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KENYA'S RESILIENT DEMOCRACY

BALANCING POWER AND ACCOUNTABILITY

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Introduction

Kenya is a resilient democracy that has been able to endure considerable challenges to its democratic institutions (Cheeseman et al, 2020; Mueller, 2014a), securing its place as a key player in Africa. Despite facing multiple challenges, including electoral violence, corruption, and ethnic conflicts, Kenya has shown a remarkable ability to reform and adapt, thus laying the foundation for democratic development and citizens' commitment to democratic ideals. How do we explain Kenya's democratic resilience despite persistent challenges?

This paper examines how Kenya has bounced back from several critical junctures by using a composite accountability lens (diagonal, vertical and horizontal). Diagonal accountability—which focuses on the role of civil society, civic participation, and media freedom—has been growing in the country for several decades. For instance, since the late 1980s, civil society organizations have played a key role in pushing for free and fair elections and promotion of human rights (Mati, 2020). Along with the advent of a vibrant and autonomous press, the media has uncovered maladministration in different political regimes, remaining key in providing information on corruption and poor governance in general. (Mueller 2014b, 343). Civil society, in turn, uses this information to demand accountability, and gradually, Kenya has witnessed growing levels of civic engagement, where citizens actively participate in elections and demand good governance. As in June 2024, the youth, in particular, have become an increasingly powerful force in the political landscape, advocating for social change and greater economic opportunity (Twinomurizi, 2024). Despite the country's challenges, according to Afrobarometer surveys, there remains a strong desire among Kenyans for progress, stability, and the continued improvement of their democratic system (Afrobarometer, 2024b).

Vertical accountability focuses on two interrelated mechanisms of political competition: elections and political parties. Since gaining independence in 1963, Kenya has oscillated from a multi-party democracy (1963-1982) to a one-party system (1982-1992), then

back to multi-party from 1992 to date (Odera, 2023). The return to multi-party politics created the avenue for an inclusive and participatory political environment. The 2007-2008 post-election violence was a critical juncture in Kenya's democratic trajectory, but it bounced back through a subsequent power-sharing agreement that ushered in a series of constitutional reforms in 2010.

Indeed, those reforms helped reinforce horizontal accountability, which refers to the balance of power amongst the executive, legislature, judiciary, and oversight bodies. Specifically, the 2010 Constitution established a devolved system of governance, outlined a comprehensive bill of rights safeguarding political and civil liberties, required parliamentary review of presidential appointments, and ensured public participation in political decisionmaking. The Constitution also introduced a supreme court to listen to any presidential electoral petitions. In essence, these changes, among others, were meant to reduce the power of the presidency, thereby lowering the significance of national elections, while also motivating political leaders to build wider multiethnic coalitions and embrace more inclusive politics (Cheeseman et al. 2019). Over time, the judiciary has taken a bold stance in asserting its independence, which has further increased civil liberties (Nzau & Edgell, 2019).

Despite these constitutional reforms, Kenya still experiences setbacks that continue to test its resilience. This paper first provides a conceptual framework about drivers of democratic resilience through the three lenses of accountability. In turn, it provides an overview of Kenya's political trajectory from the 1990s onwards. Subsequently, more detailed evidence is provided about how each form of accountability has manifested and been tested before concluding with a consideration of more contemporary threats to the country's democratic credentials. Unlike most existing literature on Kenya's democracy, the novelty and contribution of this paper lies in its utilization of a composite accountability lens (diagonal, vertical and horizontal) which allows us to understand how various accountability actors may interact synergistically (or even haphazardly) to stop democratic erosion. This lens moves beyond a compartmentalized reading of

each accountability mechanism. The paper shows that democratic resilience is a derivative of dynamic and complex interaction among the three accountability mechanisms.

A conceptual framework: Democracy, democratic resilience, and accountability

There have always been differences in how democracy is defined and understood (Gallie, 1955). Although democracy is commonly viewed as a political system where citizens elect their government, there is even disagreement about the most important rights and liberties of citizens under democracy. Despite this, our entry point to visualizing Kenya's democracy draws from Robert Dahl's eight foundational criteria of democracy:

- 1) The ability to participate in elections through voting;
- 2) The opportunity to run for public office;
- 3) The freedom for political figures to seek public backing and electoral support;
- 4) The conduct of elections that are impartial and transparent;
- 5) The right to join or form groups, parties, or organizations;
- 6) The liberty to express opinions openly;
- 7) Access to diverse and independent sources of news and information; and
- 8) The degree to which existing institutions serve and reflect the will of the people (Dahl, 1971).

These criteria are also reflected in Africanist literature, which emphasizes upholding the rule of law, promotion of inclusion, and public participation as important elements in the practice of democracy in Africa (Ake, 2000). From this perspective, Kenya's democracy is undermined when there is a significant decline in the ruling regime's adherence to key governance indicators such as those listed above. To avert this decline, accountability actors play an oversight role, constraining the abuse of political power by the regime and allowing democratic institutions to be more resilient by upholding democratic norms and practices.

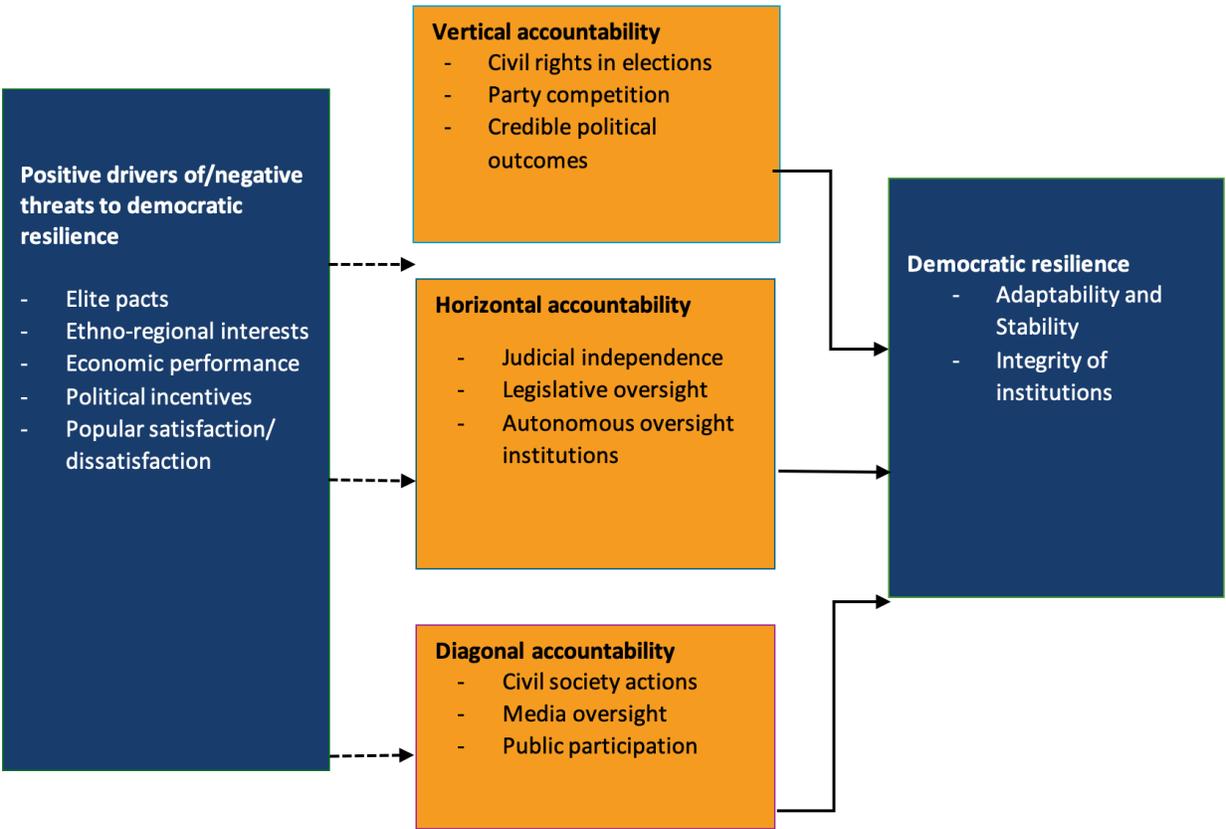
The concept of democratic resilience is now gaining traction in democratization literature. Although there is no agreement about the definition, it is commonly viewed as an adherence to democratic ideals and practices (Burnell & Calvert, 1999; Merkel & Lührmann, 2021). In a broader sense, Petra Guasti views democratic resilience as the capacity of institutions and civil society to resist efforts by technocratic populists to weaken mechanisms of accountability (Guasti, 2020). Our own conception of democratic resilience and the factors that determine a country's success in achieving it is outlined in Figure 1 below.

Building on Guasti's conceptualization, there are three forms of accountability that may constrain a political regime from eroding democratic institutions: vertical, horizontal and diagonal accountability (Lührmann et al., 2020; Laebens & Lührmann, 2023). Vertical accountability concerns the use of electoral processes and popular mobilization, including civic activism, to hold political leaders to account (Schedler et al. 1999; Lührmann et al., 2020). For example, the political competition in fair and free multi-party electoral systems can provide a safeguard against democratic erosion by electing new office holders and removing authoritarian incumbents. Transparent electoral processes demonstrate electoral fairness, which ensures both losers and winners are satisfied with the outcome. Here, our interest is in political competition pre-and post-elections and how the winners and losers receive the election outcomes.

Horizontal accountability mechanisms prevent abuses of state power in the three arms of government by

FIGURE 1

Accountability and democratic resilience: A conceptual approach



SOURCE: Authors

providing institutional checks (O'Donnell, 1998; Lührmann et al., 2020). These include independence of the judiciary, effective legislative oversight, and independent institutions. The legislature offers a space for political elites to organize against executive aggrandizement; conversely, the capture of legislature by the executive may disallow it from performing legislative oversight effectively. We look at the extent of the independence of judiciary, the oversight role played by the Kenyan Parliament since independence, and the extent to which independent institutions established since 2010 provide effective checks on the elected branches of government. We note how Kenya's 2010 Constitution established constitutional commissions and independent offices that provide additional checks on the use of power by public bodies. We also discuss how these institutions enhance democratic resilience and the challenges experienced in their implementation.

Diagonal accountability refers to the degree to which citizens, civil society organizations, and media hold the government accountable (Lührmann et al., 2020). There is a broad range of actions available to civil society and media to prevent democratic erosion. Journalists may unearth corrupt practices by state officials, while at the same time civil society may mobilize against such officers through petitions, demonstrations and mass protests. In this paper, attention will be directed at the effectiveness of the tools used by civil society groups and the media in monitoring the governance process.

It is noteworthy that the effectiveness of three forms of accountability is modulated by contextual and informal factors (visible in the first column of figure 1), of which we will explore a selection based on the Kenyan context. Arendt Lijphart (2002: 37-54) argues that in a multiethnic society, inclusive elite pacts can serve as

positive drivers of democratic resilience by reducing ethnic tensions, preventing winner-takes-all dynamics, and promoting institutional cooperation. In Kenya, elite pacts like the 2008 Grand Coalition arrangement following disputed presidential results between President Mwai Kibaki (of the Party of National Unity from the populous Kikuyu ethnic group) and Raila Odinga (of the Orange Democratic Movement from the Luo Community) ushered in short-term stability, creating opportunities for constitutional reforms (Kanyinga & Long, 2012). However, when elite pacts bypass formal institutions, they may undermine horizontal accountability, like the famous 2018 handshake between President Uhuru Kenyatta (of Jubilee Party, Kikuyu ethnic group) and Odinga, then with the National Super Alliance. This handshake deal bypassed formal avenues for cooperation in its quest for a constitutional amendment (Simiyu & Makunya).

According to Donald Horowitz, ethno-regional mobilization can be managed positively through structural reforms and policies (1985:651-680) but can also lead to zero-sum politics and conflict. Kenya's experience since the return of multiparty elections in 1992 shows that ethnic polarization within political parties undermines vertical accountability. Rather than using programs and policies to compete for voters, parties promote loyalty to perceived regional kingpins (Cheeseman, 2008).

Economic performance can also serve as either a positive or negative driver for democratic resilience. For example, Teorell (2010:14) underscores that economic crises and declining national revenues are foundational structural catalysts for democratic transitions. Poor economic performance may fuel citizens' dissatisfaction with state institutions and low trust in oversight mechanisms. Indeed, in June 2024, economic stagnation triggered protests among the youth which was catalyzed by diagonal accountability such as social media campaigns (Munga, 2024).

As for political incentives, the benefits or penalties political actors attach to certain behavior may also shape accountability (Schedler, 1999). When there are benefits derived from upholding constitutional values, incentives become positive drivers for dem-

ocratic resilience, but when political elites perceive lesser penalties for undermining rule of law, incentives become negative threats. In Kenya, Kanyinga and Odote (2019:235) argue that politics remains "winner-takes-all" and factional leading to elite manipulation of the legislature, judiciary and executive. Kenyan courts operate "in an environment in which partisan political interests weaken all institutions". As a strategy to consolidate power, the executive frequently controls parliament and stall judicial appointments.

Popular satisfaction or dissatisfaction can also tangentially affect democratic resilience. Widespread societal trust in judiciary or religious institutions serve as a positive driver, promoting horizontal and diagonal accountability. However, low levels of trust and high dissatisfaction acts as a negative threat by fueling extra-institutional resistance, thus undermining democratic resilience.

We now turn to how accountability mechanisms act as possible drivers of democratic resilience in the Kenyan case. This is done by examining the status of Kenya's democracy since the third wave of democratization (from the 1990s), with more attention from 2014 to date. Throughout these phases, democratic practices are reviewed, unearthing how accountability actors keep regimes in check to sustain democratic resilience. How have accountability actors enabled or constrained democratic resilience? Before exploring this, the next section presents a brief history of democracy in Kenya and citizen opinions of it.

A brief history of Kenyan democracy, 1992-present

Kenya's democracy could be aptly described as a transitional-consociational model (O'Donnell & Schmitter, 1986). Kenya transitioned from a one-party state to multiparty democracy in the early 1990s. From 1982 to 1992, there were no registered political parties to challenge the ruling party—Kenya African National Union (KANU)—under the authoritarian leadership of

President Daniel Arap Moi (Ajulu, 1992; Odhiambo-Mbai, 2003). Citizens could not choose presidents at election time, while candidates competed only within the ruling party for lower level parliamentary and local government seats. Critics of the government would not be allowed to run for office—or, if they won, would have their election nullified at appeal in courts (Odhiambo-Mbai, 2003). The courts lacked independence to withstand pressure from the executive and therefore they would make judgments in line with the wishes of the executive (Nzau & Edgell, 2019). Diagonal accountability lacked momentum, too. The media and civil society lacked the freedom to check the executive (Kanyinga, 2014). All the same, there was intensive political competition for lower-level seats (Odhiambo-Mbai, 2003). The country returned to multiparty democracy following the repeal of the Constitution in 1991. In 1992, a general election was conducted in which opposition parties presented candidates (Odhiambo-Mbai, 2003).

THE RETURN OF MULTIPARTY POLITICS IN THE 1990S

The return of multiparty politics was largely a function of diagonal accountability. The major civil society actor that questioned the excesses of Moi regime was the church, especially the Catholic, Anglican, and the Presbyterian Churches of East Africa, which together accounted for over three-quarters of the Christian community in the country (Sabar-Friedman, 1997; Throup, 1995). Together with the apex organization—the National Council of Churches of Kenya—the church persistently used the pulpit to criticize the government, demand for multiparty politics, and call for the end to detention without trials (Sabar-Friedman, 1997; Throup, 1995).

The late Anglican Bishop Alexander Muge emphasized that “the church has a moral obligation to protest when God-given rights and liberties are violated ...to give voice to the voiceless.” (Sabar-Friedman 1997, 32) After the ban of the university staff union, radical faculty members also criticized the government for violating human rights. Later, these demands culminated into pro-democracy and human rights movements, leading to the formation of the Forum for the

Restoration of Democracy (FORD), made up of lawyers, activists, clergy, intellectuals, and politicians who openly criticized Moi’s government (Khadiagala, 2010). The key political figures in the forum overcame the ideological differences to unite in rallying Kenyans to protest Moi’s authoritarian tendencies.

FORD continually pressured the Moi administration for the return of multiparty politics and an end to jailing dissenters without trial. In December 1991, concerted pressure eventually caused the regime to repeal Section 2A of the Constitution that had made Kenya a de jure one-party state (Odhiambo-Mbai, 2003). This constitutional amendment led to the registration of many political parties, key among them FORD, led by Oginga Odinga, and the Democratic Party of Kenya, led by Mwai Kibaki. Despite these changes, when elections were held in 1992, the authoritarian regime emerged triumphant, given their overwhelming advantages as well as the failure by the opposition parties to unite (Barkan, 1993; Holmquist and Ford, 1992).

Several associated changes in the electoral system were also introduced in the run-up to the 1992 elections. The power of the Electoral Commission of Kenya (ECK) was enhanced in election supervision, parties themselves were obliged to finance political parties’ nominations (unlike during the one-party period, where state machinery (provincial administration) was used to support KANU’s nominations (Oyugi, 1994)), and the winning presidential candidate, in addition to garnering the highest number of votes, was required to win a parliamentary seat and receive a minimum of 25% of all votes cast in at least five of the eight provinces of Kenya. Most importantly, the presidential tenure was capped at two five-year terms (Throup & Hornsby, 1998).

In the run-up to the 1997 election, opposition members pushed for even more constitutional reforms to ensure a free and fair election. The opposition raised concerns about the neutrality of the ECK, condemned party suppression, and called for full media access and a just voter registration system. The combined pressure of the opposition, joined by various members of CSOs, churches, and advocacy groups (Adar and Munyae, 2001), birthed the Inter-Parties Parliamentary

Group, which ushered in reforms that were constitutional, statutory, penal, and administrative in nature. These reforms aimed at leveling the political playing field and eliminating some aspects of the law that had constrained political and civil liberties for opposition parties. These reforms partly contributed to opposition unity, leading to the defeat of KANU in 2002 election by the National Alliance Rainbow Coalition (NARC) led by Mwai Kibaki (Ndegwa, 2003).

From 1992 on, Kenya has conducted periodic elections after every five years, with three regime transitions upon the expiry of the incumbents' constitutionally stipulated two five-year term limits. The 2022 election was the seventh election since the return of multiparty politics in 1992 and the third under the new Constitution to witness a successful political transition.

But despite these advances in democratic consolidation, the return of multiparty politics came at a cost. The incumbent political elites and their supporters have traditionally pushed back against any threats to the power and resources they wielded. This has led to pre- and post-election violence in 1992, 1997, and 2007. The 2007 elections were marked by extreme violence, resulting in 1,133 casualties and around 350,000 people being internally displaced (Center for Strategic & International Studies, 2009).

The violence was eventually contained, however, through a power-sharing agreement between the main contenders of the election, President Mwai Kibaki of the Party of National Unity (PNU) and Raila Odinga of the Orange Democratic Movement (ODM) (Chege, 2008; Khadiagala, 2008). The inclusive government lasted until the 2013 elections when Uhuru Kenyatta became president. This agreement began a trend in Kenyan politics that has been followed in the years since.

With some variations, this power-sharing arrangement was repeated after the 2017 elections. On March 9 2018, sitting President Uhuru Kenyatta of the Jubilee Party and again-main opposition leader Raila Odinga shook many when they shook hands at the doorstep of the Office of the President (Omulo, 2023; Onguny, 2020)—an example of an informal elite pact

we addressed earlier. This handshake, while informal in execution, was not just for show: A few of Odinga's allies were appointed to executive positions. Although later declared unconstitutional by the court, the power-sharing agreement's major political proposal was to restructure the executive branch to create more positions (Omulo, 2023; Onguny, 2020).

The most recent example of power sharing came in July 2024, when President William Ruto of the United Democratic Alliance appointed Raila Odinga's allies into his broad-based government following the uprising of the youth against the Finance Bill (Chothia & Rukanga, 2024). In March 2025, the two leaders committed their political parties to a joint framework of cooperation aimed at confronting the socioeconomic and political challenges facing Kenya (Republic of Kenya, 2025).

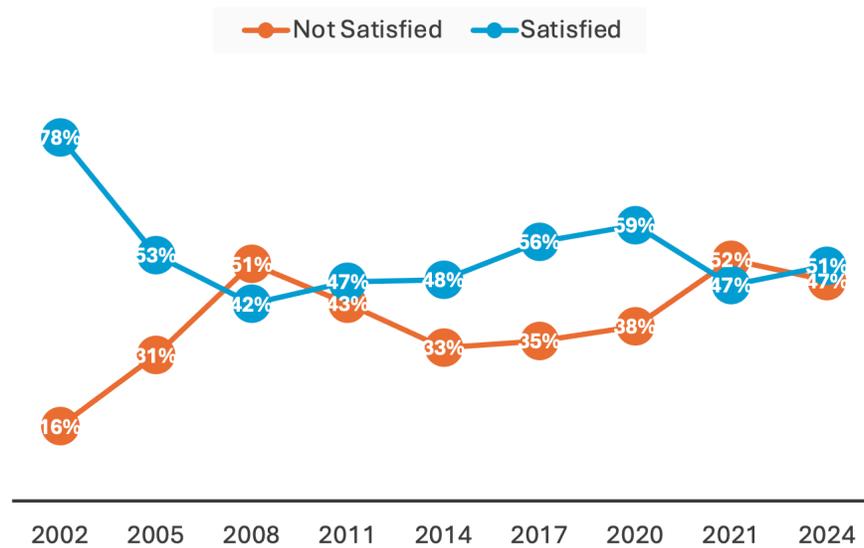
CITIZEN OPINIONS ON DEMOCRACY IN KENYA OVER TIME

While these power-sharing settlements served important objectives, they also had some downsides. As Chelsea Johnson avers, "power sharing settlements are associated with increasing executive corruption and fewer improvements in the rule of law, which are likely to undermine accountability." (Johnson, 2023:1135) This has been reflected by Kenyans' growing dissatisfaction with democracy despite the three decades of competitive elections. 2024 Afrobarometer survey data shows that only 51% of Kenyans are satisfied with democracy in the country (Afrobarometer, 2024). This is a drop from 78% in 2002, when the NARC party first defeated the long-ruling KANU party (Afrobarometer, 2005).

Respondents were asked: Overall, how satisfied were they with the way democracy works in Kenya? They were five options, with respondents selecting only one. In figure 2, "not satisfied" includes more than one response: "not very satisfied" and "not at all satisfied." Similarly, "satisfied" includes "very satisfied" and "fairly satisfied." There were also two neutral options for respondents to select: "Kenya is not a democracy" and "do not know" (Afrobarometer, 2025). This is why responses from "not satisfied" and "satisfied" do not

FIGURE 2

Kenyan satisfaction with democracy over time



SOURCE: Authors

add up to 100%.

Satisfaction was at its lowest in 2008, likely because it followed the disputed presidential election results of December 2007 that led to post-election violence from then to mid-2008. The passing of a new constitution in 2010, however, rekindled optimism and therefore the number of those satisfied with Kenya's democracy increased to about 47% in 2011.

Although a slim majority of Kenyans were satisfied with democracy in 2024, generally declining levels of satisfaction with their democracy since 2002 appears to suggest that Kenyans are not satisfied with one or many key aspects of democracy: For example, the way they are able to participate in elections (Afrobarometer 2005), the credibility of electoral outcomes, how political leaders compete for support and votes, and/or how political leaders uphold the rule of law and safeguards of social justice, inclusion, equity and equality. These low levels of satisfaction could also suggest that a majority of Kenyans are not satisfied with the extent to which individuals can interact and organize among themselves to express, promote, pursue and defend common interests and/or the extent to which

individuals have the right to access to information.

While some of these elements have remained resilient since Kenya's independence in 1963, others have not. The discussion that follows seeks to explain the status of Kenya's democracy, focusing on the following two questions: i) How did accountability actors manage to halt democratic erosion? ii) What mandated accountability pressures (if any) from vertical, horizontal, or diagonal directions?

Processes and actions that undermined democracy

In the early 2000s, the prospect for Kenyan democracy looked optimistic. In the December 2002 election, the authoritarian incumbent President Moi (KANU party) was constitutionally barred to contest, having completed his terms of office. Some opposition parties

united under Mwai Kibaki to end KANU's four decades in power. This resulted in a peaceful transfer of power from the ruling party to the opposition (Mutahi, 2005).

Uhuru Kenyatta, the losing presidential candidate, accepted the elections, terming the outcome a reflection of the will of Kenyans. To inspire confidence, the new NARC government established independent organizations to investigate past human rights violations. These included: The Kenya National Commission of Human Rights, the Ndungu commission on land, a parliamentary committee to investigate the murder of a prominent foreign affairs minister, and the Commission to investigate the Goldenberg Scandal.¹

The 9th Parliament (2003-2007) in this period was distinct, being the first instance where power changed through an election since 1963 (Barkan & Matiangi, 2009), transitioning from the authoritarian KANU regime to NARC. This affected the political calculus of the entrenched KANU power brokers in Parliament, who had historically interfered with its independence. During that session, the Parliament enacted the Constituency Development Fund Act 2003 against the wishes of the executive, thus destroying a potential avenue for the new regime to extend patronage to legislators.

The judiciary also began to assert itself against the executive and legislative arms. In 2004, in a case touching on the constitution-making process, the High Court ruled in favor of human rights activist Reverend Timothy Njoya blocking the executive and Parliament from amending the Constitution (Stacey, 2011). Furthermore, the Court stopped the Parliament from using the Consensus Act to alter the draft Constitution adopted by the National Constitutional Conference (Mukuna & Mbao, 2014). Additionally, President Kibaki suspended the Chief Justice following allegations of corruption and established the Integrity and Anti-Corruption Sub-Committee to implement "radical surgery"

1 The Goldenberg Scandal was a fraud in which a firm falsely claimed to be exporting gold and diamonds. This resulted in the government paying huge amounts as subsidies to the company and related officials and individuals for exporting what did not exist (Grynberg and Singing, 2021).

against widespread corruption in the judiciary (Onsongo, 2016).

The NARC government also initially expanded freedoms of speech and association that had been limited in the past regimes. Remnants of civil society organizations continued to clamor for constitutional changes. A vibrant media emerged with lively discourses on governance. The widespread availability of internet and cellphones made it easier to criticize government anonymously (Mueller, 2014b).

DEMOCRACY UNDER THE NARC REGIME

However, the wave of democratic enthusiasm that greeted the 2002 election results began fading away due to intra-coalition struggle, weak civil society, ethnic polarization, and undermining of judicial independence. Raila Odinga and his Liberal Democratic Party (LDP) supporters within the NARC felt that President Kibaki had failed to fulfill the pre-election agreement. Odinga and his LDP supporters rallied for constitutional reforms that the NARC government had pledged to Kenyans before the 2002 elections, ultimately leading to a constitutional referendum in November 2005, which resulted in a defeat for the NARC government side (Lynch, 2006).

Instead of continuing to play their watchdog role, some civil society and human rights groups began to be co-opted by the NARC government, with some of their officials being appointed to government positions. President Kibaki's biased high-profile government appointees from his Mt. Kenya political backyard (dominated by the Kikuyu, Embu and Meru ethnic groups) created a sense of exclusion in other ethnic groups in the governance process (Hornsby, 2012). With growing tension within the NARC government, like in past regimes, Kibaki incorporated members from the opposition in an attempt to undercut the clamor for constitutional changes (Hornsby, 2012). The Kibaki regime also continued the past tendencies of undermining judicial independence. In 2005, Justice Minister Kiraitu Murungi remarked "The executive has the direct mandate of the people...and will expect to be backed by the judiciary. [T]he executive desires a judiciary that shares its philosophy." (Gichohi & Arriola 2022, 149)

At the same time, the Kibaki government's dalliance with foreign mercenaries (the Artur brothers), saw it respond harshly to the media and civil society activists when these actors unearthed their criminal activities (Mueller, 2014b). The government also engaged in extra-judicial killings, targeting political gangs that supported constitutional changes (Branch, 2011).

COALITION FORMING AND DEMOCRACY UNDER THE KENYATTA ADMINISTRATIONS

In the run-up to the 2007 election, political parties regrouped, with Raila Odinga and his supporters coalescing into ODM, while Mwai Kibaki and allies formed PNU. Post-election violence broke out following the 2007/2008 disputed presidential elections when Kibaki was declared the winner amidst allegations of rigging (Mueller, 2014a). This was a critical juncture for Kenya, as it ushered in constitutional reforms that culminated into the 2010 Constitution which fundamentally altered Kenya's democratic governance framework.

With the previously discussed formation of a grand coalition government, there was no opposition party to oversee the government. Thus, the coalition was somewhat a return to the de-facto one-party state system of 1969-1981. Failure to establish a domestic mechanism to punish perpetrators of violence resulted in six individuals (William Ruto, Henry Kosgei, and Joshua Sang from Raila's ODM side and Uhuru Kenyatta, Francis Muthaura, and Ali Hussein Mohammed from Kibaki's PNU side) being charged at the International Criminal Court (ICC). Ahead of the 2013 election, the Chief Justice of the Supreme Court of Kenya was intimidated just before the announcement as to whether the ICC indictees would be allowed to contest for the presidency (Mueller, 2014a). Before the 2013 election, the Political Parties Act was amended to allow for the party coalitions and established deadlines for concluding coalition agreements (Republic of Kenya 2011, s.10(2)). This amendment provided a mechanism for the structured formation of party coalitions aimed at building wider multiethnic coalitions and embracing more inclusive campaigns in line with the constitutional principles. Uhuru Kenyatta and William

Ruto's plans to run for the presidency had fueled ethnic polarization, before, given this new amendment, Kenyatta (from the Kikuyu ethnic group) and Ruto united under Jubilee Coalition with Kenyatta as the presidential flag bearer and Ruto as the running mate.

In short, the 2013 election, the first under the new Constitution, was largely peaceful (Long et al., 2013). It was an open election, as the incumbent President Kibaki was constitutionally barred, having attained his maximum terms. The main contenders were Raila Odinga of the Coalition for Reforms and Democracy and Uhuru Kenyatta of the Jubilee Coalition. The presidential electoral dispute was finalized at the Supreme Court, where Uhuru Kenyatta's victory was upheld (Kanyinga & Odote, 2019). As a result, Kenyatta was able to run under the Jubilee Coalition and won the election. President Kibaki handed over power peacefully. Operating under two constitutional frameworks (the Independence Constitution between 2008-2010 and the 2010 Constitution), the 10th parliament (2008-2013), was uniquely constituted as the opposition party was part of the Grand Coalition Government. However, unlike the prior legislatures under multi-party democracy, the leadership was more assertive in the way it disapproved executive proposals and nominations for appointments. The Judiciary became more assertive following the establishment of the Supreme Court, the Judicial Service Commission (JSC), and the judiciary fund, all firmly entrenched in the constitution.

After the peaceful transfer of power, though, similar to the previous regime, President Uhuru Kenyatta instigated processes and actions that undermined democracy, including interfering with transitional justice mechanisms established to address 2007/8 post-election violence, interfering with independent commissions, insulating executive power through the legislature, and preventing judicial independence. Upon assumption of the office and facing criminal charges, President Uhuru Kenyatta and his deputy embarked on a mission to undermine the ICC process. Human rights supporters of the ICC were harassed, intimidated, and even murdered (Mueller, 2014b). Lack of a constitutional mechanism to protect witnesses allowed state agencies to violate the rights of those suspected to have provided evidence to the ICC. The office of the pres-

ident also harassed the commissioners of the Truth, Justice and Reconciliation Commission, which had been established to investigate past injustices in the country (Mueller, 2014a).

In December 2013, Kenyatta's Jubilee Coalition administration enacted a draconian law that placed the media under government control and imposed fines on journalists and media owners (Daily Nation 2013). In 2015, President Kenyatta suspended the leadership of the Ethics and Anti-Corruption Commission (EACC) following a parliamentary vote of no confidence. In a move that shocked many, the EACC had produced a list of those implicated in corrupt practices, which included cabinet secretaries, county governors, members of Parliament, and civil servants (Arseneault, 2015).

In the run-up to 2017 election, the recommendation of the EACC to the Independent Electoral and Boundaries Commission (IEBC) that 106 candidates should not present themselves before the electorate because of not fulfilling the leadership and integrity requirements under chapter six of the Constitution was ignored (Ayega, 2017). The IEBC argued that the 106 candidates were still innocent until proven guilty by courts. Following the nullification of the presidential election results which declared him as winner, Kenyatta publicly showed hostility toward the judiciary (Kanyinga & Odote, 2019). He stopped the appointment of 41 judges proposed by the JSC, in violation of the 2010 Constitution and the Judicial Service Act (The Star, 2020a). Further, he crippled the operation of the judiciary by slashing its budget by 11.1%, arguing that it was necessary to offset the costs used in the repeat presidential elections (Gichohi & Arriola, 2022: 150). Among this, Kenyatta was re-elected in the second round of presidential elections.

In 2018, the Computer and Cybercrimes Act was passed (Republic of Kenya, 2018). Although the law aimed to protect the confidentiality and integrity of data to enhance the prosecution of cybercrimes, journalists convicted of defamation faced up to 10 years imprisonment or a fine equivalent to \$45,000, while those convicted of spreading false information faced two years in prison (Gichohi & Arriola, 2022). Legis-

lators used parliamentary privileges to criticize and threaten journalists. In July 2018, Jubilee party legislators requested the Power and Privileges Committee to investigate two journalists who had published a story on corruption in the Parliament (Committee to Protect Journalists, 2018).

Legislators also frustrated attempts to liberalize civil society, but civil society continued to fight back. Parliament failed to implement the Public Benefits Organizations Act (PBO) (2013) aimed at making the regulations of civil society organizations more transparent and efficient until 2024 (Republic of Kenya, 2013). The Civil Society Reference Group mobilized the public through peaceful protests to oppose the revision to the PBO Act that would have capped foreign funding for NGOs at 15% of the organization's total budget (Dodsworth & Cheeseman, 2023:631); Republic of Kenya 2013a). Indeed, the amendments failed to pass the second reading in Parliament. Otherwise, the move would have undermined the capacity of the CSOs to effectively carry out their watchdog role. Muslim activists protested Section IV of the Suppression of Terrorism Bill, which would have allowed police to interfere with the communications (Ndzovu, 2014, p.115). In the same vein, the Jubilee administration stopped implementing the Religious Societies Compliance Rules in 2016, following pushback from religious groups. The passage of the rule would have infringed the freedom of worship and association. While protests from various groups led to some gains for these groups' rights, overall, legislators allowed the executive to set the terms and conditions for operation of CSOs (Musila, 2019). In the same breath, Parliament also failed to approve the IEBC's draft regulations on campaign spending as required by the Election Campaign Financing Act (Republic of Kenya, 2013b), meant to regulate amounts of money for campaigns in an attempt to level the playing field for political competition. Through unconstitutional executive orders, President Kenyatta also reorganized the national government by placing independent commissions under the Attorney General and other cabinet secretaries (Kakah, 2020). He also infringed on the devolved authority of the Nairobi City County government by establishing the Nairobi Metropolitan Services to oversee crucial functions of the city (Makambu, 2020; The Star 2020b).

DEMOCRACY UNDER THE RUTO REGIME

The victory of William Ruto in the 2022 elections was marred by controversies. On the eve of announcement of the presidential election results, the IEBC was divided, with four commissioners disowning the results announced by the Chairman of IEBC (Cheeseman et al., 2024). However, the attitude of the four commissioners appears to suggest that they were allied to longtime opposition leader Odinga, thus casting doubt on impartiality and independence of the electoral management body. There was also an allegation that top officials in the National Security Council attempted to persuade the IEBC to inflate the results in favor of Odinga (Cheeseman et al., 2024). Since taking power in September 2022, President William Ruto has undermined democracy by following the playbook of the past regime: Using political manipulation, intimidation, corruption, abuse of human rights, and attacks on the Judiciary (Mutunga 2024; Abdikadir 2024).

Since taking office, however, the judiciary has continued to function, reversing decisions made by President William Ruto and stating that they had not adhered to the constitutional principle of public participation (Daily Nation 2025). Overall, this independence of judiciary strengthens the legitimacy of democracy, thereby enhancing public trust.

Civil society is also empowered to push back against socioeconomic policies. For example, in 2022, President Ruto inherited an economy that was in distress as evidenced by rising inflation (7.1%); escalating rates of unemployment (14%), especially among the youth; and increasing income inequality (Changole, 2022; Klaus et al., 2022). Instead of initiating economic policies to boost broad-based growth as part of his bottom-up economic agenda, he opted for raising revenues, a move that triggered economic grievances especially among Kenya's Generation Z (the demographic cohort, generally defined as those born between 1997 and 2012). Gen Z activists demanded government accountability on digital platforms (mainly X and Facebook), culminating in widespread protests and invasion of Parliament on June 25, 2024 (Gachuki, 2024). President Ruto conceded to the demand by shelving the Finance Bill and dissolving the entire cab-

inet (Gachuki, 2024). This Act has since been negated by assigning some of the dismissed Cabinet Secretaries to other public positions, resulting in renewed public protests.

Configuration of accountability mechanisms: A reflection

The discussion above highlights how the three forms of accountability interact—reinforcing or weakening one another depending on political situations. Crucially, conflict or cooperation among accountability actors (citizens, media, civil society, political parties, legislature, and judiciary) create political opportunity structures for democratic resilience. Vertical accountability, anchored in electoral dynamics and political settlements, is the most dominant attribute of Kenya's democracy. Since the return of multiparty politics, competitive elections have become somewhat the “only game in town” enabling regime transitions and citizen oversight. Nonetheless, vertical accountability has become anathema for democracy when elections are rigged or electoral management institutions are perceived to lack independence. Indeed, the paper has demonstrated critical junctures when vertical accountability was at its lowest, especially post-election violence that characterized 2007 and 2017 elections. In these situations, horizontal accountability (landmark judicial rulings) and diagonal accountability (civic engagement) were reactivated to balance executive power.

The 2010 Constitution gave impetus to horizontal accountability—legislative oversight and judicial independence have to a greater extent constrained executive power. The Supreme Court's nullification of the 2017 presidential election results and declaration of the constitutional amendment drive by the Building Bridge Initiative were a few key high moments of recent horizontal accountability. Nonetheless, its effectiveness has been undermined by an executive quest for

power consolidation through co-option and manipulation when not reinforced by the other two forms of accountability.

Diagonal accountability, although the least institutionalized, arguably is the most effective form of accountability in originating and catalyzing public pressure. We have seen that from the church in the late 1980s and independent media to Gen Z protests in 2024, diagonal accountability was consistent in the campaign against corruption and demands for inclusivity. Notably, diagonal accountability has become more visible when formal institutions of vertical and horizontal accountability are in paralysis. What is clear from the discussion is that the configuration of the accountability mechanisms is not often straight line. For instance, the 2004 Anglo-Leasing scandal and 2007 post-election violence triggered the three accountability mechanisms in various ways (Bachelard, 2010). The scandal excited CSOs and media (diagonal accountability), activated opposition mobilization (vertical accountability) and prompted establishment of an independent inquiry (horizontal). In the same vein, the 2007 post-election violence provided a political opportunity structure that allowed actors from the three accountability mechanisms to converge around a constitutional reform movement.

Conclusion

This paper has explored Kenya's democratic resilience through the composite accountability lens—vertical, horizontal and diagonal. Rather than visioning Kenya's democratic resilience project through a compartmentalized approach of each accountability mechanism, we argue that resilience is better understood through dynamic interactions between the three accountability mechanisms. Notably, in Kenya, the accountability mechanisms vary in terms of the extent of institutionalization (with diagonal accountability being the least institutionalized) and have at certain critical junctures (Anglo-leasing scandal, post-election violence, nullification of presidential elections, and Gen-Z protests) counter-balanced the executive power. With the emergence of the third wave of democratization, diagonal accountability led by CSOs pushed for the return of

multiparty politics. Vertical accountability via routine elections has facilitated regime transitions since 2002, thus strengthening political pluralism. Horizontal accountability, reinforced by the 2010 Constitution, enabled the judiciary and independent commissions to balance executive aggrandizement. Yet none of the three mechanisms have operated seamlessly. Because Kenya's democratic experiment is not linear—it is punctuated by tensions and reversals (Kanyinga et al 2010), where resilience relies on the agency of accountability actors. This prevents democratic backsliding. Crucially, as discussed, the success of democratic resilience depends on the extent to which the three mechanisms cooperate.

Recent developments in the country appear to suggest new tactics of contestation. The June 2024 youth protests against the Finance Bill and the subsequent regime's response shed light on opportunities and threats to Kenya's democracy. The youth protests recalibrated diagonal accountability with mobilization of Gen Z through social media and led to unprecedented street demonstrations across the country. Unlike previous protests with identifiable leaders tied to political parties, the Gen Z protests were amorphous, without a leader and with less ethnic ties. The outcome of this new form of diagonal accountability was reversal of policy direction, in terms of reversing a Finance Bill and disbandment of the cabinet. On the other hand, President Ruto's reinstating previously sacked cabinet secretaries indicated how the executive may continue to utilize political incentives to consolidate power. He resorted to establishing an elite pact with the leader of opposition, Raila Odinga, to help address the challenge. He brought to the cabinet allies of Raila Odinga and allies of former President Uhuru Kenyatta. This new elite pact offered political cushioning and reduced tensions among political elites, but the youth and CSOs perceived this as reinforcement of elite deals at the expense of reforms. They continued to demand broader reforms in governance.

The Ruto regime's concerted effort to silence critical voices in social media, abductions, and judicial interference have become new threats to democratic resilience. Contextual variables like poor economic performance exacerbate cost of living, unemployment and

inequality, creating room for triggers that could deepen civic engagement in the quest for better conditions. Finally, Kenya's resilient democracy will depend on the extent of responsiveness of the three accountability mechanisms. It is essential that CSOs remain vigilant and broaden their support base while leveraging digital tools. Despite the pressure, the judiciary must rise to the occasion by remaining independent. Electoral reforms like operationalizing campaign financing regulations must be jumpstarted to guarantee vertical accountability. Ultimately, a participant political culture among Kenya's citizens is key to sustaining Kenya's democratic project.

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