

From imperial power to vulnerable authority: A historical study of the institution of the presidency in Kenya

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Abstract

The role of the presidency in Kenya has animated and dominated popular and political discourses on constitution making, constitutional processes, and constitutional review and implementation, as well as political processes, since independence in 1963. This study employs the ex post facto approach as well as the use of archives and secondary sources and explores the key milestones and shifts that have defined the presidency, analysing its development in the context of democratic governance, executive authority, and the balance of power within the Kenyan government. The study examines the institution of the presidency including debates over executive power, checks and balances, and the role of the president as commander-in-chief. It then proceeds to analyse how successive presidents have interpreted and exer-

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cised their constitutional powers, considering factors such as party politics, presidential leadership styles, and responses to domestic and international crises. Special attention is given to landmark moments in presidential history, including the expansion of executive authority during times of crises, the emergence of the modern presidency under and in the post-Kibaki era, and the challenges to presidential legitimacy and accountability in that era.

Keywords: imperial presidency, vulnerable authority, implementation, constitutionalism, executive power, presidential leadership styles.

Introduction

I call on all ministers, assistant ministers and every other person to sing like parrots. During the Mzee Kenyatta period, I persistently sang the Kenyatta tune ... If I had sung another song, do you think Kenyatta would have left me alone? Therefore, you ought to sing the song I sing. If I put a full stop, you should put a full stop. This is how the country will move forward. The day you become a big person, you will have the liberty to sing your own song and everybody will sing it too.¹

The role of the presidency in Kenya has animated and dominated popular and political discourses on constitution making, constitutional processes, and constitutional review and implementation, as well as political processes, since 1963. The preoccupation with the role and power of the presidency continued through the 2010 referendum with the adoption of a new Constitution, and has remained a thorny issue in Kenyan history. As such, the Kenyan presidency elicits a lot of controversy both locally and globally. From controversies over electioneering processes and the quest over the use and maintenance of power, it seems like the institution of the presidency has been weakened and greatly exposed to abuse which has made it more vulnerable as an institution.

Since the dawn of the post-colonial era in Africa the presidency has become an enduring fixture on the continent's political landscape. That is, the presidency has become the dominant institution in African politics by wielding tremendous unfettered powers that span the broad gamut of the public sector – from unbridled control of the 'national purse' to expansive appointive powers.² Both the ubiquity and the dominance have led to the typical African president being referred to as a 'prince, autocrat, prophet and tyrant'.³ Significantly, the suzerainty

¹ Africa Watch Committee, 'Kenya: Taking liberties', *Africa Watch*, 1991, 27 as cited in Africa Watch, 'Divide and rule: State-sponsored ethnic violence in Kenya', *Human Rights Watch*, 1993, 8.

² Kwasi Prempeh, 'Presidential power in comparative perspective: The puzzling persistence of imperial presidency in post-authoritarian Africa', 35(4) *Hastings Constitutional Law Quarterly* (2008) 821.

³ Robert H Jackson and Carl G Rosberg, *Personal rule in black Africa: Prince, autocrat, prophet, tyrant*, University of California Press, 1982, 11.

of the presidency over political power has witnessed the corresponding weakening of the legislative and judicial branches that are supposed to serve as countervailing forces in providing 'horizontal accountability'.⁴ In other words, the growth of the presidency has created a 'zero-sum framework' in which the increase in presidential powers leads to a decrease in legislative and judicial powers and the consequent broader weakening of all other public institutions.⁵

Charles Fombad examines the presidency through the lens of constitutionalism, stressing that the effectiveness of governance in Africa hinges on how presidential powers are defined and limited within constitutions. While many African constitutions formally enshrine separation of powers, Fombad argues that enforcement mechanisms are often inadequate, allowing the presidency to overshadow other branches of government. There is need for a more balanced distribution of power and greater public participation in the constitutional process to ensure that constitutions serve as genuine checks on executive authority.⁶

HWO Okoth-Ogendo brings a different perspective by exploring the presidency in relation to African political traditions. He critiques the imposition of Western constitutional models on African societies without considering indigenous governance systems, which were often more communal and less centralised. Okoth-Ogendo argues that the presidency in Africa is a hybrid institution, shaped by both colonial legacies and traditional leadership structures, leading to a disconnect between the presidency and the people. This analysis suggests that rethinking the presidency in Africa requires a deeper engagement with indigenous political traditions.⁷

⁴ Pita Ogaba Agbese, 'The political economy of the African state', in George Klay Kieh, Jr (ed) *Beyond state failure and collapse: Making the state relevant in Africa*, Lexington Books, 2007, 33-50.

⁵ Claude Ake, *Democracy and development in Africa*, Brookings Institution Press, 1996, 34.

⁶ Charles M Fombad, 'Constitutionalism and the presidency in Africa', in John Akokpari (ed) *The African Charter on Democracy, Elections and Governance: A commentary*, Oxford University Press, 2020, 235-258.

⁷ Hastings Wilfred Opinya Okoth-Ogendo, 'Constitutions without constitutionalism Reflections on an African political paradox', in Douglas Greenberg and others (eds) *Constitutionalism and democracy: Transitions in the contemporary world*, Oxford University Press, 1993, 79.

Interestingly, the emergence of the 'third wave of democratisation', and the resulting liberalisation of politics in 1990, raised hopes that the 'hegemonic presidency' would be caged, as democratising African states made the transition from political systems based on personal rule,⁸ to those based on formal norms embodied in constitutions and statutes. However, these hopes have been dashed as the 'hegemonic presidency' has remained ensconced on the African political landscape, due to its resilience and adaptability.⁹ Prempeh puts the case this way:

However, despite the recent democratic backlash against decades of authoritarian presidential rule in Africa, and the regime change this has wrought in several African states, the phenomenon of the 'imperial presidency', long associated with politics and government in Africa, persists.¹⁰

Against this background, this study seeks to address some critical questions. First, what factors and forces have shaped the historical development of the presidency in Kenya? Second, what is the nature and dynamic of the imperial presidency phenomenon? Third, what are the major causes of the phenomenon – what are the major axles? This paper asserts that although recent presidents have encountered numerous political troubles, the institution of the presidency in Kenya has grown in power and prominence over the past century. Designed as a 'unitary' office, the presidency possesses a capacity for quick decision and action.¹¹

The article examines the evolution of the office of the institution of the presidency in Kenya since 1963 to 2022 when a new constitution was successfully promulgated. This includes the Jomo Kenyatta regime (1963-1978) and the politics of power, resource distribution, and the rise

⁸ See for example, Jackson and Rosberg, *Personal rule in black Africa: Prince, autocrat, prophet, tyrant*; Goran Hyden, *African politics in comparative perspective*, Cambridge University Press, 2012.

⁹ Denis Tull and Claudia Simons, 'The institutionalisation of power revisited: Presidential term limits in Africa', 52(2) *Africa Spectrum* (2017) 96. This resilience is evidenced through specific constitutional provisions such as presidential term limits, see, Tull and Simons, 'The institutionalisation of power revisited', 82.

¹⁰ Prempeh, 'Presidential power in comparative perspective', 763.

¹¹ John R Bond and Richard Fleisher, *The president in the legislative arena*, Chicago University Press, 1990, 259.

of the imperial and populist presidency. Then came the Daniel Arap Moi presidency (1978-2002), which sought to consolidate the imperial and populist tradition of the Kenyatta era. Mwai Kibaki's presidency in the pre-coalition phase (2002-2007) was largely a continuum of the Kenyatta-Moi administrations as well as touching briefly on the Uhuru Kenyatta presidency. We argue that precipitated by the urgent need to stem the violence following the 2007 presidential election, the Grand Coalition Government of Kibaki's Party of National Unity (PNU) and Raila Odinga's Orange Democratic Movement (ODM) (2008-2013) ushered in a semi-presidential system without parallel; in these years the exercise of presidential power became somewhat circumscribed. Finally, the study evaluates the impact of the Constitution of Kenya (2010) on the presidency, public authority and public administration.

In essence, this study will focus on the broader matter of how the expression of power has evolved over time depending on the persona of the holder of the presidency at that particular period. More importantly no historical study on the institution of presidency, to our knowledge, has been done before and thus this work will fill the void in Kenyan political historiography. A historical study on the institution of presidency is considered key because it casts light on the changing patterns of presidency in general and examines intellectual merit and coherence in leadership.

After this introduction, the paper proceeds with a historiographical survey on the nature of presidency in Africa discussing the various views on imperial presidency. This section also provides an alternative lens of studying imperial presidency. Thereafter, we will examine the Kenyatta presidency, the Moi era, Kibaki era as well as an anatomy and challenges of the Uhuru presidency, closing with a conclusion.

The institution of presidency: A historiographical survey

Often, scholars studying the presidency face gaps in their understanding due to missing information or data. When research is limited

by the lack of crucial empirical evidence, it highlights the areas that remain unknown and raises new questions about them. In contrast, existing research helps us identify important relationships, based on current knowledge and insights. One key area where there is still insufficient understanding is the president's relationship with the executive branch.

The initial three decades of the post-independence era in Africa were marked by the spectre of one-party states, 'presidents for life', violent usurpations of power either through assassinations or military coups.¹² Further, these political developments revolved around an imperial presidency that was anchored on the personalisation of power, the suppression of human rights, and predation. For example, by the end of the 1980s, only six of the approximately 150 presidents who had ruled various African states voluntarily relinquished power, howbeit, after tenures in excess of 20 years.¹³

The phenomenon of imperial presidency is rooted in 'aspects of the post-colonial history and the evolution of the African state; and in aspects of the constitutional design and politics in Africa's new democracies'.¹⁴ Moreover, even in this era of the 'third wave of democratisation,' presidential suzerainty persists because of the continuation of the practice of the centralisation of power at the national level, weak legislatures, courts and other public institutions, and presidential monopoly over the control of public financial resources.¹⁵

Similarly, imperial presidency in Africa is mainly powered by presidential control over the financial, material, and logistical resources of the state. Using this position of dominance, the imperial presidency has then created a vast patron-client network. Operationally, the imperial president serves as the chief patron and is assisted by a coterie of national and local pro-consuls, who serve as the intermediaries with ordinary citizens. Particularly, given the pervasiveness of mass poverty in Africa,

¹² Tony Leon, 'The state of liberal democracy in Africa: Resurgence or retreat?', Development Policy Analysis No 12, Cato Institute, 26 April 2010, 2.

¹³ Leon, 'The state of liberal democracy in Africa', 2.

¹⁴ Prempeh, 'Presidential power in comparative perspective', 764.

¹⁵ Prempeh, 'Presidential power in comparative perspective', 762-63.

these patron-client networks have become the sources of survival for ordinary citizens. Ultimately, these ordinary citizens have been trapped by a dependent relationship with the imperial presidency.¹⁶

In the same vein, several key elements are pivotal to sustaining the hegemonic presidency in Africa. The pivot is the establishment of reciprocal relations between the president, the chief patron, and his or her coterie of lieutenants, followers, and clients. Another factor is that access to resources by the president's vast clientelist network is the glue that holds the relationships together. Essentially, the 'clients and followers expect something in return for their loyalty'.¹⁷

The phenomenon of the 'big man' is visible through these hegemonic presidents.¹⁸ The foundational pillar of these 'big men' is anchored on the fact that they 'are too willing to use undemocratic means to silence their vocal opponents'.¹⁹ In other words, the use of repression is crucial to the maintenance of presidential hegemony.

Using Cameroon as a case study, Fru Doh postulates that the 'big man syndrome' in Cameroonian politics, as personified by the presidency, 'is a gorgon that was inherited from the colonial administrations'.²⁰ Functionally, the hegemonic presidency in the country has been notorious for fostering a culture of corruption and graft, amid neglected human needs. In other words, while the hegemonic president and his clients have used various corrupt means to accumulate wealth, they have paid very little attention to the needs of the majority of Camerooni-

¹⁶ Igwe Dickson Ogbonnaya, 'The continuity of 'autocratic presidency' in Africa's democratisation project', 7 *International Journal of Public Policy* (2011) 183.

¹⁷ Hyden, *African politics in comparative perspective*.

¹⁸ Helge Ronning, 'Democracies, autocracies or partocracies? Reflections on what happened when liberation movements were transformed to ruling parties, and pro-democracy movements conquered government', Paper for the conference election processes, liberation movements and democratic change in Africa, Maputo 8-11 April 2010, 13 that provides examples of Dos Santos (the former President of Angola), Afwerki (the President of Eritrea), Mugabe (the deposed President of Zimbabwe), Zenawi (the late Prime Minister of Ethiopia), and Museveni (the President of Uganda).

¹⁹ Ronning, 'Democracies, autocracies or partocracies?', 13.

²⁰ Emmanuel Fru Doh, *Africa's political wastelands: The bastardization of Cameroon*, Langaa RPCIG, 2008, 21.

ans. The resulting effect is that the institution is despised and unpopular with the majority of the citizens of the country.

In Kenya, the imperial presidency phenomenon is shaped by two major sets of factors: ethnicity and partisanship. In the case of the former presidential hegemons, such as Kenyatta, Moi, and Kibaki, they used the dominant Kikuyu ethnic group as a major anchor of presidential dominance while employing their vast party machinery. Kenyatta and Moi used the Kenyan African National Union (KANU) while Kibaki used the Liberal Democratic Party (LDP) and its subsequent metamorphoses such as the National Rainbow Coalition (NARC) and the Party of National Unity (PNU).²¹

As Quirk has pointed out, '...the presidency is not a single, coherent field...'.²² The study of the presidency brings together a number of fragmented interests and foci, and with some exceptions, presidency scholars have remained wedded to their own specialisations within this broad and disparate subfield of the study of African politics. Quirk's sound advice was that presidency scholars 'should learn to live with the fundamental diversity of the field',²³ but the quest for scientific rigour and theoretical sophistication may not always be compatible with that proposition. There are some areas of presidency scholarship where theoretical sophistication, at least in the way that term is understood in contemporary political science, is not, and perhaps ought not to be, the prime concern.²⁴

²¹ Maurice Amutabi, 'Beyond imperial presidency in Kenya: Interrogating the Kenyatta, Moi and Kibaki regimes and implications for democracy and development', 1(1) *Kenya Studies Review* (2009) 56. Treading on the same path, Isumonah interrogates the dynamics of the imperial presidency in the specific context of Nigeria observing that it has undermined the legal and other formal guarantees for political competition and participation in the country. Using the Obasanjo regime as the case study, he postulates that the pivots were presidential domination of the ruling People's Democratic Party (PDP), the Independent Electoral Commission (INEC), and the Economic and Financial Crimes Commission (EFCC). See, Adefemi Isomunah, 'Imperial presidency and democratic consolidation in Nigeria', 59(1) *Africa Today* (2012) 43.

²² Paul J Quirk, 'What do we know and how do we know it?', William Crotty (ed) *Volume 4 of Political science: Looking to the future*, Northwestern University Press, 1991, 38.

²³ Quirk, 'What do we know and how do we know it?', 56.

²⁴ William J Crotty, 'Introduction: Setting the stage' in William Crotty (ed) *Volume 4 of Political science: Looking to the future*, Northwestern University Press, 1991, 7.

Literature on the presidency is an area where substantial and significant scholarship has been produced. Such significant contributions illustrate that scholars in the public law tradition do their work on the presidency differently from others. Their method is traditional. It consists of detailed historical research, textual exegesis of legislation and legal opinions, and argument about the nature of constitutionalism, leading to prescriptive conclusions. We still learn a great deal about the presidency through this approach, and without getting into the finer points of epistemology, it has not been demonstrated that the kind of work produced by Koh,²⁵ and Fisher,²⁶ operating within the public law tradition would be better informed by what is understood as theory in the post-behavioural age.²⁷

The imposition of the tenets of the behavioural revolution on presidency scholarship tends to marginalise a particular focus of research, such as public law. Fisher himself pointed this out 15 years ago. 'In recent decades,' he wrote, 'we have managed to drive an artificial wedge between the disciplines of law and political science'.²⁸ Fisher thought the problem went further than presidency scholarship, and he did not attribute all the blame to the development of political science, but he was contributing to an evaluation of presidency research and his concerns have yet to be taken on board by those who have developed methodological, conceptual, and theoretical standards for presidency research.

Learning to live with the fundamental diversity of approaches embraced by presidency scholars has not been an easy task. The emphasis on methodology, theory, and scientific rigor has detached the public law approach from what is now mainstream presidency scholarship even more since Fisher first identified the problem. Moreover, Fish-

²⁵ Harold Hongju Koh, *The national security constitution: Sharing power after the Iran-contra affair*, Yale University Press, 1990, 16.

²⁶ Louis Fisher, *The law of the executive branch: Presidential power*, Oxford University Press, 2014, 112.

²⁷ See, Roger H Davidson, 'Legislative research: Mirror of a discipline' in Crotty (ed) *Political science: Looking to the future*, Vol 4, 23-30, for a broader discussion of the behavioural age.

²⁸ Fisher, *The law of the executive branch: Presidential power*, xvii.

er's concern about the fate of the public law tradition in presidency research could well be extended to other areas. Historical research and analysis, for example, shares much in common with the public law approach, and although history can be made to fit contemporary benchmarks of scholarship in political science, detailed historical research on the institution of the presidency seems to yield less professional payoff than it used to.²⁹ As Skowronek himself notes, 'it is easy to get lost in presidential history. Each story presents itself as baldly idiosyncratic and therefore defiant of any quest for generalisation.' His work is the exception to the rule.³⁰

Quirk provided a thorough and perceptive compendium of the gaps in the 'core topics of the presidency field,' and much of what he highlighted is still relevant.³¹ Quirk's survey remains an indispensable reference point for any newcomer to the field who wants to know about the state of presidency scholarship. The purpose of this review therefore, is not to update Quirk but rather to pursue the question of what gets neglected in the study of the presidency by addressing the almost systemic constraints and impediments facing any scholar in this field. It is suggested in this study that those constraints are more responsible for the gaps in the existing knowledge of the presidency than any other variable and that if presidency scholars have been deficient, it is not in the quality of their scholarship but rather in their collective failure to address this fundamental problem.

The Jomo Kenyatta presidency: The unitary state and consolidation, 1963-1978

In December 1963, Kenya gained independence and, after a year of negotiations, became a presidential republic with Jomo Kenyatta as its first president. This section reconstructs Kenyatta's presidency, explor-

²⁹ Stephen Skowronek, *The politics presidents make: Leadership from John Adams to George Bush*, Harvard University Press, 1993, 526.

³⁰ Skowronek, *The politics presidents make*, 514.

³¹ Quirk, 'What do we know and how do we know it?', 37.

ing the links between his ability to emerge as an uncontested leader and the deeper colonial and postcolonial history of the country.

Kenyatta's regime has been aptly described as an example of 'bonapartist' rule.³² Bonapartism is characteristic of countries in which capitalist penetration and class formation are incomplete, and a national bourgeoisie has yet to consolidate its power. A bonapartist leader does not represent a single class, but must appear to be simultaneously promoting the interests of various groups in the society and must encourage the emerging bourgeoisie and speak for the peasantry, satisfy the armed forces and the large bureaucracy, which serves as his or her chief power base. To carry out these contradictory policies successfully, such a leader must possess a certain charisma and political adroitness.³³

Kenyatta was a leader in bonapartist mould and by the time of his death in August 1978, his repression of opposition, the implication of his government in political assassinations and the land grabbing and corruption associated with various family members had eroded a large measure of his support. However, he retained his undoubted charisma and reputation as a 'grand old man' of African nationalism.³⁴ He still possessed a certain amount of the political cunning which had distinguished his long career. More importantly, there was enough leeway in the economy to enable him to give scope to the ambitions of the bourgeoisie (both national and foreign) and to expand the bureaucracy which provided jobs for school leavers and university graduates.

The smallholders and landless were wooed with the Kenyatta's charisma and settlement schemes while officers in the armed forces were courted with offerings of land in 1964 to perhaps quell possibilities of a mutiny against the Kenyatta state. However, seven years later coup plotters, including an army commander, were undone by a well-developed intelligence network and artful sense of timing. With such char-

³² Colin Leys, *Underdevelopment in Kenya: The political economy of neo-colonialism, 1964-1971*, Heinemann Educational Books, 1975.

³³ Leys, *Underdevelopment in Kenya*, 39.

³⁴ Colin Legum, *Africa contemporary record: Annual survey and documents 1989-1990*, Africana Publishing Company, 1998, 111.

acteristic finesse, Kenyatta declined to press charges against the commander, but instead encouraged him to retire to his 10,000-acre farm.³⁵

In his later years, Kenyatta encountered widespread dissatisfaction, especially after the assassination of the highly popular opposition Member of Parliament, Josiah Mwangi Kariuki, in March 1975. The government's attempt to cover up the murder led to the detention of those who openly condemned its actions, intensifying the use of repression. Kenyatta's personal popularity, vital in a bonapartist regime, was waning. However, the economy came to his rescue by 1976, as the Brazilian frost of 1975 drove up coffee prices, creating a seemingly robust – though misleading – economic boom. Capital accumulation surged in 1976 and 1977, with farmers, including smallholders, switching from food crops to coffee. The smuggling of 'black gold' (coffee) from Uganda made Kikuyu middlemen and government officials instant millionaires, creating a neo-patrimonial system that benefited his community while alienating others.³⁶

In this way, Kenyatta was beginning to favour and promote his own Kikuyu bourgeoisies. As a result, the small tribes in Kenya banded together in the Kenya African Democratic Union (KADU) party in fear of the alliance of the Kikuyu and Luo in Kenya African National Union (KANU). By 1965, it was certain that the Kikuyu-Luo Alliance had failed. The Luo accused Kenyatta of tribalism and selfishness. On his part Kenyatta regarded the Luo as the ambitious and bitter rivals of the Kikuyu political powers. In this struggle, Kenyatta forged some loose alliance of most Kenyan ethnicities with the Kikuyu and isolated the Luo throughout his rule. It was perhaps only in Luo land where the people danced gleefully when Kenyatta died.³⁷

In explaining Kenyatta's character in relation to presidency, we examine this analogy in the context of the Independence Constitution of

³⁵ Maina wa Kinyattĩ, *Mwakenya: The unfinished revolution, selected documents of the Mwakenya - December Twelve Movement (1974-2002)*, Mau Mau Research Center, 2014, 118.

³⁶ Legum, *Africa contemporary record: Annual survey and documents 1989-1990*, 320.

³⁷ John W Harbeson, *Nation-building in Kenya: The role of land reform*, Northwestern University Press, 1971, 32.

1963, in which the Prime Minister was the head of government. This office was soon amalgamated with that of the outgoing colonial Governor to create a powerful head of state and government. Between 1966 and 1992, the presidency was beefed up by systematic constitutional amendments and constitutional practice that created what Okoth-Ogendo calls the 'imperial presidency',³⁸ to the emasculation of other arms of government, including parliament, the judiciary, and other constitutional or public offices.

These amendments included the abolition of constitutional safeguards in presidential systems of government such as devolved governments, the bicameral parliament, parliamentary and judicial independence, and tenure of office for judicial officers and constitutional office holders.³⁹ In addition, Kenyatta wielded extra-legal authority constructed from tradition.⁴⁰ Against the backdrop of the repressive colonial legacy, the presidency was also equated with chiefly authority in traditional societies, which authority was often intertwined with religious authority.

In Sihanya's thinking, Kenyatta is perhaps the best embodiment of traditional authority in post-independence Kenya.⁴¹ With the help of constitutional changes, he managed to create a larger-than-life profile, as most African presidents did. In addition, he used certain Gikuyu traditional institutions to posture himself as a political, tribal and even religious leader (of the Gikuyu), especially when his presidency was increasingly threatened by the opposition led by Jaramogi Oginga Odinga, Kenya's Vice-President. These institutions included oath-taking.⁴² Presi-

³⁸ Okoth-Ogendo, *Constitutions without constitutionalism*, 74.

³⁹ For a sympathetic review of some of these constitutional amendments, See Okoth-Ogendo, 'Constitutionalism and the politics of governance in Africa' in J S Mbaku and S M Mwaura (eds) *The politics of constitutional reform in Africa*, East African Educational Publishers, 1988, 27-35.

⁴⁰ Jackton Boma Ojwang, *Constitutional development in Kenya, 'Institutional adaptation and social change'*, African Centre for Technology Studies Press, 1990, 180.

⁴¹ Ben Sihanya, 'The presidency and public authority in Kenya's new constitutional order', Society of International Development Constitution Working Paper No 2, 2011, 5.

⁴² See for example, Githu Muigai, 'Political violence in Kenya: A study of the 1992 general elections', Kenya Human Rights Commission, 2004; Bethwell A Ogot, *History as destiny*

dent Kenyatta used charisma as a tool of authority more than any other president during his time.

However, Kenyatta's presidency also took on a more centralised and paternalistic form, where his personal authority often overshadowed institutional frameworks, leading to a consolidation of executive power. His presidency became characterised by neo-patrimonial relationships, in which he empowered his Kikuyu community and created a loyal political elite, but this came at the cost of alienating other ethnic groups and fostering inequalities within Kenya. Thus, while Kenyatta's presidency was initially seen as embodying the aspirations of the independence movement, over time, it became marked by increasing authoritarianism and personal rule, with his charisma being both a unifying and divisive factor in Kenyan politics.

In conclusion, Jomo Kenyatta's indelible mark on Kenya's history and his pivotal role in the struggle for independence has secured his place as a revered figure in the country's narrative. His leadership, vision, and dedication to the ideals of freedom and unity left an enduring legacy that continues to resonate with the people of Kenya and beyond. As president, Kenyatta adopted a pragmatic approach to governance, blending traditional African values with modern statecraft. His leadership emphasised unity and national stability, coining the phrase 'Harambee' (meaning 'let's pull together'), which became central to his philosophy of nation-building. Kenyatta focused on consolidating political power and maintaining Kenya's territorial integrity, while also advocating for Pan-African unity.

Despite criticism over the concentration of power and the marginalisation of certain communities, Kenyatta's legacy as the 'grand old man' of African nationalism remained intact.⁴³ His leadership style influenced many post-independence African leaders, and his role in decolonisation earned him a place in history as a key figure in the African

and history as knowledge: Being reflections on the problems of historicity and historiography, Anyange Press, 1995; Eisha Stephen Atieno-Odhiambo, *The historical anthropology of an African landscape*, Ohio University Press, 1988.

⁴³ Ojwang, *Constitutional development in Kenya*, 19.

liberation movement. Kenyatta's political legacy continues to shape Kenya's political landscape and remains a subject of both admiration and critique in African historiography.

Moi presidency: Following the footsteps, 1979-2002

When Jomo Kenyatta, the founding president, passed away in August 1978 after fourteen years as head of state, he was succeeded by Daniel Arap Moi, who had served as Kenyatta's vice-president from 1966-1978. During Kenyatta's presidency, the political realm was dominated by a small Kikuyu elite, often referred to as the 'Kiambu mafia'.⁴⁴ This group tended to undermine Kenyatta's nationalist and populist background, alienating other ethnic groups, as well as many non-conforming Kikuyus. The succession of Jomo Kenyatta was a highly contested and critical period in Kenya's political history, marked by intrigue and intense political manoeuvring.

Andrew Morton, delves into how Daniel Arap Moi, the then Vice President, successfully navigated the power struggle and eventually became Kenya's second president. Morton highlights Moi's political acumen and ability to outmanoeuvre potential rivals, despite being considered a weak leader by many within Kenyatta's inner circle.⁴⁵ The transition was carefully managed to ensure continuity and stability, though it was accompanied by fears of potential ethnic violence and political unrest.

There were power struggles within Kenyatta's government and Moi capitalised on these divisions within the ruling elite. There was resistance and resilience that shaped the succession through backroom deals, alliances, and betrayals. Moi's calm demeanour, loyalty to Kenyatta, and ability to mobilise support within key factions enabled him

⁴⁴ Legum, *Africa contemporary record: Annual survey and documents 1989-1990*.

⁴⁵ Andrew Morton, *Moi: The making of an African statesman*, Michael O'Mara Books, 1998.

to rise to the presidency peacefully, even as critics underestimated his capacity to consolidate power once he assumed office.⁴⁶

Although Moi was loyal to Kenyatta, he was never accepted into his inner circle. He also came from the Kalenjin ethnic group. He was regarded by Kenyans to be the right candidate to steer the country towards a more accommodating human rights era, without ethnic dominance. This general perception of Moi by Kenyans was reinforced by the decisions and promises he made immediately he took over the presidency. In December 1978 Moi released political detainees across the ethnic spectrum, most of whom had been languishing in jails for years.⁴⁷ He also reassured Kenyans that his administration would not condone drunkenness, tribalism, corruption, and smuggling, problems already deeply entrenched in Kenya.

However, as a candidate in a bonapartist situation, he was seriously deficient in two respects: one, he totally lacked charisma and any type of historical claim to the presidency and two, he was not politically adroit, and seemed intellectually out of his depth. On his accession to the presidency, Moi appeared as both the obedient follower and implicit critic of Kenyatta. He attempted to cover himself with Kenyatta's mantle, and at the same time to distance himself from the more corrupt features of Kenyatta's regime. The word *nyayo* (Kiswahili for footsteps) was soon elevated to the level of national ideology. It was first used by the new government to emphasise continuity: Moi was following in Kenyatta's footsteps but lacking the Kenyatta charisma.

Moi had to pledge himself to clean up the corruption associated with the previous regime in order to ensure that the people would follow in his footsteps. He had to pose as a populist leader who would foster the interests of the 'small man' thus, one of his earliest pronouncements was that 'one can accumulate enough wealth to buy a golden bed,

⁴⁶ See generally, Philip Ochieng, *I accuse the press: An insider's view of the media and politics in Africa*, East African Educational Publishers, 1992; and Joseph Karimi and Philip Ochieng, *The Kenyatta succession*, Transafrica Press, 1980.

⁴⁷ David Leonard, *African successes: Four public managers of Kenyan rural development*, University of California Press, 1991, 169.

but one cannot buy sound sleep with money'.⁴⁸ His first executive act was to suspend the allocation of residential and commercial plots on the grounds that some big men were grabbing everything and he soon announced his intention to revive the moribund ruling party KANU, and to hold long overdue party executive and national elections.

Despite his failure to match populist rhetoric with deeds, there is no disputing the fact that Moi was popular with most Kenyans at the end of 1978. His release of Kenyatta's political detainees on 12 December 1978, and promise that his government would only use detention without trial as a last resort, brought even the university students into the streets to demonstrate in his favour. But soon things began to go spectacularly wrong for his government and the country and once the downward spiral had begun, there would be no reversing it.⁴⁹

Unlike Kenyatta, Moi came to power with no historic claim to it.⁵⁰ He had not only played no direct role in the nationalist struggles leading to independence, but had been in opposition to it, being a member of the pre-independence Legislative Council as a colonial appointee. Also, in the early years of independence he had also been in opposition to the nationalist consensus as a member of the Kenya African Democratic Union (KADU). His personal attribute was dramatically opposed to those of Kenyatta. He lacked his predecessor's charisma, confidence and exuberance. To the extent that manipulation is an art of politics, he was not a politician thus, he paradoxically became the chief political leader because he was non-political. His best credential to leadership was that he would not radically alter the existing power relations.

⁴⁸ Legum, *Africa contemporary record: Annual survey and documents 1989-1990*.

⁴⁹ Daniel Branch, *Kenya: Between hope and despair, 1963-2011*, Yale University Press, 2011.

⁵⁰ If Kenyatta had enjoyed a reputation as a conciliator before he became chief of state, Daniel Arap Moi came to the presidency as a man whose qualities as a leader were largely unknown. Although Moi served as vice president for twelve years, the Kalenjin leader and former KADU chairman had acted primarily as Kenyatta's agent in building bridges between the country's different cultural communities and had had little opportunity, perhaps little inclination, to articulate his own views.

During this era, President Moi appeared to exercise a mixture of enumerated inherent and residual executive powers.⁵¹ Despite the immense constitutional and statutory powers embodied in those offices, the Constitution did not construct a presidency within the inherent or residual power theories. This was largely a result of the extension of traditional and charismatic authority embodied by the occupants of the offices.⁵² The impact on the exercise of public authority was profound. First, the rationale for the exercise of public authority by state officers was neither managerial nor political nor legal; it became patrimonial and patriarchal. The public service became an appendage of the executive through which presidents, their families, handlers and close political associates amassed wealth through rent-seeking, including illegitimate and primitive accumulation of the resources of the state.⁵³

The result of the patrimonial exercise of public authority by both the presidency and the public service was deep ethnic, racial, gender, regional and other geographical inequities, inequalities and marginalisation. In addition, public authority was used by the President and other public officials to disenfranchise citizens of their constitutionally guaranteed rights. This fomented dissent in the form of political party opposition, emergence of a civil society and an increasingly insistent international community, all of which pushed for political and legal reforms.⁵⁴

By 1988, there was concerted pressure from the single-party opposition, civil society, academia and the international community for reforms, especially the repeal of section 2A of the Constitution to allow multi-party politics. This finally paid off in 1988 with the restoration of

⁵¹ Such para-judicial powers are partly attributed to the President's claim to a historical role in the struggle for independence, his charisma, or his role in the sole or dominant political party. There are echoes of the classical Weberian legitimate sources of power in this schema.

⁵² Yash Pal Ghai, 'The rule of law, legitimacy and governance' in Yash Pal Ghai, Robin Luckham, and Francis G Snyder (eds) *The political economy of law: A third world reader*, Oxford University Press, 1986, 179-208.

⁵³ Patrick Michael Ogeto, 'Party politics and repression in Kenya, 1963-2012', Unpublished MA thesis, Laikipia University, 2022.

⁵⁴ Ogeto, 'Party politics and repression in Kenya, 1963-2012'.

security of tenure to superior court judges, the Attorney General and other constitutional office holders, and, ultimately, the repeal of section 2A in 1991. The repeal allowed for the introduction of multi-party politics in Kenya. Moi and KANU, which by then was dominated by the Kalenjin ethnic group, could no longer maintain a stranglehold on Kenyan politics and the allocation of economic resources.⁵⁵

Between 1992 and 2002, there were other constitutional, statutory and political reforms that had a significant impact on the nature of the presidency and the exercise of public authority. These were the limitation of the President's tenure to two five-year terms, repeal of presidential powers over security and declaration of emergency, the creation of an 'independent' Electoral Commission of Kenya (ECK), and empowerment of Parliament by the establishment of the Parliamentary Service Commission (PSC). The presidency and the state also lost considerable political and administrative power as a result of the market liberalisation programmes advocated by the Bretton Woods institutions from the mid-1980s.⁵⁶

Moi's centralisation and personalisation of power led to the subordination of the functions of the judiciary and of parliament. As was the case during the *de jure* one party state rule, human rights violations by his administration continued even after the post 1992 and 1997 multi-party elections. Moi persistently demonstrated unwillingness to uphold the sanctity of human rights at home. Despite constitutional reform, the government was unable to fulfil its obligation to the country's citizens as enshrined in the constitution and international human rights treaties that it is party to. In and of themselves, the elections of 1992 and 1997 proved insufficient to guarantee human rights. It was also clear that an independent judiciary and an accountable police force were required if human rights and civil liberties were to be secured for the majority of Kenya's peoples.⁵⁷

⁵⁵ Ogeto, 'Party politics and repression in Kenya, 1963-2012'.

⁵⁶ Ogeto, 'Party politics and repression in Kenya, 1963-2012'.

⁵⁷ Ogeto, 'Party politics and repression in Kenya, 1963-2012'.

As the 2002 general election approached, President Moi and his close advisers sought to control the Moi succession politically, administratively and constitutionally through the manipulation of the constitutional review process that looked to be on its home stretch. This presidential power play galvanised the political opposition within and without parliament to come together under the National Rainbow Coalition (NARC), which would successfully challenge the ruling party KANU, and bring to an end its 40-year rule.

In sum, Daniel Arap Moi's presidency in Kenya, spanning from 1978 to 2002, was characterised by an increasingly centralised and autocratic governance style. Moi, who succeeded Jomo Kenyatta, initially maintained a semblance of continuity but gradually consolidated his power, turning Kenya into a *de facto* one-party state under the Kenya African National Union (KANU). His administration was marked by the extensive use of patronage, suppression of dissent, and manipulation of ethnic divisions to maintain control. The 1982 attempted coup led to a crackdown on opposition and further tightening of Moi's grip on power, as he amended the constitution to make Kenya a one-party state, solidifying KANU's dominance.⁵⁸

It was widely believed that under Moi's rule, political repression and human rights abuses became rampant.⁵⁹ The government frequently used detention without trial, torture, and intimidation to silence critics and opposition leaders. The media and civil society organisations faced severe restrictions, and freedom of expression was curtailed. Despite internal and external pressure, Moi resisted calls for political liberalisation until 1991, when widespread protests and international pressure forced him to reluctantly legalise multi-party politics. However, the subsequent elections in 1992 and 1997 were marred by allegations of electoral fraud, violence, and manipulation, ensuring Moi and KANU's continued dominance.⁶⁰

⁵⁸ Ogeto, 'Party politics and repression in Kenya, 1963-2012', 110

⁵⁹ Kihoro Wanyiri, *The price of freedom: The story of political resistance in Kenya*, Mvule Africa Publishers, 2005, 28.

⁶⁰ David Throup and Charles Hornsby, *Multi-party politics in Kenya*, Ohio University Press, 1997, 123.

Economically, Moi's presidency was plagued by widespread corruption and mismanagement, which stunted Kenya's development and exacerbated poverty. Grand corruption scandals, such as the Goldenberg scandal, drained public resources and undermined confidence in the government.⁶¹ Despite these challenges, Moi managed to maintain a base of support through patronage networks and by leveraging ethnic alliances. His departure in 2002, after constitutional term limits prevented him from running again, marked the end of an era and paved the way for a more democratic political landscape in Kenya. The transition to Mwai Kibaki's presidency brought hopes for reform and recovery, setting the stage for significant constitutional changes and efforts to address the legacies of Moi's long rule.

Daniel Arap Moi's presidency, which lasted from 1978 to 2002, has been characterised by contrasting assessments from both regional and Western perspectives. In the regional context, Moi was seen as a stabilising force in East Africa. His leadership played a key role in mediating regional conflicts, particularly in Uganda and Sudan, where he helped to broker peace agreements. Moi's Kenya was also relatively stable compared to its neighbours, which were plagued by civil wars and political unrest.⁶² However, his long tenure was marked by growing authoritarianism, with widespread suppression of dissent, a weakened opposition, and increasing ethnic tensions. Regionally, Moi's image as a leader who maintained stability was appreciated, but this was tempered by criticisms of his repressive policies and the entrenchment of patronage politics.

However, despite the above, Moi's presidency found an acclaim from the Western societies. His presidency was initially viewed favourably, especially in the Cold War context. Kenya was a key ally of the West, particularly the United States and Britain, who saw the country as a bulwark against the spread of communism in Africa. Moi's gov-

⁶¹ Michela Wrong, *It's our turn to eat: The story of a Kenyan whistle-blower*, HarperCollins, 2009, 11.

⁶² Korwa Adar, *Kenya and the Sudan peace process: A decade of diplomatic efforts*, African Centre for Technology Studies, 2003, 45.

ernment received substantial economic aid and diplomatic support, especially during the early years of his rule. However, by the 1990s, as global attention shifted towards democratisation and good governance, Moi's regime faced increasing criticism from Western governments and international organisations for human rights violations, corruption, and resistance to political reforms.⁶³ The West, while valuing Kenya's strategic importance, pressured Moi into implementing multi-party democracy in 1992, although his regime continued to be criticised for electoral manipulation and stifling opposition.⁶⁴ His legacy in the West remains complex – he is remembered as a pragmatic leader who maintained Kenya's international relationships but also as a ruler whose governance was marred by authoritarianism and corruption.

Kibaki presidency: Consolidation and transition to democracy, 2003-2013

The euphoric optimism on the part of the general public was captured in a poll conducted three months after the historic December, 2002 elections that ranked Kenya the most optimistic nation on earth. Indeed, those who remained cautious retained the attitude that anything but Moi or KANU was better.⁶⁵ At the more formal level of commentators, two trajectories of optimistic expectations are discernible. The first focused on the person of the new president while the second was rooted in the older civil society paradigm within this immediate post-election context. Some scholars praised Kibaki as a man of 'integrity and efficiency' who, 'despite his association with the worsening performance of the Moi regime took a leading role in fostering the multiparty opposition'.⁶⁶

⁶³ Branch, *Kenya: Between hope and despair, 1963-2011*, 112.

⁶⁴ Shadrack Wanjala Nasong'o, *Contemporary Kenya: Democracy and political change*, Palgrave Macmillan, 2008, 39.

⁶⁵ Shadrack Wanjala Nasong'o, 'Civil society and African democratization: The flip side of the coin', 11 *Studies in Democratization* (2002) 14.

⁶⁶ David Anderson, 'Briefing Kenya's elections 2002: The dawning of a new era?' 102(407) *African Affairs* (2003), 331-342.

Others, even though they criticised his post-election ethical agenda, noted Kibaki's reputation as a gentleman.⁶⁷

The second trajectory of formal optimism about the possibilities of a new mode of politics in Kenya was rooted in the perspective of civil society as an agent of change and a catalyst of political transformation. This perspective lauds civil society as the bastion of democracy and the realm within which democratisation ought to be engineered. Associated with the World Bank and International Monetary Fund notion of state failure in Africa, this approach vouches for non-state actors as the main players in Africa's democratisation. It calls for greater financial backing for non-state actors such as non-governmental organisations (NGOs) to facilitate the thickening of civil society as a buffer against the corrupt state.⁶⁸ Indeed, civil society organisations played a crucial role in the politics of democratisation in Kenya and, on assumption of power, the National Rainbow Coalition (NARC) brought into government a number of luminaries of the civil society realm. These include the likes of Kiraitu Murungi, Kivutha Kibwana and Mirugi Kariuki, even as others including Gibson Kamau Kuria and Maina Kiai were appointed to key positions as lead counsel in the Goldenberg Commission of Inquiry, and head of the public human rights body, the Kenya Human Rights Commission respectively.

In view of this, expectations were high that these individuals would use their democratic credentials, honed within the realm of civil society activism, to nurture and promote a new mode of politics for the overall betterment of governance in the country. The expectation was

⁶⁷ C Shisanya, 'The Kibaki ethical agenda for renewal in Kenya: Challenges and proposed solutions', Unpublished Paper presented at the Council for the Development of Social Science Research in Africa (CODESRIA) East African Sub-Regional Conference on East Africa, Addis Ababa, 2003, 16.

⁶⁸ See for example, Stephen Orvis, 'Kenyan civil society: Bridging the urban-rural divide?', 41(2) *Journal of Modern African Studies* (2003) 247-268; Joel Barkan 'New forces shaping Kenyan politics', 18 *Africa Notes*, 1-5; John Harbeson, 'Civil society and political renaissance in Africa' in John Harbeson, Donald Rothschild and Naomi Chazan (eds) *Civil society and the state in Africa*, Lynne Rienner, 1994, 475-494; Thomas Callaghy, 'Civil society, democracy and economic change in Africa: A divergent opinion about resurgent societies' in Harbeson and others (eds) *Civil society and the state in Africa*, 231-253.

reinforced further with the tapping of John Githongo from directorship of Transparency International's Kenya chapter to become Permanent Secretary for ethics and governance in the Office of the President.

The Kibaki presidency was thus born out of political arrangements between National Alliance Party of Kenya (NAK) and Liberal Democratic Party (LDP).⁶⁹ Among the political class, the body politic and the electorate, there was a sense of power-sharing established by the context of the constitutional reform movement and the memorandum of understanding between NAK and LDP. While the constitutional text had not changed, the Kibaki presidency was expected to depart from the Moi approach because of the collegial nature established by such coalition organs as the NARC Summit. During this phase, the checks and balances on the presidency were within the framework of traditional constitutional principles like separation of powers. The coalition arrangements were politically significant to the extent that major government programmes demanded consultation and concurrence between the two coalition members, with the threat of public disapproval or sabotage in case there was no concurrence.⁷⁰

In addition, the NARC Government, in its formative years, sought to introduce a three-pronged approach to the exercise of public authority: First, the new public management was characterised by the initiation of performance contracting, institutional service charters and strategic plans. Second, there was emphasis on broader political representation in governance, characterised by inclusion of civil society, academia and other non-state actors in the governance process, for example, in the initiation of the Economic Recovery Strategy for Wealth and Employment Creation, 2003-2007 (ERS).⁷¹ Third, the juridical or adjudicatory approach ushered in increased recognition of fundamental rights and fi-

⁶⁹ Denis Kadima and Felix Owuor, 'Kenya's decade of experiments with political party alliances and coalitions: Motivations, impact and prospects', 13 (1) *Journal of African Elections* (2014) 155.

⁷⁰ For example, debates on major economic policy blueprints like the Economic Recovery Strategy for Wealth and Employment Creation 2003-2007 [ERS].

⁷¹ Government of Kenya, 'Economic recovery strategy for wealth and employment creation 2003-2007', Ministry of Planning and National Development, June 2003.

delity to the law in the governance process. Arguably, during this phase there was a renewed neo-liberal sense of the character of executive and public authority in the affairs of the state.

The 2007-2008 post-election violence in Kenya was a significant crisis that unfolded after the December 2007 general elections, which were marred by allegations of electoral fraud. Following the announcement of President Mwai Kibaki's victory over Raila Odinga, his main rival, widespread violence erupted across the country. The unrest was fuelled by ethnic tensions, political disputes, and deep-seated grievances about inequality and historical injustices.

The violence led to over 1,000 deaths, the displacement of around 600,000 people, and massive property destruction. The crisis prompted international intervention, leading to a mediated peace agreement brokered by former UN Secretary-General Kofi Annan. This led to the formation of a coalition government between Kibaki and Odinga, with Odinga assuming the position of Prime Minister. The aftermath of the violence saw significant political and constitutional reforms aimed at addressing the underlying issues, including the introduction of a new constitution in 2010 that sought to decentralise power and promote inclusivity. These crises altered the nature of presidency in Kenya in many respects.

This phase of the presidency therefore, was ushered in by the passing of the 2008 National Accord and Reconciliation Act (NARA) as part of the constitutional text. NARA created the office of the Prime Minister in the context of a power-sharing agreement on the basis of portfolio balance. It thus created or contextualised the contested idea of a dual or semi-presidency.⁷² While it had been there at independence, such sharing of power had not materialised until after the post-election violence.⁷³

⁷² Ben Sihanya and Duncan Okello, 'Mediating Kenya's post-election crisis: The politics and limits of power-sharing agreement' in Karuti Kanyinga and Duncan Okello (eds) *Tensions and reversals in democratic transitions: The Kenya 2007 General Elections*, Institute of Development Studies (IDS), University of Nairobi, and the Society for International Development (SID) Eastern and Central Africa, 2010.

⁷³ In fact, at the instance of any turf war between the President and Prime Minister, the President's handlers and supporters would point out that executive power was vested by the Constitution in the President, and that this power was not shared. This raises

Consequently, the institution of the presidency was qualified, at least juridically, by the power-sharing agreement in two ways: first, the power-sharing between the president and the prime minister, or between the Party of National Unity (PNU) and Orange Democratic Movement (ODM). This is in the share and allocation of executive responsibilities within the executive structure.

Second, power-sharing between the executive and parliament. This has been manifested in the following ways: first, the creation of the post of prime minister who is answerable to parliament and who can be removed from office by a simple majority vote in parliament. Second, in the spirit of the accord and the other mediation agreements, parliament, through parliamentary committees, enacted legislation giving it powers of appointment of members of executive bodies and commissions, such as the Interim Independent Electoral Commission (IIEC), the Interim Independent Boundaries Review Commission (IIBRC), the Truth, Justice and Reconciliation Commission (TJRC), and the Interim Independent Constitutional Dispute Resolution Court (IICDRC).⁷⁴

The historical and then current context of the constitutional review process resulted in a thoroughly negotiated presidential system of government. The 2010 Constitution departs from the dual executive of the power-sharing Grand Coalition Government and establishes what has been called an American presidency. Under Articles 131 and 132, the president exercises, among other powers, executive authority of the republic as the head of state and government; is the Commander-in-Chief of the Kenya Defence Forces; chairs the National Security Council; appoints high ranking state officers; and directs and coordinates the functions of government ministries.

the question of the concept of 'power' as captured in the NARA, which continues to operate during the transitional phase discussed below.

⁷⁴ On numerous occasions in 2008, the Head of Public Service, Ambassador Francis Muthaura, bemoaned the legislature's encroachment onto the Executive's turf and infringement of the doctrine of separation of powers through its new role in the nomination of persons to hold executive offices.

In contrast to the imperial presidency under the 1969 Constitution, this presidency has been subjected to horizontal, vertical and normative checks and balances. Horizontal checks are in the form of an independent and empowered bicameral parliament, an independent and juridically and administratively empowered judiciary, and commissions and independent offices. Vertical checks are in the form of a devolved system of county governments, a restructured public service and an empowered civil society. The president and the entire public service are bound by established standards in their exercise of constitutional, statutory, and administrative public authority.⁷⁵

Unlike the parliament in the 1969 Constitution, the bicameral parliament has been delinked from executive control and given powers to vet all presidential appointees, impeach the president, and oversee and investigate cabinet secretaries and other state officers. Parliament also has its own administrative bureaucracy to facilitate its daily operations. The transitional provisions require parliament to enact at least 49 pieces of legislation to operationalise the Constitution. Thus, as an organ of the state, parliament's legislative role is fundamental to defining the powers and limits of the presidency and other state officials exercising public authority. In addition, its powers to amend the statutes will have significant impact on the relations with the executive and other organs of the state.

The constitutional provisions on principles and values of governance, for example, and also provisions on policymaking, will require legislation to put them into operation across national and devolved levels of government. Parliament's role in interpreting, applying, enforcing and implementing the constitution, legislation and policies will play an important role in checking presidential and public authority.⁷⁶ Moreo-

⁷⁵ Sihanya, 'The presidency and public authority in Kenya's new constitutional order', 11.

⁷⁶ Constitution of Kenya (2010) Article 129 (1) states that 'Executive authority derives from the people of Kenya and shall be exercised in accordance with this Constitution'. Article 131 (2) states that 'The President shall (a) respect, uphold and safeguard this Constitution; (b) safeguard the sovereignty of the Republic; (c) promote and enhance the unity of the nation; (d) promote respect for the diversity of the people and communities of Kenya; and (e) ensure the protection of human rights and fundamental

ver, the house speaker and parliamentary committees such as the Legal Affairs Committee and the Finance Committee were instrumental in stamping parliamentary authority during the stand-off created by President Kibaki's contested nomination of persons to the offices of Chief Justice, Attorney-General, Director of Public Prosecution and Controller of Budget. Indeed, Speaker Marende's ruling set a precedent in defining the new relations between the presidency and parliament under the Constitution of Kenya (2010), and especially because fresh nominations ensued.

In sum Mwai Kibaki's presidency in Kenya, which lasted from 2002 to 2013, marked a significant shift from the autocratic rule of his predecessor, Daniel Arap Moi, towards greater political openness and economic reform. Elected on a platform of change and anti-corruption, Kibaki's victory ended the Kenya African National Union's (KANU) four-decade rule and brought a sense of renewed optimism to the country. His administration prioritised economic growth, achieving notable improvements in sectors such as education and infrastructure. The introduction of free primary education in 2003 was one of Kibaki's most celebrated policies, dramatically increasing school enrolment and literacy rates.

However, Kibaki's presidency was not without challenges. His tenure was marred by persistent allegations of corruption within his administration, undermining his reformist agenda. The most significant crisis during his presidency was the already mentioned disputed 2007 election, which led to widespread violence and ethnic clashes, resulting in over 1,000 deaths and the displacement of hundreds of thousands of people.

On a more positive note, one of the most notable achievements of Kibaki's presidency was the promulgation of a new constitution in 2010. This landmark reform introduced significant changes, including the decentralisation of power through the creation of county governments,

freedoms and the rule of law'. This is in contradiction to Section 23 (1) of the 1969 Constitution, which was more expansive and stated 'The executive authority of the Government of Kenya shall vest in the President and, subject to this Constitution, may be exercised by him either directly or through officers' subordinate to him'.

enhanced checks and balances on the executive, and the establishment of a more robust bill of rights. The new Constitution was a crucial step in addressing the issues of governance and institutional weaknesses that had plagued Kenya. By the end of his presidency, Kibaki had set the stage for a more democratic and transparent political environment, despite the mixed legacy of his administration's struggles with corruption and ethnic division

The Constitution of Kenya (2010) significantly transformed the presidency by introducing checks and balances to curb the concentration of executive power. It established a more accountable and transparent system by devolving authority to 47 county governments, reducing the president's control over local administration. Presidential terms were limited to two five-year terms, reinforcing democratic succession. The Constitution also introduced a clearer separation of powers between the executive, legislature, and judiciary, enhancing institutional independence. Additionally, the creation of independent commissions, such as the Independent Electoral and Boundaries Commission (IEBC), sought to ensure free and fair elections. These reforms aimed to prevent abuses of power and foster greater political stability, ensuring that the presidency operated within a constitutional framework that promoted inclusivity, accountability, and the rule of law.

The Uhuru state and the vulnerable presidency

Uhuru Kenyatta's presidency from 2012 to 2022 was marked by both political continuity and significant transformation in Kenya's governance and economic landscape. Upon taking office in 2013, Kenyatta's government adopted an agenda focused on economic growth, infrastructure development, and national unity. His administration launched flagship projects such as the Standard Gauge Railway (SGR), which linked Mombasa to Nairobi and later extended to Naivasha, symbolising his ambition to modernise Kenya's infrastructure. Uhuru Kenyatta's government also embarked on other infrastructure megaprojects

like road networks and energy production, particularly through renewable energy investments.

Politically, Kenyatta's presidency was shaped by the pursuit of national unity through initiatives like the 'handshake' with opposition leader Raila Odinga in 2018. This unexpected political truce, following years of hostility between their respective parties, aimed to foster national cohesion after the divisive 2017 elections. It resulted in the Building Bridges Initiative (BBI), which sought to address underlying issues of political instability, ethnic tensions, and electoral disputes through constitutional amendments.⁷⁷

However, the BBI faced strong opposition and was ultimately struck down by the courts, casting doubt on Kenyatta's ability to effect long-term political reform. Despite this, the 'handshake' redefined the political landscape by creating alliances that shifted traditional power structures in Kenyan politics, especially within Kenyatta's own party, Jubilee. The fallout from this realignment led to growing tensions between Kenyatta and his deputy, William Ruto, setting the stage for political intrigue in his second term.

Economically, Kenyatta's presidency was characterised by ambitious visions under the big four agenda, which prioritised affordable housing, universal healthcare, manufacturing, and food security. However, the implementation of these ambitious projects faced challenges, including corruption scandals, inadequate resources, and bureaucratic inefficiencies, which hampered their full realisation. The government was criticised for the slow pace of reforms in manufacturing and food security, while rising public debt, exacerbated by borrowing for large infrastructure projects, put strain on the national economy. While there were visible improvements in certain sectors, by the end of Kenyatta's presidency, questions remained about the sustainability of his economic policies.

⁷⁷ Githu Muigai, *Power, politics and law: Dynamics of constitutional change in Kenya, 1887-2022*, Kabarak University Press, 371-378.

In terms of governance and the rule of law, Kenyatta's presidency was marked by both advances and setbacks. The judiciary, emboldened by the Constitution of Kenya (2010), occasionally clashed with the executive, particularly following the Supreme Court's annulment of the 2017 presidential election, a first in African history.⁷⁸ Kenyatta initially respected the ruling, though he later expressed frustration with the judiciary, accusing it of undermining his government's efforts. His administration's commitment to the fight against corruption was questioned, as several high-profile graft cases emerged involving government officials and state resources. Despite launching various anti-corruption initiatives, critics argued that political interference hindered their effectiveness. Nonetheless, Kenyatta's presidency left a mixed legacy, characterised by infrastructural transformation, political realignment, and ongoing challenges in governance and economic management.

Conclusion

Since Kenya's independence in 1963, the institution of the presidency has undergone significant evolution, reflecting the country's shifting political landscape. Initially, the presidency was characterised by a centralised and authoritative structure under president Jomo Kenyatta. His administration established a strong executive branch with substantial control over the legislative and judicial arms of government, reinforcing a one-party state that dominated political life. The presidency during this era was marked by extensive executive powers, limited checks and balances, and a personalised form of governance where presidential authority was both absolute and unchallenged.

The post-independence era saw a major transformation with the adoption of the Constitution of Kenya (2010), which redefined the presidency in response to previous criticisms of excessive concentration of power. This new constitutional framework introduced a more decen-

⁷⁸ Dominic Burbidge, 'Transition to subnational democracy: Kenya's 2017 presidential and gubernatorial elections', 30(3) *Regional and Federal Studies* (2020) 387-414.

tralised system of governance, with enhanced roles for the prime minister, parliament, and county governments. The presidency's powers were curtailed to ensure greater checks and balances, aiming to prevent autocratic rule and promote democratic governance. These changes reflected Kenya's ongoing struggle to balance effective leadership with democratic principles, illustrating a shift from a highly centralised executive authority to a more collaborative and accountable presidential system.

The Constitution of Kenya (2010), as we have argued, significantly redefined the presidency, aiming to address previous concerns about the excessive concentration of power. By instituting a more decentralised system, it introduced a robust framework for checks and balances, diluting the presidency's authority which had been extensive under previous constitutions. The introduction of a bicameral legislature, increased the devolution of powers to county governments, and the establishment of an independent judiciary which were pivotal changes. These reforms sought to create a more balanced distribution of power, thereby weakening the presidency's grip on the executive and legislative branches. The president's role was redefined to include shared responsibilities with the prime minister and the strengthened parliament, reducing the unrestrained power previously held.

However, this dilution of presidential power also made the office more vulnerable and arguably weaker. The president's diminished authority meant that crucial executive decisions required more negotiation and compromise with other branches of government. This fragmentation of power often led to gridlock and inefficiencies, as the president had to work within a more complex and collaborative framework. Additionally, the strengthened parliament and judiciary increased the scrutiny and accountability of the presidency, limiting the executive's ability to act unilaterally. While these changes aimed to foster democratic governance and prevent autocratic rule, they also resulted in a presidency that lacked the decisiveness and control it once wielded, reflecting a shift towards a more collective and less centralised approach to governance.