

Power-sharing in Kenya: New Hopes, Old Fears

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The post-electoral power-sharing arrangements, first in Kenya and more recently in Zimbabwe, have kicked off a raging debate about their implication(s) for democracy in Africa. Scholars of democratic theory see power-sharing as a form of democracy that can socialise opponents into compromises and moderation, and as a viable option for democratic governance in divided societies.¹ However, the flip side is that African politicians could, under the pretext of power-sharing deals, retreat from the path of multi-partyism and democracy which they fought for in the early 1990s.

While the concept of power-sharing is not new in Africa,² the case of Kenya (and more recently Zimbabwe which had run into a stalemate at the time of writing), stand out because they are associated with the unwillingness of incumbents to give up power. This brief examines, among others, whether power-sharing arrangements are a viable alternative to the 'winner takes it all' type of democracy? What are the implications of such arrangements on opposition politics? Significantly, to what extent can power-sharing arrangements be said to be working in Kenya and what are the prospects for other contexts like Zimbabwe?

Background

The power-sharing arrangement in Kenya followed the disputed December 2007 general elections in which the incumbent Mwai Kibaki was controversially declared the winner over his main challenger Raila Odinga. Opposition supporters, angered by alleged electoral malpractices, resorted to civil unrest which in various cases turned violent. Matters were compounded by the uneven policing where security forces resorted to excessive use of force to quell unrest, especially in opposition strongholds. In addition, retaliatory violence and the lack of ability or willingness by the leadership on both sides of the political divide to control the violence led the country to teeter on the precipice. As a result, more than 1 000 people lost their lives and over 300 000 others were displaced from their homes. The crisis exposed Kenya's historical socio-economic and political fault lines which date back to independence in 1963. The inability to resolve critical issues, including those relating to land and the skewed distribution of national resources, left real and imagined grievances bubbling close to the surface. Allegations over electoral malpractices served to activate these resentments, in some cases into armed violence which, in turn, invited retaliation.

Mediation efforts by former United Nations Secretary General Kofi Annan led to the National Accord and Reconciliation Act of 28 February 2008. This Act brought the Party of National Unity (PNU) led by Mwai Kibaki and the Orange Democratic Movement (ODM)

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led by Raila Odinga into a coalition government in which Kibaki remained President while Raila Odinga became Prime Minister. A Cabinet, with an equal number of ministers from PNU and ODM was named on 13 April. The Accord charged the Prime Minister with the power and authority to co-ordinate and supervise the functions of the government, while the President remains the head of state. The coalition government can only be dissolved if the current parliament is dissolved, or if the parties agree in writing, or if one coalition partner withdraws from the coalition.

Eight months after the power-sharing deal

It is argued that Kibaki's and Raila's sides agreed to the power-sharing arrangement because they had much to lose. The economy was suffering and essential commodities were cut off, especially in Raila's stronghold. Pressure from the business community, including leading figures from Kibaki's Kikuyu community, was significant to ending the crisis that was estimated to have cost the country at least \$1 billion.³ Professor Calestous Juma observed; 'I think the crisis woke the country up. It helped the country to recognise the fragility of the economy. People started to see the connections between politics and the economy which Kenyans had not experienced before.'⁴

Months into the 'forced marriage', Mwai Kibaki and Raila Odinga continue to confound skeptics with the way they have accepted and accommodated each other. Even while their respective lieutenants within the grand coalition have sometimes resorted to undercutting one another, the President and the Prime Minister have not exchanged unkind words since they went into the power-sharing deal. The two men could be polar opposites in various ways but they seem to enjoy a sense of personal chemistry that puzzles many. Gaitho observes; 'While the President rarely calls cabinet meetings, a fact that may reinforce impressions of a dysfunctional government, he hosts the Prime Minister for weekly meetings at State House.'⁵ The coalition government in Kenya has surprised people by its resilience, and how well it had kept the peace.⁶ Months after the bloody crisis, the 'odd couple' of Mwai Kibaki and Raila Odinga seem to be doing better than expected. Even skeptical analysts now believe Kenya's coalition government could last until the next election in 2012. One reason given for this optimism is that many people benefit from the bloated administration. There is 'a locked-in mutual interest' in maintaining the power-sharing arrangement because it benefits the political class across the political divide. According to

Moody, 'the grand coalition is a fix between the political elites promoted and financed by big business.'⁷

The coalition government has, however, not been without its fair share of challenges. Immediately after the formation of Kenya's cabinet, some members of parliament from the ODM started complaining that the PNU had kept most of the main cabinet posts and that the cabinet did not reflect a true balance in portfolios. A number of backbenchers in parliament, apparently spiteful about being left out of cabinet, started agitating for the creation of a coalition opposition, arguing that it was important for the sake of democratic governance. This position was, however, opposed by the cabinet, which insisted that it would be unconstitutional and would violate the spirit of the coalition. Nonetheless, the proposed the National Assembly (Parliamentary Opposition) Bill 2008 to allow backbenchers to create an official opposition is expected to be debated in Parliament before the end of 2008.

The coalition government has also not guaranteed an end to ethnic tensions. The government's plan to resettle thousands of people displaced by the post-2007 election violence has, in some instances, run into problems as some of those affected refuse to return to their former homes fearing for their lives. Kibaki and Raila may be demonstrating that the coalition is united, but their respective allies remain not only openly suspicious of each other, but also worried that the two principals may be leaving them out of the power-sharing equation. In the Kibaki camp, many of the traditional political power brokers seem resentful that they are losing out as the President comes to rely more and more on the Prime Minister, whose clout has been growing by the day. Raila, on his part, has to contend with the populous Kalenjin bloc who voted for him overwhelmingly but now accuse him of having sold out since his ascent to power.

Critics of the coalition point to the bloated 93-member cabinet, which is the most expensive in Kenya's history. They also argue that the overdue reforms have been fading with time as leaders slip back into political wrangling. Even Kenya's controversial electoral commission which was widely criticized by local and international observers for failing to prevent vote fraud, remains intact and has been overseeing by-elections. This has prompted some to say that the politicians were only interested in themselves and 'finally got what they wanted: power, or to be precise, a share of it,' while the necessary reform priorities were relegated to the bottom of the agenda.⁸ Kenyans accuse members of parliament of being more concerned with preserving their tax-free \$10,000-a-month pay packages than with the plight of their constituents. Hopes that the painful clashes might usher



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in overdue reforms and encourage Kenyans to tackle long-standing historical grievances and tribal tensions are fading. Many continue to wonder if the new coalition government will be any different from its predecessors when it comes to tackling graft. Among other issues that have dogged the coalition include political differences over the release of individuals arrested in connection with the electoral violence. ODM refers to them as innocent young men who were arrested for agitating for democracy while PNU strongly opposes their release, calling them criminals.

The Commissions of Inquiry and their findings

The power-sharing arrangement included provisions to address both proximate and long term sources of political violence. Besides the sharing of positions, the accord recommended the establishment of two independent commissions to look into the disputed presidential elections and the root causes of the electoral violence. Consequently, the government established the Independent Review Commission (IREC) 'to inquire into all aspects of the 2007 General Elections with a particular emphasis on the Presidential Election,' and the Commission to Investigate the Post Election Violence (CIPEV), whose mandate included inquiring into 'the facts and circumstances surrounding acts of violence that followed the 2007 Presidential election, as well as the actions and omissions of state security agencies.' The two commissions were headed by Justice Johann Kriegler (a South African) and Justice Philip Waki, respectively.

In their findings, IREC concluded that there were too many electoral malpractices during the December 2007 Presidential elections that made it impossible to conclusively establish which of the two main presidential candidates won the elections. It recommended a variety of corrective reforms particularly on the electoral process, although its conclusion on the difficulties in establishing the presidential winner raised a fundamental constitutional question about the legitimacy of the current office bearers. Meanwhile, CIPEV's report implicated senior politicians, businessmen and security agents in the perpetration of violence, although the report did not reveal the names of the suspects. It recommended the establishment of a tribunal with Kenyan and international members, to try those suspected of the greatest involvement in the violence. It gave the two Kenyan leaders a timeframe of 60 days within which to establish a tribunal, or else the names of suspects would be forwarded to the International Criminal Court. Key supporters of both President Mwai Kibaki and

Prime Minister Raila Odinga are thought to be on the list. The report has rekindled political tensions, particularly within Odinga's ODM. The Prime Minister, who has in his time in office sought to court international favour, initially endorsed CIPEV's recommendations, a position which has met with a lot of resistance from sections of his party members. They argue, among others, that he (Odinga) and Mwai Kibaki should bear the greatest responsibility because the electoral dispute was being fought on their behalf.

A key long term stipulation in the National Accord was the provision for a new constitution. Although a Constitutional Review Bill was passed by parliament in early November 2008, the review process has generally lacked impetus with members of the civil society accusing the coalition government of renegeing on their pledge to give the country a constitution within the first 12 months in office. The provision for a new constitution, however, signals that Kenya's power-sharing agreement is very much seen as an interim measure, pending a more satisfactory redefinition of the democratic space. Indeed, a key constitutional problem in Kenya (and Africa generally) is the question of overbearing presidential powers. This calls for institutional re-engineering in order to resolve the problems of skewed and divisive national politics. The Kenyan Parliament has equally passed the Truth, Justice and Reconciliation Commission (TJRC) Bill (awaiting presidential assent at the time of writing) to inquire into historical injustices.

It is quite apparent that the personal relationship between Kibaki and Odinga will remain central to the navigation of a successful power-sharing arrangement. The competition for high office between the two leaders was one between politicians who had worked together before. Odinga worked for Kibaki's successful election campaign in 2002. The two fell out after the latter failed to follow through on a promised power-sharing government. So it seems reasonably easier for the two to now work together. Odinga and Kibaki are, however, a study in contrasts which may explain why they work together surprisingly well. Odinga, a veteran opposition figure, is a charismatic crowd pleaser with strong grassroots connections and acute political instincts. Kibaki is a relaxed, patrician politician who shuns public appearances, likes to delegate, and prefers the golf course to political platforms.⁹ Now in his second and final term, he seems perfectly happy to let Odinga, who loves the limelight, do the 'hard work'.

Nonetheless, some observers think Kibaki and Odinga are using the coalition government to their advantage. While Odinga clearly has his eyes on the presidency in 2012 and is building bridges even with former fierce enemies, Kibaki is

more concerned with his legacy. Their mode of operation has, however, allowed the two men to sidestep regional and ethnic pressures in the interests of the country, a rarity in Kenya politics.¹⁰

Power-sharing: A blow to liberal democracy?

The breakdown of democracy in many post-colonial African states and Asia has been attributed to the adoption of the majoritarian Westminster-style democracy.¹¹ It is argued that since people in these societies vote along ethnic lines, majoritarian rule becomes not only undemocratic but also dangerous and risks animating civil strife. Majoritarian democracy is judged unsuitable for such divided societies because of its winner-takes-all character and concentration of power, which allows dominant groups or coalition groups to capture state power, relegating the minority into permanent opposition.¹² For this school of thought, power-sharing and democracy are not incompatible; rather democracy is only possible when power is shared instead of monopolised, and devolved rather than centralized. Cooperation in grand coalition governments is, therefore, seen to promote tolerance, increased trust, the development of a democratic culture and societal peace. It may be too early to make conclusive judgments about whether this is the case in Kenya. What this brief seeks to do is to give a tentative assessment of the Kenyan situation so far.

While there are arguments that present power-sharing as synonymous with democracy and as an alternative to competitive elections, there are also concerns that power-sharing can actually present potential dilemmas for long-term democratization and peace. By fixing the ratio of government positions for each contending group, the arrangement may regulate the direct form of conflict by changing the dynamics of political contestation, while concealing the underlying sources of conflict. In Kenya, critics argue that the power-sharing arrangement has merely papered over deep-seated social and economic problems exposed by the December 2007 presidential vote. In that light, power-sharing can level power relations in the short-term while undermining the long-term process of democratization and peace.

Power-sharing can also be risky especially where it calls for balancing of ethnic elite interests. It may build upon and maintain separate rigid identity loyalties, which, as was the case in Rwanda, became a source of instability, ineffective governance and violent conflict.¹³ Kenya has not so far vindicated this postulation although the coalition government

continues to largely operate on the political party identities that reflect the December 2007 presidential contest. A concern for others interested in power-sharing is that where there is no stability in the power arrangement, political parties may end up operating on the basis of positions and power, which can degenerate into a protracted struggle for power at the centre. Parties would then find it difficult to reach consensus and this may lead to a continuous struggle and paralysis of government operations. Moreover, power-sharing arrangements tend to reflect the power relations at the time of negotiations. If power relations change with time, there is a risk of defection from the agreement. The Kenyan coalition is likely to face a similar threat when it comes to the implementation of the comprehensive reform agenda that includes land reforms, constitutional and institutional reforms and policies to address regional inequalities, especially with politicians seeking to promote their narrow ethnic interests. Most of the relevant bills are, at the time of writing, under discussion in Parliament.

Although, the power-sharing arrangement in Kenya was signed in the name of national reconciliation, it has also diluted the functioning of parliamentary opposition parties. When all groups are included in government, the place for opposition as an oversight of the executive is diluted. There is a concern in Kenya that the grand coalition government was, for instance, not doing enough to fight graft since it had, instead, concentrated its efforts on ensuring the survival of the coalition.

In view of these considerations, the prospects for power-sharing in Africa look ominous. With most leaders nursing greed for power and seeking the spoils of office, it is feared that the Kenyan example could encourage some incumbent presidents in Africa to bastardize the electoral process and then get to share power with the real winners. Johann Kriegler, who led the independent commission investigating the integrity of Kenya's 2007 elections, argues that the trend towards power-sharing pacts undermines the healthy culture of competitive politics and smooth change of government.¹⁴ The point is that while elections in Africa are hard to live with, it would be much worse to live without them. The right to change governments helps keep those in power on their toes. The Kenyan type of power-sharing is accused of rewarding losers. Since there can never be two winners in any electoral democracy, granting electoral losers a stake in government goes against the very logic of elections (the person or party preferred by most voters forming government). Under such conditions, losing parties need only to refuse to accept electoral outcomes in order to share power which creates the



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risk that political actors will continue to use similar tactics to effect similar outcomes in future.

It is in light of the above that the Kenyan and Zimbabwean cases are causing apprehensions. Some recall at independence in the late 1950s and 1960s when many founding presidents adopted the 'one country one party' chorus en masse that later plunged much of the continent into dictatorship. The fear is that Africa may be running away from free and competitive elections in a manner similar to Kenya and that the international community seems to be warming up to the idea too.¹⁵ Power-sharing is an attractive alternative to violence but the international community must guard against setting precedents where incumbent regimes rely on coercion to resist the will of the people and the transfer of power to electoral winners.

Conclusion

The power-sharing arrangement in Kenya sought to apportion political offices in order to give incentives to the elite and masses to moderate their divisive impulses.¹⁶ The aim was to build political coalitions that transcended the cleavages that were dividing the countries at the time. While Kenyans could breathe a sigh of relief, with power-sharing being the best option under the circumstances (given the prospect of the country sliding into anarchy), power-sharing should not be treated as a substitute for electoral democracy since it could encourage despots to cling on to power in the hope of signing similar power-sharing arrangements in order to perpetuate their stay in office.

Yet to the optimists, the power-sharing arrangement in Kenya provides a chance to repair past fractures, stabilize the country and pave the way for the consolidation of genuine democracy. Indeed, the complete implementation of the agreement could significantly improve the prospects for stability and consolidation of democracy. The Kenyan experiment might, however, be handicapped if parties do not work on internalising shared norms and aspirations. Without common norms and aspirations, it becomes difficult to maintain a balance of forces, especially where political leaders carry conflicting political agendas over into the coalition arrangement.

Policy Considerations

The Kenyan Coalition Government

- The power-sharing arrangement has to be considered as a transitional measure. In this regard the coalition government must focus on building and strengthening institutions of democracy to ensure service delivery and prevent a repeat of the December 2007 events. The government must also implement constitutional reforms to address power imbalances in the three branches of government.

African Union/International Community

- To prevent inherent risks to the long term consolidation of democracy and threats from spoilers, the African Union and the international community in general must continuously monitor the coalition government and its implementation of the power-sharing agreement.

Political Parties

- Parties to the power-sharing agreement have to learn to frame their demands in a way that emphasizes joint benefit, and focuses on developing mutually acceptable ways for all groups. This way, they are likely to meet with more success than if they take a more combative or competitive approach.

Civil Society

- The civil society must, in the absence of opposition parliamentary parties, find ways to check, monitor, and restrain the power of political leaders and state officials in order to ensure the state at all levels is more accountable, responsive, inclusive, effective and, hence, more legitimate.

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