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KENYA 2002 ELECTIONS

COMMENTARY

As the election clock ticks, the political and electoral environment in Kenya continues to be incredibly dynamic, as political leaders and citizens alike are beginning to sense weakness in Moi's plan for Uhuru Kenyatta to succeed him. Although much of the political landscape remains muddled, events of the last three weeks have made it clear that the presidential election will likely be contested by three main political parties and groupings: KANU, NAPK and Ford-P. In fact, the National Alliance Party of Kenya (NAPK) recently named its line-up of candidates, effectively introducing a new dimension to the politics of Moi succession, while the president continues to face vocal opposition to his designation of Uhuru as his political heir. In addition to all of the jockeying for electoral position, the Constitution of Kenya Review Commission (CKRC) published last week a draft report outlining their recommendations for the new constitution. Reaction has been mixed from citizens and different stakeholders, although the release of the report has led to fresh calls for waiting to hold elections under the new constitution.

NAPK Presidential Line-Up

On September 18, 2002, following months of consultations and negotiations among its party members, the NAPK named its presidential flag bearer: Honorable Mwai Kibaki, leader of the official opposition and Chairman of the Democratic Party. Honorable Michael Wamalwa, Chairman of FORD-Kenya was designated the vice presidential candidate, with Honorable Charity Ngilu, Chairperson of the NPK, singled out for the position of the prime minister.

This announcement ended an incredible amount of speculation and uncertainty regarding the ability of the NAPK to agree on a platform of candidates; in fact, many analysts believed that this announcement could be the beginning of the end of NAPK as a political alliance. The declaration was the product of an elaborate process of negotiation and bargaining, including the facilitation of two South African

experts who helped the parties establish the framework and principles of the alliance.

Nevertheless, four major questions have emerged in light of this development: 1) Can the NAPK withstand the test of time and face elections as one formidable block? 2) If so, can the NAPK line-up defeat KANU in the general elections? 3) If KANU continues to show signs of splintering, would the NAPK be willing to merge with the Rainbow Alliance? and, 4) If so, would the new alliance be able to agree on a new line-up of candidates?

General reaction among Kenyans to the NAPK line-up has been favourable; moreover, contrary to some observers' expectations, the candidates' respective ethnic groups are supportive of the alliance as a whole. Based on his performance in the 1992 and 1997 elections, Mwai Kibaki is widely considered to command a sizable electoral block – and to be able to

attract significant financial resources to

the campaign.

The Implications of Politics in KANU

Long-time observers of Kenyan politics have been stunned by developments within the ruling KANU party since Moi's announcement of Uhuru as his endorsed successor. In fact, many analysts believe that the architects of the so-called "Uhuru Project" made two key strategic mistakes: first, they assumed that the nomination would generate unanimous support inside the party; and second, they believed that, in the event of dissent, executive powers could be invoked to intimidate doubters into supporters. The reality has been far different, as almost immediately following Moi's announcement, dissatisfied KANU leaders formed the Rainbow Alliance, which has held up in spite of the sacking of a number of key senior officials from the Cabinet, including the Vice President.

KANU – and, by extension, Moi – now faces its most serious challenge of division and potential electoral defeat since multipartyism was introduced in

1992. The emergence of the Rainbow Alliance has unquestionably brought a new perspective to Kenyan politics, outdrawing the campaign rallies of KANU and the mainstream opposition parties alike. In light of this clear popularity, the KANU leadership is slowly beginning to make quiet overtures to the Rainbow Alliance. Likewise, given the Alliance's strength and possible ability to swing the elections, both the NAPK and the People's Coalition have indicated their willingness to negotiate with the group.

For their part, the Rainbow Alliance has insisted that if their demand for a democratic internal nomination process is not met, then they will reconsider their positions in KANU. Possible scenarios include the Alliance's joining either the NAPK or People's Coalition, its partnership with and revitalization of another existing party or its transformation into a political party, which would create the challenge of registration.

Bottom Line?

At this point, the projections for the winning presidential candidate in Kenya seem to change daily depending on which group is in the news or which just held a successful rally. Ethnic politics will also undoubtedly play a role, as both Uhuru and Kibaki come from the populous Kikuyu community, which is also represented by some members of the Rainbow Alliance. Many analysts believe that the Alliance will play the deciding role; NAPK likely needs the votes outside of Central Province, where the majority of Kikuyu live, that the Alliance could attract – and the same could be said for KANU.

The Draft Constitutional Report

The Constitution of Kenya Review Commission (CKRC) recently made sweeping recommendations in the draft constitutional report released on September 18, 2002. Among other things, the draft calls for a change in the structure of government with the introduction of the post of prime minister as Head of Government and the idea that non-Members of Parliament (MPs) be appointed as Cabinet Ministers. The report also suggested that a winning presidential candidate should, in addition to the current provision of garnering 20 percent of the votes in at least five provinces, be elected by a minimum of 51 percent of all valid votes.

Further radical proposals were introduced regarding the judicial branch, including the recommendation of the Office of the Supreme Court as the final authority on all judicial matters, and sections addressing the appointment of judges and their security of tenure. Perhaps even more sweeping were provisions dealing with the election of Members of Parliament and the provision that electorates could impeach their MPs in case of non-performance.

Citizens and a considerable number of stakeholders have come out in massive support for the draft document. Nevertheless, the provisions that touched on the judiciary and the Cabinet nominations have received considerable criticism from a number of judges and MPs. In fact, two senior judges have initiated court proceedings that seek to have the section dealing with the judiciary deleted from the report. In another reminder of the strength of Kenyan civil society, human rights organizations and other citizen groups have expressed solidarity with

the Review Commission, publicly asserting that the courts have no jurisdiction to institute any legal injunctions against the CKRC, as it is insulated by the Review Act.

The constitutional review will now move into the public debate phase of the process, which will last for one month prior to the convening of the national Constitutional Conference the debate the document. The conference will comprise 222 MPs, three people – one of whom has to be a woman – nominated from each of the 70 districts of Kenya, one representative of each political party registered by the end of 2000, and the 29 CKRC commissioners, who will have no vote. In the event no resolution is reached on pertinent issues, the same documented will be voted on in a public referendum.