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SNAPSHOT

Turning the Corner in Kenya

A New Constitution for Nairobi

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In a historic referendum on August 4, nearly 70 percent of Kenyan voters approved a draft for a new constitution, an outcome that raises the prospects for peace and stability in East Africa's anchor state and in the surrounding region. Ratification of the new constitution also returns Kenya to the path of democratization and economic growth -- a path that was disrupted by the mass violence that threatened the viability of the state following the disputed presidential election in December 2007. In contrast to that election, the referendum was peaceful and well run by the country's reconstituted election commission.

The new constitution is undoubtedly the best of the multiple proposals and drafts that have been considered in Kenya since the early 1990s, when the nation returned to multiparty politics after nearly three decades of single-party rule. Since then, democratic activists have viewed a new constitution as essential for the consolidation of democracy. As in South Africa after the fall of apartheid, protracted discussion and negotiations -- and no doubt some fatigue -- led to a grand compromise supported by most prominent members of Kenya's political class. These include President Mwai Kibaki and Prime Minister Raila Odinga, bitter rivals in 2007 who came together to form Kenya's power-sharing government to halt the postelection violence. Their agreement, brokered by former UN Secretary-General Kofi Anan in February 2008, included the promise of a new basic law that would address long and deeply held ethnic grievances over land and the distribution of state resources. In an alliance unimaginable six months ago, Kibaki and Odinga barnstormed the country together to support the passage of the new constitution.

In at least four respects, the new constitution is a major improvement over the current one, which has governed Kenya since 1964. First, it vests coherent executive authority with the president rather than splitting authority between the president and the prime minister, as is the case in the current power-sharing government. However, it strips the presidency of the powers and patronage that fueled dictatorial rule and kleptocracy under former President Daniel arap Moi in the 1980s and 1990s. All major presidential appointments -- including members of the cabinet, the judiciary, senior bureaucrats, and ambassadors -- now require confirmation by the National Assembly. The size of the cabinet will be cut in half and limited to 24 members. The president will no longer have the power to suspend or dissolve the National Assembly, as its members will be elected to fixed five-year terms. The election commission will also be truly independent and beyond presidential control.