

“Without Moi, Anything is Possible!” Or is it?

The Possibilities of the Post - Moi Kenya

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“Without Moi, anything is possible!” was the rallying cry of the opposition, enthusiastically taken up by Kenyans prior to the election held on 27th December 2002. Due to President Daniel Arap Moi’s retirement, for the first time in 24 years, Kenyans were assured of a different personality at the helm. Moreover, it was the first time in 40 years, that the ruling party, KANU, faced election opposition that threatened to remove it from power. When the opposition, the National Rainbow Coalition Party (NARC), won the elections by a landslide, the country embarked on a new road in its chequered and violent history.

For many Kenyans, a government without Moi or KANU, though sought-after, was inconceivable. The landslide victory indicated the country’s desperate yearning for change. As a result, the new NARC government has so far enjoyed tremendous popularity and goodwill from the people, combined with dangerously high expectations for immediate change and economic prosperity.

President Kibaki and NARC have inherited a country on the brink of total economic collapse, with endemic corruption supported and actively promoted by the previous regime. Over the last month, as the new government has acted to purge the system of the mess KANU left behind, citizens have been slow to realize that the system’s corruption goes beyond those who profited from it and that institutional reforms are urgently needed if Kenya is to make a clean start.

Recently, Kenyans have been mesmerised by stunning revelations in the press of hitherto suspected, but unconfirmed, reports of massive plunder of public funds and assets under the KANU regime. They have

been told that public funds amounting to millions of US dollars have been lost through fraudulent transactions, from the payment of padded contracts for public development, to the unfair allocation of government property, to just plain old theft. Power-brokers under the former regime are implicated in the revelations, and the new government seems determined to haul them into court to answer for their crimes.

It is only now that the extent of the damage caused by what appears to be unencumbered plunder of public coffers is beginning to sink in. Kenyans are beginning to bray for blood. And as long as the blood belongs to members of the previous regime, the government may be only too happy to comply.

But there is an ominous lack of activity by the government when it comes to purging the system itself, rather than the personalities in the system. Avid media exposure of scandalous crimes has been important in revealing the extent of the damage, and the perpetrators. But perhaps more important is to investigate the weaknesses in the system that allowed this harm to occur in the first place.

What hasn’t been emphasised so far is that over and above a shattered economy, the new government also inherited governing institutions that are unanswerable to the people they govern. The problems start at the heart of the Constitution, which grants the President extensive, unfettered powers with only weak and manipulable checks and balances. Not just the constitution, but the whole corpus of Kenyan law supports and sustains this imbalanced system.

At the moment, Kenyans have indulged the new regime, wanting to give the government a chance to

settle in before they implement substantive organisational change. The assumption is that the new government will, with each passing day, remain equally committed to bringing about the sweeping reform that formed the basis of their pre-election promises. For the time being, Kenyans still feel safe in the knowledge that without Moi, anything is in reality, possible.

But the people of Kenya cannot afford to sit on their laurels. With each passing day there is greater danger that the new government will, in fact, get “settled in”. The legal and institutional framework that allowed the gargantuan pillage that Kenyans are now beginning to comprehend still exists, and grants the new regime the same opportunity for abuse.

The Need for Constitutional Review

For the last two years, Kenya has been going through a constitutional review process, which is expected to culminate in the adoption of a new constitution. It is hoped that the new constitution will change the prevailing structure of power relations by drastically reducing the overarching powers of the executive, and restoring a system of checks and balances. The new constitution is also expected to create institutions for independent oversight of the government.

However, the constitutional review process has been fraught with difficulties, especially under the pre-December KANU government. Immediately prior to the national constitutional conference scheduled to run from the end of October 2001, President Moi unilaterally suspended the process. NARC, in one of its major campaign promises, stated that it would see the constitutional review process to its proper conclusion and adopt a new constitution for the country within its first 100 days in office.

Ominously, signs are emerging that the new regime is being seduced by the sense of infallibility that comes

with almost absolute power. A few days after the swearing in of Mr. Kibaki as Kenya’s third president, editorial pieces were highly laudatory of the alleged fact that President Kibaki had promised not to run for a second term. Barely one month later, when asked about the issue, the President allegedly quipped, “When did I say that?”

Kenyans bought the election promise that the stalled constitutional review process would be brought back on track and completed within NARC’s first 100 days in power. At the time of writing, NARC’s first 100 days in office were nearly complete, and the constitutional conference still had not been scheduled, apparently due to internal bickering. Signs are clearly emerging that the government’s enthusiasm for effecting change decreases a little more with each passing day.

Kenyans must sit up, take notice and take action otherwise they will discover for themselves the hard truth, that Moi was enabled by an institution that sanctioned dictatorship. They need to maintain pressure and ensure that the government sees the constitutional review process to its conclusion. Kenyans must also ensure that the government begins to systematically dismantle the laws and procedures that allowed the previous regime to operate without accountability.

The new Government, if it hopes to avoid the same fate that KANU is facing, must act now to open itself up, not only to broader and deeper scrutiny, but also to liability for its actions. A new constitutional order would be a necessary first, but not the only step, to achieve this.

Moi’s retirement has certainly made the transition to an accountable and functioning government a little easier. However, without a system that guarantees institutional transparency, accountability, and fettered powers, Kenya will only succeed in producing a new set of Moises. ■