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Of Oranges and Bananas: The 2005 Kenya Referendum on the Constitution

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Executive summary

On 21 November 2005, a referendum on a proposed new constitution was held in Kenya. As members of a group of international observers recruited by the diplomatic missions in the country, we observed the voting and counting in Manyatta and South Imenti constituencies in Eastern Province. This report summarizes our key observations in a wider perspective, including the constitutional context of the referendum, the immediate pre-referendum period and the developments in its immediate aftermath.

In addition to our own observations, we draw on other available sources of information, including a series of interviews in Nairobi in the week prior to the referendum. We summarize our main findings in the follow points:

1. Our overall assessment is that the referendum was conducted in a peaceful and orderly manner, and that the poll represented the will of the Kenyan people through a process and a vote that were largely free and fair.
2. It is also our assessment that the organization and management of the referendum shows a growing democratic maturity in Kenyan governance institutions. This is particularly true of the way in which the Electoral Commission of Kenya (ECK) organized and administered the referendum. The speed of voting, the well managed counting process, and the rapid announcement of the results by the ECK significantly contributed to easing potential tensions in the immediate aftermath of the voting. The campaign was organized in two referendum camps, respectively referred to as Bananas (“yes”) and Oranges (“no”).
3. The proposed new constitution was rejected by 57 per cent of the votes cast, while 43 per cent voted in favour. The turnout was somewhat above 52 per cent, which was slightly higher than many commentators expected, and about 5 per cent higher than in the Ugandan referendum earlier in July 2005 on whether or not to introduce a multi-party political system.
4. The referendum result implies that the constitutional issue has not been resolved. Rather than interpreting the result as expressing a popular wish to retain the existing constitution, we see this result as a quest for a constitution different from the proposed constitution.
5. An important qualification to our positive overall assessments is the use of state resources to influence the voters’ choice in the run-up period, tantamount to a form of indirect vote-buying. This involved the President’s announcement of new districts, promises about development projects and food distribution, and alleged hand-outs of money to groups of visitors from districts outside the capital gathering at State House to rally in favour of the proposed constitution.
6. Another qualification has to do with the prevalence of violence at several rallies. Eight people were killed and many injured during the campaign. Allegations were widespread that the police provoked rally participants, and that this caused an escalation with tragic results in two cases (Kisumu and Mombasa) with altogether eight killed. Concern was also raised about political utterances referred to by the National Kenya Commission for Human Rights (NKCHR) as “hate speech”. The KCHR is preparing several court cases where they intend to take legal action against politicians for engaging in “hate speech”.
7. The referendum campaign reconfirmed that Kenyan politics is characterized by ethno-political cleavages, and political loyalty based on ethnicity. The referendum also validates that the constitution-making process became deeply entrenched in political contestation over power and positions among political elites that are structured along ethnic lines.

8. The print and electronic media generally covered the two sides of the campaign in a balanced manner. The state-controlled Kenya Broadcasting Corporation (KBC) was a notable exception, with highly biased coverage in favour of the “yes” campaign.
9. While voter education seems to have had a fairly good effect (cf. for instance, the reasonable turnout and the moderate number of rejected ballot papers), civic education was less effective than expected. Non-governmental organizations were less involved in civic education than in previous national elections. One possible explanation is that most of the “democracy and governance” NGOs had taken public positions on the referendum issue, and hence disqualified themselves from the civic education exercise on account of partiality.
10. While it is reasonable to interpret the result as a popular demand for an alternative new constitution, people voted out of a multitude of reasons more or less related to the constitutional issue itself. However, the main thrust of our interpretation (that the result reflects a quest for a new constitution different from the proposed one) echoes the interpretation made by the Chairman of the ECK when announcing the results on 22 November 2005, and the pre-referendum poll published three days after polling.

Introduction and background

The constitutional issue has been at the forefront of Kenya politics during the reform process since the early 1990s. The re-introduction of multi-party politics in December 1991 was formally made by the removal of the “one-party clause”, Section 2A, of the current constitution. In the years that follow, the quest for a “comprehensive constitutional overhaul”, or a new constitution became a rallying point for organizations in civil society and the political opposition.

This focus of the democratic movement was not surprising: a constitution is a set of values, principles and rules that determine the form and structure of government. In principle, it is a social contract between the leaders of the state and the citizens and between the citizens themselves. Kenya, therefore, followed the trend of other African countries that went through democratization processes in the 1990s – South Africa, Zambia, Uganda, Ethiopia, and Eritrea. A common feature of many of these processes is attempts to make constitutional reviews or constitution-making in an inclusive, participatory manner by encouraging people and organizations to submit their views and preferences to constitutional commissions. Participation and involvement were seen as critical for building popular trust in the exercise, and legitimacy of the new constitution.

Kenya has a troubled constitutional history. The independence constitution (1963) was negotiated between the new Kenyan nationalist political leadership and the departing colonial power, but was seen as being imposed upon the larger faction of the nationalist leadership organized in the Kenya African National Union (KANU) under the leadership of Jomo Kenyatta and Oginga Odinga. The independence constitution was a federalist construction, and was favoured by the smaller ethnic communities organized in the Kenya African Democratic Union (KADU). Its legitimacy, however, was disputed by the new KANU leadership, and after only one year in force the federalist (*Majimbo*) constitution was replaced in 1964 with one that introduced a unitary state with an elected President as Head of State.

Shortly after independence, a practice of frequent constitutional amendments started, which represented the legal endorsement of increasingly authoritarian politics. It meant a process of constitutional decay, where the central constitutional issue of division of power between the executive, the legislature and the judiciary was gradually distorted. This resulted in a close to dictatorial presidency, which became the hallmark of Kenyan authoritarianism in the 1970s and 1980s.

The constitutional reform movement

The broader constitutional context of the referendum, therefore, goes back to independence when especially the devolution issue (federalism vs. unitary state) was controversial.

The process leading to the recent referendum was pushed ahead by the 1997 presidential and parliamentary elections, and the new parliament’s passing of the Constitution of Kenya Review Commission (Amendment) Act of 1998. This act established the Constitution of Kenya Review Commission (CKRC), whose members were appointed by a Parliamentary Select Committee on Constitutional Reform headed by Raila Odinga from the then National Development Party.

The CKRC was a parliamentary route to constitutional change. In the early 1990s, however, the constitutional issue was a preoccupation of many organizations in civil society, which were suspicious of the establishment of the CKRC. On 15 December 1999, civic organizations initiated

the so called Ufungamano initiative (named after Ufungamano House where the meetings were held), and called for a “people-driven” constitutional process that included civil society organizations.

In November 2000, Raila Odinga, as head of the Parliamentary Select Committee on Constitutional Reform invited the internationally renowned constitutional lawyer and a Kenyan citizen, Yash P. Ghai, to head the CKRC. Ghai insisted on negotiating a joint process with the Ufungamano initiative, but this turned out to become a rocky terrain. Internal divisions emerged within the Ufungamano initiative, for instance over the distribution of seats in the CKRC allocated to civil society organizations.

Without much progress, the CKRC survived the Moi regime, although Moi was hostile to the whole exercise. With the new Kibaki regime after December 2002 the following agenda was drawn up by the CKRC:

- 1) To carry out civic education and prepare the people for the review through so-called Constituency Constitutional Forums;
- 2) To tour the country and listen to people directly and through organizations and groups;
- 3) To prepare the Commission’s report and a Draft Constitutional Bill;
- 4) To publish and disseminate the Commission’s report and the Draft Constitutional Bill;
- 5) To organize a National Constitutional Conference in accordance with section 27(1)(1) of the Constitution of Kenya Review Act;
- 6) To organize a referendum;
- 7) To submit the final constitutional draft to the Attorney-General for final “technical revision”. The AG would then submit a Bill to parliament for adoption as the new constitution, subject to popular approval through a referendum.

The fifth point on this agenda is known as the Bomas (so named after their venue at the outskirts of Nairobi) I–III conferences, which produced the Bomas Draft Constitution. The Bomas I conference lasted from April to June 2003, Bomas II from August until September 2003 and Bomas III, which finalized the “Bomas draft constitutional Bill”, lasted from January until March 2004. Around 630 representatives from locally elected bodies, members of selected non-governmental organizations and all members of parliament attended the Bomas conferences. The last phase of Bomas III, however, was marred by deep controversies, and the final adoption of the draft was boycotted by MPs opposed to the governmental model that the majority of the conference participants preferred. The main conflict revolved around the so-called “contentious issues” that Bomas III was unable to resolve, and remained key controversies in the referendum campaign. The two major issues of disagreement were:

- The system of government, that is, the choice between, on the one hand, a parliamentary system with separation between a president as head of state with significantly reduced powers and an executive prime minister as head of government, supported by a majority in parliament, versus a presidential system with a strong executive president (and a weak prime minister appointed by the President).
- The devolution of power to lower tiers of government. The Bomas draft suggested five tiers of government, including a strong regional political level (with regional “governments”).

These contentious issues seriously hampered the Bomas III conference, and the draft constitutional Bill adopted by the conference in March 2004 threatened to bring the constitutional process to a halt. In order to bring the issue out of the deadlock, Parliament on 30 June 2004 “reconstituted” the Parliamentary Select Committee on Review of the Constitution of Kenya. This Committee met in Naivasha from 4-5 November in 2004 under the chairmanship of William Ruto to resolve the

“contentious issues”, and negotiate a compromise between the supporters of the Bomas Draft and those opposed to it. The negotiated Naivasha Accord stated that the executive authority should “repose in the president, the prime minister and the Cabinet”. Although the President would appoint the prime minister, the latter should be appointed from the party or coalition of parties with majority support in parliament. In addition to the national level, it suggested to introduce a “county” level of government, but retained the district level under the current constitution. The Naivasha “devolution model” thus effectively consisted of three tiers.

The Naivasha Accord was subsequently reconsidered by a new Parliamentary Select Committee appointed on 5 May 2005 with a new chairman (Simeon Nyachae) and new terms of reference. The Committee met at a retreat in Kilifi on 15–17 July 2005. The Kilifi Report basically recommended that the Bomas Draft be revised in accordance with the Naivasha Accord. Yet, the Kilifi Report went further by suggesting a reduction of the powers of the prime minister in favour of the president, and omitted a clause in the Naivasha Accord which limited the number of ministers to “not more than twenty-five”. The Bomas Draft along with the Naivasha Accord and the Kilifi report were then submitted to Parliament for debate and adoption on 20–21 July 2005. The debate was heated because many MPs felt the Kilifi report had gone beyond its terms of reference and reintroduced issues that were not considered contentious at Naivasha. After parliamentary adoption of the Kilifi report the Attorney-General, Amos Wako, would prepare a Constitution of Kenya Bill. When Wako eventually produced the Bill, the Bomas Draft and the revisions recommended by the Naivasha Accord and the Kilifi Report were tilted in favour of the latter. It was, however, this ‘Wako Draft’, supported by Mwai Kibaki and “the Kikuyu faction” and its associated ethnic communities of Embu and Meru in the National Alliance of Rainbow Coalition (NARC) government that finally became the Bill (commonly referred to as the Wako Bill) or “the proposed new constitution” to be voted upon in the referendum.

In summary, the parliamentary treatment of the constitutional draft after Bomas did not resolve the “contentious issues” on system of government and devolution of power. Rather, the process became embedded in struggles between ethnic leaders about which governance model was likely to serve their own interest in the short and long term (with the 2007 elections in mind). This rivalry, moreover, has a “pre-history” in the Memorandum of Understanding (MoU) between the Liberal Democratic Party (LDP) (Raila Odinga) and the National Alliance of Kenya (NAK) (Kibaki) that made the formation of NARC possible only a month before the 2002 general elections and secured Kibaki the presidency and NARC parliamentary majority. The MoU stated that a position of an executive prime minister be introduced by the adoption of a new constitution “within a hundred days”, and that Raila Odinga would fill this position. After the elections, however, the NAK faction of NARC reneged on its promise.

In response to the Wako Bill, published in August, two national referendum committees were organized – the Banana representing the yes side, and the Orange representing the no side.¹

Referendum preparations

This was the first referendum ever held in Kenya. Therefore, there was no previous legislation to apply. It is clear, though, that the referendum was advisory rather than binding. Yet, as the outcome

¹ For a fuller account of the constitution-making process and a comparative analysis of contentious issues in the current constitution, the Bomas Draft and the Wako Bills, see Preston Chitere, Ludeki Chweya, Japhet Masya, Arne Tostensen and Kamotho Waiganjo, *Kenya Constitutional Documents: A Comparative Analysis*, Bergen: Chr. Michelsen Institute, 2006. CMI Report 2006: 16. (Also issued as IPAR Working Paper No. 7/2006, Institute of Policy Analysis and Research, Nairobi).

shows, the Government has chosen to accept the result as if it were a binding instruction from the people.

The referendum was organized by the ECK, led by Samuel Kivuitu. After the publishing of the Wako Bill on 22 August, the ECK registered referendum committees (5–15 September) and set the campaign period to one month, from 21 October to 19 November. The registration of voters lasted for two months ending on 19 October, and coincided with the period of voter education conducted by the ECK.

Both the Bananas and the Oranges started campaigning weeks before the official campaign period and was criticized for this by the ECK, but in vain. The ECK conducted voter education on voting procedures and hired and trained referendum clerks. Voter education was co-ordinated by the UNDP, while civic education on the proposed constitution was left to non-governmental organizations.

In interviews with the ECK Chairman and Vice Chairman, they expressed satisfaction with the voter education campaign but claimed that civic education had been “very bad”. In their assessment not more than 10–20 per cent of the electorate was well aware of what the referendum really was about. They also asserted that the public debate had moved away from constitutional issues and constitution-making to the settling of scores between political rivals. The process had become entrenched in ethno-political rivalry at the elite level, and ethnic divisions and hostility increased substantially throughout the run-up to the referendum.

From other sources we learned that civic education had been largely neglected because civil society itself was divided along ethnic lines, and hence had compromised their credibility and impartiality. In two cases rallies escalated into violence, in Kisumu and Mombasa, leaving eight people shot dead by the police.

The campaign was also characterized by incidents of aggressive, inciting and hostile language and utterances. The Kenya National Commission for Human Rights set up a “verbatim account” of “hate speech”, and released a press statement on 10 November 2005 urging political leaders “to watch their language”. During the last phase of the referendum campaign the KNCHR started a process of taking “hate speech” cases to court.

We did not have occasion to make a systematic review of media coverage during the run-up to the referendum. Our general assessment is based on interviews with selected key informants and our own observation of written and electronic media in the week immediately before polling day. The main daily newspapers, *Daily Nation* and *Standard*, seemed to keep a fair and balanced coverage of the two sides of campaign. The same applies to two main TV channels, KTV and Nation TV. However, the state controlled TV channel, the Kenya Broadcasting Corporation (KBC), was grossly biased in favour of the yes campaign, just as was the newspaper *Citizen*. One FM radio station, Kiss FM 89.0, was closed down briefly on orders of the Communications Commission of Kenya after allegedly having used harsh “hate speech” language. Thus, our general observation, with the exceptions noted, is that the media were focusing on key issues of the constitutional issues, not least in a number of quality analytical columns of high journalistic standard.

Polling and counting

The polling process on 21 November 2005 was generally calm and orderly throughout the country. In many polling centres the atmosphere was even dignified. Agents of both the Banana and Orange

sides were present at most polling stations. In a great number of polling stations, but by no means in all, domestic observers kept a vigilant eye on the process. As a rule, most polling stations opened on time at 7 a.m. and closed at 5 p.m. as prescribed. Voting materials had been distributed the day before and as an expression of commitment to the integrity of the process polling clerks and officers slept in the polling station to guard the equipment.

Admittedly, there were a few shortcomings in certain areas. In some polling centres confusion arose as to the alphabetical arrangements of several polling stations within one polling centre; a few voters were told by polling clerks that the voters' registered showed that they were deceased, but by checking the so-called black book their true identity was ascertained and they were allowed to vote; in some constituencies tension rose owing to palpable misunderstandings based on mistrust; in several stations the cardboard polling booths faced the room and might have compromised the secrecy of the vote. These minor incidents and irregularities do not significantly modify the overall assessment of the polling exercise as peaceful and orderly.

Having observed the 1992 and 1997 general elections in Kenya, we find it noteworthy that the professional performance of the staff and polling officers of the Electoral Commission of Kenya was superior in comparison to previous election exercises, even though it must be said that a referendum is not as challenging as a general election. It should be added that in our view the level of tension had decreased considerably since the early and mid-1990s. This suggests that democratic rule and behaviour is taking root and gradually maturing, which augurs well for the future.

Our own observations in the constituencies of Manyatta (Embu District) and South Imenti (Meru Central District) accord very well with the nationwide assessment. Although these constituencies were solid majority areas (Banana), there was no indication of intimidation or harassment of Orange supporters.

Outcome and aftermath

In the afternoon of 22 November 2005 the chair of the ECK, Samuel Kivuitu, announced the results despite the fact that some results had not been validated at that point in time. However, the remaining votes would not alter the overall outcome of the referendum. The No side had secured a resounding victory with 57 per cent of the votes cast, whereas the Yes side garnered 43 per cent. The Banana camp conceded defeat at an early stage and pledged to work with the opposing camp towards reconciliation and the healing of wounds inflicted during the heated campaign. For its part, the victorious Orange camp drew attention to the fact that the people had made its verdict but immediately extended a conciliatory hand to the Banana side. It was apparent that both sides were keen on putting the matter to rest, at least for the time being, and work for a new constitutional consensus.

Table 1: 2005 Referendum results by province

PROVINCE	REGISTERED VOTERS	YES	NO	% YES	% NO
Nairobi	961,295	161,344	212,070	42	56
Coast	967,518	64,432	269,655	19	80
North Eastern	237,321	12,401	39,028	24	75
Eastern	1,977,480	485,282	494,624	49	50
Central	1,795,277	1,023,219	74,394	92	7
Rift Valley	2,668,981	395,943	1,218,805	24	75
Western	1,322,604	240,582	358,343	39	59
Nyanza	1,664,401	114,077	822,188	12	87
Total	11,594,877	2,532,918	3,548,477	43	57

Source: *Daily Nation*, 23 November 2005

The table above depicts the results (not final at the time of writing) broken down by province. It is remarkable that the Orange side carried all but one province. The clearest results are found in Central and Nyanza Provinces where the Yes and No sides mustered 92 and 87 per cent, respectively. Other clear majority provinces include Coast with 80 per cent, North Eastern (sparsely populated) and Rift Valley (the most populous province) with 75 per cent. The turn-out was 52.4 per cent, which is not impressive although not so bad. It means that the legitimacy of the referendum cannot be called into question.

It is exceedingly difficult to interpret the results in terms of the people's attitudes to the new constitutional proposal (Wako Bill) because they were compelled to say either yes or no to a composite package of proposals. Voters may have liked parts of the Bill and disliked others. The campaign in the run-up to the referendum gave decreasing attention to the substance of the matter and focused increasingly on ethnicity. A large number of voters probably had little knowledge about constitutional affairs but responded to the appeals of their ethnic leaders.

A political analysis in the immediate aftermath of the referendum must, above all, highlight the fact that the incumbent government suffered a humiliating defeat at the polls. President Kibaki and his close associates had invested much political capital in a Yes vote. However, in the first referendum in Kenya's history on an issue of great political significance the people defied the powers that be and voiced a resounding No. In a parliamentary system such a defeat would no doubt have caused the government to resign. But Kenya is still a largely presidential system under the current constitution, in which the President is also Head of Government.

Before the referendum, in the anticipation of a Yes victory, demands were made for the dismissal of disloyal ministers who broke ranks with the government and campaigned for a No: Raila Odinga, Kalonzo Musyoka, Najib Balala, Anyang' Nyong'o, Ochilo Ayacko, Lintah Kilimo, and William ole Ntimama. With a clear No victory, however, it would have been difficult for Kibaki to sack No ministers who evidently enjoy wide popular support. Instead, he was put under pressure to reshuffle his cabinet and get rid of some of the Yes hardliners such as Kiraitu Murungi and Chris Murungaru. As it turned out, in an unprecedented move his response was to dismiss his entire Cabinet and declare that he would form a new one within two weeks. It is likely that he will recycle a fair number of the less tainted ministers who have kept a low profile and perhaps take the opportunity to rid himself of elements that are unpalatable to the No camp. He may even reduce the number of ministerial posts.

In the context of contemporary ethnic politics the Kikuyu community, along with its associated Mount Kenya groups of Embu and Meru (derogatively referred to as the Mt. Kenya Mafia), appears

to have isolated itself in Kenyan politics. Hence, in the run-up to the 2007 general elections some serious rethinking will be necessary within the Yes camp. It should be recalled, however, that even though the Kikuyu community (or rather the erstwhile Gikuyu, Embu, Meru Association (GEMA) group) has been dealt a serious political blow, it commands considerable economic clout not only in Central Province but across the country. Therefore, the Kikuyu are still a major force to take into account in the political and economic future of Kenya.

With the rejection of the Wako Bill, Kenya has returned to the current constitution for the foreseeable future, yet the question of a new constitution will be put on the agenda pretty soon. It is likely that the winning camp will wish to return to the Naivasha Accord with a view to charting a way towards a new consensus. It is obvious that this time around the No camp will negotiate from a position of strength. But it should not be underplayed that 43 per cent of the electorate did in fact vote in favour of the Wako Bill. But in the new circumstances civil society might see an opportunity for playing a constructive role in constitution-making.

The same key contentious issues will have to be tackled: (a) the nature and scope of the Executive and its relationship to Parliament, and (b) devolution of decision-making powers to lower tiers of government. The most intractable issue is likely to be the former. The Wako Bill suggested a strong presidential system in which Parliament would play second fiddle, despite the introduction of a nominal position as Prime Minister. The President could only be removed by means of an elaborate impeachment procedure requiring a 75 per cent parliamentary majority. Thus, it would be extremely difficult to depose a president. By contrast, the Bomas Draft proposed a new position of executive Prime Minister emerging from and being accountable to Parliament, in effect a parliamentary system of government. In this system a simple majority vote of no confidence is all that would be required to remove a prime minister.

With regard to devolution, the Bomas Draft proposed five tiers of government which in our view would be cumbersome and costly, even though the ambition to bring government closer to the people is laudable. The Wako Bill, on the other hand, reduced the number of tiers to only two, with the district as the basic unit of local government. The common denominator between the Bomas Draft and the Wako Bill is towards devolution and a compromise would probably not be so difficult to achieve, as indicated by the Naivasha Accord.

Apart from the governance structures of devolution, the financing of local government is critical. If the lower levels of devolved government are not adequately funded the whole devolutionary exercise would be a mere sham. To finance local authorities the Wako Bill proposed to establish a Revenue Fund for each district. But it is not clear what criteria were to be applied when deciding on allocations to each district, and what proportion of revenue received at the national level would be distributed to local government. A Commission of Revenue Allocation was to handle that matter. Admittedly, the district governments proposed under the Wako dispensation would be given taxation and be permitted to take up loans. But the unequal revenue base and resource endowment could be a source of disparities.

In the longer term, the referendum result will lead to a reconfiguration of Kenya's political landscape. The Orange Democratic Movement (ODM) which is now propagated comprises a much wider range of ethnic communities than the Kibaki government as it functioned in operational terms. At the helm in the immediate aftermath of the referendum is Raila Odinga with his Luo community of Nyanza Province solidly behind him. Although Uhuru Kenyatta seems to be at loggerheads with his fellow Kikuyu in Central Province, he is the leader of KANU and a force to be reckoned with in years to come. Among the Kamba, Kalonzo Musyoka is an important ally, although his leadership in Ukambani is challenged by Charity Ngilu, who sided with the government in the constitutional campaign. Among the Kalenjin of Rift Valley William Ruto

(secretary-general of KANU) has risen to prominence. In Western Province, Musalia Mudavadi has made a comeback. On the face of it, there is thus a group of presidential pretenders in the ODM among whom jockeying for positions are likely to unfold. Since the Kikuyu and the Kalenjin have had 'their turn' at the presidency, it is very unlikely that Uhuru Kenyatta or William Ruto will be presidential candidates. Raila Odinga is not popular in all communities of the ODM and is more likely to have his eyes on a prime minister post, if that is the outcome of the constitutional consensus. That leaves Mudavadi and Musyoka as possible compromise candidates.

The referendum victors have the immediate task of producing a consensus constitution. Although there appears to be harmony between the various forces within ODM at the moment, akin to NARC before and immediately after the 2002 elections, there is considerable tension within that new coalition, as there turned out to be within NARC. It is not a foregone conclusion, therefore, that the coalition will keep together come the 2007 elections.

Beyond the immediate task of making a new constitution and keeping the alliance intact, the ODM is facing the challenge of charting an election strategy towards 2007, including the elaboration of a manifesto that is both distinct from other political party rivals yet conciliatory in content towards the sizable minority who voted in favour of the Wako Bill.

Nairobi, 27 November 2005

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SUMMARY

On 21 November 2005, a referendum on a proposed new constitution was held in Kenya, which was conducted in a peaceful and orderly manner. The poll represented the will of the Kenyan people through a process and a vote that were largely free and fair. The campaign was organized in two referendum camps, respectively referred to as Bananas (“yes”) and Oranges (“no”). The proposed new constitution was rejected by 57 per cent of the votes cast, while 43 per cent voted in favour. The voter turnout was slightly above 52 per cent. The print and electronic media covered both sides of the campaign in a balanced manner. The state-controlled Kenya Broadcasting Corporation, however, was biased in favour of the “yes” campaign. The referendum campaign reconfirmed that Kenyan politics is characterized by ethno-political cleavages, and political loyalty based on ethnicity. It is reasonable to interpret the result as a popular demand for an alternative new constitution, implying that the constitutional issue has not yet been resolved.

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