



ISS Public Seminar Report

POWER SHARING IN KENYA: ACHIEVEMENTS AND CHALLENGES

Thursday 4th June 2009, UNECA Conference Room 3, Addis Ababa, Ethiopia

Chair: H.E. Ambassador Guillaume Nseke, Permanent Representative of La Francophonie to the African Union and UNECA, Addis Ababa

Panelists: H.E. Ambassador Franklin Esipila, Ambassador Extraordinary and Plenipotentiary, Embassy of the Republic of Kenya, Addis Ababa
Dr. Tim Murithi, Programme Head, Peace and Security Council Report Programme, Institute for Security Studies, Addis Ababa

Background

The CPP programme strives to complement and support the work of the African Union (AU) and AU Member States particularly on issues of peace and security. The ISS Public Seminar Series is part of the CPP's effort at consensus-building by providing a platform for sharing information, encouraging policy debates and dialogues on the African peace and security agenda. The central objective of the seminar was to stimulate quality discussion, in-depth and constructive interaction between participants on achievement as well as the failure of the Grand Coalition Government of Kenya (GCG). Particularly, the

same time the seminar sought to examine and identify lessons learnt and advance comprehensive policy recommendations.

Focus of the Discussion

The seminar began with welcoming remarks by Roba D Sharamo, Programme Head, CPP, ISS Addis Ababa Office and then followed by panel presentations focusing on the progress and challenges of Kenya's Grand Coalition Government (GCG). The power sharing agreement which followed the 2007 post-election violence in Kenya led to the establishment of a coalition government under which the contending parties fronted by the Party of National Unity (PNU) and Orange Democratic Movement (ODM) shared power. Beyond apportioning political offices, the agreement sought to bring a durable peace through genuine compromises and moderation. Yet, as evidenced by the recent political tensions, the power-sharing agreement fell to address issues of effective representation and participation in decision-making for ordinary Kenyans. It also fell short of addressing the very factors that underpinned the post-election violence, namely the decades of economic marginalisation and resource-based conflicts (such as land) which have deprived ordinary Kenyans of the opportunity to realise their full potential. It is thus essential to address the many pressing issues confronting the Kenyan power sharing agreement especially in view of the precedence it would set for the future application of similar agreements in Africa, especially in the context of contested election results.

As such the GCG's current status demands an analysis as to why it has not been able to maintain some of its promises and the failure of implementing the National Reconciliation Accord signed on February 28, 2008. The Accord signed in the spirit of "acting for Kenya", outlined the principles for partnership for the GCG and formed the basis for its creation by the two principals. The Accord contained four agenda items negotiated upon within the framework of the Kenya National Dialogue and Reconciliation process led by Koffi Annan among other personalities. These key elements were: immediate action to stop violence and restore fundamental rights and

liberties; immediate measures to address the humanitarian crisis, promote reconciliation, and healing; to overcome the political crisis; and to address long term issues, including constitutional, legal and institutional reforms, land reforms, tackling youth unemployment, poverty, inequality, regional development imbalances, consolidating national unity and cohesion, and addressing impunity, transparency and accountability.

Based on the aforementioned key elements, it was highlighted that some of the progress made after the formation of the GCG, among others, the restoration of peace and normalcy in the country, the tackling of the humanitarian crisis through the resettlement of the internally displaced person, harmonization of different policies and programmes of the parties, the official launch of the Kenya Vision 2030 and other progress in relation to the amendment of the Kenyan Constitution. Key achievements have been made in institutional development and strengthening such as:

- Investigation and implementation of the recommendation of the Independent Review Commission of Inquiry on the conduct of 2007 Elections (the Kriegler Commission), which was appointed on 14th March and submitted its report on 17th September, 2008, and the Commission of Inquiry into the Post Election Violence (CIPEV) –the Waki Commission and submitted its report on 15th October, 2008;
- The Truth, Justice and Reconciliation Act of 2008 came into force in March 2009 establishing the Truth, Justice and Reconciliation Commission (TJRC);
- The National Cohesion and Integration Act of 2008, which was passed by Parliament last year, establishes an eleven (11) member National Cohesion and Integration Commission to spearhead issues of national integration;
- The Witness Protection Act of 2008 is also in place, and the Government formally launched the Witness Protection Unit in March 2009;
- Following the enactment of the Constitution of Kenya Amendment Act of 2008 and the Constitution Review Process, a Committee has been set-up and expected to lay the ground work for the review of the constitution and the referendum for its adoption. Additionally, the Constitutional amendment also established the Interim Independent Constitutional Dispute Resolution Court (IICDRC) to hear and determine matters related to the review process;

- The Interim Independent Election Commission (IIEC) has been established by the Constitutional amendment as constituted in May after Parliamentary approval earlier in April 2009;
- The Constitutional amendment also established the Interim Independent Boundaries Review Commission (IIBRC), which will be responsible for reviewing electoral and administrative boundaries making recommendations to the Parliament;
- In May 2009, the government appointed a National Task Force on Police Reforms. The Task Force is mandated to, among others, examine existing policy, institutional, legislative, administrative and operational structures, systems and strategies and recommend comprehensive reforms while taking cognizance of the recommendations contained in Agenda 4, Kriegler and Waki Commissions and other policy related Reports, so as to enhance policy efficiency, effectiveness and institutionalize professionalism and accountability.

The above progress notwithstanding, it was argued that key challenges still remain in the implementation of the Accord. In this regard, it was pointed out that the election dispute and the post-election violence damaged Kenya's international image and reputation which previously regarded as beacon of peace and democratic stability in the region. It was also stated that post-election situation also contributed to food crisis and affected negatively the economic progress. At time of election, Kenya's economic growth was 7 % and the recently released Economic Survey reveals a dramatic decline to a mere 1.7 %. Thus, declining economic growth will further undermine the performance of the GCG and raise the already problematic and high unemployment rate in the country.

Additionally, it was argued that in order to give a clear reflection on the power sharing in Kenya, it is necessary to situate the events that were witnessed in December 2007 and early 2008 within a historical context. It would be more accurate to consider what happened as the logical consequence of the continuous political manipulation that had been taking place in post-colonial period—where the seeds of dissension were sown in the very fabric of colonial nation-state. The root causes of those clashes were attributed to

the twin problem of economic impoverishment and ethnic chauvinism. It was also stated that the problem in Kenya stems from the persistent and increasing 'ethnicisation' of the political sphere. Linked to this process of ethnic manipulation is the instrumentalization of political power to gain, secure and entrench economic advantage. In fact it was highlighted that none of Kenya's Presidents saw the long term political expedience or appreciated the necessity to change and transform the way in which political power is centralized. Since independence in 1963, the three post-colonial Presidents of Kenya have come from only two ethnic groups, the Kikuyu and Kalenjin. Therefore, this scenario generates ethnic contestation in the political sphere and hence creating room for ethnic suspicions and unrest.

Turning to the formation of Kenya's GCG, it was noted that there was a degree of misplaced euphoria in the Agreement. Fundamental issues have still not been addressed but there exist opportunities for achieving them. Currently GCG is deeply polarized and in a crisis mode with internal bickering and political jostling and disagreements further accentuating inherent institutional divisions across the political divide. It was also pointed that the GCG is ineffective to combat corruption and address economic challenges. And such failure is paralleled by the increasing infighting and public accusations and fallouts. As such it was argued that the situation is delicate and precarious. Thus, it is necessary to pose a question that --what are the ramification of the failure of the GCG? In this regard several points can be identified, such as: the GCG failed to lay foundation for peace building and national reconciliation, its inability to provide basic service, the envisaged roadmap is not clear, the general public frustration, the recent resignation of the Ministers from the GCG and the deep structural division on some issues like the amnesty debates among others. It was also mentioned that the context of power sharing in Kenya was super imposed on the existing constitution and legal system so it is difficult to expect it to function smoothly. Some of the crises in Kenya are deep-rooted and old issues that do not have connection with the election such as distribution of land and political power cannot be addressed by a hurriedly put together GCG.

It was also advanced that as a positive move the establishment by the GCG of a Permanent Committee to manage its affairs, functioning and disputes. However, the Committee has not featured in managing the coalition.

Thus, a few emerging lessons could be drawn:

- Coalition should not be formed under duress. There are still hard liners in the GCG.
- To survive, coalition governments must work hard to respect the institutions that have been established to manage and implement the power-sharing deals.
- Coalitions should not publicly air out internal disagreements.
- It is imperative to adopt and respect coalition conduct to uphold and maintain internal cohesion.

Policy Recommendations

- The need to involve Civil Society Organizations and the media to play a vital role in terms of humanitarian relief effort, promoting civic education and reconciliation and healing across the country.
- Accelerate the involvement of citizens on the dialogue on the process of national reconciliation and integration process.
- There has to be a shift in emphasis from the political sphere to the people and civil society organizations.
- The need to increase the role of the international community particularly on the issues of impunity and accountability, and in the process of reconciliation and healing.

Closing Remarks

Roba D. Sharamo, Programme Head, CPP ISS Addis Ababa Office thanked the panelists and participants for the rich and interactive discussions. He also thanked the CPP donors: Humanity United (USA) and the Ministry of Foreign Affairs of the Federal Democratic Republic of Germany for the financial support, which enabled the holding of this important seminar.