. 2001. Authoritarian leaders and multiparty elections in Africa: How foreign donors help to keep Kenya's Daniel arap Moi in power. *Third World Quarterly* 22, (5): 725-39.

to democracy, which would undermine economic reform”³⁶. As a result of the donors’ overemphasis of the process of elections (as discussed earlier by Baker), their interest in maintaining economic prosperity, and their refusal to condemn the widespread electoral fraud, the Moi regime was able to remain in power and delay further democratic reform. Obviously, this was an instance where these international actors had an opportunity to demand accountability from Kenyan politicians. However, their refusal to do so set the stage for continued abuses of power, and a lack of accountability.

Another important role that international organizations have played in developing democracies is as an election observer or monitor. Organizations such as the United Nations, Organization of African Unity, and the Council of Freely Elected Heads of Government (which is coordinated by former U.S. President Jimmy Carter) have increasingly become more involved with democratic elections around the world. Many times these groups are invited to oversee elections to provide a sense of legitimacy to the process. In addition, the groups can mobilize vast resources and provide cutting edge technology that can be utilized during the election process. Furthermore, if conflict arises between opposition parties these organizations can play the role of mediator. Robert Pastor identifies this phenomenon as a “third dimension of accountability” and argues that “the presence of a prestigious group can deter electoral fraud and give local people a sense that their election has a larger importance (possibly increasing voter turnout)”³⁷. He goes on to say that:

³⁶ Brown, Stephen. 2001. Authoritarian leaders and multiparty elections in Africa: How foreign donors help to keep Kenya’s Daniel arap Moi in power. *Third World Quarterly* 22, (5): 725-39.

³⁷ Pastor, Robert A. 1999. The third dimension of accountability: The international community in national elections. In , eds. Andreas Schedler, Larry Diamond and Marc F. Plattner, 123-142. Boulder, CO: Lynne Rienner Publishers.

“the most difficult question for monitors to answer is whether the election has been free and fair. To answer that effectively, monitors need to evaluate the entire electoral process. Irregularities of some kind occur, and the problem is to try to determine a pattern to the irregularities that could have biased the election in favor of a particular party or candidate”³⁸

However, Pastor argues that many of these international organizations are hesitant to criticize elections and rarely declare an election a fraud. This is often because the country they are working in is a member of the same organization, thus a conflict of interest occurs. The ongoing involvement of the International Criminal Court in the fallout of deadly ethnic clashes following the 2007 election is an interesting comparison to the previous two examples. The ICC, as an international policing organization, is not concerned with economic prosperity or offending the Kenyan state, rather their only interest is in bringing those politicians who incited ethnic violence to justice. The ICC seems to be imposing horizontal accountability upon Kenyan politicians since they seem to be unwilling to do so themselves. The argument can be made that the judiciary in Kenya is not a horizontal actor, rather a vertical one that works for the state to repress dissent. However, Kenyan politicians are unable to manipulate the ICC and could be facing one of the first instances where horizontal accountability and enforcement will be enacted upon them. Luis Moreno-Ocampo, the chief prosecutor of the ICC, has even claimed to “use Kenya as a world example on how to fight impunity” and he is viewed as a savior by victims of the

³⁸ Pastor, Robert A. 1999. The third dimension of accountability: The international community in national elections. In , eds. Andreas Schedler, Larry Diamond and Marc F. Plattner, 123-142. Boulder, CO: Lynne Rienner Publishers.

violence³⁹. This has resulted in a sense of optimism among the population who believe “the momentum against impunity is now unstoppable and will be far reaching. It will not be confined to the post election violence. It will involve many players and catch up with a wide range of crimes and misdeeds, past and present. Impunity of every kind will come under siege⁴⁰.”

CONCLUSION

Ultimately, the push for political accountability in Kenya is an ongoing process. The media has enjoyed significant growth and plays a vital role in ensuring that the “answerability” aspect of accountability is addressed. Furthermore, the culture of silence and fear has passed, and citizens and civil society groups today are empowered and are willing to speak out against governmental impunity. However, the inability and reluctance of domestic courts to invoke any sort of “enforceability” upon powerful politicians is a clear example where accountability is failing. Additionally, the tragic events that followed the 2007 elections and the refusal to address the issue by local politicians do not speak well to acceptance of the idea of accountability by political actors. The involvement of the International Criminal Court in domestic issues is a new development, and its ability to impose negative sanctions on those who have abused power would send a strong message to Kenyan politicians that the old way of doing things has serious consequences. In the end, “the reality is that the degree of accountability in a country is the outcome of the conflict between pressure from the populace and resistance from the power holders”⁴¹.

³⁹ Gekara, Emeka-Mayaka. "Horse-Loving Prosecutor Who Strikes Fear into Lords of Impunity." *Daily Nation*, November 6, 2009, .

⁴⁰ Shaw, Robert. "At Last, the Diabolical Forces of Impunity are in Retreat." *Daily Nation*, November 18, 2009,

⁴¹ Baker, Bruce. 2000. Who should be called to account for good governance in Africa? *Democratization* 7, (2): 206.

Therefore, the level of accountability in the country will continue to evolve and be an ongoing and highly contested issue.

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