



After Kenya's Leaders Reconcile, a Tough Path Ahead

Crisis Group Africa Briefing N°136
Nairobi/Brussels, 13 March 2018

I. Overview

The meeting on 9 March 2018 between Kenya's President Uhuru Kenyatta and opposition leader Raila Odinga was as unanticipated as it is significant. In their joint statement issued after the talks, they promised to address the "deterioration of relationships between communities" and "aggressive antagonism and competition" that has blighted repeated electoral cycles in Kenya. This pledge is welcome: the warm words between the two men should help end the protracted crisis provoked by last year's disputed presidential election, while raising prospects for some form of national dialogue and reforms to avert a repeat. But now comes the hard part.

The two leaders, together with other politicians, business leaders, clerics and diplomats, must now ensure the next phase is a consensual, inclusive process yielding meaningful change. Priorities include an investigation into police killings and police reform; a reopening to civil society and the media; and political reforms that aim to reverse Kenya's winner-takes-all politics, perhaps including provisions that widen representation in the executive. While changes to rules are important, in themselves they will not temper the country's zero-sum ethnic politics without a broader shift in the behaviour of Kenyan leaders.

A. *Historical Feud, Contested Polls*

The presidential election, held on 8 August 2017, pitted the incumbent Kenyatta against veteran opposition leader Odinga. Both are scions of prominent political families – Kenyatta senior was the first president and the elder Odinga was vice president at independence. The pair fell out in the 1960s and the two families have dominated political competition for decades.

Ahead of the 2017 election, the younger Kenyatta and Odinga headed the tickets of alliances cobbled together largely along ethnic lines. The election commission pronounced Kenyatta the victor, but Odinga rejected the results. The Supreme Court annulled the vote on 1 September, finding widespread irregularities and illegalities in the tallying, tabulation and transmission of results, and ordered a fresh election. Odinga boycotted these polls, which were held on 26 October, citing insufficient reform of the electoral authorities. Kenyatta won with 98 per cent of the vote (although turnout in opposition areas was extremely low) and was declared president.

After that second election, Kenyatta and Odinga both took escalatory steps that deepened social divisions and triggered violence, leaving dozens dead, mainly at the hands of security forces. Odinga defied pressure from allies and foreign diplomats, and staged a mock inauguration on 30 January at which he was declared “people’s president”. This show not only compounded the political crisis but also sowed discord within Odinga’s own National Super Alliance. Kenyatta initially drew praise for pulling the security forces away from the venue of the Odinga ceremony to avoid a confrontation with opposition supporters. But he subsequently ordered several private TV stations off the air for days (and ignored a court order declaring this action illegal). He has led a crackdown on civil society and dismissed calls from the opposition, religious leaders and diplomats for a national dialogue.

Last week’s talks between the two leaders were thus an important turnaround in a situation that appeared headed toward prolonged stalemate. It seems that back-channel contacts between aides culminated in the surprise one-on-one meeting in Nairobi.

The two leaders would both benefit from reconciliation. Kenyatta’s second-term agenda – focused on growing the economy – would be imperilled if a significant proportion of the electorate continued to question his legitimacy. Reaching out to Odinga, who enjoys particularly strong support in western Kenya and along the coast, is one way to overcome those challenges.

Odinga, too, has much to gain. In recent weeks, key opposition allies seemed to be abandoning him, as they positioned themselves for the 2022 election. The latest move puts Odinga back at the centre of Kenyan politics. Aides say the veteran opposition leader, who has long championed reform and was a supporter of Kenya’s progressive 2010 constitution, seeks to claim a place in history by pushing further change to the winner-takes-all political system.

B. *Three Critical Steps*

Kenyatta and Odinga have formed a committee of close aides to spearhead the campaign for national unity and propose possible constitutional amendments. To succeed, they need to ensure that any reforms are adopted only through an inclusive dialogue that consults as wide a cross section of the population as feasible. Important allies of both leaders appear to have been excluded from the talks and could seek to undermine reform efforts. Both Kenyatta and Odinga need to rally militant supporters behind the rapprochement to achieve wider buy-in for any prospective deal.

Moreover, a settlement negotiated exclusively by politicians would clearly contravene Article 118 of the Constitution (which demands public consultation before major decisions are made). The committee devising the reforms should host meetings with grassroots and other civil society organisations, as well as clerics and business leaders, to discuss any proposed changes.

Three areas will be vital in shaping reform if Kenya is to avoid further cycles of polarising and destabilising elections:

- 1. Lowering the stakes.** In their joint statement, Kenyatta and Odinga conceded that polarisation and all-or-nothing contests for power have turned elections into “a threat to lives, our economy and our standing as a nation”. Many politicians believe

that the narrow structure of the executive, in particular, with only the posts of president and deputy president up for grabs, leaves little room for accommodation of a wider cross section of elites.

Some politicians suggest amending the constitution in favour of a Tanzania-style system to include a prime minister and possibly a deputy prime minister nominated by the parties that won the most parliamentary seats. Pursuant to this structure, both would govern under the supervision of a directly elected president. Such a move, proponents argue, would have several positive implications: broadening the executive, checking presidential power and, crucially, beginning to address the question of “exclusion and, ultimately, animosity” that Kenyatta and Odinga raised in their statement.

Finding ways to spread power around different positions and institutions, and to widen representation in the executive, could lower the high stakes of elections. But such an overhaul, particularly after the exhaustive constitutional reform undertaken less than a decade ago, should not be entered into lightly. It would require a process as consultative and inclusive as that which preceded the adoption of the 2010 constitution. Alternatively, a proposal from the leadership of Kenyatta's Jubilee Party, which commands a majority in parliament, to create a formal role for the leading opposition figure in presidential elections – with a special budget and specific mandate – might be less controversial and achieved through legislative rather than constitutional change.

Kenya's political elite and civil society ought to be cautious in assuming that rule changes alone will transform the culture of winner-takes-all ethnic politics and fierce electoral competition. The 2010 constitution in principle strengthened checks and balances and independent institutions, and thus should have achieved those objectives. That these reforms failed to avert last year's crisis is a testament to the manner in which Kenyan politicians contest power. Political culture – the behaviour of Kenyan leaders, particularly the distribution of resources along ethnic lines – needs to change as much as formal rules of the game.

2. Probe rights violations. Human rights groups found that the police were responsible for by far the largest number of deaths, including of several infants, during protests over the electoral crisis. A judicial commission of inquiry should investigate these killings. It should go beyond identifying culprits – who should face prosecution – and issue binding recommendations, potentially including retraining officers and a review of police codes.

The government also should reinvigorate efforts to reform the police and strengthen civilian oversight, including by empowering the Independent Policing Oversight Authority. Wider police reform, including through implementation of existing constitutional provisions that protect the security forces' leadership from interference by the executive, remains key to addressing Kenya's poor human rights record.

3. Civil liberties and media freedom. Kenya has a deserved reputation as one of the continent's more open societies. Its free-wheeling private media and debate of public issues on social media as well as its robust civil society help promote transparency and accountability. Those freedoms are in danger, both from an intensified government campaign against civil society and from government pressure on private

media firms, including threats to selectively withdraw government advertising, a crucial source of revenue. Odinga should use his place at the table to persuade Kenyatta that the country would gain more by maintaining its culture of openness.

C. Conclusion

Kenyatta and Odinga deserve praise for their recent show of statesmanship in agreeing to hold talks to try and end the crisis and help unite the country. Together with civil society, religious groups, business leaders and the diplomatic community, they should now turn to the hard work of ensuring this chance for meaningful change is not wasted.

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Appendix A: Map of Kenya



Appendix B: Reports and Briefings on Africa since 2015

Special Reports

Exploiting Disorder: al-Qaeda and the Islamic State, Special Report N°1, 14 March 2016 (also available in Arabic and French).

Seizing the Moment: From Early Warning to Early Action, Special Report N°2, 22 June 2016.

Counter-terrorism Pitfalls: What the U.S. Fight against ISIS and al-Qaeda Should Avoid, Special Report N°3, 22 March 2017.

Central Africa

Elections in Burundi: Moment of Truth, Africa Report N°224, 17 April 2015 (also available in French).

Congo: Is Democratic Change Possible?, Africa Report N°225, 5 May 2015.

Burundi: Peace Sacrificed?, Africa Briefing N°111, 29 May 2015 (also available in French).

Cameroon: The Threat of Religious Radicalism, Africa Report N°229, 3 September 2015 (also available in French).

Central African Republic: The Roots of Violence, Africa Report N°230, 21 September 2015 (also available in French).

Chad: Between Ambition and Fragility, Africa Report N°233, 30 March 2016 (also available in French).

Burundi: anatomie du troisième mandat, Africa Report N°235, 20 May 2016 (only available in French).

Katanga: Tensions in DRC's Mineral Heartland, Africa Report N°239, 3 August 2016.

The African Union and the Burundi Crisis: Ambition versus Reality, Africa Briefing N°122, 28 September 2016 (also available in French).

Boulevard of Broken Dreams: The "Street" and Politics in DR Congo, Africa Briefing N°123, 13 October 2016.

Cameroon: Confronting Boko Haram, Africa Report N°241, 16 November 2016 (also available in French).

Fighting Boko Haram in Chad: Beyond Military Measures, Africa Report N°246, 8 March 2017 (also available in French).

Burundi: The Army in Crisis, Africa Report N°247, 5 April 2017 (also available in French).

Cameroon's Anglophone Crisis at the Crossroads, Africa Report N°250, 2 August 2017 (also available in French).

Avoiding the Worst in Central African Republic, Africa Report N°253, 28 September 2017 (also available in French).

Time to Reset African Union-European Union Relations, Africa Report N°255, 17 October 2017 (also available in French).

Cameroon: A Worsening Anglophone Crisis Calls for Strong Measures, Africa Briefing N°130, 19 October 2017 (also available in French).

Cameroon's Far North: Reconstruction amid Ongoing Conflict, Africa Briefing N°133, 25 October 2017 (also available in French).

Time for Concerted Action in DR Congo, Africa Report N°257, 4 December 2017 (also available in French).

Seven Priorities for the African Union in 2018, Africa Briefing N°135, 17 January 2018 (also available in French).

Horn of Africa

Sudan and South Sudan's Merging Conflicts, Africa Report N°223, 29 January 2015.

Sudan: The Prospects for "National Dialogue", Africa Briefing N°108, 11 March 2015.

The Chaos in Darfur, Africa Briefing N°110, 22 April 2015.

South Sudan: Keeping Faith with the IGAD Peace Process, Africa Report N°228, 27 July 2015.

Somaliland: The Strains of Success, Africa Briefing N°113, 5 October 2015.

Kenya's Somali North East: Devolution and Security, Africa Briefing N°114, 17 November 2015.

Ethiopia: Governing the Faithful, Africa Briefing N°117, 22 February 2016.

Sudan's Islamists: From Salvation to Survival, Africa Briefing N°119, 21 March 2016.

South Sudan's South: Conflict in the Equatorias, Africa Report N°236, 25 May 2016.

Kenya's Coast: Devolution Disappointed, Africa Briefing N°121, 13 July 2016.

South Sudan: Rearranging the Chessboard, Africa Report N°243, 20 December 2016.

Instruments of Pain (II): Conflict and Famine in South Sudan, Africa Briefing N°124, 26 April 2017.

Instruments of Pain (III): Conflict and Famine in Somalia, Africa Briefing N°125, 9 May 2017.

Instruments of Pain (IV): The Food Crisis in North East Nigeria, Africa Briefing N°126, 18 May 2017.

Kenya's Rift Valley: Old Wounds, Devolution's New Anxieties, Africa Report N°248, 30 May 2017.

Time to Repeal U.S. Sanctions on Sudan?, Africa Briefing N°127, 22 June 2017.

A New Roadmap to Make U.S. Sudan Sanctions Relief Work, Africa Briefing N°128, 29 September 2017.

How to Ensure a Credible, Peaceful Presidential Vote in Kenya, Africa Briefing N°129, 2 October 2017.

Managing the Disruptive Aftermath of Somalia's Worst Terror Attack, Africa Briefing N°131, 20 October 2017.

An Election Delay Can Help Avert Kenya's Crisis, Africa Briefing N°132, 23 October 2017.

Uganda's Slow Slide into Crisis, Africa Report N°256, 21 November 2017.

Southern Africa

Zimbabwe: Stranded in Stasis, Africa Briefing N°118, 29 February 2016.

Zimbabwe's "Military-assisted Transition" and Prospects for Recovery, Africa Briefing N°134, 20 December 2017.

West Africa

Burkina Faso: Nine Months to Complete the Transition, Africa Report N°222, 28 January 2015.

Security Sector Reform in Guinea-Bissau: An Opportunity Not to Be Missed, Africa Briefing N°109, 19 March 2015 (only available in French).

Mali: An Imposed Peace?, Africa Report N°226, 22 May 2015 (only available in French).

Burkina Faso: Meeting the October Target, Africa Briefing N°112, 24 June 2015 (only available in French).

The Central Sahel: A Perfect Sandstorm, Africa Report N°227, 25 June 2015 (also available in French).

Curbing Violence in Nigeria (III): Revisiting the Niger Delta, Africa Report N°231, 29 September 2015.

The Politics Behind the Ebola Crisis, Africa Report N°232, 28 October 2015.

Mali: Peace from Below?, Africa Briefing N°115, 14 December 2015 (only available in French).

Burkina Faso: Transition, Act II, Africa Briefing N°116, 7 January 2016 (only available in French).

Implementing Peace and Security Architecture (III): West Africa, Africa Report N°234, 14 April 2016 (also available in French).

Boko Haram on the Back Foot?, Africa Briefing N°120, 4 May 2016 (also available in French).

Nigeria: The Challenge of Military Reform, Africa Report N°237, 6 June 2016.

Central Mali: An Uprising in the Making?, Africa Report N°238, 6 July 2016 (also available in French).

Burkina Faso: Preserving the Religious Balance, Africa Report N°240, 6 September 2016 (also available in French).

Nigeria: Women and the Boko Haram Insurgency, Africa Report N°242, 5 December 2016 (also available in French).

Watchmen of Lake Chad: Vigilante Groups Fighting Boko Haram, Africa Report N°244, 23 February 2017.

Niger and Boko Haram: Beyond Counter-insurgency, Africa Report N°245, 27 February 2017 (also available in French).

The Politics of Islam in Mali: Separating Myth from Reality, Africa Report N°249, 18 July 2017 (only available in French).

Double-edged Sword: Vigilantes in African Counter-insurgencies, Africa Report N°251, 7 September 2017 (also available in French).

Herders against Farmers: Nigeria's Expanding Deadly Conflict, Africa Report N°252, 19 September 2017.

The Social Roots of Jihadist Violence in Burkina Faso's North, Africa Report N°254, 12 October 2017 (also available in French).

Finding the Right Role for the G5 Sahel Joint Force, Africa Report N°258, 12 December 2017 (also available in French).



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