DISCOURSES
on
CIVIL SOCIETY
in
KENYA

Editors:
P. Wanyande
M. A. Okebe

African Research and Resource Forum (ARRF)

Discourses
on
Civil Society
in
Kenya

TABLE OF CONTENTS

Preface

Acknowledgements

PREFACE

The African Research and Resource Forum (ARRF) is a regional policy research institute based in Nairobi with a focus on the most critical governance, security and development issues in Eastern Africa. All the governments in Eastern Africa have introduced national governance reforms, with varying degrees of success in the past one and a half decades. In that process, the role that civil society should play in improving the quality of governance and the lives of ordinary citizens has been an issue of great concern to the governments of the region, civil society groups, donors, academics and the voters. Obviously the relations between state and civil society vary from one country to another. There are disagreements on the direction in which civil society groups have evolved, since the struggle for democracy began in the middle of the 1980s. To understand the issue in greater detail, the ARRF in partnership with the Heinrich Boll Foundation organized a regional workshop on civil society in 2008 which was open to a large number of civil society groups in the region, in addition to the press, public officials and academics. This publication is the result of that collaborative effort between ARRF and the Heinrich Boll Foundation, Kenya office.

The idea of holding a regional discourse on civil society was motivated by a number of reasons. First, there was recognition that civil society worldwide has become a critical player in the management of public affairs. The role of civil society in Eastern Africa is particularly important at this time because of the many challenges facing the region. Some of these challenges have arisen from the efforts being made to establish the East African Community, and attempts at democratization and the improvement of governance among others. Managing these challenges requires the participation of key stake holders. Civil society can generate ideas regarding the successful establishment and eventual functioning of the East African Community. This role is acknowledged in the charter establishing the East African Community.

Secondly, civil society organizations in the region have undergone some changes that are worth exploring. In some countries like Kenya, and also Southern Sudan, civil society actors of the past are now serving in government. For the sector to play its rightful role in the region it is important that changes over time are observed so that weaknesses arsing from such transitions do not weaken the movement. Finally, the project assumed that a comparative analysis of civil society from other regions of

Africa would enhance our overall understanding. What works in one situation may not work in the next. There are best practices in one case that others might learn from. It is against this consideration that section two of the publication is devoted to an analysis and perspectives on civil society in other parts of Africa, namely Nigeria, Ethiopia and Zanzibar.

In chapter One, Sall provides an overview of the role civil society in Africa has played in bringing about change. He argues that at first glance there is no evidence of civil society driven change in Africa. He goes on to observe therefore that where new political dispensation has emerged and survived, change was driven by political parties which may or may not have been in alliance with civil society organisations.

In chapter Two, Wanyande examines the contribution made by civil society to the various attempts at political transition in Kenya and the challenges facing the sector. The chapter argues that Kenya has attempted about four political transitions beginning from the imposition of colonial rule. The author argues that civil society did not play any role in the first attempts at transition. The sector however played a major role in attempts at political transition. The chapter ends by observing that civil society currently faces a number of challenges that may hamper its role and effectiveness.

Chapter Three is by Chemengich and looks at the prospects of civil society driven change in Kenya. The author argues that civil society in Kenya is involved in a variety of functions that include service provision, fighting for democracy and good governance, market agitation and religious and spiritual development. The chapter identifies a number of challenges to the effectiveness of Kenyan civil society organisations.

In chapter Four, Charles Olungah discusses the role of the academic community in the process of democratisation in Kenya. The main argument of the chapter is that the academic community has struggled hard against successive oppressive state measures including hostile university environments. Despite this the academic community has been at the forefront in fighting against authoritarian rule.

In chapter Five, Ben Sihanya interrogates the role played by academics and civil society in development policy making and the budgetary process. He sees the academic and civil society becoming increasingly involved in development policy making and in the budgetary process.

Chapter Six by Oculli is on the role of university students and civil society in Nigeria. The chapter analyses the determination of university students in Nigeria to influence change in state policy despite very hostile political and economic environment. The author describes the situation as a real struggle.

In chapter Seven, Gudina discusses the activities of civil society in Ethiopia. In this detailed and well-informed chapter Gudina argues that the political environment in Ethiopia has been and remains hostile to civil society participation in the days of the emperor, under the Dirgue and after the Dirgue was thrown out of power in 1991.

Chapter Eight contains perspectives by Othman on the role of civil society in Zanzibar. The massage from the chapter is that civil society in Zanzibar is weak due mainly to the nature of an intolerant the political environment.

All the authors agree that civil society is a critical stakeholder in the change process. This is true whether one is talking about political, economic or even socio- cultural change. There is therefore a case to be made for strengthening civil society in Africa and any other region undergoing change.

Professor Michael Chege
Board Chairman,ARRF

ACKNOWLEDGEMENTS

SECTION I

CIVIL SOCIETY IN KENYA

CHAPTER ONE

REFLECTIONS ON CIVIL SOCIETY DRIVEN CHANGE: AN OVERVIEW

Alioune Sall

This chapter provides an overview of the role of civil society in influencing change. It begins with a defination of the concepts of "civil society" and "change". We do so because of the polysemic nature of the two concepts.

For civil society the definition we would like to propose "would go beyond the parochial orientation which tends to limit civil society to organized secular groups in urban settings" (Bangura quoted by Okello Oculi). It encompasses a wide range of organizations which are not under the control of governments and which are not for profit as organizations of the private sector. Civil Society Organizations (CSOs) are value-driven rather than profit driven. They include: Non Governmental Organizations (NGOs), Community Based Organizations (CBOs), Faith Based Organizations (FBOs), Trade Unions, Farmers Associations, Academics, Professional Associations, Students Movements and other mass movements which are not affiliated to political organizations Civil society does not encompass political organizations or political society.

In this paper the term change refers to, qualitative change which brings about a new dispensation in political arena, tantamount to a paradigm shift in the epistemological world, in the sense given to paradigm by Kuhn.

Against this definitional backdrop, it would seem at first glance that, empirically, there is no example of civil society driven change to talk about in specific African countries. Where new political dispensation has emerged and came into being, the change was driven by political society and especially political parties which may or may not have been in alliance with civil society organisations. In other words, an exclusively civil society led change is something unheard of in Africa. Even where CSO were quite strong, like in apartheid South Africa with COSATU and SANCO, the alliance they entered into was led by a political party – the African National Congress (ANC).

There are certainly many factors which account for that reality. Four explanatory factors stand out. The first has to do with the young age of the civil society. In the African context civil society of the kind we are talking about are relatively young, This is because their activities were curtailed by the colonial authorities and even after independence they were not given an opportunity to develop. Most of the CSOs emerged or became active only in the 1990s following the liberalisation of the political and development space. Secondly many of the CSOs in Africa have a very loose structure. Thirdly the CSOs exhibit weak organizational capabilities in addition to having limited scope of work (whether geographical or thematic).

Yet, in spite of these shortcomings one can argue that, notwithstanding the ultimate hegemony of political parties in the alternation process in the political arena, CSOs have been at the initiation phase of many social and political movements which have led to change. The following examples illustrate the point quite well: The student's movement in Senegal in 1966 and particularly in 1968 forced the Government to open up space for dialogue. The movement also influenced the relaxation of the presidential nature of the regime leading to the establishment of a position of Prime Minister. This position had been scrapped from the institutional architecture of the country in December 1962.

Second the trade union movement/strike in Mali, supported by the students' movement which led to a military coup that toppled the regime which had been in place for 22 years. The pressure from the trade unions led eventually to multi-party elections which brought Alpha Oumar Konaré to power. It's worth noting that for long "Alpha", as he is known popularly, was at the helm of a magazine and an NGO whose main activity was education and literacy-related. The trade unions were also in the forefront of change in Upper Volta, when, in 1966, Yameogo was toppled by a junta led by Sangoule Lamizana. The same scenario was repeated in 1981 against Saye Zerbo in a coup staged by young radical officers led, among others, by Thomas Sankara and Blaise Compaoré. The coup brought significant change in the political landscape of the country and had also a symbolic dimension as the country's name was to be changed.

The Faith Based Organizations (FBOs) and the academia were at the forefront of change in Benin where the first "National Conference", following the "Discours de la Baule", was held in 1990. The Conference chaired by an Archbishop ended up with the drafting of a new Constitution, organization of new elections that were won by

President Soglo, after more than 20 years of "Marxism-beninism" under President Mathieu Kerekou. Closer to us is the Soweto uprising of 1976, starting with children.

It should be noted that in the five examples provided above, where the change process was triggered by CSOs (student's movements, workers trade unions, FBOs and academic circles) the public space was dominated/controlled by a political party with almost no breathing space for other political actors. In all these examples, there was *de jure* (Mali) or *de facto* a State-Party. As political identities could not be expressed or express themselves freely, dissenting voices had to identify other channels than political parties. Corporatist bodies (trade unions, students' movements) defending particular interest groups were one of those channels, in as much as they were recognized. The same holds true with spiritual identities in as much as constitutions upheld/ recognized the right for citizens to worship in the way of their choice. In other words, it is the repressive, authoritarian, if not dictatorial nature of these regimes that provided the fertile ground for the expansion/development of the CSOs which became the locus of the resistance to dictatorship. That was so true that NGOs, in the minds of the powers that were considered as a cover for anti-governmental organizations and opposition parties which did not claim their identities but were in the making.

From the examples given above one can argue that change may not have been driven entirely by CSOs but triggered by them. It should also be noted that in all the examples cited above, the historic role played by CSOs in opening up the public and political space has been short-lived for a couple of reasons, mutually reinforcing or separate but very clearly discernable.

In the first place the CSOs transformed and reinvented themselves as political parties aiming at control of the State and positioned themselves as opposition parties.

Secondly, the CSOs were on the contrary massively co-opted in the power as was the case with South Africa where the leaders of the tripartite alliance worked mainly for CSOs. As a result of this dual process, the CSOs found themselves weakened under new dispensation by one of those ironies that history is full of. Expansion of the democratic space rather than being a gain for the CSOs which had contributed to it in significant manner became a loss for the CSOs which then lacked platform or leadership.

In all those countries, as a result of those changes, and opening up of the public/political space, some soul searching is taking place as to the role of the CSOs, and their potential

for driving a change agenda in Africa. Some argue that the State, particularly if it is a developmental State, will, by its very existence, confine CSOs to a marginal role as it will deal successfully with issues of development, human rights which were the forte, so to speak, of CSOs. Others argue that more than ever CSOs are needed to hold government accountable, particularly in times of transition from an opposition party or liberation movement to one of a Party in charge of/and controlling the state. There may be some validity in both positions but the debate must be contextualized. In other words, what is required is "a concrete analysis of concrete situations" to use Lenin's words. And it is very likely that one conclusion will be that CSOs are neither totally redundant, even in the framework of developmental states, nor the messiah which will rescue humanity from its sins and protect governments from their tendencies to be abusive. It is very likely that out of a proper assessment, it will appear that CSOs do have a potential to contribute or even play a triggering or leading role in change process in Africa even though they share that privilege or prerogative with other social actors. The issue then is how to actualise that potential? The response can be expressed in three statements: audacity to think, audacity to speak, audacity to act.

Audacity to Think

Real change is always accompanied and preceded by a paradigm shift, the emergence and or consolidation of alternative discourse to the dominant discourse, a discourse which, as we all know since Marx, is the discourse of the dominating classes. Challenging the dominant discourse is therefore a first step for CSOs if they are eager to change the balance of power in society, and contribute to overcoming the alienation mechanisms associated with disempowering discourses. Seeing reality through alternative lenses is the first step on the journey for changing realities. Intellectuals have therefore a major role to play in bringing about change hence the idea of Gramsci referring to political parties as "a collective intellectual". The same can be said of civil society; at its best they are a collective intellectual which offers a reading of society which is, by necessity, a de-construction of the dominant discourse.

Examples abound where civil society in Africa has played that role of collective intellectual. The examples include the critical analysis of Structural Adjustment Programmes (SAPs) as policy instruments for the management of African economies. Long before the Economic Commission for Africa, then under the leadership of Prof. Adededji, challenged the wisdom of the Bretton Woods Institutions, intellectuals

like Samir Amin, NGOs like Oxfam, and Third World Network had provided critical analysis demonstrating that SAPs were misnomers and non starters. The same holds true with the notion of developmental or capable State, embraced today by institutions which, not long ago, were advocating minimalist States. The same can be said about the critical importance of long-term planning in the development process and the utilization of scenarios in strategic planning processes. Research centres and Think Tanks such as CODESRIA, AAPS, AFI have played critical roles in unlocking the minds and refining these alternative discourses without which people would still be boxed in conventional views of development.

There is therefore need to strengthen these centres, to establish new ones and to network them so as to keep up the search for alternative paradigms to the discourse of globalization which obviously has failed to deliver on its promises, as evidenced by breadth and depth of poverty and destitution in Africa. It should be recalled that periods of Renaissance in Africa, whether the Askia of Mali in the 14th century, or during the struggle for independence in the 1960s, as well as everywhere in the world have been characterized by an intense intellectual production. From that standpoint, those who advocate African Renaissance should be well advised to invest in intellectual production and engagement rather than sticking to the conventional wisdom as, unfortunately, the Mbeki regime in South Africa Soel Akee did. Development of an African intelligentsia – which goes beyond graduating students – is a prerequisite for any meaningful change.

Audacity to Speak

 Ideas, no matter how bright they are, only become tools of change when they are internalised by a wide constituency. Communication is key in that regard. It is a powerful tool. It therefore does not come as a surprise that leaders in change process from the prophets of biblical times to contemporary leaders have been communicators or have secured services of communicators. The challenge in that regard is to be able to depict a possible future that is desirable and the path that can lead to it in such vivid and convincing ways that various constituencies mobilize themselves to reach that desirable future. In view of the need to be as inclusive as possible, and taking into account the diversity of potential actors of change, tailor-made strategies have to be devised to convey the message that change is within reach in our lifetime (Yawezekana in Swahili; Djitu Ten in Creole of Guinea Bissau) and that there is nothing like fate

or curse which would condemn us to be spectators of our history rather than actors of change.

A related challenge is to be able to document what has come to be known as best practices and disseminate them widely. Here, I am not talking about promotional material on glossy paper which profiles an organization or an individual or even a community. Documenting best practices goes beyond giving a snapshot of a reality. It involves analysing factors, actors, critical uncertainties, trends, strategies (FACTS) behind the considered reality. An analytical capability is therefore required.

Communication and the media are important segments of civil society in as much as they account to a large extent for the success of alternation in countries where they took place. That explains why media Bills are being passed, even in countries supposedly democratic like Botswana and Senegal. That's also why when those restrictive/ repressive Bills fail to alter their combativity or simply their professionalism, the media people get banned or jailed. Examples include Sembene's anti-imperialist movie "Ceddo" which was never shown in Senegal under Senghor under the pretext of inappropriate orthography.

In the same way that governments have come to appreciate the power of media, the CSOs should see to it that media are part of their constituency.

Audacity to Act

Change is brought about by action, not by chance. And when it comes to action, 3 modalities can be found:- reactive: fire brigade mentality; Pre-active: insurance premium holder; Pro-active: strategist.

To be proactive, an actor (whether an individual, community) requires capacities. And for that matter, two types of capacities are required. First is the capacity to anticipate: data collection on drivers of change, environmental scanning… knowing that whilst future cannot be predicted with certainty, one can comfortably identify the factors that will shape the future. Anticipation is what future studies are all about. It is therefore important that CSOs engage into future studies by their own or in association with other organizations. In East Africa, there are many future studies already carried out but which need update. Thus in Burundi, "Burundi 2025" is being carried out; Rwanda has completed and is implementing "Rwanda 2020"; Tanzania has carried out years ago under the leadership of Prof Wangwe, then Executive Secretary of ESRF, a future

study; Uganda did the same with Salim Bachou at the helm; Kenya, with Institute of Economic Affairs (IEA), then led by Betty Maina and Peter Anyang' Nyong'o as Chair of the Board completed "Kenya at crossroads" with the support of Society for International Development (SID). CSOs have to get involved in these national exercises, and make use of them to enhance their capacities of anticipation. Moreover, it would be appropriate, in my view, to organize a meeting of CSOs of the region on future study (methodology, process, use future study).

The second is the capacity to chart a courses of action on the basis of an alternative vision of the future, and are shared by as large constituencies as possible. I am referring you back to what I was calling the audacity to think, to operate paradigmatic shifts vis-à-vis dominant discourses. This dual capacity can be expressed in the metaphor of a pilot. If civil society is to be agents of change, it has to act as a pilot.

CHAPTER TWO

CIVIL SOCIETY AND TRANSITION POLITICS IN KENYA: HISTORICAL AND CONTEMPORARY PERSPECTIVES

Peter Wanyande

Introduction

This paper attempts to shed insights into the contribution of civil society to the politics of transition in Kenya. The paper highlights some of the actual contributions made by civil society to the politics of transition as well as their potential to contribute to transition politics. This includes a highlight of both the direct and indirect contribution of this sector to the politics of transition. Also taking pride of place in the discussion are the challenges facing civil society. From the discussion on the challenges the way forward for civil society in Kenya should emerge. Since attempts at political transition have been a feature of Kenya's political landscape since the colonial period, the discussion takes an historical approach. This is done in order to place the issues in their right historical perspective.

The paper presents four arguments. First is that any discussion of the role of civil society in the politics of transition must take cognizance of the complexity of transition politics and the fact that the undertaking involves competition first between the conservative forces bent on maintaining the status quo and the progressive groups that wish to make fundamental changes to the existing system on the one hand and on the other, competition within each of these forces. This point is well articulated by Adam Przeworki (1991). The politics of transition thus involves a multiplicity of actors with civil society being only one of them. Consequently it becomes difficult to measure the contribution of any single actor. It is because of this that one has to be careful in crediting or admonishing any of these actors, CSO undivided, with the success or failure of a transition project. The second argument is that not all civil society organizations have made a positive contribution to attempts at political

transition. A number of them have in fact worked closely with conservative forces in government to frustrate the efforts to effect political transition. This is not surprising in view of the heterogeneity of civil society and the fact that it is made up of groups with diverse interests in a political system both existing and anticipated. The final argument is that the effectiveness of civil society in Kenya has oscillated between being active and being dormant depending on the type of regime in power and the quality of civil society leadership.

Conceptual and Theoretical Issues

Although the term civil society has a long history going as far back as classical Greece, there is no consensus on its precise meaning. While some scholars apply the concept to any non state actor including political parties but excluding family and blood associations or groups others (Nzomo: 2003) include family and blood associations or groups while excluding political parties in defining civil society. Nzomo also includes the informal associations in the rural areas in the category of civil society. Other scholars also consider the media as part of civil society. According to Elmaky, civil society is defined as 'the group of free and voluntary associations which strand in the middle between the family and the state to achieve interests of its members and must confine itself and activities to the values of respect, tolerance, general agreement and peaceful management of diversity and contradictions'.

Arriving at an agreed definition of civil society is particularly problematic in Kenya where a plethora of non state actors with very different characteristics and ways of conducting business emerged especially since the 1990s with each laying claim to the title civil society. Development partners compound the problem by channelling development assistance to these groups on grounds that civil society is a better performer in the use of development resources than to the state. As a result of this, people began to associate any non- state actor with civil society.

The general understanding of civil society in Kenya has therefore been that it is any organized non –state actor that seeks to work for the political, social and economic wellbeing of its members in particular and the citizens in general. They do this by attempting to limit the freedom and capacity of the state to encroach on the interests, rights and freedoms of citizens.

Another problem that one meets in any discourse about civil society is the tendency to talk about civil society as a homogeneous entity despite the fact that many of the organizations that claim civil society label exhibit very different characteristics, interest and approaches to their activities. It is also commonly assumed that the interest of civil society and those of the state are and must necessarily be incompatible. The expectation in this regard, is that civil society must always oppose the state. In reality and especially in Kenya, there are a number of civil society organizations that work with the state. For example organizations such Youth for KANU (YK92) worked with the state to defend the Moi government and campaigned for its victory in the December 1992 general elections.

There is also a tendency to assume that civil society has the capacity to perform better than the state in terms of catering for the interests of the citizens and in keeping the state in check. (See for example the views of the World Bank 1989-1994). Finally there is an assumption that civil society is a prerequisite for the institutionalization of democracy in Africa and therefore for effecting genuine political transition. It is against the above conceptual muddle with its potential to mar an objective analysis of the role of civil society that this paper will interrogate the contribution, if any, of this sector to the politics of transition in Kenya.

The Concept of Political Transition

A number of studies have been undertaken on the subject of political transition in Kenya especially since the 1990s. This interest has been kindled by the prospects of regime change that was made possible by the repeal in 1992, of section 2(A) of the constitution that had hitherto criminalized multiparty politics in the country. There is, however, some confusion from some of the literature on the meaning of political transition.

Some scholars use the tem to refer to any change of government and or leaders even when the political system remains largely unchanged. Others take the position that transition involves a fundamental change in the philosophy and system of governance and must therefore go beyond change of guard at the helm of the political system or change of administration.

This paper adopts the view that political transition involves a fundamental change in the socio economic and political order of society including the philosophy and practice

of governance in all its dimensions. It must incorporate a new and more acceptable constitutional dispensation in situations where the constitution was considered a stabling block to good governance. As Anyang points out political transition is therefore to be distinguished from change of administration including the political leadership of a country. (Nyong'o: 2007) A mere change of administration would, qualify as political succession. Having made the above conceptual clarifications it is now appropriate to attempt an analysis of the role played by civil society in attempts as political transition.

Attempts at Political Transition in Kenya

Kenya has attempted four political transitions since the late 19th century. The first occurred with the establishment of British colonial rule in the 1880s. Colonial rule caused fundamental changes in the philosophy and practice of governance of the country. The indigenous governance structures and system were replaced by those of the West. In place of the decentralized system of governance highly centralized political arrangements were introduced. All hitherto independently governing communities were henceforth forced to direct their political loyalty to a central authority, the governor, in Nairobi. The colonial government also fundamentally altered the economic system by, among other things, introducing the money economy to replace batter trade. The social fabric of society was also altered in the sense that society was racially divided and categorized into first, second and third class groups with one set of laws applied to one category of the people- the citizens- and another set to another category - the subject. For details of how this worked refer to Mamdani (1999). The thing to note about this transition is that it was not participatory. Instead it was imposed on the people with one actor, the colonial authority, taking charge. CSOs did not play any significant role.

After absorbing the shock, the Africans organized themselves to resist and overthrow the colonial government and its infrastructure. Among the notable primary resistances to colonial rule were those by the Nandi (1905-1907) The other major threat to rule was the Mau Mau movement.. These resistances set the stage for the second attempt at political transition. A number of organizations and associations were formed to aid this process. Prominent among these were trade unions, political parties and various tribal associations such as the Kavirondo Welfare Association. These organizations joined forces to demand that a new political order complete with a new governing philosophy be put in place. They called for a governance system that was democratic, inclusive,

just and fair. They also advocated for an economic system that was inclusive and one that would improve the social and economic welfare of the people, the majority of whom had been economically marginalized and impoverished. The people in their individual and collective capacities were calling for a fundamental change in the governance system in its political economic and social dimensions.

Needless to say these efforts were fiercely resisted by the colonial authorities who were determined to maintain the status quo. In this resistance the authorities recruited some Africans to fight on their side. This is the group referred to as Home Guards. Some of them are said to be in government even today. The significant point about this is that in any struggle there will always be opportunists whose activities undermine or frustrate the goal of a struggle. This is true even of civil society actors. Conservative members of civil society are likely to betray the efforts of the more progressive forces. Any efforts to analyze the role of civil society in the politics of transition must thus take this into account. This in fact has been a major source of transition failures in Kenya.

Eventually colonial rule was overthrown by a combined force of nationalists using political parties, civil society in the form of traded unions and ethnic associations. A new constitution was put in place that had the potential to make Kenya a liberal democratic state. The main democratic features of this constitution that distinguished it from the colonial constitution were a devolved state structure, a functioning local government system, separation of powers between the executive, legislature and the judiciary complete with checks and balances. The expectation was that the new government would make a complete break from the colonial type government. It was expected that in line with the manifesto of the nationalist parties and especially Kenya African National Union (KANU), the new political dispensation would be responsive, responsible transparent and accountable to the citizens and therefore democratic. These expectations and hope were, however, quickly frustrated.

The government faced a number of challenges. These included the threat from the trade unions who were former allies of the nationalists in the struggle for transition from colonial rule to independence.

Confronted with these challenges some of which they probably did not anticipate or they were not equal to, the leadership of the country resorted to tactics similar to those used by its predecessors, the colonial government. Instead of multiparty democracy, one party rule was instituted leading to the constricting of political space. Human

rights violation including detention without trial became the order of the day for people with dissenting political views. Trade unions and other associational life were silenced by the state using all manner of tactics. For the trade unions the state made rules restricting their freedom to elect leaders of their choice. It did this by requiring that after the elections three names be forwarded to the government. The government would then appoint any of the three people as the Secretary General of the Central Organization of Trade Unions, (COTU) the umbrella workers' union. Organizations such as Maendeleo Ya Wanawake were co-opted into the ruling party and made to operate as a wing of the ruling party thus undermining its autonomy and effectiveness in championing the rights of women in the face of government interference. The clamp down on civil society was particularly harsh after Moi took over power in 1978 following the death of President Kenyatta. Moi lacked the confidence that Kenyatta enjoyed partly because Moi did enjoy popular support from the numerically large and politically active ethnic groups such as the Kikuyu and the Luo. He himself was a small ethnic group, the Turgen, a sub group of the Kalenjin community. In addition although Moi had served as Kenyatta's vice president for twelve years he was considered a weak personality. This too cost him popular support. Indeed many politicians of his time saw his presidency as only temporary. One politician from the Kenyatta regime called it a passing cloud. He was therefore sensitive and saw any political groupings outside the state including civil society organizations as a potential threat to his power. In this regard it is instructive that Moi even deregistered sporting clubs such Abaluhya and Luo football clubs because they had tribal names. He even went on to deregister ethnic welfare associations such as Akamba Union and Luo Union. The regime became extremely authoritarian by any standards.

The failure to make a break with the past system of governance provided grounds for the third attempt at political transition. One of the major differences between this period and the preceding one was the fact that by this time, the country had a fairly vibrant civil society including the media. This was backed by an increasingly politically aware citizenry. The civil society enjoyed strong financial and moral support from the donor community. Donors at this point in time were not quite happy with the state and were keen to see democratic changes in Kenya. Civil society was their natural ally in this objective.

The academic community also supported the activities of civil society in this struggle. The strong financial bases of these organization enable them hire the services of scholars to assist think through the issues of transition. They presented papers at workshops and seminars organized by civil society. This was particularly the case with the more politically oriented civil society groups. Indeed civil society organizations such as CLARION were managed by people from the academia. Although difficult to measure there seems to be agreement, at least in popular discourse on civil society today that the leadership of civil society groups during this period was led by very committed and dedicated people who understood the role of civil society in transition. It is worth noting that some of these leaders were eventually co-opted in government after the 2002 elections. This has posed major leadership challenge to civil society today as we discuss in a later section of this chapter.

Role Played by Civil Society in Transition Politics

Since the 1990s civil society has been very instrumental in providing civic education**.** As Mute (2002) rightly observes, civic education shaped the role that individuals… play in the process of change, shaping relationships amongst citizens and influencing the proactive role of citizens in social change and transformation. It empowers citizens to play their role in transition politics. Although the specific impact of these activities has yet to be measured it is generally accepted that it was due to these civic activities that the level of political consciousness in Kenya improved.

Secondly civil society organizations and especially the faith based organizations gave sanctuary to victims of state terror during the struggle for the reintroduction of multiparty politics. The reorganizations were also very vocal against injustices and autocratic tendencies of the Moi government. Bishops such as Henry Okulu and Alexander Muge of the Anglican Church will be remembered for their unrelenting criticism of the atrocities of the Moi government. They gave courage and hope to those who were being persecuted by the state.The media was particularly instrumental in exposing the weaknesses of the government and giving the pro democracy forces a channel through which they engaged the government and the conservative forces that supported the status quo. The media also provided citizens with an opportunity to express their misgivings about the government. This was done through letters to the editor and other newspaper articles.

Some civil society organization's provided citizens with the much needed services that the state had failed to provide. This served to erode peoples' confidence in the state and thereby hardening the peoples' resolve to demand real change in the governance realm.

The 1980s witnessed the emergence of numerous CSOs engaged in issues of democracy and improved governance. They included the Citizen Coalition for Constitutional Change, CLARION, Centre for Democracy and Governance, the Institute for Education in Democracy (IED), the National election Monitoring Unit (NEMU) the Kenya Human Rights Commission, the National Executive Council. These organizations put considerable pressure on government to improve governance and open up the political space for those who wish to contribute to the country's public affairs. At the height of the clamour for constitutional review, organizations such as CLARION drafted a constitution which they presented to the Office of the President for consideration. This was part of a strategy to force the state to involve the people in constitutional review. The Moi government had initially insisted that the review of the constitution would be done by parliament and the people would have nothing to do with it. Thus CSOs were also instrumental in opening up the political pace. The Civil society organizations worked closely with opposition politicians to contribute to the changes.

Civil society also undertook a spirited campaign to expose electoral fraud and malpractices that characterized elections during Moi's presidency. The sector also lobbied the international al community to put pressure on the government to respect democracy and the voices of the people. In this regard it is important to note that civil society group called on the international community to demand the trial of those who manipulated the 2007 elections.

Prior to the active participation of CSOs in politics, this critical human activity was the preserve of political parties. This however changed with the entry of CSOs in the political arena. The participation of civil society organization in politics has broadened the scope of political players. This development has led to the demystification of politics and given citizens confidence that they too can contribute to political change and that politics is not the preserve of elites.

Challenges to Effective Civil Society Participation in Transition Politics

It is generally accepted in Kenyan discourse on civil society that the sector is in a flux. Having contributed to the removal of KANU from power with the hope that a new and more democratic system of governance would be put in place, a number of developments that have had great implications for the role and relevance of civil society took place. A discussion with a number of civil society activists reveals that the sector has several challenges. While some of these potential challenges are historical others are relate to social structure of the Kenyan society. Some are also of a contemporary.

One of problems that civil society in Kenya has had to deal with is the hostile political environment. As already indicated, right from the colonial period, successive governments have not been very receptive to civil society activities. This is particularly the case with those CSOs that question the excesses of government and the ruling elite. The media has been a target especially for exposing scandals involving government and powerful state officials. It is imperative to note that even when the space was finally opened and it appeared that civil society organization would freely play their watchdog role the hopes were quickly dashed. The passing by parliament of a media Bill that is likely to gag the media and its signing into law by president Kibaki in January 2007 is an example of how uncomfortable the government is with a free media, the claims that is a liberal government notwithstanding.

Another challenge is the temptation by civil society leaders to join government. Following the 2007 elections, the government took a deliberate move to incorporate some of the most vocal and committed civil society leaders into government. This was the case for example with Njoki Ndungu who was nominated to parliament and John Githongo of Transparency International - Kenya Chapter - who was appointed Permanent Secretary and presidential advisor on matters of governance and corruption. Others such as Kivutha Kibwana chose to join national electoral politics and became members of parliament. The effect of this is that it robbed civil society of leadership. This point ought to be understood against the fact that it takes a long time to build an effective and committed leadership. Indeed some of the problems that the current civil society organizations are grappling with is that of replacing leaders who have left the sector either because they have been co-opted into government or for other reasons.

Many civil society activists felt that since this was a government established with their support they had to support the regime at whatever cost. They forgot that the two actors have different roles and that civil society has to constantly monitor activities and performance of government with a view to stopping government from engaging in excesses. The decision by civil society whether by design of by default to work very closely with the NARC government was a major undoing as it gave government confidence and courage to allow scandals such as the Anglo Leasing to take place. It certainly affected the ability and freedom of civil society to effectively check on government excesses. The danger with this is that civil society may end up behaving as if they are part of government.

A major challenge for civil society today is to keep a close eye on constitutional review and ensure that the process is not hijacked by the political elite. The sector must mobilize the Kenyan people to reject any short sighted and self serving deals that the political leaders may go into. These deals may delay or completely frustrate the review process.

As champions of democracy and good governance civil society organizations must practice democracy and be seen to do so. Civil society organizations must develop, practice, internalize and institutionalize internal democracy. Currently the public believe that the sector lacks and does not practice internal democracy. Yet for them to be effective in their work they must develop a democratic culture.

Another major weakness exhibited by civil society is their tendency to take ethnic positions on major national issues. This is a weakness that has even taken root in the faith based organizations including the Catholic Church. A good example was the position taken by the catholic bishops regarding the Wako draft constitution. While some supported and campaigned for the adoption of the Wako draft, others campaigned for its rejection at the 2005 referendum. Catholic Bishops from Central Kenya went along with political leaders from the region and called for the adoption of the Wako draft while their counterparts from Nyanza and other parts of the country campaigned for its rejection. The sector is, in other words, unable to transcend ethnic and regional capture. In this sense one can argue that Kenyan civil society is a mirror of the broader society. This must be considered a weakness because the sector stands the danger of perpetuating values and practices that retard the development of this society into a modern nation. Adopting ethnic inspired positions on major issues such

as elections can also threaten the solidarity of oppositional civil society. They risk becoming reactionary rather than progressive.

There are other challenges facing the CSOs that need to be highlighted. First Civil society currently exhibit extraordinary dependence on donor funding. This makes civil society accountable to those who fund them and not the people they intend to serve and benefit. Second the 1990s, present day civil society has relatively weaker links with the academia. The sector therefore stands the risk of benefiting from appropriate theoretical framework to guide the analysis and understanding of the problems so society that they deal with research findings by academics can form useful tools for advocacy by civil society organizations. The sector must thereof strive to re-establish these useful links. They will obviously have to hire the services of intellectuals at an acceptable fee to conduct research for them.

Third, given the current efforts at regional integration in East Africa it would be useful for civil society to forge links with their counterparts in the rest of the region. Currently this link appears to be weak. Such links are important for the sharing of knowledge and experiences and other support.

Finally, civil society actors must continue to play its watchdog role in the protection of human rights, promotion of freedoms and transparency and accountability in the management of public affairs. The sector must avoid unhealthy competition not just for financial resources but also in terms of the activities they engage in. It would be a major source of weakness if civil society organizations were to engage in unhealthy competition and duplication of activities.

References

Bujra, A, Adejumobi S. (ed). 2002. <u>Leadership, Civil Society and Democratization in Africa; Case studies from Eastern Africa</u>. A Publication of Development Policy Forum.

Mamdani, Mahmood. 1996. <u>Citizen and Subject</u>. Fountain Publishers, Kampala Uganda.

Mute L. 2002 - In Mute L. and Wanjala S. (eds) <u>When The Constitution Begins To Flower.</u> Claripress Nairobi, Kenya.

Nzomo, M. 2003. Civil Society in the Kenyan Political Transition: 1999-2002 in Oyugi et al. (ed). <u>The Politics of transition in Kenya from KANU To NARC</u>. A Publication of Henrich Boll Foundation

National Election Monitoring Unit. 1993. The Multiparty General Elections in Kenya 29th December, 1992. <u>The Report of the National Election Monitoring unit.</u>

Nyong'o P. 2007. <u>In Governance and Transition Politics in Kenya.</u>

Oyugi, W. et al 2003. <u>The Politics of Transition in Kenya; From KANU To NARC</u>. Boll Foundation Eastern Africa Office.

Przeworski. 1991. <u>Democracy and the Market,</u> Cambridge University Press.

Wanyande , P Omosa, M, and Ludeki, C (ed) . 2007. <u>Governance and Transition Politics in Kenya.</u> University of Nairobi Press.

CHAPTER THREE

THE PROSPECTS OF CIVIL SOCIETY DRIVEN CHANGE IN KENYA

Margaret K. Chemengich

Introduction

Civil society is an institution whose members are engaged in multifaceted non-state activities with the objective of transforming or preserving identity and way of life. They do this by among other strategies, exerting pressure on state institutions. The activities could be economic, cultural, political or humanitarian. Civil society include trade unions, professional associations, the Church, media, special interest associations, residents associations, students, business and various types of non-governmental organizations (NGOs). Civil society is therefore consists of the totality of voluntary civic and social organizations and institutions that form the basis of a functioning society, parallel to the structures of the state and markets. Civil society can thus be considered as the space that lies between the individual and the state. Civil society organizations are not homogeneous and in their diversity engage in different activities that may include development, democracy and governance among other issues.

After World War II, Marxist theorists portrayed civil society as a center of independent political activity crucial for the struggle against oppression. Civil societies for example, have been instrumental in the fight against dictatorship in Eastern Europe and Latin America in the 1970's and 1980's, while in the 1990's, the global tendency towards democracy opened space for civil society in former dictatorial regimes around the world. In developing countries, reforms such as privatization and other market reforms gave opportunity for civil society participation and less government control.

In this paper we discuss the role played by civil society in democratization, development, market agitation, and religion and spiritual development. We begin with a discussion of civil society as agents of democratization.

The Role of Civil Society

A number of civil society organizations in Kenya work in the areas of human rights,

democratic development, gender and social awareness among others. The Kenyan CSOs that deal with issues of democratization sprung up after 1992 following the opening up of democratic space that also led to the birth of multi party politics. This was made possible by the repeal of section 2(A) of the constitution that had hitherto outlawed the formation, registration and operation of more than one political party. Some of the civil society agencies championing democratization include the Law Society of Kenya, Women in democracy, Release Political Prisoners group (which is currently inactive), Institute of Education in Democracy, the Students Organization of Nairobi University (SONU), and the Justice and Peace Convention - Kenya (JPC) among others.

In Kenya a number of CSOs including NGOs are actively engaged in development work. Most of the development CSOs including NGOs and the Community Based Organizations (CBOs) began as welfare organizations. They were initially concerned with the provision of social services. This role became critical especially when the state gradually withdrew from the provision of welfare services after independence. Some of the factors that caused the government to withdraw from the provision of some social and welfare services include the worsening economic conditions occasioned by the oil crisis of 1979, the decline in the prices of primary commodities and the failure of the import substitution strategies that were adopted at independence. While the state withdrew from social service provision, it continues to tighten its grip on political space. The activities undertaken by development CSOs and NGOs include relief, service provisioning and human development in both rural and urban areas. International development NGO's provide leadership in this aspect. Some of the key development oriented NGOs include Care International, World Vision, Christian Children's Fund, ActionAid, Adventist Development Relief Agency (ADRA), CordAid among others.

The other category of Kenyan CSOs and NGOs are those engaged in market agitation. They include labour unions, professional associations, informal market associations and market based interest groups. Some examples of formal market associations in Kenya are: Kenya Union of Teachers (KNUT) and Bankers and Financial Workers Union (BIFU). They advocate for better pay for their members. Others are the Kenya chapter of Transparency International, which campaigns against corruption and human rights abuse. The Institute of Economic Affairs, which was registered in 1992, has engaged on issues relating to proper economic governance. This membership driven institute

was low key before 1992 i.e. before the opening up of the political and development space. While the Institute could have operated as an NGO, given its activities, the members opted to operate as a quasi company/NGO to avoid the stringent rules the government had put in place for NGO registration. The other CSOs in this category are the professional bodies and activity based private sector membership associations of the productive sectors.

There is a large number of Kenyan CSOs that are engaged in matters relating to religious and spiritual development. They include Christian, Islamic, Hindu and traditional religious groups. The religious groups are the most polarized and segregated members of the civil society given the ideologies and tenets held by the members, but are also the most effective in conflict resolution between state and civil institutions. The religious CSOs were active in both pre-independence and post-independence periods. As will be seen, the role of the religious groups also changed as the political regimes changed. They became more vocal in the fight against repression, corruption and violation of human rights as these issues directly affected their flock.

In addition to the above CSOs there are other CSOs that deal with a host of other issues including the preservation of indigenous culture, land matter, development of new forms of social provisioning and access to justice. There are also organized CBOs, vigilante groups and other traditional movements such as *Dini ya Msambwa* in Western Province, *Mungik*i in Central province, *Sungu Sungu* in Kisii area, land lobby groups and others in the urban frontiers like *Jeshi la mzee, Baghdad boys.* Most of these groups are normally regarded as living on the margin of society; some may be legal or illegal groups.

The Changing Role of Civil Society in Kenya

Pre-Independence Era

The colonial government viewed the few civic groups made up of indigenous people with a lot of suspicion. The government feared that the CSOs could use their popularity to mobilize citizens against the government. The colonial regime therefore discouraged the formation of civic groups that could participate in the political process. Instead it encouraged only the formation of civic groups that comprised of settlers and colonialists themselves or allowed civic groups that facilitated greater penetration and control of society in line with the colonial policy. The colonial state therefore dominated the

socio-political and economic space and activities, a legacy that remained until the early 1990's.

In reaction to this, Africans formed associations or groupings that were basically political. These included burial societies and community forums. With time however, these associations became avenues through which individuals expressed their political opinions against the colonizers. The traditional leaders of the clan or community normally provided leadership of these associations in the pre-independence era.

Post World War II developments also saw the growing momentum of African nationalism and the gathering of momentum of trade unions. Among the prominent labour unions was the East African Trade Unions Congress. In 1950, the union organized the boycott of official celebrations marking the granting of a royal charter to Nairobi and articulated grievances which included exploitation of workers, effects of capitalism and racial discrimination. The Union demanded an increase in the minimum wage to workers, an end to payment by race, the abolition of the '*kipande*' and self-government for the East African territories. The union resolved that the real solution to the problem it was addressing was complete independence and sovereignty. The response of the colonial government was to harass and imprison leaders of the union. This partly contributed to the outbreak of Mau Mau in 1952.

The *Mau Mau* was a secret society that required its members to take an oath to reclaim African land that had been illegally appropriated by the Europeans and in the process drive the white man from Kenya. The activities of *Mau Mau* led to the arrest of Mzee Jomo Kenyatta, who was later to be the first president of the Republic of Kenya. Other groupings, which aimed at decolonization, were formed to articulate social, cultural or religious concerns for example "*Dina ya Msambwa*" in Western Kenya, "Nomia Church" in Luo Nyanza and "*Dini ya Kaggia*" and other independent churches in Central province. All these groups had an ethnic base and could not at the national level due to restrictions by the colonial government. The 'ethnicization' of civil society therefore started with the colonial government.

Civil Society under the Kenyatta Regime

Kenya gained independence in 1963. At this time, there were two main political parties: the Kenya African National Union (KANU) and the Kenya African Democratic Union (KADU). However, KADU was dissolved in 1964 on the grounds that one party system

was good for the promotion and realisation of national unity. Kenya thus became a *de facto* single party state. KANU experienced serious internal party wrangle after the merger with KADU. These wrangles saw the reappearance of trade unions namely the Kenya Federation of Labour (KFL) and Kenya Africa Workers Congress (KAWC) as a powerful force in Kenyan politics. These two unions were however competing against each other and in 1965; the government deregistered both unions and created the Central Organization of Trade Unions (COTU). Members of both KFL and KAWC were senior officials in COTU. One of the results of this development was the split of the trade union movement with one faction supporting KANU and the government while the other opposed its policies.

The atrophy in the organization and management of KANU led to the resignation of some its members who were officials in COTU. They argued that they had lost hope in fighting within KANU to improve government policies. The government responded by suspending these party from their official positions in COTU on the grounds that it was not possible to criticise the government that sponsored its establishment.

The Kenyatta regime was no different from the colonial state with respect to civil society participation in public matters. Under Kenyatta, the government ensured that civil society engaged only in social and economic activities and not in things political including governance. Voluntary agencies including NGOs, churches and self-help groups were allowed to provide services at the grassroots since they were considered an important force for development and furthermore they supplemented state development endeavours. Only leftist oriented university organizations such as the students union dared to criticize the government.

The media was equally silent during the Kenyatta era because there was only one national broadcasting station at this time, the Voice of Kenya (VOK). This broadcasting station was pro-government and therefore was not expected to agitate for improved democratic governance. There were only three newspapers produced by the print media: Standard, Nation and Kenya Times.

Civil Society under the Moi Regime

President Daniel arap Moi acceded to power in 1978 after the death of Jomo Kenyatta. He inherited a centralized decision making authority. Moi went on to consolidate power in the executive branch of government especially following the attempted coup against

his government in 1982. While the coup disrupted the country's economic and political affairs it strengthened Moi's reign and authority. In fact, in 1982, a constitutional amendment made Kenya a de jure single party state. As part of the consolidation of presidential power, another constitutional amendment was passed in 1988 which gave president Moi the power to remove and appoint members of the Public Service Commission, the Judicial Service Commission and the judiciary.

The reign of president Moi saw the demobilization of civil society organizations. Co-operative societies and in particular land buying co-operatives were controlled by the state, self-help groups were incorporated in the administrative and political structures, ensuring that their activities could be monitored by state agents. All these groups were required to register with the then Ministry of Culture and Social Services. Failure to do so resulted in denial of donor and government grants. The state was also opposed to activities of religious organizations such as the National Council of Churches of Kenya (NCCK) and the Catholic Church. The government strengthened their grassroots links by co-opting labour unions, cooperatives; self-help groups including the Maendeleo Ya Wanawake organization into the ruling party. Maendeleo Ya Wanawake was renamed KANU Maendeleo. Civil society was weakened and could not effectively fight for their causes.

The nature of civil society engagement with government at this time was more often than not confrontational. Underground social movements that were not happy with government operations were also proliferating. In limited cases civil society members were detained without trial on grounds that they were a security threat However, civil society activities blossomed after the repeal of section 2A. In the mean time the most active civil society organisations were those that served the interest of government. Those independent CSOs like the Green Belt Movement, headed by the Nobel Laureate Winner Prof. Wangari Maathai, ran into trouble when it opposed the government's proposal to put up a high-rise building near Uhuru Park.

The growth of civil society in the 1990's was as a result of two factors. First, the country was undergoing structural adjustment programmes initiated by the donor community. The donor community had lost confidence in the government's poor development record and use of donor money. The donor community was therefore looking for alternative organizations through which donor funds could be channelled. Secondly, there were massive retrenchments within the civil service and the government was

not able to undertake all the development work. This created space for civil society, especially the NGOs to engage in more development work. The NGOs became more vocal as they occupied the development space hitherto occupied by government.

The multi-party era also saw the opening up of the airwaves and the media became more active on political matters. While previously there were only 3 newspapers, there emerged other newspapers including the *"The People Weekly"*. This publication was considered by most citizens to be investigative and would provide information on classified government operations. Several newspapers were being produced including tabloids. Journalists also began to scrutinize government activities without fear. The VOK changed to the Kenya Broadcasting Corporation (KBC) after a second licence was given to a private operator the Kenya Television Network (KTN), owned by the Standard Group. More TV channels such as Nation, TV Africa also were licensed to operate. For the first time, television stations could air programmes focused on political satire such as *Reddykyulass, Bulls eye and Newshot.*

Civil Society in the Post -KANU Era

The NARC government won the 2002 elections on the platform of zero tolerance on corruption, good governance and accountability. However, the initial euphoria was watered down by the non implementation of the Memorandum of Understanding signed by President Kibaki and Raila Odinga the then Leader of Liberal Democratic Party (LDP). The MOU was a symbol of broad based ethno regional representation and power sharing. The failure to honour the MoU resulted in divisions within NARC. The attempted gagging of the media gave NARC government negative publicity. New massive scam- the Anglo-leasing Affair that was linked to Goldenberg network of business elites and ministers came into the limelight.

These new scandals provided civil society organizations that were concerned about good governance and accountability an opportunity to expose the weaknesses of the NARC government. They included CSOs like Institute of Economic Affairs, Transparency International, and Centre for Governance and Democracy. Other civil society groups that were previously strong in the Moi era such as the Law Society of Kenya, The National Council of Churches among others re-oriented their activities to deal with the challenges at hand: corruption and impunity by the NARC government.

The NARC government had also promised a new constitution within one hundred days

of being in government. The constitutional debate that went on at Bomas of Kenya (*Bomas*) also saw civil society organizations pushing for different agenda within the constitution. For example, the Kenya Human Rights Commissions advocated for the Bill of Rights to be entrenched in the constitution; The Children's Rights organizations such as CRADLE advocated for better children's rights in the new constitution; the Muslims, Hindus, Christians and the other religious groups haggled over religious neutrality of the constitution. The constitutional review process therefore saw a strong interaction of different civil society groups.

The Media became more open and was able to report on any issue. Programmes such as '*Up Close and Candid', 'On the Spot', 'Showdown', 'Third Opinion'* and *'Newsline'* were avenues through which the media interrogated different personalities including high ranking government officials on national issues. Currently there are more than 15 radio stations that broadcast in different vernacular languages. The print media produces more than five independent newspapers. The NARC Government operations made the media more vigilant and investigative.

The Grand Coalition Government, which was created after the December 2007 elections that almost sent the country into civil war, has two centres of power: the presidency and the premiership. Both positions have been entrenched in the constitution. The executive premiership is a new concept. Civil society is yet to develop its niche and place in this new political arrangement. They have however added their voices in the push for transparency and accountability in the coalition government.

Globalization and Civil Society

Globalization has also changed the role played by the civil society. The changes affecting the welfare of households in general has precipitated the need for collaboration between government and civil society in combating the challenges of globalization and at the same time putting efforts in ensuring that benefits that accrued are enjoyed by all citizens. Collaboration in tackling globalization challenges is much easier since there is a common 'enemy' or 'friend'. The benefits of globalization include improvement in technology resulting in better service delivery, better communication among others.

Challenges Facing Civil Society

The key feature of civil society is their lack of cohesion. Even though they tackle similar problems there is little partnership or collaboration amongst them. While the different civic groups play different roles, they are all part of a jigsaw puzzle like the familiar poem of the *"Six Blind Men of Hindustan"* who went to see the elephant. Like the blind men, the civil society has come up with six different descriptions of the same elephant, based on which part of the animal they happen to touch. The lack of synergy explains why poverty eradication programmes have failed since that there is no synergy between groups working towards poverty reduction and those advocating for human rights.

There is little evidence to show that the activities of civil society have benefited the grassroots. As a result, the development agents and market agitators have been dismissed as elitists who are based in the capitals and pushing foreign agenda as dictated by donors. The rural civil society in particular sees no linkage between the work of most of the NGOs and the intended rural beneficiaries.

Another challenge is that of exclusion. Actions by civil society geared towards achieving gender equity have tended to focus on women alone. However, gender issues do not operate in isolation. All issues affecting the woman such as the existing patriarchal system that disfavours the woman from birth must be addressed, this would include incorporating men in the empowerment programmes. Secondly, in the fight for justice, human rights groups have tended to focus in raising awareness in the demand for justice while leaving out the administration of justice. In addition civil society groups lack the analytical capacities that would adequately prepare them to engage in contemporary issues of globalization and regional integration.

Conclusion

The political environment has defined the role of civil society in Kenya. The activities of civil society organizations whether development or democracy oriented have tended to respond to the policies and actions of the government in power. The nature of engagement under autocratic regime was either collaborative or confrontational.

More receptive regimes that opened chancels for engagement with civil society saw the proliferation of civil society organisational that played different roles including

democratization and development and the promotion of culture and   spiritual development.

In the early years of colonial rule, there were few intermediary organizations that occupied the political space between the state and the household. That space was taken up by cultural and religious institutions that expressed collective identities-- such as clan, age-set, and brotherhood to which most rural folks granted allegiance. During the colonial period Kenyans established informal solidarities such as ethnic welfare associations, prophetic movements, and agricultural work groups to cope with urbanization. Some of these associations became political as they protested the indignities of the colonial rulers. After Independence, as the regimes became more and more autocratic the ruling elite suppressed civil society movements. The poor performance of most economies gave the impetus for the resurgence of civil society especially in service provision, democratization and issues of governance.

References

Alice H. Amsden (1970) "Reviewed work(s): History of Kenya's Trade Union Movement to 1952 by Makhan Singh" *The Journal of African History*, Vol. 11, No. 3, pp. 465-466.

Bratton M. (1994) "Civil Society and Political Transition in Africa" IDR Reports Volume 11, Number 6.

Makumbe J. M. (1998) "Is There a Civil Society in Africa?" International Affairs (Royal Institute of International Affairs 1944), Vol. 74, No. 2, pp. 305-317.

Ngunyi M. "Civil Society and the Challenge of Multiple Transitions in Kenya" in Nyang'oro J. E., ed. (1999) .Civil Society and Democracy in Eastern and Southern Africa. Mambo Press: Harare.

Nyang'oro J. E. "Democracy and Development in Eastern and Southern Africa: The Role of Civil Society" in Nyang'oro J. E., ed. (1999) .Civil Society and Democracy in Eastern and Southern Africa. Mambo Press: Harare.

Owiti J.O "Popular participation in Governance in Kenya" in Abdalla Bujra, ed. (2005) Democratic Transition in Kenya.: the Struggle from Liberal to Social Democracy. African Centre for Economic Growth (ACEG) and Development Policy Management Forum (DPMF).

CHAPTER FOUR

THE ROLE OF ACADEMIA IN DEMOCRATIZATION IN KENYA

Charles Olungah

Introduction

The recent violence and wanton destruction of property and loss of life that occurred following the disputed presidential elections of December 27th 2007, has given Kenyans an added reason to review the nature of the country's governance. This paper discusses the role of academics in the process of democratization. The paper begins with definition of the key concepts used in the paper, namely academia, and democratization.

Academia

Academia is a collective term for the scientific and cultural community engaged in higher education and research. (Wikipedia, the Free Encyclopedia) The term has come to connote cultural accumulation of knowledge, its development and transmission across generations and its practitioners and transmitters. An academic therefore, can be described as a person who works as a researcher (usually a teacher) at a university or similar institution. He or she is nearly always a holder of an advanced degree and engages in research. Other terms that are frequently and loosely used to refer to an academic are: professor, fellow, lecturer, reader, don and scholar.

Ali Mazrui (1978:347) defines an intellectual as a person who has the capacity to be fascinated by ideas and has acquired the skills to handle some of those ideas effectively. He identifies four types of intellectuals; academic; literary; political and general intellectuals. He says that academic intellectuals are the category that relates intellectual pursuits to higher learning and commits its mental resources to the arts of teaching and research and are found at university campuses. This is the category of people whose role in democratization that this paper is concerned about.

Democratization

Democratization is a concept derived from the term democracy and the term democracy, both at the theoretical level and in practice has been one of the most misused or abused concepts. It has meant different things to different people at different times (Akivaga, 2002). Instead of defining democracy, however Akivaga alludes to the conceptualization of the term and the general agreement amongst scholars and practitioners of certain minimum standards or principles and practice that democratic governance must meet. Besides the three forms of democracy identified by Bujra (2005) such as liberal democracy, social democracy and socialist democracy, terms such as Christian democracy, Asian democracy and African democracy[1] are also used.

According to Bujra (2002:3), democratization is a process through which the institutional infrastructure germane to the construction of a democratic polity is established (e.g. parliament, impartial judiciary, electoral institutions and police, independent media etc); civil liberties are codified and guaranteed, the rule of law suffices and a process of constitutionalism evolved. Bujra notes that important concepts associated with democracy include formal political equality, inalienable human rights, right of political participation, accountability to the governed and the rule of law. To this list I would add respect for diversity and the equitable sharing of the spoils emanating from the collective efforts of the citizenry.

PrZeworski (1991:14) on the other hand views democratization as an act of subjecting all interests to competition and of institutionalizing uncertainty. The decisive step toward democracy is the devolution of power from a group of people to a set of rules. Lingnau (1997) however argues that democracies are not just about institutions. They are about people. For purposes of social cohesion and political stability any democratic transition needs to put the citizens at the centre of the transition process. The implication is that the citizens become the core in the decision-making process, in governance and distribution of national wealth, recognizing that in the last analysis, they are the producers of that wealth.

---

[1] A common term used by former President Moi to underscore the fact that Africa was different and therefore, required a different set of governance principles other than the liberal democratic principle and multi-party politics that according to him was being pushed by "foreigners".

Adejumobi's (2002:290) contribution to the debate is that democratization involves the creation and expansion of the political space for multiple actors to interact, negotiate, compete, and seek self realization within set and permissible rules. Democratization is therefore, not a one-start event, but a continuous process through which society wishes to be governed having established an acceptable democratic order.

The Role of Academia in Democratization

Shivji (2006) underscores the fact that partisan environments need bodies and institutions which can rise above partisan politics and concern themselves with larger social and national issues. He sees the student body and institutions of higher learning as part of that intellectual organization that has the potential to rise to the occasion. He further notes that the intellectual body is like a mirror, it gives the society its own image. They articulate people's hopes and fears, help them give meaning to what may look like the obvious, the innocuous and the mundane.

Melanie (2003) notes that the academia should provide students with opportunities to learn in environments that allow for critical analysis of daily experiences and for the application of theory learned in classroom, to their everyday world. It should offer space for intellectual engagement where the social context is discussed and personal experiences may be understood.

When the knowledge that emanates from daily experience is theorized and applied to everyday living, it has the power to transform individuals and in turn society. This heightens awareness and creates a level of understanding that makes it possible for individuals to appreciate the "otherness".

Freeland (2004) sees academia's role in strengthening the foundation of a democratic society to emanate from the daily contact with young people, the fellowship of colleagues who pursue knowledge, the bustle of campus life, and the satisfaction of commencement. He regards education as the most revolutionary movement in human history and the most powerful force for social justice ever conceived. The enlightened citizenry is the foundation of democracy and for that, leaders who do not wish to involve the people in the affairs of the state more often than not see academics as a problem that must be controlled if not gagged.

Freeland further observes that although most people would quickly identify representative government, free elections, the rule of law, and free press as essential

institutions for a healthy democracy, few would as readily include our higher education system on such a list. This is despite the fact that colleges and universities are a vital foundation of our political system. He notes that higher education sustains democracy in four ways: It provides a protected arena for free expression, and the nurturing of new thoughts; cultivates an appreciation of democracy and a disposition to public service; offers individuals a chance to discover and nurture their talents and fosters economic growth and, therefore, individual opportunity. He further notes that the academics' belief in free speech provides young people with an essential foundation for democratic life, as the commitment to respecting individuals from all backgrounds accord all a say without discrimination. In addition, democracy requires a corresponding culture of tolerance, trust and respect for divergent opinions and citizens in particular need to have a lot of courage (Wanyande, 2005:53). This would help them resist attempts by those in power to take them for granted, as has been the case in Kenya. This can only be possible through education and de-ethnicization process which academia has the potential to offer.

Achievements of Academia in Democratization

In Kenya academics have constituted the core of change agents against the excesses of the past regimes. They have been the formulators and vehicles of ideological dissemination, representative of the majority and sympathetic to the cause of ordinary people. As a result of their uncompromising stands, the country's academics and the state have never been bedfellows. Many of them have been maimed, killed, detained, sent to jail, tortured, denied employment opportunities, ostracized or forced into exile for taking on the government or for opposing undemocratic governance. This unfortunate scenario has affected both students and lecturers in our public universities.

Other major contributions have been made by the radical lecturers who have created a critical mass amongst their students who have not only questioned the excesses of dictatorial regimes, but participated in enhancing democracy. The presence of academics in a number of civil society organizations and their subsequent entrance to competitive elective politics are all measures that have enhanced democratization process.

Former student leaders at the university started outfits such as '*Kituo cha Sheria*' in collaboration with their lecturers as a means of silently organizing against the repressive

Moi regime. Later, several civil society organizations interested in governance and widening the democratic space emerged. They have truly played an active role in enhancing democracy. It is however, worth noting that some academics became turn coats as soon as they entered elective politics and power got to their heads.

Challenges Faced by Academia in the Process of Democratization

As noted above it was only from our campuses that dissenting voices could be heard away from the political sycophants and the economic plunderers. One of the reasons why the academics played this role was the relative independence that the universities initially enjoyed. However, the academics has faced a number of setbacks in the recent past. This sorry state has been occasioned by a number of factors.

According to Mamdani (2007), African governments view universities as dangerous centres that must be tamed. The result has been a deliberate attempt to devalue higher education and to economically impoverishment academics. This was extended to university students who because of the structural adjustment programmes introduced in the 1980s can hardly afford a decent meal. The basic concern of most students is survival and it is not uncommon to find the lecture halls empty. Many seminar and public lectures are also attended by just a handful of both students and lectures.

To further demoralise the lecturers and devalue university education generally, there have been massive expansion of universities. This has taken different forms. To start with a number of middle level colleges are being converted into constituent campuses of existing universities at a rate that baffles many. In addition, there is competition for students in the module II or parallel programmes in which departments offering the so called "marketable" courses are oversubscribed at the expense of quality. The lecturers are literally between classes from morning to evening seven days a week and twelve months a year. As a result, the academic has almost no time for research and critical reflection.

The current top university managers in most public universities have frustrated open discussion and discourses on governance. They have limited the democratic space for both students and lecturers to engage the state especially through public debate in the campuses. The processes and procedures for delivery of a public lecture at the universities especially by non university teaching staff and students are very cumbersome and frustrating. This explains why universities have ceased to be hosts to

public lectures. Public lectures that ordinarily should be hosted by and at Universities are now organised and hosted by institutions such as ARRF.

The staff and students' organizations that were formerly in the forefront in opening up democratic space and ensuring that the rights of students and staff were protected are today shells of their former selves. Most of the elected officials are busy practicing the politics of "entrism", their major preoccupation being personal aggrandizement. For the lecturers, unionism seems to be serving as a means of getting into national politics, incorporation into university management, and a means to government appointment. As for the student leaders, the positions have come to confer certain financial advantages in the form of allowances. The leaders even threaten the rest of the students with expulsions or suspensions from the university courtesy of their proximity to the authorities. In a nutshell, the former spirit of comradeship that united students is no longer practiced.

The bug of survival is not limited to students. It extends to lecturers too. It was not uncommon during the 2007 general elections to see senior professors donning political party T-shirts and appearing in the media to expound on the manifestos of political parties. Others penned down complete falsehoods in support of politicians in what may be summed up as "intellectuals for hire". The democrats within the universities also faced challenges from their sycophantic colleagues who became the intellectual mouthpieces of the excesses of government in all the past regimes.

Conclusion

Democracy must be understood to include critical thinking, empathy, voice, awareness, sensitivity, respect for experiential and community based learning and the ability to connect ideas and experience in reflective practice. Academia provides the means for intellectual exploration of the concerns and experiences that influence students' perspectives about significant issues in their lives including those that divide them such as ethnicity and ethnocentrism.

We need to interrogate the arrogance and economic deprivation that make certain groups of people to behave in a certain way. In matters of democracy and ethnicity the greatest possibilities lie in the connection between the agency of individuals and their ability to understand structure and system, and between the application of theory and the theorizing of application. There is a synergy in the learning process. There is a

link between exposure and agency. This interaction encourages and supports thorough exploration of the structures, history and systems of assumptions, biases and ideological presumptions about how society functions and why certain stereotypes prevail.

As a way of enhancing the role of academia in contributing to democratization, university curricular should address concepts of justice, equality, opportunity, liberty with a view to instilling democratic principles/ and or aspirations in society. These must be regarded and understood as means of forging unity in diversity and giving every Kenyan a chance to achieve their wild dreams. This engagement is central to the development of civic responsibility and social awareness.

For the sake of Kenya, progressive academic groups and individuals must work to focus current public discourse on issues of peace, justice, equality, ethnic harmony, political uprightness and above all, development for all with dignity. It is true that there will be powerful forces at work to discourage, demonize, stigmatize and undermine voices of dissent. These must be fought. The post 2007 electoral violence has shown that our collective future is at stake and we must openly discuss things that divide.

References

Adejumobi, S. 2002. "Democracy and Good Governance in Africa: Theoretical and Methodological Issues" In Bujra, A and Adejumobi, S. (eds.) *Breaking Barriers, Creating New Hopes. Democracy, Civil Society and Good Governance in Africa*. Addis Ababa: DPMF.. Pp 1-21.

Akivaga, S. K. 2002. "Towards a National Movement for Democratic Change in Kenya" In Kioko, W., Mute, M. L., and Akivaga, S. K (eds.) *Building an Open Society: The Politics of Transition in Kenya*. Nairobi, Claripress. Pp. 8-59.

Amutabi, N. M. 2007. "Intellectuals and the Democratization Process in Kenya" In Murunga, G. R. and Nasongo, S. W. (eds.) *Kenya: The Struggle for Democracy*. Dakar: Codesria Books.

Bujra, A and Adejumobi, S. (eds.) 2002. *Breaking Barriers, Creating New Hopes. Democracy, Civil Society and Good Governance in Africa*. Addis Ababa: Development Policy Management Forum.

Bujra, A. (ed.) 2005. *Democratic Transition in Kenya, The Struggle from Liberal to Social Democracy*. African Centre for Economic Growth (ACEG) & Development Policy Management Forum (DPMF).

Fought, C. 2006. *Language and Ethnicity*, New York: Cambridge University Press.

Freeland, R. M. 2004. "Academia's Role in Strengthening the Foundation of Democratic Society". American Council on Educational Fall, 2004. Found at http://findarticles.com/p/articles/ml_qa3839/is_200410/ai_n9473306, accessed on 2/9/08.

Furnivall, J. S. 1948. *Colonial Policy and Practice*. Cambridge: Cambridge University Press.

Kumar, K. 1993. "Civil Society: An Inquiry into the Usefulness of An Historical Term", *British Journal of Sociology*, Vol. 44:3 Pp. 375-395.

Lingnau, H. 1997. "Democratisation Process in Developing Countries and Options for Democratization Assistance by Political Foundations", ECDPM Working Paper No. 33, June 1997.

Mamdani, M. 2007. *Scholars in the Market Place: The Dilemmas of Neo-Liberal Reform at Makerere University, 1989-2005*. Dakar, Council for Development of Social Science Research in Africa.

Mazrui, A. 1978. *Political Values and Educated Class in Africa*, Berkeley, CA, University of California Press.

Melanie, E.L.B. 2003. "Dreaming of the Third Reconstruction: Visions, Praxis and the Role of Academia"www.allacademia.am//meta/p_mla_apa_research_citation/1/0/6/7/1/pages106717-23.php accessed on 1/9/08.

Oyugi, O. W. 2003. *The Politics of Transition in Kenya: From KANU to NARC*. Heinrich Boll Foundation.

PrZeworski, A. 1991. *Democracy and the Market. Political and Economic Reforms in Eastern Europe and Latin America*. Cambridge: Cambridge University Press.

Shivji G. I. 2006. *Let the People Speak. Tanzania Down the Road to Neo-Liberalism*. Senegal. Codesria.

Wanjala, S. 2002. "Elections and the Political Transition in Kenya" In Kioko, W., Mute, M. L., and Akivaga, S. K (eds.) *Building an Open Society: The Politics of Transition in Kenya*. Nairobi, Claripress. Pp. 98-125.

Wanyande, P. 2005. "Evolution of Governance Practice in Kenya: An Overview" In Bujra, A. (ed.) 2005. *Democratic Transition in Kenya, The Struggle from Liberal to Social Democracy*. African Centre for Economic Growth (ACEG) & Development Policy Management Forum (DPMF). Pp 43-55.

THE CONTRIBUTION OF ACADEMIA AND CIVIL SOCIETY IN DEVELOPMENT POLICY MAKING & BUDGETARY PROCESS

Ben Sihanya

Introduction

This article explores three closely-related questions: first, how has the discourse on democracy and especially the quest for constitutional governance impacted on development policy in Kenya? Second, how does the budget and the budgetary process influence development in Kenya? Third, what is the role of academics and civil society organizations in development policy-making and the budgetary process in Kenya? We begin with a clarification of then key concepts used in the paper, namely policy formulation, academic and civil society.

Policy formulation is the process by which a government (or any other entity) translates its vision into statements and actions to guide the achievement of desired outcomes. Good policy making is therefore essential if government is to achieve its aims and deliver real change and benefits. A government's vision is usually contained in policy statements and legislation in operation at each particular time, whether these are national development plans, sessional papers or budgets. Because of its importance, the management of public policy must be guided by certain strategic principles which foster policy and juridical dynamism, in which policy management is seen as a process of social learning. It is a process in which a country embodies new knowledge and enhances its adaptive capability.[2]

---

[2] See Calestous Juma and Bernard Sihanya (1992) "Public policy making in Kenya: challenges and options for institutional reform," lecture delivered at the Senior Management Seminar, Kenya Institute of Administration (KIA) Nairobi, on November 4, 1992, and a policy research paper under the African Centre for Technology Studies (ACTS), Nairobi, on file at Innovative Lawyering.

Some authorities describe an academic as a member of an institution of higher learning, or a scholarly organization.[3] My reading of Max Weber indicates that intellectual rigour, discipline, diligence and integrity are key defining elements of an academic[4]. Other scholars have emphasized social consciousness and an intellectual's or academic's identification with popular struggles in the society in which they live. Hence there is dichotomy between organic intellectuals and those who are not culturally or politically sensitive or authentic.[5] In this study, an academic will refer to a professional who works in the knowledge economy. His or her work entails researching, learning, analyzing, reconstructing, applying, evaluating and communicating ideas.[6]

The Oxford *Concise Dictionary of Politics* defines civil society as 'the set of intermediate associations which are neither the state nor the (extended) family; civil society therefore includes the voluntary associations and firms and other corporate bodies."[7]Civil society, is itself contested especially between liberal and neo-Marxist scholars. Prof Eugene Kamenka presents a Marxian definition of civil society as follows:

> "Marx follows the usage of Adam Ferguson rather than the more complex discussion in Hegel in treating civil society as the world of industry and trade, the pre- or extra political world of the egoistic self-seeking individual standing in a relationship of competition and antagonism to all other individuals. Civil society, which displays Hobbes' war of all against all, is contrasted by Marx with the pretended universalism of the state: the two require each other but stand in fundamental conflict."[8]

[3] See The American Heritage Dictionary of the English Language (3rd ed), Houghton Mifflin Company, New York.

[4] See Max Weber, "Science as a Vocation," in H.H. Gerth and C. Wright Mills (eds) (1946) *From Max Weber: Essays in Sociology*, Oxford University Press, Oxford & New York, pp 129 - 156. Weber also applies these parameters to politics and politicians. See Max Weber, "Politics as a Vocation,*"* in H.H. Gerth and C. Wright Mills (eds) (1946) *From Max Weber: Essays in Sociology*" *op. cit*, pp. 77 – 128.

[5] Organic is usually used in the Gramcian sense. Gramci was an Italian (neo) Marxist. See Antonio Gramci (1971) *Selections from the Prison Notebooks,* International Publishers, New York. See also Antonio Gramsi (1991) *Selections from Cultural Writings*, Harvard University Press, Cambridge, Massachusetts. See also Antonio Gramsi (1977) *Selections from Political Writings 1910 – 1920,* International Publishers, New York.

[6] For this largely liberal definition of an academic, cf. Adebayo Williams in (2000) "Intellectuals and governance" in Goran Hyden, H.W.O. Okoth Ogendo & Dele Olowu (eds) *African Perspectives on Governance,* African World Press, Inc., Trenton, NJ, & Asmara, Eritrea, q.v. 295-318.

[7] See Iain McLean (1996) *Oxford Concise Dictionary of Politics* Oxford University Press, Oxford New York. See also Willy Mutunga (1999) "Constitution - Making from the Middle: Civil Society and Transition Politics in Kenya, 1992 – 1997," SAREAT, Kenya.

[8] See Eugene Kamenka (ed) (1983) *The Portable Karl Marx*, Penguin Books USA Inc, New York.

Kamenka continues:

> "After 1845, when Marx 'discovered' the materialist conception of history, he sees civil society as the real source and theatre of all historical development and the state as overcoming civil society only in fantasy, as in fact dominated by it. The sharp separation of the economic, the moral and the political, the dualism of civil society and the state, according to Marx, reaches its apogee in bourgeois society."

The role of policy has moved to centre-stage in Kenyan and African development discourses over the past 30 or so years.[9] This has been due to the socio-economic crises that have largely been blamed on poor policy and law-making in the African continent. A major cause and effect of policy and juridical failure is associated with the Structural Adjustment Programmes (SAPs) that the World Bank and the International Monetary Fund (IMF) designed and implemented in Kenya and other borrowing countries of the developing world.[10] The efficiency of Kenya's policy instruments attracted intense scrutiny and study especially with regard to their role in the country's development. The conclusion was that Kenya's socio-economic problems could be traced to poor policies as well as their poor implementation.

The Discourse on Policy Process

The movement for constitutional governance and democratization in the late 1980s and 1990s underscored popular participation in governance. The discourse has thus transcended the role of policy and law, as such, and entered the realm of the 'extent of popular participation' in policy-making. The content is not dispositive; policy and law-making processes matter. It is in this context that in February 1990, African governments and a number of United Nations agencies, for example, United Nations Economic Commission for Africa (UNECA), held an international conference on popular participation, where the Charter for Popular Participation in Development was adopted by acclamation.[11] Also adopted on that occasion was the Charter for Popular

---

[9] See Florence Etta (2005) "Policy making: the new development el dorado" in Florence Etta and Laurent Elder (Eds) *At the Crossroads: ICT Policy Making in East Africa*, East Africa Educational Publishers, Nairobi, p. 3.

[10] See Ben Sihanya (2008) "The IMF and policymaking in Kenya," in Ben Sihanya (ed) *The Impact of IMF Policies on Education, Health and Women's Rights in Kenya,* a study commissioned, peer reviewed and published under the auspices of Action Aid International Kenya, Nairobi.

[11] Florence Etta (2005) "Policy making: the new development el dorado," *op. cit.*

Participation in Democracy. It called for the emergence of a new era in Africa – an Africa in which democracy, accountability, economic justice and development for transformation became internalized and the empowerment of the people, initiative, enterprise and democratization of the development process are the order of the day in every country.

Eighteen years after the adoption of the Charter for Popular Participation in Development and the Charter for Popular Participation in Democracy, Kenya is yet to fully adopt popular participation in its policy making practices. The extent of participation in policy - making has starkly differed from one administration to another. During the Presidency of Daniel Arap Moi (1978–2002), popular participation, especially by the civil society and academia, was almost non-existent. This was because of the mutual distrust and disdain that existed between the autocratic Moi regime and the restless civil society that continued to harass the system to adopt reforms that would make governance more transparent and democratic.[12] Indeed, the first measure of popular participation in policy making would come in 2000 as a result of donor aid conditionalities.[13]

In the policy domain, Government of the Kenya African National Union (KANU) subscribed to the World Bank's Poverty Reduction and Growth Facility (PRGF) programme. The conditionality was that the Government had to craft a Poverty Reduction Strategy Paper (PRSP) through wide-ranging consultations and dialogue.[14] Consultations were conducted at the national, provincial and district levels with stakeholders that included the private sector, civil society, development partners and local communities.

---

[12] See generally, Willy Mutunga (1999) *Constitution - Making from the Middle: Civil Society and Transition Politics in Kenya, 1992 – 1997*, *op. cit.* See also P.L. Agweli Onalo (2003) *An African Appraisal: Constitution - making in Kenya*, Transafrica Press, Nairobi.

[13] This is in contrast to the law-making process which was democratized and liberalized in around 1991, with the establishing by the Attorney General of the Task Force to review various aspects of Kenyan law. Most of these Task Forces consisted of academics and civil society actors. They also held hearings in various parts of Kenya to solicit or receive public views.

[14] PRSPs were introduced as a joint effort between the IMF and the World Bank to create a country-driven, long-term, comprehensive strategy for poverty reduction, which donors could use as the basis for their programming. For the full PRSP, the Government launched an ambitious consultation process in November 2000, with the PRSP Secretariat in the Ministry of Finance and Planning as the lead agency. See Gerrishon Ikiara, Carolyn Abongo and Walter Eberlei (2001) *PRSP Institutionalization Study: Institutionalizing the PRSP Approach in Kenya,* under the auspices of Strategic Partnerships with Africa. See also, Ben Sihanya (2008) "The IMF and policy making in Kenya," *op. cit.*

The election of the National Rainbow Coalition (NARC) Government into power on December 27, 2002 ushered in a new era of participatory policymaking. In a bid to break with the past governance practices, the NARC Government sought to deepen stakeholder consultations with the private sector, civil society and development partners as well as with a cross section of ordinary Kenyans. In early 2003, the Government embarked on the preparation of a policy document called the *Economic Recovery Strategy for Wealth and Employment Creation* (the ERSWEC) which became popularly known as the ERS.[15] This document would focus on reviving the economy and creating employment while also taking on board any important lessons drawn from the previous history of policy making.[16] The ERS process was thoroughly consultative, involving Parliamentarians, trade unionists, local and international professionals, financial institutions, representatives from the Arid and Semi-Arid Lands (ASALs), civil society representatives, development partners and Kenya Government officials.[17]

Developmental policy making has become even more complex in Kenya following the formation of the current Grand Coalition Government in 2008. In 2008, the Grand Coalition Government, through the Ministry of State for Planning, National development and Vision 2030 embarked on coordinating the development of the country's long-term vision, known as Vision 2030. This merged the policies of the Orange Democratic Movement Party of Kenya (ODM) and the Party of National Unity (PNU). It was prepared under the guidance of the National Economic and Social Council (NESC), whose Council Members have been drawn from Government, private sector, academia, labour unions and civil society.[18] The Council was thus in a position to utilize the private sector capacities and synergies through collaboration, engagement and networking in order to promote efficiency and effectiveness of economic planning process.

---

[15] See Government of Kenya (2003) *The Economic Recovery Strategy for Wealth and Employment Creation,* Government Printer, Nairobi.

[16] See pages 6, 32, 46 and 48 of the ERS.

[17] See Peter Anyang' Nyong'o (2005) "Planning for policy making and implementation in Kenya: problems and prospects," in Florence Etta and Laurent Elder (eds) *At the Crossroads: ICT Policy Making in East Africa,* East Africa Educational Publishers, Nairobi, at pp. 16, 18. Also see generally, Peter Anyang' Nyong'o (2007) *A Leap into the Future: A Vision for Kenya's Socio-political and Economic Transformation,* African Research and Resource Forum, Nairobi.

[18] See the official website of the Ministry of Planning and Vision 2030, at www.planning.go.ke (last accessed on 8/10/08). The Vision 2030 process was a more closed and partisan process during 2006/07.

It is within this context that the management structure for developing the vision has representation of eminent personalities from the private sector at all levels.[19] In collaboration with staff in the Ministry of State for Planning, National Development and Vision 2030, NESC assisted in putting together a series of private sector consultative forums to seek their views on the process of crafting Vision 2030. The NESC therefore played a pivotal role towards improving Public-Private Partnership (PPP) in Kenya's development process.

This was indeed a good precedent by a government that is reform oriented at least in appearance or rhetoric. However, this example of popular participation has not been replicated in other spheres of governance, for example, the budgeting process. This is in spite of the strong linkage between policy and budgeting. For example, budgets and budget implementation tends to dictate policy implementation, despite the fact that the process of budget preparation is often influenced by the proposed policies. Budget drives policy implementation. In this context, effective participation in policy making goes hand in hand with participation in budgeting.

Civil Society and Academia in the Budgetary Process in Kenya

The budget is an important instrument used by the government of Kenya to define the direction of, and priorities regarding its national developmental policy, the cost implications of government programmes, and the possible sources of revenues during a fiscal year. The basic functions of the budget therefore entail three main components: collection and allocation of resources to priority sectors; provision of public goods and services by the government; and re-distribution of incomes.[20] In addition, the budget strives to ensure economic stabilization, social order and harmony, as well as acting as a measure of government performance and accountability.[21] The budget

---

[19] Members of NESC include top Government officials like the Prime Minister Raila Odinga, Deputy Prime Ministers Musalia Mudavadi, and Uhuru Kenyatta and other Ministers and Permanent Secretaries. Members from academia include Prof. Edward Oyugi, and Prof Michael Chege. Members from the private sector include Jimnah Mbaru, Salma Mazrui and Wilfred Murungi. International experts include Lee Yee Cheong (Dato) (Engineer from Malaysia) Dr Chung Kunmo (Energy Expert from South Korea), Hiroyuki Hino (Professor of Economics from Japan) and Dr Victor Koh (Management Consultant from Singapore). See the official website of the National Economic and Social Council, at www.nesc.org (last accessed on 21/10/08).

[20] See Institute of Policy Analysis and Research (IPAR) *Budgetary Process in Kenya: Enhancement of its Public Accountability*, Policy Brief, Volume 10, Issue 1, 2004.

[21] *Ibid*.

process consists of four major phases: planning and preparation; debate and approval; implementation; and monitoring and evaluation.[22] In the Kenyan context this process is complex and is hardly uni-linear.

Participatory budgeting involves implementing mechanisms that directly involve citizens in decision-making about how to allocate resources and monitor public spending. Participatory budgeting has captured the attention of the policy world, with over 250 cities, mostly in Latin America, adopting some version of participatory budgeting.[23] A discourse on participatory budgeting in Kenya is timely, considering the negative score card that the Kenya Government has maintained in areas of accountability and transparency.[24]

The rationale for participatory budgeting is as follows: first, citizens have a right to know; second, it enhances transparency, credibility and accountability; and third, it enhances efficient and fair allocation of scarce national resources. The fourth reason is that participation enhances better implementation of budget through monitoring and evaluation; fifth, it helps to incorporate the views of a wider range of people; sixth, it helps people to identify more with the budget; and seventh, it promotes solidarity and concern for the common good. Eighth, participation helps to create a collaborative model of governance in which government and civil society can work together; ninth, it promotes the mobilization of entire communities by engaging local groups on issues that matter to them.[25]

Currently, the budgeting process in Kenya is undertaken at three levels: the national level (Treasury budgeting); the local authority level (Civic budgeting); and the constituency level (Constituency Development Fund Budgeting). Local authority and constituency budgeting both depend on Treasury budgeting, and I therefore start by discussing the budget process by the Treasury.

---

[22] I adopt this definition of budgeting from Albert K. Mwenda and Mary N. Gachocho (2004) *Budget Transparency: Kenyan Perspective*, Institute of Economic Affairs (IEA) Research Paper Series No. 4, available at www.ieakenya.or.ke (last accessed on 8/9/08).

[23] *Ibid.*

[24] For example, for a long time, Kenya's weak procurement laws were blamed for encouraging corruption in public institutions. Luckily, the debate took a different turn, with focus on the implementation, following the enactment of the Public Procurement and Disposal Act (No. 3 of 2005). The new law has been lauded as an improved piece of legislation.

[25] *Ibid.*

Central Government Budgeting

The Central Government budget cycle passes through four major phases: first, planning and preparation; second, debate and approval by Parliament; third, implementation; and fourth, supervision and audit.[26] Budget planning and preparation is usually done by the Ministry of State for Planning, National Development and Vision 2030, alongside other entities. It commences with the preparation of the District Development Plan (DDP) by each District, every five years. The DDP outlines development priorities and aspirations at the District level.[27] The Preparation is supposed to involve popular participation. The DDPs are then collated into a National Development Plan for a three or five year period.[28]

The Treasury usually releases a circular which defines the broad parameters of the budget and sets expenditure ceilings to be adhered to. The calendar includes budget hearings, which allows contribution by citizens and non-Government groups. The proposals from the districts are then consolidated with those of the line ministries and thereafter sector negotiations for allocation of resources begin. These sector hearings lead to bidding for resources, which are then allocated according to expenditure items in the budget. The Minister for Finance also receives presentations from professional associations and groups.[29] These include the Kenya Association of Manufacturers (KAM), the Institute of Certified Public Secretaries of Kenya (ICPSK), Institute of Economic Affairs (IEA), among others. These presentations include expenditure and tax proposals that the Minister may use in drafting the Finance and Appropriation Bills.

This stage of budgeting can be credited for allowing inputs from the private sector and Non-Governmental Organizations (NGOs). However, criticism has also been levelled to the effect that very few groups outside the Government are usually invited to make

---

[26] See Albert K. Mwenda and Mary N. Gachocho (2004) "Budget Transparency: Kenyan Perspective," *op. cit.*

[27] Cf. Joel D. Barkan with Michael Chege (1989) "Decentralising the State: District Focus and the politics of reallocation in Kenya," 27 *Journal of Modern African Studies* 431, pp. 431–453.

[28] See Kenya Institute of Public Policy Research and Analysis (KIPPRA) (2004), *Budget Mechanisms and Public Expenditure Tracking in Kenya*, Discussion Paper No. 37, June 2004. . The ERS was such a development plan.

[29] There has been a high turnover in the Ministry of Finance.

presentations on the budget to the Treasury.[30] The participation of the academia in budgeting has been exhibited within the framework of these private sector groups and NGOs that engage with the Treasury. Technocrats within the Public Service have also provided a useful interface with academia and civil society. For example, Dr Hezron Nyangito, formerly with the Kenya Institute of Public Policy Research and Analysis (KIPPRA) was appointed Deputy Governor of the Central Bank of Kenya (CBK) in September 2008.[31] The CBK has a crucial role in the budget planning and implementation process.

Budget Debate and Approval by Parliament

The second stage is the presentation to Parliament, debate and approval of the budget. After the annual budget is formulated, it must be laid before the legislature on or before 20th June of each financial year.[32] The Minister for Finance presents the Budget to Parliament, usually accompanied by the Appropriations Bill, the Finance Bill, the Fiscal Strategy Paper, the Statistical Annex to the budget, and the Financial Statement.[33] Parliament then transforms itself into a Committee of the Whole House (the Committee of Ways and Means) and debates the budget for the next seven days. The debate is a general one on the policy that the budget intends to support. Upon approval and the passing of the Finance and Appropriations Bills, the government is effectively authorized to raise revenue through taxes and to spend them in accordance with the approved estimates.

The budget process in Parliament provides a good opportunity for participation by scholars and civil society. First, civil society groups, academics and academic institutions, NGOs, the private sector and the mass media have in the past taken

---

[30] See Albert K. Mwenda and Mary N. Gachocho (2004) *Budget Transparency: Kenyan Perspective*, *op. cit.*

[31] Before joining KIPPRA, he was a University of Nairobi lecturer. The appointment to the CBK was quite controversial, after Dr Nyangito was appointed to replace Ms Jacinta Mwatela, who argued that her removal was occasioned by a tender (to De La Rue) for printing currency; that she had questioned.

[32] This is provided by section 100 of the Constitution of Kenya. The practice since the mid - 1990s is that all the budgets of the 3 East African Community (EAC) states are presented on the same day.

[33] The Statistical Annex indicates, among other things, the government's indebtedness to various lending institutions, both domestic and external, while the Financial Statement gives a summary of proposed revenue and expenditure measures.

advantage of the space offered by Parliament to lobby members of Parliament to make certain representations on their behalf, during the debate and approval stage. Corporations, especially trans-nationals like the tobacco companies such as British American Tobacco (BAT), have been equally aggressive in lobbying legislators. However, the ability of legislators to positively influence fundamental changes to the budget tabled in Parliament has been constrained by the legislative framework. Section 48 of the Constitution constrains Parliament from imposing or altering taxation measures in place except where they have an effect in reduction. Because the budget speech is usually aired live from Parliament, the mass media takes the opportunity to scrutinize and make a commentary on various aspects of the budget. The media has used this opportunity to act as a watchdog for the public. Journalists such as Owino Opondo have continued to pen insightful articles on Parliamentary debates surrounding the budget, and offered expert advice on the subject.[34]

Budget Implementation and Execution

The third stage is budget implementation or execution.[35] Once Parliament has approved the budget, the Controller and Auditor General (CAG) is mandated under the Exchequer and Audit Act[36] to ensure that all proposed withdrawals from the Consolidated Fund are as authorized by law.[37] This entails the final disbursement of funds to various implementing departments and ministries. Budgetary resources are disbursed to line ministries and departments through exchequer issues. Permanent Secretaries of various ministries assume the role of accounting officers and are responsible for the funds that are disbursed to their ministries.[38] The Permanent Secretaries are allowed to grant Authority to Incur Expenditure (AIE) to various district departmental heads to implement the government programmes at the district level.

---

[34] Journalists whose main focus is Parliamentary activities have lately come together under the Kenya Parliamentary Journalists Association (KPJA), a forum through which Journalists reporting on Parliament coalesce to strengthen their capacities on the various aspects of covering Parliamentary debate. For example, in June 2008, KPJA, together with Friedrich Ebert Stiftung (FES) held a workshop in Nakuru to sensitize Parliamentary journalists on the workings of the Coalition Government in a bid to improve their reporting.

[35] See Albert K. Mwenda and Mary N. Gachocho (2004) *Budget Transparency: Kenyan Perspective*, *op. cit.*

[36] Cap 412 of the Laws of Kenya.

[37] The Consolidated Fund is regulated by sections 99 - 105 of the Constitution.

This stage has proved to be the most opaque aspect of budgeting in Kenya. The Government has used the Official Secrets Act[39] to perpetuate secrecy around expenditures by Government. This has led to mega scandals in government, including the Goldenberg scandal, the Anglo Leasing scandal and, recently, the sale of the Grand Regency hotel and the De La Rue currency printing scandal. In all these instances, civil society and academia have taken up advocacy and informational roles to bring the debate to the public limelight, and also educate the public on the details as well as the socio-economic, political and constitutional ramifications of these scandals. For example, organizations like Transparency International (TI Kenya) have been instrumental in unearthing details of the Anglo Leasing scandal, and pushing the Government to take action.

The journalists, other communicators and the mass media have also kept the debate alive in print and across the airwaves, attracting the disdain and wrath of the Government in the process. Academics and professionals have used the media as a forum to publish expert opinions on these scandals. A good example is the debate surrounding the Grand Regency. Various individuals, including lawyers Donald Kipkorir, Ahmednasir Abdulahi and Paul Mwangi, have used newspaper columns to debate the salient aspects of Kenya's procurement regulations, including the Public Procurement and Disposal Act,[40] and various loopholes in relation to budget implementation.[41] These roles have assisted the public to understand loopholes that exist in public procurement, and to push the government to undertake reforms.

---

[38] The Grand Coalition Government established about 40 ministries and an equivalent number of Permanent Secretaries. It is remarkable that under section 22(5) of the Constitution, there may be two or more Permanent Secretaries per ministry, or one to supervise more than one ministry. The Solicitor General, Mr Wanjuki Muchemi, was controversially appointed the Accounting Officer in the State Law Office. See Republic of Kenya (2008) *Presidential Circular No. 1/2008: Organization of the Government of the Republic of Kenya*, Government Printer, Nairobi.

[39] Cap. 187, Laws of Kenya.

[40] Act No. 3 of 2005.

[41] Kipkorir writes in the Nation newspaper. Ahmednasir Abdullahi write in the Sunday Standard newspaper.

Budget Supervision and Audit

The fourth stage is budget supervision and audit.[42] However, it does not strictly follow budget implementation. As budget execution is underway, it allows for simultaneous *control* and accountability. There should be active and effective internal audit (supplemented by expenditure tracking surveys).[43] At the end of the financial year, the Treasury prepares accounts by the end of October. The Controller and Auditor General (CAG) then audits them and, at the end of 7 months (a period which may be extended by the National Assembly), sends the report to the Finance Minister, who tables it in the National Assembly.[44] In the past, the reports have been tabled in Parliament two years after they are prepared.[45]

Once the report reaches Parliament, it is discussed by the Parliamentary Accounts Committee (PAC) which then reports its findings to the House. Treasury, through the Minister of Finance, is then required to explain what action it has taken on the PAC recommendations. The Public Investments Committee (PIC) also examines the reports and accounts of public investments, and engages Parliament and Treasury in similar fashion.

The Constituency Development Fund (CDF)

The CDF was established in 2003 by the Constituency Development Fund Act[46] and operationalized by the Kenya Gazette Supplement No. 107 of January 9, 2004. The Fund comprises an annual budgetary allocation equivalent to 7.5% of the government's ordinary yearly revenue and any other money that may accrue to the Fund. Some politicians, academics, civil society organizations and members of the public have referred to the Constituency Development Fund (CDF) as a devolved fund.[47] It is not a

---

[42] See Albert K. Mwenda and Mary N. Gachocho (2004) *Budget Transparency: Kenyan Perspective*, *op. cit.*

[43] See Kenya Institute of Public Policy Research and Analysis (KIPPRA) (2004), *Budget mechanisms and public expenditure tracking in Kenya*, *op. cit*.

[44] The CAG is appointed and operates under section 110 of the Constitution and the Public Audit Act (No. 12 of 2003). The CAG is Mrs Priscilla Njeri Komora.

[45] See Institute of Policy Analysis and Research (IPAR) *Budgetary Process in Kenya: Enhancement of its Public Accountability*," *op .cit*.

[46] Act No. 11 of 2003.

[47] See Kenya Institute of Public Policy Research and Analysis (KIPPRA) (2004), *Budget Mechanisms and Public Expenditure Tracking in Kenya, op. cit*. See also the Party of National Unity (PNU) 2007 general elections campaign manifesto. See also, Mwangi S. Kimenyi (2005) *Efficiency and Efficacy of Kenya's Constituencies Development Fund: Theory and Evidence*, Economics Working Papers, Department of Economics, University of Connecticut.

devolved fund. It is the Executive (through the Ministry of State for Planning, National Development and Vision 2030, and the Treasury) that decides on the amount of money distributed to each Constituency.[48] The Fund is administered by an officer under the direction of a National Management Committee. The Fund is administered according to the rules and regulations laid out in the CDF Act.

The CDF Act established four committees to manage the Fund. These are the National Management Committee (NMC), the National Constituency Development Fund Committee (CDFC), both of which are national committees, and the District Projects Committee (DPC) and the Constituencies Development Committees (CDCs) which are grassroots committees.[49]

The National Management Committee ensures that allocations and disbursements of funds are made to the constituencies. It is mandated to ensure prudent management of the funds, and to receive and discuss annual reports and returns from the constituencies. The NMC is made of 4 Permanent Secretaries from the Ministries of Finance, Planning National Development and Vision 2030, Regional Development, Agriculture, the Clerk to the National Assembly, an officer administering the Fund, and 8 Ministerial appointees nominated by the following bodies: the Kenya Farmers Union (KFU), the Institute of Engineers of Kenya (IEK), the Kenya National Chamber of Commerce (KNCC), the Catholic Church, the Kenya National Union of Teachers (KNUT), the NGO Council of Kenya,[50] the National Council of Churches of Kenya (NCCK), and the Supreme Council of Kenya Muslims (SUPKEM).[51]

---

[48] For example, in September 2008, there was controversy in Parliament over the Constituency Poverty Index that was to be used in determining the distribution of funds to Constituencies. Legislators had claimed that the Kenya Integrated Household Budget Survey 2005/2006 had been doctored to favour certain Constituencies. In light of the controversy, the Minister for Planning simply shelved the Constituency Poverty Index and used old poverty indexes to determine the distribution of funds. See Susan Anyangu (2008) "Minister unveils Shs. 10 billion CDF kitty," *The Standard* newspaper (Nairobi), September 17, 2008. In the early term of the NARC Government, Parliamentarians black-mailed the then Minister for Finance, David Mwiraria, to increase the percentage allocation of the CDF in the budget, if he wanted them to pass the budget. He "bribed" them and they obliged. As a financial bill, the CDF Bill must be approved by the President. See Section 46 of the Constitution on law making.

[49] These are established under sections 6, 27, 39 and 23 respectively of the CDF Act (No. 10 of 2003).

[50] The NGO Council is established under section …of the Non Governmental Organizations Co-ordination Act (No. 19 of 1990) as amended. The Council has been inactive for some time due to leadership and electoral disputes which ended in the High Court at Nairobi.

[51] Section 6 of the CDF Act.

The composition of the NMC encourages hands-on involvement of civil society, NGOs, the private and independent sector groups like KNCC, and trade unions in CDF budgeting. The NMC, LDCs, CDCs, DPCs and CFC and citizens usually conduct monitoring of CDF projects.[52] Groups such as Muslims for Human Rights (MUHURI) have been actively involved in CDF budgeting. Since 2005, MUHURI has been monitoring expenditures made under the CDF at the Coast Province. Through this process, MUHURI has developed strong contacts with local communities that are often the beneficiaries of CDF expenditures and has in turn used their assistance to identify problems and irregularities in the implementation of the CDF.[53] Auditing of the CDF is done by internal auditors from the Fund as well as auditors from the Office of the Controller and Auditor General.[54]

The Local Authorities Transfer Fund (LATF)

The Local Authorities Transfer Fund (LATF) was established by the Local Authorities Transfer Fund Act of 1998, and operationalized on June 10, 1999. The Act was intended to "supplement the financing of services and facilities that Local Authorities are required to provide under the Local Government Act"[55]. Politicians, commentators and academics disagree on whether the LATF is a devolved fund. However, this label attracts the same criticism as the CDF, in that LATF is also largely controlled by the Executive, which disburses the funds.

The Role of the Judiciary in Budgeting

The two arms of government, the Executive and the Legislature, have an expressly legislated role in the budgeting process.[56] The Judiciary, on the other hand, has no direct

---

[52] See Centre for Governance and Development (2007) *National Devolved Funds Report: Institutional Structures and Procedures,* Research Report 3, April 2007.

[53] See Vivek Ramkumar and Sowmya Kidambi (undated) *"Twataka pesa zetu (we want our money): a public budget hearing in Kenya,"* available at www.internationalbudget.org/resources/library/HearingKenya.pdf (last accessed on 14/10/08).

[54] Centre for Governance and Development (2007) *National Devolved Funds Report: Institutional Structures and Procedures,op. cit.*

[55] Cap. 265, Laws of Kenya.

[56] See sections 99-100 of the Constitution, the Public Audit Act and the Exchequer and Audit Act.

role in the mainstream budgeting process. However, the Judiciary can still undertake an important role in interpreting the laws governing budgeting. For example, of late, there has emerged a "rights-based approach" to budgeting. This approach posits that government budgeting should be guided by national and international human rights standards.[57] To this extent, academics, civil society and other advocacy groups engaged in budget work could use section 82 of the Constitution which provides for the right against discrimination, to conduct public interest litigation against the Government regarding historical injustices and inequities in the development agenda and processes. The judiciary would then be required to step up to uphold these rights against discrimination.[58]

The Kenyan judiciary has traditionally been conservative in its approach towards cases whose prayers sought are aimed at constraining the powers of the Government or questioning Government policy. In a study of the role of the judiciary in controversial and sensitive matters of public law and policy with a focus on questions of human rights and social justice Prof. J.B Ojwang' and Prof. Otieno Odek[59] concluded that the institution seems to have adopted a dual typology in handling human rights questions. On the one hand, the judiciary appeared to be neutral and to observe the role of law and hence secure justice in horizontal conflicts or human rights questions. (These are cases between citizens *inter se,* and courts tended to protect rights, especially where the disputants were similarly situated in terms of economic or political power relations). On the other hand, the judiciary has subverted the cause of justice in vertical conflicts between the state or political or economic elite and ordinary citizens. This analysis still holds true today.

---

[57] For a detailed discussion on rights-based approaches generally, see Celestine Nyamu Musembi and Samuel Musyoki (2004) "Kenyan civil society perspectives on rights, rights-based approaches to development, and participation," Institute of Development Studies (IDS), Brighton, Sussex, England, available at www. **ids**.ac.uk/**ids**/bookshop/wp/wp235.pdf (last accessed on 14/10/08) See also United Nations Development Programme (UNDP) (2006) "Applying a human rights-based approach to development cooperation and programming," available at www.hurilink.org/tools/Applying_a_HR_approach_to_UNDP_Technical_Cooperation--unr_revision.pdf (last accessed on 14/10/08).

[58] Some of these issues have arisen indirectly, for instance, where the Central Government Departments and officials have been sued for licensing the importation of sugar, thereby adversely affecting the local farmers' market access, in a context in which the Ministry of Finance has in the past subsidized coffee farmers while taxing sugar cane farmers.

[59] See J.B. Ojwang' and J.A. Otieno Odek (1988) "The Judiciary in sensitive areas of public law: emerging approaches to human rights litigation in Kenya," *Netherlands International Law Review* (The Hague) Vol. XXXV No. 1 (1988), pp. 1-35.

David Trubek and Alvaro Santos say the following regarding the role of judges:

> "Much current development thought continues to present private law as a neutral framework in which economic actors establish relations in a realm of freedom. This is contrasted with the sphere of public or 'regulatory' law, which is presented as coercive, and an 'intervention' in an otherwise level playing field. Moreover, in this vision, the judges who decide cases involving private law issues are represented not as making regulatory or distributional decisions; they are simply deriving results from abstract principles."[60]

They continue:

> "Our authors challenge this body of thought, which has played a major role in the Second [law in development] Movement. They reject the public-private distinction on which it is based, making clear that the background rules of property and contract, constructed by judicial decisions, are just as coercive and interventionist as public regulatory law. They show that these background norms structure behavioural incentives and play a key role in the distribution of economic resources and power in society."[61]

But some influential judges and authors like Charles Newbold argue that judges have no role in policy making.[62] This is a typical (neo) liberal perspective which does not reflect the reality or the need to secure justice for the underclass, the powerless; especially those who are marginalized by skewed economic and budgetary policies and processes.

An Audit of the Role of Civil Society and Academics in Kenya's Budgeting Process

As outlined above, public budgeting, especially treasury budgeting in Kenya is a complex process that can sometimes be arcane, closed to the public and understood only by experts. In an efficient and constitutional system, however, the process should incorporate citizen insight, participation and control in a way that can enhance transparency, accountability and participatory democracy.

---

[60] See David M. Trubek and Alvaro Santos (2006) "Introduction: the third moment in law and development theory and the emergence of a new critical practice," David Trubek and Alvaro Santos (eds), *The New Law and Economic Development: A Critical Appraisal*, Cambridge University Press.

[61] *Ibid.* My interpolation. The book discusses three moments in law in development: the classical, the neo-liberal phase, and the current.

[62] See Charles Newbold (1969) "Judges as policy makers," *Eastern Africa Law Review 1*.

Civil society and academia have a very important role to play in the budgetary process, especially in situations where participation through representative, elected democracy is deficient. Budget work for academia and civil society involves several related activities, ranging from training in budget literacy skills, budget analysis, civic action and advocacy. In this regard Shultz argues:

> "Ultimately, the goal of civil society budget work is to lift out, from the pages and pages of often undecipherable figures, the real stories behind the numbers. When done well, citizens' budget efforts strip away the complexity to reveal the basic value choices buried underneath….Making these choices clearer opens up new possibilities for citizen involvement in those decisions."[63]

A number of studies on the extent of participation in Kenya's budgetary process have been conducted by a number of institutions, including the Institute of Economic Affairs (IEA), Kenya Institute of Public Policy Research and Analysis (KIPPRA), Institute of Policy Analysis and Research (IPAR) and the United States Agency for International Development (USAID). These studies and reports provide a glimpse of the progress registered in opening up the budgeting process in Kenya.[64]

In 2003, the Institute of Economic Affairs (IEA) conducted a comprehensive study on the extent of transparency and participation in Kenyan budgetary process.[65]

With regard to participation of civil society and academia, the report found that 81% of the respondents found the overall citizen participation to be poor. Secondly the study reported that 78% of the Civil Society Organizations interviewed found the budgetary process non-participatory. Another major finding was that the submission of budget proposals to the Treasury was rated as minimal.[66] Despite being invited to send budget proposals, respondents felt that their proposals were not given the due attention.

---

[63] J. Shultz (2002) *Promises to Keep: Using Budgets as a Tool to Advance Economic, Social and Cultural Rights*. Reflections and strategies based on a three-day dialogue between international human rights and budget activists, convened by the Mexico City office of the Ford Foundation and FUNDAR-Center for Analysis and Research, in Cuernavaca, Mexico, 2002. Mexico City, Fundar.

[64] Some of these reports have already been cited earlier and further below in the paper.

[65] See Albert K. Mwenda and Mary N. Gachocho (2004) *Budget Transparency: Kenyan Perspective*, *op. cit.*

[66] Only about 50 % of the respondents such as Centre for Governance and Development (CGD), Institute of Certified Public Secretaries of Kenya (ICPSK), PriceWaterhouseCoopers (PWC), Kenya Association of Manufacturers (KAM), and Retirement Benefit Authority (RBA) indicated having submitted budget proposals to the treasury. ICPSK for example indicated having made budget proposals to guide the policy and fiscal formulation. *Ibid.*

It was also reported that 86% of civil society organizations and 78% of academics polled said they had never attended budget meetings either at district, Ministerial or national level. The low attendance and contributions to the budget meetings by respondents, was attributed to lack of awareness and information regarding budget meetings.

The study reported further that the majority of the respondents i.e. 67% of the academics and 100% of the CSOs were not aware of the guidelines for planning and preparing the budget. The guidelines have been limited to government departments and ministries. In addition 75% of CSOs and 88% of academics said they had not seen Government support in enhancing a participatory budgeting process. Finally government support was not evident in the legal and institutional frameworks governing the participation of the public in the budget process. Most of the respondents noted that the legal and regulatory frameworks have not been conducive to govern on their participation.

The report identified five factors limiting stakeholder participation in the budgetary process: lack of technical expertise; lack of financial resources; inadequate legal and institutional framework; geographical location; time constraints. There have been indications that since the report was published, the extent of participation in budgeting has improved. In December 2006, USAID released the annual report on their Parliamentary Strengthening Programme that is implemented by State University of New York (SUNY) Kenya.[67] The report states:

> "The budget process is getting more and more influenced by multiple political actors as SUNY is evidently playing a significant role. Through the land mark activities of pre and post budget seminars SUNY is facilitating the interaction between Parliament and these actors. The budget making process is becoming transparent to many actors. Parliament on the other hand is taking advantage of these episodes and consequently opening up and allowing proposals from these actors to improve the outcome of the budget as well as informing the debating of the appropriation and the budget policy."[68]

---

[67] See USAID (2006) *Parliamentary Strengthening Programme Annual Report*, available at www.usaid.org The Parliamentary Strengthening Programme is implemented by State University of New York (SUNY) Kenya.

[68] *Ibid.*

The USAID report continues:

> "These traditional activities of pre and post budget by SUNY have yielded result as the Executive branch has realized the necessity of collaborating with parliament in the budget making process as opposed to a viewing it as competition."[69]

According to the USAID report, the issues submitted by USAID-funded Civil Society Organizations (CSOs) were not clearly captured in the debate in the House. Only 54.7% of issues were debated in the House, and reflected in the Finance Act.[70] Organizations that submitted budget proposals to Parliament included the Nairobi Stock Exchange (NSE), Kenya Association of Manufacturers (KAM), Institute of Certified Public Accountants of Kenya (ICPAK), Institute of Economic Affairs (IEA), and PriceWaterHouse Coopers (PWC).[71]

The above reports have indicated an improvement in the prospects of participatory budgeting in Kenya. Despite the challenges, a number of civil society and academic organizations have done a commendable job in contributing to the formulation, debate, and monitoring and evaluation of the budgetary process in Kenya. These include the African Research and Resource Forum (ARRF), Institute of Economic Affairs (IEA), Centre for Governance and Development (CGD), Institute of Policy Analysis and Research (IPAR), and Transparency International (TI), among others. Indeed IEA has been proactive in engaging the Official Opposition in Parliament. IEA develops parallel budgets known as "alternative budgets" that the Official Opposition in Parliament uses to interrogate the budget tabled by the Finance Minister.[72]

However, there has never been a more urgent time as now for CSOs and academia to be involved in the budgeting process. The post election violence that the country is just recovering from has uncovered a myriad of problems that can be traced to poor budgeting in the past.[73] Ethnic, regional, gender, class and race inequalities that have historically

---

[69] *Ibid.*

[70] *Ibid.*

[71] *Ibid.*

[72] *Ibid.*

[73] At the height of the Kenyan post-election crisis in January and February 2008, erstwhile political protagonists, academics, commentators and the general public closed ranks on the reality of ethnic governance generally, and ethnic budgeting in Kenya., perpetrated by successive Governments since independence. Indeed, the Report by the Justice Philip Waki Commission to Investigate Post Election Violence (CIPEV), released on 16th October 2008, blamed President Kibaki's governance for polarizing Kenyans along ethnic lines. It states that Kibaki retreated into his ethnic Kikuyu enclave immediately after being elected on a nationalist platform in December 2002.

festered and burst to the fore early this year have been consciously constructed by the state as a result of closed door budgeting policies.[74] Other consequences of closed door budgeting are corruption, unemployment and poverty.

In order to overcome the above challenges, there must be legislative and administrative reform in the budgeting process in order to open up all stages of the budgeting process to stakeholders. Secondly, civil society and the academia should also proactively engage the government in realizing participatory budgeting. Below I look at specific proposals on increasing the participation of civil society and academia to secure the public interest and the interest of key stakeholders in the budgeting process in Kenya.

Towards a More Participatory Budgeting Process

In the face of poor participation by CSOs and academia in the budgeting process, there is need for reform in the way the Kenya Government and stakeholders have engaged each other over budgeting issues since Independence in 1963. This is necessary for number reasons. First, there is need for constitutional and legislative reforms aimed at opening up the budgeting process. The Constitutional and legislative framework for budgeting in Kenya should be reviewed to inculcate citizen and stakeholder participation in all stages of the budgeting process. The review should aim to increase the role and capacity of Parliament to oversee the entire budgetary process, and to effectively engage with other stakeholders in the processes of budget formulation, implementation and monitoring and evaluation (M&E).[75] Currently, there is before parliament, the Fiscal Management Bill 2007. This is a private Member's Bill sponsored by Mr Oloo Aringo during the 9th Parliament.[76] The principal objective of this Bill is to provide for

---

[74] See Ben Sihanya (2006) *Constitutional Political Economy of Ethnic Inequality and Poverty in Kenya, 1963-2006 and Beyond: Human Rights, Class Formation and Development* a study under the auspices of Society for International Development (SID), available on file at Innovative Lawyering. See Sang Kipyego Stephen (2008) *Historical Injustices in the Public Service in Kenya: Ethnicity in Public Service Appointments*, Dissertation submitted to the University of Nairobi in partial fulfilment of the degree of Bachelor of Laws (LLB), available on file at Innovative Lawyering.

[75] See the earlier discussion on the role of Parliament in debate and approval of the budget tabled by the Finance Minister, and also the role of Parliament in the Committees created under the Constituencies Development Fund Act.

[76] The original Bill introduced by Mr. Oloo Aringo (Nominated MP, NARC - LDP) was known as the Fiscal Management Bill 2006. The Fiscal Management Bill, 2007 is slightly different from the Fiscal Management Bill, 2006 in that: first, it renames the Fiscal Analysis and Appropriations Committee as the Budget Committee; second, it introduces two new definitions – "Impounding" and "Department," and also

effective regulation and oversight of the national budget process and the establishment of the office of Fiscal Analysis and a concomitant Budget Committee to revitalize the involvement and participation of the National Assembly, its committees and its members in the formulation and regulation of the national budget.

Parliament has also reviewed its standing orders[77] to create a more efficient House Committee system, especially with regard to budgetary approval processes. In August 22, 2008, members of parliament approved amendments to standing orders expected to make the House more responsive to the new Grand Coalition Government system. With regard to budgeting, budgetary proposals for various government ministries would not be passed unscrutinized as was the case then. Instead, Cabinet Ministers concerned would appear before the relevant Parliamentary Committees to explain how the money would be spent.[78]

For better access to budget information by civil society and academia, the Official Secrets Act should be repealed and a Freedom of Information law enacted. Currently, the Government has indicated its willingness to repeal the Official Secrets Act and enact the Freedom of Information Bill into law.

Secondly the budgeting process must be further decentralized to provincial and district levels so as to move the process closer to CSOs, academics and the citizens at the grassroots, in order to foster participation. This reform is tied to wider constitutional reforms, especially on decentralization of Government.

There is need for policy review of the budgeting processes at the Treasury. Government, in collaboration with stakeholders, must shed light into the budgetary process by formulating and disseminating guidelines on participation in the budgeting process. Treasury should improve its level of engagement with CSOs and academics by calling for budget proposals from them, inviting them to deliberate over these budget proposals, and incorporating their proposals into the final budget.[79]

enacts sanctions for departments that materially fail to implement audit recommendations or wilfully and persistently fail to comply with the provisions of the Act.

[77] Standing Order 147 and 148 which provide for the House PAC and PIC to interrogate CAG's audit reports are some of the provisions needing reforms.

[78] See Peter Opiyo (2008) "Radical proposals to amend House Standing Orders," *The Standard* newspaper (Nairobi) Friday August 22, 2008.

[79] See USAID's report on Parliamentary Strengthening, which I have discussed earlier in this paper. The report evaluates the level of incorporation of stakeholder views in the Finance Bill.

The government should strengthen its Public - Private Partnerships (PPP) policy by promoting and facilitating capacity-building among key stakeholders in the budgeting process. Capacity-building should involve training on budget analysis, advocacy, and reporting. This will improve their participation in the formulation, debate and monitoring and evaluation of budget implementation.

Finally, Treasury should assist in dissemination of budget information. This involves simplifying data for easier appreciation and use by stakeholders. For example, the budget tabled before Parliament usually consists of more than 1000 pages. These should be an abridged version that underscores the main highlights of the budget.

Conclusion

Budgets and budget processes are important in the economic, political, cultural and constitutional development process of Kenya. Yet during the regime of Jomo Kenyatta, Daniel Arap Moi and Mwai Kibaki respectively, budgets and budget processes have historically focused on the interests of economically, politically and intellectually powerful groups. These groups have also been ethnically affiliated to the President and the powerful cliques around the President. There has been a struggle to make the budget inclusive in content and process, through participation. Academics and civil society organizations and activists have increasingly staked a claim, in spite of serious challenges.

The reform proposals outlined in this paper are important to realize equity in the content of the budget as well as participation in budgeting in Kenya. Civil society and academia must seize the current constitutional review debate and the general quest for reform directed at the Grand Coalition Government to advocate for greater reforms that will entrench further participatory policymaking and budgeting in Kenya. This will forge a powerful partnership between the state and key stakeholders like CSOs, academia, the private sector and the citizens generally in addressing and giving priority to problems that continue to plague the development agenda in Kenya.

References

Antonio Gramci (1971) *Selections from the Prison Notebooks,* International Publishers, New York.

Antonio Gramsi (1991) *Selections from Cultural Writings*, Harvard University Press, Cambridge, Massachusetts.

Antonio Gramsi (1977) *Selections from Political Writings 1910 – 1920,* International Publishers, New York.

Anyang' Nyong'o, Peter (2005) "Planning for policy making and implementation in Kenya: problems and prospects," in Florence Etta and Laurent Elder (eds) *At the Crossroads: ICT Policy Making in East Africa*, East Africa Educational Publishers, Nairobi.

Anyang' Nyong'o, Peter (2007) *A Leap into the Future: A Vision for Kenya's Socio-political and Economic Transformation,* African Research and Resource Forum (ARRF), Nairobi.

Anyangu, Susan (2008) "Minister unveils Shs. 10 billion CDF kitty," *The Standard* newspaper (Nairobi), September 17, 2008.

Barkan, Joel D. with Michael Chege (1989) *Decentralising the State: District Focus and the politics of reallocation in Kenya*, 27 Journal of Modern African Studies 431, and pp. 431 – 453.

Cabannes, Yves (2004) "Participatory budgeting: a significant contribution to participatory democracy," *Environment and Urbanization* 16, no. 1, April 2004.

Etta, Florence (2005) "Policy Making: the new development el dorado" in Florence Etta and Laurent Elder (Eds) *At the Crossroads: ICT Policy Making in East Africa*, East Africa Educational Publishers, Nairobi.

Fölscher, Alta, Warren Krafchik and Isaac Shapiro (2000) *Transparency and participation in the budget process: South Africa – A Country Report*, Institute for Democracy in South Africa, available at http://www.idasa.org.za/final/publications/bis_transparency_full.htm.

Gerth, H.H. and C. Wright Mills(eds) (1946) "From Max Weber: Essays in Sociology" Oxford University Press, Oxford New York.

Ikiara, Gerrishon, Carolyn Abongo and Walter Eberlei (2001) *PRSP Institutionalization Study: Institutionalizing the PRSP Approach in Kenya,* under the auspices of Strategic Partnerships with Africa.

Institute of Policy Analysis and Research (IPAR) (2004) *Budgetary Process in Kenya: Enhancement of its Public Accountability*, Policy Brief, Volume 10, Issue 1, 2004.

Juma, Calestous and Bernard Sihanya (1992) *Public Policy Making in Kenya: Challenges and Options for Institutional Reform,* African Centre for Technology Studies, Nairobi.

Kamenka, Eugene (ed) (1983) "The Portable Karl Marx," Penguin Books USA Inc, New York.

Kenya Institute of Public Policy Research and Analysis (KIPPRA) (2004), *Budget Mechanisms and Public Expenditure tracking in Kenya,* Discussion Paper No. 37, June 2004.

Krafchik, Warren (undated) *Can Civil Society Add Value To Budget Decision-Making? A Description of Civil Society Budget Work*, International Budget Project, available at www.internationalbudgetproject.org (last accessed on 5/10/08).

McLean, Iain (1996) "Oxford Concise Dictionary of Politics" Oxford University Press, Oxford New York.

Mwangi S. Kimenyi (2005) *Efficiency and efficacy of Kenya's Constituencies Development Fund: Theory and Evidence*, Economics Working Papers, Department of Economics, University of Connecticut, available at www.digitalcommons.uconn.edu/econ_wpapers/200542 (last accessed on 17/10/08).

Mwenda, Albert K. and Mary N. Gachocho (2004) *Budget Transparency: Kenyan Perspective*, Institute of Economic Affairs (IEA) Research Paper Series No. 4, IEA, Nairobi, available at www.ieakenya.or.ke (last accessed on 8/9/08).

Mutunga, Willy (1999) "Constitution - Making from the Middle: Civil Society and Transition Politics in Kenya, 1992 – 1997," SAREAT, Kenya.

Newbold, Charles (1969) "Judges as policy makers," *Eastern Africa Law Review 1*.

Nyamu, Celestine Musembi and Samuel Musyoki (2004) "Kenyan civil society perspectives on rights, rights-based approaches to development, and participation," Institute of Development Studies (IDS), Brighton, Sussex, England, available at www.**ids**.ac.uk/**ids**/bookshop/wp/wp235.pdf (last accessed on 14/10/08)

Onalo, P.L. Agweli (2003) "An African Appraisal: Constitution - making in Kenya," Transafrica Press, Nairobi.

Opiyo, Peter (2008) "Radical proposals to amend House Standing Orders," *The Standard* newspaper (Nairobi) Friday August 22, 2008.

Ramkumar, Vivek and Sowmya Kidambi (undated) *"Twataka pesa zetu (we want our money): a public budget hearing in Kenya,"* available at www.internationalbudget.org/resources/library/HearingKenya.pdf (last accessed on 14/10/08).

Sang Kipyego Stephen (2008) Historical Injustices in the Public Service in Kenya: Ethnicity in Public Service Appointments" Dissertation submitted to the University of Nairobi in partial fulfilment of the degree of Bachelor of Laws (LLB), available on file at Innovative Lawyering.

Shultz, J. (2002) "Promises to Keep: Using Budgets as a Tool to Advance Economic, Social and Cultural Rights," Reflections and strategies based on a three-day dialogue between international human rights and budget activists, convened by the Mexico City office of the Ford Foundation and FUNDAR-Center for Analysis and Research, in Cuernavaca, Mexico, 2002. Mexico City, Fundar.

Sihanya, Ben (2008) "The IMF and Policymaking in Kenya," in Ben Sihanya, (ed) *The Impact of IMF Policies on Education, Health and Women's Rights in Kenya,* a study commissioned and published by ActionAid International Kenya, Nairobi.

Sihanya, Ben (2008) "How IMF policies constrain policy space in Kenya's health sector," in Ben Sihanya, (ed) *The Impact of IMF Policies on Education, Health and Women's Rights in Kenya,* a study commissioned and published by ActionAid International Kenya, Nairobi.

Sihanya, Ben (2008) "How IMF policies constrain policy space in Kenya's education sector," in Ben Sihanya, (ed) *The Impact of IMF Policies on Education, Health and Women's Rights in Kenya,* a study commissioned and published by ActionAid International Kenya, Nairobi.

Trubek, David M. and Alvaro Santos (2006) "Introduction: the third moment in law and development theory and the emergence of a new critical practice," David Trubek and Alvaro Santos (eds), *The New Law and Economic Development: A Critical Appraisal*, Cambridge University Press.

United Nations Development Programme (UNDP) (2006) "Applying a human rights - based approach to development cooperation and programming," available at www.hurilink.org/tools/Applying_a_HR_approach_to_UNDP_Technical_Cooperation--unr_revision.pdf (last accessed on 14/10/08).

USAID (2006) "Parliamentary Strengthening Programme annual report."The Parliamentary Strengthening Programme is implemented by State University of New York (SUNY) Kenya.

Williams, Adebayo in (2000) "Intellectuals and governance" in Goran Hyden, H.W.O. Okoth Ogendo & Dele Olowu (eds) African Perspectives on Governance African World Press, Inc., Trenton, NJ, & Asmara, Eritrea, q.v. 295-318.

SECTION II

CIVIL SOCIETY IN AFRICA: A COMPARATIVE ANALYSIS

CHAPTER SIX

UNIVERSITY STUDENTS AND CIVIL SOCIETY IN NIGERIA

Okello Oculi

Introduction

The African roots of "civil society" lie deep in rural community technologies of social engineering. Institutions ranging from clan, age-groups, craft groups to more political organs, like the "*imbatarav*" group among the Tiv in Nigeria. The "imbatarav" consist of a group of youths in a community charged with the responsibility for punishing, by public shaming, elders whose personal activities cause harm to the local community. In the economic sphere, groups of women that undertake co-operative saving scheme to raise capital for each member on a rotational basis, have their counterpart in groups of men clearing each others' farms, also on a rotational basis, with collective labour. The ethos of communalism in the sphere of work, and its spill over into the sharing of products of labour, found resonance in Nyerere's concept of *ujamaa* and JomoKenyatta's haraambe. These matters tend to be ignored in the literature that celebrates the role of "civil society" as a post-cold War dividend. Bangura rebukes what he regards as "parochial orientation ….which tend to limit discussion of civil society to Organized secular groups in urban settings" (Bangura 2001:250). The ActionAid office in Nigeria lavishes praise on the sector even while ignoring the low priority given to them in discourses on the quest for democracy, transparency and accountability:

> The primary concern of these organizations is the economic empowerment of their members, developing and encouraging income-generating activities or undertaking development and welfare activities on behalf of their members and the community at large. Therefore, it is suggested that those organizations are strong, popular, and have a legitimate consciousness of the people and can thus become the source of societal renewal in contemporary Nigeria". (ActionAid: 2007:29.)

In the area of liberation armed struggle in Angola, Namibia, Mozambique and Zimbabwe, the tremendous achievement and triumph of strategies anchored on training the political and military awareness of predominantly illiterate peasant, and creating

social power that would defeat highly trained and mechanized colonial armies, has become a significant contribution to liberal political thought in Europe and North America (Sachikonye: 2001:48). The influence of writings by Amilcar Cabral and Samora Machel, who in turn had built on the writings of Mao Zedong (in China), Che Guevara (in Cuba) and General Giap (in Vietnam), forced themselves into the consciousness of intellectuals who were most likely not ideological supporters of liberation and revolutionary armed struggle in Asia, Africa, the Caribbean and South America. (Cabral 1973).

This paper will explore the possible influence of these two traditions of civil society in Nigerians affairs. While much attention has been given to the role of communal civil society in influencing the role of Aba women in Nigeria's anti-colonial protests, little attention has been given to the possible influence of ideas associated with grassroots-based liberation social technology in the activities of civil society in Nigeria. This is so despite the open association of civil society with "furtherance of a common good"; protest against externally imposed economic reforms that are experienced to be destructive of the common good; and with holding state officials accountable as if in competition or supplementation of the role of parliaments in conventional political theory discourses. (Osahgae:1997).Furthermore, the emphasis put on *empowerment, democratization* and *participation* as valued promises that post-Cold War civil society activities are said to hold, as reported by Bangura, are already deeply embedded in tradition-anchored communal self –help and community welfare and progress organizations.(Bangura:ibid).

Forms of Civil Society Activities

The post-cold War liberal enthusiasm for the role of civil society in governance sees in its historical record the defense and promotion of individual freedom by keeping the intrusive economic and political power of the state at bay. There are echoes of the John Lockean call for the new industrial and commercial classes to throw away the greedy shackles of legislation and taxes by the English monarchy. The echoes assume a heroic political and economic form in the war by the 13 American colonies for independence from inhibitive and extractive measures that saved British interest at the expense of the new American bourgeoisie. In the era of the post-Cold War thrust by "globalization", the villain in Africa is presented as the economic nationalism of the African state which sought to use the state to build development and, thereby,

ensure new economic and social progress to her people who, the intensive and relentless colonial exploitation had denied. The African state had created new tools for engaging in various economic activities; sometimes with the use of economic and legal pressures like the "nationalization" of enterprises owned by resident non-citizen groups and companies owned by absentee non-nationals. The ideological assault against this search for economic power by African political leaders has latched onto various levels of failed management of these economic initiatives to make its case in the name of economic efficiency, accountability and transparency. It also found company with protests against prolonged corruption-ridden military and single-party dictatorship. (Joseph: 1997:137-154).

In Nigeria, the "international community" which detested General Sani Abacha's hard-headed investment of funds derived from petrol tax into providing health care, rehabilitation of educational facilities, and reconstruction of dilapidated road networks all across the country; paying salaries of civil servant in neighbouring states including Niger and Sierra Leone, and funding armed termination of civil wars in Liberia and Sierra Leone, found ready allies in justifiably angry rejecters of the denial of Nigeria's presidency to Chief Moshood Abiola, winner of the country's 12th June, 1993 elections. This rejection was fuelled by a deft move by the Yoruba political class to return Abiola's blocked electoral mandate into an ethnic trophy which must be recovered. Failure to do so was to acquiesce to the nation that a Yoruba man would never be allowed, by the Hausa Fulani political block, to rule over Nigeria.(Ezeazu:2008). Although the "June 12"struggle was led by politicians, several professional lawyers, notably: Femi Falana and Beko Ransome Kuti, led vigorous, articulate and combative challenges by civil society. The emergence of a group of pro-democracy and human rights NGOs (including Citizens Forum for Constitutional Reform, League of Human Rights, Constitutional Rights Project, Committee for the Defence of Human Rights), expressed this energy. Their membership volume was known to be low and the military authorities were more worried about opposition from the much older, richer, larger pools of highly trained membership in professional associations, namely: the Nigerian Medical Association, the Nigerian Society of Engineers, the Nigerian Bar Association, the Nigerian Union of Journalists, and the Academic Staff Union of Universities. In the run-up to the introduction of structural Adjustment Policies in 1986, General Babangida's government sponsored rifts in the leadership and ranks of the Nigerian Bar Association, The Nigerian Medical Association and the Nigerian Labour Council.

These rifts became integrated in the anti-military struggles of students' union politics.

Their control of the local print media; the fact that the bulk of Nigeria's educated manpower came from the "Yoruba race" (as protested propaganda insisted on labelling the community), and the influence of Euro-American openly expressed rejection of General Abacha's rule, ran the risk of giving all quests for human rights and the rejection of military rule and ethnic Yoruba coloration. Abacha himself chose to play this card. His Minister of Information, Comrade Chukwumerije, himself an Igbo, dug up the punitive role that Chief Obafemi Awolowo, the icon of Yoruba political leadership, is perceived to have played against the Igloos during and after Nigeria's civil war. While Chukwumerije sought to distance Igbos who had massively voted for Abiola from continuing to support his fight for the presidency, Abacha sought to claim the status of a victim of Yoruba antagonism to the Hausa Fulani to which he belonged as an indigene of Kano State in the north.

Abacha was however, already too late in the political day. The previous military regimes of General Olesegun Obasanjo (1976-1979); Muhammadu Buhari (1983/4-1985) and Ibrahim Babangida (1985-1993), as well as the brutal rigging of the 1983 elections by the civilian regime of Shehu Shagari, had incited and driven a radicalized group of university graduates, drawn from angry students' union politics, into anti-military human rights protest politics. The period 1976 to 1993 had been characterized by a tripod of centres of Marxist academic radicalism. At Ahmadu Bello University's Kano and Zaria campuses, there were: Patrick Wilmot, Wang Metuge and the politically militant historian Yusuf Bala Usman; at the University of Jos there was Onoge; at the University of Ife was the historian Segun Osoba; at the University of Ibadan was Comrade Ola Oni; at the University of Nigeria there were Ikene Nzimiro and Okwodiba Nnoli, at the University of Port Harcourt there was Claude Ake, and Eskor Toyo at the University of Calabar. Segun Osoba and Bala Usman had gained national visibility as the joint authors of the socialist "Minority Report" of the 1979 draft constitution that was submitted by an assemblage of lawyers, intellectuals and politicians to General Obasanjo's military government. The use by these radical academics of public rallies on university campuses to critique and denounce Nigeria's neo-colonial economy and growing corrupt political and economic governance, aroused a generation of radicalized students.

One group that nimbly, but tenaciously and vigorously, grafted their concerns into the agenda of radical politics of lecturers in the Facility of Arts and Social Science at the Ahmadu Bello, were post-graduate students and researchers who teamed up with Ayesha Imam and Hauwa Mahdi. Benefiting from the pro-participation of women in politics (as voters and candidates to be voted for), of Mallam Aminu Kano – the ideological and political fountain of the People's Redemption Party. (a successor of the Northern Elements Progressive Union of late pre-colonial and early post colonial Nigerian politics in Northern Nigeria) – this group of women grafted their interest in "*women's mainstreaming and women empowerment*" onto the radical socialist intellectual debate that swirled around Yusuf Bala Usman. This joint-gender political and intellectual process gave birth to Women in Nigeria (WIN). It was, therefore, not surprising that WIN would locate the "*women question*" firmly at the centre of the neo-colonial structure of Nigeria combined with feudal forms of exploitation and inhibition of Nigeria's development. That WIN won rapid national visibility is reported by Nwabara, thus:

> "During the political debate conducted earlier on this year, women in (WIN) were asked to organize a political debate to ascertain the wishes of women in the country. While it was not possible to involve all women in the debate, over 4,000 women of all classes, ethnic groups, ages, religious affiliations, etc., participated in the debate. These debates were carried out in different states in which WIN had branches." (Wabara: 1987:52).

The importance of research in the ancestry of WIN came to be reflected in the issues it focused on, including: unearthing the fact that Nigeria had ratified CEDAW (Convention for the Elimination of Discrimination Against Women), in 1984 but had not "practiced it in law, policy and administration". WIN called for the reduction of high stall charges that market women are made to pay so that women can earn higher interest since "studies have shown "that they' make very small interest for the time they expend in trading". (Wabara: *ibid)*.

Ezeazu stated that, in the heat of the struggle for Abiola's mandate, a group of them took the decision to move out of Lagos and export the struggle for human rights to the northern part of the country. They were driven by the "fear that human rights campaign would take ethnic character. Student union activists had now entered a charity-based organization but with a new orientation; that is, challenging the interminable transition of IBB (Ibrahim Badamasi Babangidda), calling for a stop". (Ezeazu: 2008). In 1994,

Festus Okoye located to Kaduna and started "Human Rights Monitor" as a human rights non-governmental organization. Nankin Bagudu established "League of Human Rights" in Jos, having been fired by Civil Liberties Organization (CLO), to also establish branches outside of Lagos; its home base as an organization for lending legal support to prison inmates.

Ezeazu and his colleagues had not only moved to subvert Abacha's strategy to project "human rights as an ideology of the southern elite to take over power" from northerners; but to "use the real struggles of the northern people to discover real issues on the ground"; so that, in talking about human rights violations, they would be "speaking what people knew and felt" in their lives. This trip to the "grassroots" was also a major transition because, as Kole Shetima put it, their earlier urban-elite campaigns of "naming and shaming" corrupt officials and violators of human rights had been less taxing:

> "That was an easier task because of alliance with media and the international Community being on your side didn't require a lot of grassroots organization". (Shetima: 2008)'

There are clear echoes here of their falling back to the type of radical literature that would have described the strategy for raising consciousness and recruiting militants for liberation movements (from Angola to Cuba), as reported by MPLA's leaders and in Che Guevara's work, *Reminiscences* that was based on Fidel Castro's revolution.

As an illustration of this process, Clement Wassah (of Community Action for Popular Participation, CAPP, and one of the first migrants out of Lagos to Abuja), discussed the project for transforming the condition of education for girls in the North. UNICEF would see the problem as: (1) girl attendance being reduced by girls not having toilet facilities at school, and (2) lack of chairs to sit on inside classrooms or under tree shade. UNICEF would award contracts to local officials who would be immediate relations of the Emir. The Minister of Education and the elected representatives from the area would most likely also be blood relations of the Emir and, therefore, not likely to provide solutions that would challenge the status quo. That status quo would prescribe pulling girls out of school at Primary 4 level. Girls who reach this educational level would either be driven into marriage by being jeered at peers for wanting to go on with higher education, or fall to being victims of forced marriages.

The alternative radical perception of the problem by CAPP includes: (1) the community is ruled by relations of the Emir brought in from another community; (2) claims by

local religious leaders that the Koran "does not allow you to investigate your leaders' misappropriation of funds ". CAPPs proposed solutions would be: (1) to "organize local people into clubs and organize talks that gradually open their minds"; (2) get alternative religious leaders (or *Mallams)* "that will get them to ask questions about their conditions", and (3) arouse desire in people to "now want to have their own people" as their local rulers, (Wassah: 2008). We are here in contact with social transformers.

Student unionism taught several skills that fed the grassroots orientation and technology referred to above. Ene Obi reports that at the University of Jobs she had been part of a national students' movement "that used to exist in cells"; that put high value on the "search for knowledge and set up intelligence groups"; that did research and worked with high commitment as a "selfless team" not lured by money. The Nigerian Labour Congress (NLC) also served as an intermediate training ground for those who exited from radical student union politics. Both Obi and Ezeazu had had such stints. As Obi puts it: "in NLC, you have to be an activist". When she later joined ActionAid, her imbibed ability to mobilize people would enable her to launch and facilitate "*Mock Parliament For Child Survival"* sessions by rural people to raise participatory consciousness around issues of human rights, women's empowerment, and democratic party politics. She had adapted a "Mock Organization of African Utility Summit" initiated and facilitated by Okello Oculi at Ahmadu Bello University and presented as an outreach event to audiences at the University of Jos where she was a student activist. She had, while working at ActionAid, applied latent skills "for designing, implementing and evaluating a program". (Obi: 2008).

Anti-Statist Politics

The gunning down of students by the police in 1978 (during demonstrations against the withdrawal of state funding of feeding and accommodation costs in residential dormitories on Nigeria's federal-government owned university campuses), marked the first moments of conflicts between the national students' movement and successive military regimes and their enforcement of "Structural Adjustment Policies". The "ALI-MUST-GO" chant (a call for General Obasanjo to dismiss his minister of education, Colonel Ahmadu Ali:, marked the start of a culture of "struggle against the state"; economic policies associated with anti-people military dictatorships, and a growing capacity by student leaders to organize resistance campaigns including travelling long

distances in cat-and-mouse ploys to out-wit state security operatives. This struggle against the Nigerian state over the sharing of oil revenues, at the general level, would feed into raising the consciousness of student leaders in the oil-producing Niger Delta states. The ploy of general Babangida's military regime to shut down the agitation-based power of the National Association of Nigerian Students, NANS, opened the way for students to channel their anger into other political associations including the National Democratic Coalition (NADECO), Civil Liberties Organization (CLO), Committee for the Defense of Human Rights (CDHR), Constitutional Rights Project (CRP), Women in Nigeria (WIN), the Nigerian Labour Congress (NLC) and others. More significantly, it opened gates to ethnic-focused protests. Here, too, the ploy by the military as a patriotic institution (consequent to its adoption of externally-imposed anti people "economic reform" policies), by inciting ethnic conflicts, further fuelled and militarized ethnic-based politics in the Niger Delta.

It could be plausibly argued that the failure of the Shagari government to reward the ethnic minority in the Niger Delta who voted for him and titled the electoral balance in his favour in the 1979 presidential elections, as well as his government's brutal rigging of the 1983 elections, fuelled protests across Nigeria against what was increasingly presented by critics as domination by the "Hausa-Fulani" ethno-religious elite. This perception was also fuelled by the 1983/84 midnight military coup and the August 1985 counter-coup. The failed coup of 1990 whose broadcast to the nation expelled the predominantly Hausa-Fulani states out of Nigeria, pending their application for re-admission, in rejection of their monopoly of political and military power, deepened the militarization of armed ethnic calls for economic and political self-determination. Claude Ake welcomed the military regime's call in 1990 for the convening of a "National Conference" to debate the power question in Nigeria, thus:

> "…national conference is a good place to begin. It is a particularly effective way of *mobilizing practically everyone into the vortex of politics* and initiating the *idea of everyone as leaders* which we propose here. More importantly, a national conference will break up the rigidities of the existing power structure and institutions, bringing more social forces into relevance…"(Momoh: 2003: 174, emphasis added).

Claude Ake was an influential radical academic from the Niger Delta. His views would echo among the emerging "Movement for the Survival of Ogoni People (MOSOP)"

and the "Ijaw Ethnic Nationality Rights Protection Organization of Nigeria". Ken Saro Wiwa, the leader of MOSOP had been active in sending students to study abroad on government scholarships. They returned as foot soldiers for his politics of challenging the perceived collusion between the Nigerian state and foreign oil companies in the exploitation of oil resources and destruction of agricultural land and fishing resources in the Niger Delta. Saro Wiwa even offered the prospect of Ogoniland becoming another oil-rich 'Kuwait' totally separated from the Nigerian federation. It has been observed that the rash decision by the Abacha regime to execute him, together with the "Ogoni 9", would push forward civil society's protests over state neglect; repression of victim communities and severely unbalanced sharing of oil revenues, into becoming increasingly armed challenges.

Engagement with the State

Student leaders had, while on campus, acquired skills and orientations for tenaciously canvassing for votes, making political campaign alliances, negotiating with university officials over policy issues and access to resources for themselves and for their constituencies. Those of them that passed through apprenticeship with the Nigerian Labour Congress, also acquired skills for mobilizing workers for combat negotiations with employers, branches of unions, and the state. The insistence on "*continuity and consistency",* as well as, "*creativity in the way you do engagement with government officials",* that Stella Amadi was urging in a recent workshop held in Abuja for civil society organizations, were likely to have been imbibed from these routes of socialization. Another scholar attributes the success of Civil Society Legislative Advocacy Centre (CISLAC) to the high priority that its staff gives to patient and persistent tracking of project proposals and policy initiatives down long and convoluted labyrinths of offices of executive and legislative bureaucrats. Rafsanjani, himself s graduate from student movements politics, laments against the tendency of most NGOs to put heavy reliance on "one-off'" correspondence, or physical contact, with such institutions.

CISLAC, the Centre for Democracy and Development (CDD), ActionAid, and Alliance for Credible Elections are among the top ranking NGOs in Nigeria whose "skills and competence (are) increasing not only at the level of engagement with the government but also at the level of ordinary people" (Ezeazu: 2007: 6). A correspondence from the National Commission for Refugees to CISLAC illustrates this point with bold relief:

> "…the Commission has prepared a Zero Draft Bill reflecting the additional responsibility and desire to enhance its position and hereby seeks to collaborate with the Civil Society Legislative Advocacy Centre (CISLAC) to raise awareness, gather support within the Civil Society and to closely ensure and facilitate the passage/enactment of the Commission's Bill"

> The collaboration is being sought based on CISLAC track record in the passage of Debt Management Office's Fiscal Responsibility Act, Due Process Office's Public Procurement Act and the Nigeria Industrial Transparence Initiative Act respectively." (NCR: 2008: 1-2).

CDD organized a "CDD Dialogue Series" to ensure that they "talk to policy makers: talk to people who have access to policy makers and can influence policy makers"; and underline the notion that "ideas come from good talk" with policy makers and other "stakeholders". On May 22, 2008, CDD hosted a workshop by "Global Call to Action Against Poverty" involving representatives of a network of over 750 trade unions, CBOs, FBOs, INGOs, and International Development Partners. Top Officials from the Ministry of National Planning, the Millennium Development Goals Office, shared presentations with papers (commission by CDD on strategies for Nigeria's economic development), by a former Deputy Governor of the Central Bank (Obadia Mailafia); a former Economic Advisor to the Vice President (Professor Ode Ojowu), and a former Economic Advisor to the Vice President (Professor Mike Kwanashie). (CDD: 2008). A communiqué issued by GCAP, at a follow-up workshop, reflected the determination of these civil society organizations to achieve effective dialogue within the policy arena:

> Driven by the conviction that Nigeria can meet and exceed the MDGs,
>
> GCAP Nigeria, otherwise known as "Make Our Money Work for Us',
>
> Campaign continues to mobilize public pressure on government at all
>
> levels in Nigeria and the international community to fulfill their Promises to meet the MDGs by 2015". (CDD: 2008: 1).

Jibrin Ibrahim, CDD's Chief Executive, himself a graduate from student union politics, emphasized the physical endurance, length of time, and mental tenacity it makes to travel to government offices; book appointments, and achieve actual face-to-face meetings with top government officials; including directors and ministers. Amadi notes that government officials assume "that they are doing CSOs a favour" by attending workshops and dialogue sessions arranged by civil society. Moreover, as Kwanashie asked, rhetorically: "what do we mean by *dialogue"* when government

officials regard themselves as "*Kabiyesi*", a cultural Yoruba reference to '*the man who cannot be questioned'*.

Reverend Mathew Kukah has emphasized the value of the learning experience he has personally derived from being appointed by government to the membership of several investigation panels and commissions set up by the government to investigate national crises. Jirbrin Ibrahim was appointed by Yar'Adua's government as a member of a commission to learn from experiences the Nigeria's past elections (particularly the highly contested 2003 and 2007 elections), and propose corrective measures. The Commission is headed by Justice Uwais, a former Chief Justice of Nigeria, and was due to submit its report by December 2008. Jibrin Ibrahim and John Idah, Administrative Secretary of the Nigerian Labour Congress, owe their appointments to the high visibility they acquired nationwide as civil society advocates for "credible elections". In the run up to the 2003 elections, Jibrin Ibrahim, as former Country Director of Global Rights, had organized and funded the use of community drama at local markets and community centres in several states, to train voters against election malpractices; including: violence, bribery of voters and election officials, and the intimidation of women voters by their husbands.

Global Rights partnered with IFES and IDASA, with funding by DFID, to undertake "The Electoral Geography Project to "evolve measures to improve the chances of organizing credible elections in 2007". Among these measures were "holistic review of the 1999 Constitution" to address the thorny issue of ensuring the independence and impartiality of officials of the Independent National Election Commission, INEC. Specifically they sought to ensure that INEC gains effective measure of independence from the executive and the ruling political party, by obtaining its statutory funds directly from the Consolidated Revenue Fund; and that qualification for membership of INEC does not include being a member of a political party.

They also sought to train orientation and capacity of voters to "defend their votes", and the replacement of the "majoritarian first-past-the-post system with a combination of proportional and two rounds electoral systems". (An Electoral Reform Network Publication: 2004: 7-8). Predictably, much frustration was to follow from the conclusion that all these efforts were in vain because INEC and the ruling People's Democratic Party had "captured" the April 2007 elections. CDD, in alliance with other NGO's built around the search for free and fair elections, launched a combination of vigorous

efforts to undermine the legitimacy of the election results as announced by INEC; denounce the legitimacy of, and insist on the criminality of, Professor Maurice Iwu, the boss of INEC; and build public pressure on the judiciary for the reversal of election results at all levels by election tribunals. A member of that coalition was ruthless in attacking Iwu:

> "…Iwu is very, very cowardly. He is unable to stand up to the authority, he is unable to voice out the truth, and he is unable to take a stand on the part of truth before raving power ….. We held elections with ballot papers without serial numbers ….He completely destroyed the legitimacy of the electoral process…One is compelled to ask whether he has any moral basis to hold any post in a public institution." (Ezeazu: 2008: 32).

While CDD has sought to compete with government at the level of intellectual input into the policy process (by commissioning and putting into the public arena policy visions prepared by alternative and highly credible experts that may have been dropped by government because they hold dissenting policy options), ACE-Nigeria has sought to compete for an effective share of legitimacy with public opinion. Its Secretary General stated, in an interview granted to *The Nation* newspaper, that their memorandum to be submitted to the election review Commission would be based on very broad consultation:

> "…we are holding consultations nationwide to harvest from different and strategic organized groups in the society, we want to harvest ideas from the media and journalists, we want to harvest ideas from religious leaders, we have held meetings with CAN (Christian Association of Nigeria), we have also met with the Supreme Council for Islamic Affairs (NSCIA), we would be meeting with the Organized Private Sector, we will be meeting with members of the judiciary too. Our own is to harvest ideas". (Ezeazu: 2008: 32)

There are hints here of sending notice to government officials that this is one civil society group that has climbed out of precincts of primary school when it comes to discourses over the direction of good governance in Nigeria, and must be treated with appropriate respect in government corridors.

It is not clear that much creativity and articulation of novel frontiers of thought is being put by civil society into the arena of public imagination and policy. Mwalimu Nyerere had once come up with a novel electoral system for ensuring that democratic politics took place within a consensus one-party situation. Faced with the fact that if Britain's

electoral formula of a duly nominated candidate being declared elected if no other candidate is presented by another party within the stipulated time, TANU's universal support was ensuring that voters were being denied the opportunity and experience of being addressed at campaign rallies and casting their votes after due consideration of policy views presented to them by competing candidates. Nyerere's "democratic one party system of conducting elections was a creative moment of social and political engineering.

Such innovation may be resisted by donors who fund civil society. Wheeler reports its record in the history of European art:

> "At a time when the human body was portrayed in idealized from, Rodin was willing to model the pot bellies of the middle-aged, the emaciated limbs of the poor, and passions previously not displayed in public monuments. While the French Impressionists were freeing color from form, Rodin was liberating human emotions". (Wheeler: 1999:B2)

As Nyerere also once noted, part of the responsibility that goes with political independence is the dignified burden of thinking for our societies. Civil society in Nigeria is yet to effectively bear this burden by transcending paradigm either voluntarily adopted or tied to funding support from Euro-American donors.

Blows by the State

The exhortation by Stella Amadi that civil society organizations should "do advocacy that is evidence based: based on field observations; civil society need to the field", is an admission of severe decline in the quality of students that universities are sending out for civil society to draw from. The generation of the morally-charged student union militant selflessly working for "the revolution", has been depleted. At the workshop that Amadi was addressing, were representatives of civil society groups that were being funded by the World Bank to promote accountability and transparency; and to fight corruption through conducting "budget-tracking" research, and mobilizing local communities behind the process and its goals. (Amadi: 2008). Comments on reports by various State teams included: failure to use Accountant General's Report; the Auditor General's Report, as part of failure to "emphasize data collection". The Kaduna State team, for example, had only produced flyers about the exercise in Hausa and English; undertaken "project identification trips"; "paid visits to Traditional Rulers"; and sensitized "communities on critical needs to be *incorporated into the*

2009 budget". A team member from Kwara State expressed alarm over the incidence of "politicians giving money to their relations to form NGOs to be hostile to (budget tracking) NGO's". The expected flare in the militant for a fight against enemies of change, and for social transformation, seemed lacking. Desperate levels of poverty in local communities makes them vulnerable to cynical politicians who may turn the table against anti-corruption crusaders by pointing out how better fed and clothed civil society are. No strategies for counter-mobilization were proposed.

Ene Obi blames the fall in public spiritedness among the second-generation of civil society activists to the erosion of income as a result of the withdrawal of "subsidies" for education and   other social services by the state since 1986. The lack of jobs, let alone high-paying jobs, has made civil society work more lucrative if projects are funded by donors. The decline in the standard of living by university teachers, from the early 1980s, drove many into migration either out of teaching or Nigeria. This coupled with loss of access to current journals and high quality academic texts, radical or not, dried up the pool of both radical and effectively literate students. Military regimes, fearful of radicalized university campuses had adopted defensive measures like promoting violence secret cult groups that used guns to maim and slaughter, members of rival cults. Ethnic conflicts in communities often drew their instigation from within such secret-cult campus groups.

The Grassroots Revisited

Even while they had their umbilical cord tied to radical teachers in the country's regionally dispersed universities, students "revolutionaries" still failed to turn to rural communities as sources of guerrilla fighters for conducting liberation armed struggle the way Fidel Castro, the MPLA in Angola, Ho Chi Mihn in Vietnam and others had done. Paradoxically, even as Rima Shawulu has noted, "Unending economic crisis which has produced an army of the unemployed nationwide, making people to live on politics", civil society has continued to sit outside the option of fighting for fundamental politico-economic revolution. Civil society leaders have continued to work within the perspective of token "poverty alleviation programmes "that has been put and sustained on their intellectual agenda by "donors". Under the recent intensive scholarly initiative taken by CDD in the policy arena, civil society hovers outside the gates of offering fundamentally creative research-based economic and socio-political architectural design for the reconstruction of Nigeria.

The Obasanjo administration (1999-2007) sought to borrow from Malaysia's model for reforming and dragging Nigeria into developmental capitalism. The struggle for control of the reigns of power to drive along that uncharted governance road, however, found civil society leaders trapped in fighting for "civil rights" and against the misuse of state power to deny the electorate the right to determine who would rule them after April 2007. Civil society had remained rooted on the vision platform constructed by the international Community, and the social class that Barrington Moore had seen as potential reflexive forces of fascism if given the opportunity to recover from the fright of loosing economic and political power as victims of a successful bourgeois revolution similar to the neo- Meiji reform that had pulled Japan out of feudalism ...the model the Malaysians had adopted. Petras has also asserted that:

> In the past, particularly in the third world , imperial ruling classes financed and supported overseas and domestic religious institutions to control exploited people and deflect their discontent into religious and communal rivalries and conflicts…a new social institution emerged that provides the…function of control and ideological mystification-the self-described non-governmental organization (NGOs). Today there are at least 50,000 NGOs in the Third World receiving over $10 billion in funding from international institutions, Euro - US Japanese governmental agencies and local governments. (Petras: 1999: 429).

The ideological and social engineering domain in Nigeria is a challenge that civil society organization must be wary of treating lackadaisically. The current protest against the continued domination of donors in dictating project priorities of CSOs that seek for funds from them is a healthy development. Civil society group, however, remains trapped in a situation in which politicians, at best, hold them at arm's length; at worst, as hostile enemy forces. Shettima notes their dilemma thus:

"Once the elections happened few had ties with political parties and political process to influence politicians. Politicians ask:' where is your constituency; how many votes can you rig?' They couldn't really have influence on our politicians. Their moral authority became less; different from when they were dealing with Abacha". (Shettima: 2008).

Weakened by the loss of quality human resources coming into its fold-a factor related to the rate of expansion that is rivalled by only those of the evangelical churches and their followers-Civil societies in Nigeria, never the less stand at the threshold of assuming the historic beauty of building communal democracy in Africa by re-integrating new post- cold war politics in Africa to ancient moral and social philosophical values and

architectural foundations severely attacked by colonial dictatorship and exploitation with protracted violence; and has come under new attack by individualism and privatization of the new socio-economic warfare tagged as "globalization" This matter was illustrated to me by interviews I conducted with rural communities in Osun, Abia and cross river States about governance at the Local government levels. In Arochukwu, for example, a community reported that officials elected to run projects funded by the community itself, as a general rule, maintained full accountability, transparency and high quality service. However, they felt that funds sent from the federal treasury, in far away Abuja, as statutory monthly allocation to their local government councils, was alien and stood outside the traditional moral authority of the community. At best they would expect to get some claim on such funds when, in the next election, it is their son that is elected as the chairman of the Local Government. Their own son would, by blood ties, be held accountable to welfare of the community.

> Civil society, working at raising consciousness of the local communities, would do well to follow in the footsteps of Africa's liberation movements which used to appeal to, and arouse *the power of the community welfare to undermine authority of colonial administrations*. CISLAC reports that participants at a workshop on transparency and corruption "*called for enablement of the community to help them hold their representatives accountable for any lapses*". (CISLAC: 2005:18, emphasis added). A strategy that focuses on *re-fuelling their communal moral and political sovereignty* which would help encircle politicians at local and far away urban capitals, would guarantee effective "enablement".

Conclusion

Nigeria's NGO sector of civil society owes its leadership to products of the nation's universities, especially to graduates produced before the structural adjustment "reforms" that struck from the mid- 1980s. The radical ideologies that flourished in the campuses in the mid-1970s played a major fertilizer role in their intellectual and political growth. The departure of top academic and the general decline of the educational sector at all levels, has also affected the effectiveness of civil society adversely. The focus on developing, and using on a national scale, skills for raising conscious grassroots demand for governance, offers a historic window for civil society to build democracy on the power of the local community moral and the sovereignty in a way that will return accountability in governance to pre-colonial dictatorship levels. The commitment of the NGOs, the enablement of the local communities to struggle

to ensure accountability by elected leaders would be well anchored on this power. Sachikonye has reported the following apt warning:

> "……a major challenge in transforming the African state into a developmental one is to go beyond merely its techno-bureau tic capacity and seek to embed such a developmental state within democratic social institution and governance framework….What Africa need is more good governance like that defined in narrow technocratic, functionalist terms meant to further the goals of an adjustment model… What Africa does not need is a system of democratic governance in which political actors have the space too freely and openly debate, negotiate and design an economic reform package that is integral to the construction of a new contract for ushering Africa into 21st century". (Sachikonye: 2001: 74)

References

ActionAid, *civil society in Nigeria contributing positive social change*, 2007.

An Electoral reform Network Publication, *Nigeria Electoral Geography and the path to free and fair elections*, Abuja, 2004.

Bangura, Yusuf, "New directions in state reform: Implication for civil society in Africa", in Bjorn Beckman et al., *civil society and authoritarianism in the Third World*, Stockholm university, 2001.

Cabral, Amilcar, *Return to the source: selected speeches Amilcar Cabral*, Edited by AFRICA Information Service, Monthly Review Press, 19973.

Casanova, Jose," Civil society,: Retrospective Reflections on Catholicism and Prospective Reflections on Islam, *Social Research*, vol.68 No 4, Winter 2001

Charles Baan, Pervasion of values, and Civic Actions Civic Society", NGO Network Vol. 6 No.2, April-July, 2008.

Civil society Legislative Advocacy centre (CISLAC), *Issues in public in public procurement in Nigeria*, Abuja, 2007.

-*Mainstreaming Transparency into the political process in Nigeria*, Abuja, 2007

Civil Society/ Government Policy Dialogue on poverty Reduction Strategy, GCAP *Demands for the governments*" Rockview Hotel, Abuja, May 22, 2008.

Diedhiou, Aipha, "The Stabilizing Role of Muslim Brothers in Senegal: The case of Mouridism", Democracy *and Development* Vol 5 No1.

Ene Obi Interviews at ActionAid offices, Abuja, 26 May, 2008.

Ezeazu, Emma, Interview, Abuja, June 13, 2008.

Government Civil Society Partnership: *A Three- Day Evaluation Workshop* on *the World Bank Supported Governance* Project 2-4 September, 20008, Chelsea Hotel, Abuja.

Hussaini Abdu, "Religion and citizenship in Northern Nigeria; the politics of Sharia*", Development and Democracy* Vol5 No1.

Joseph Richard, "Democratization under Military Rule and Repression in Nigeria", in Paul A. Beckett and Crawford M. Young (eds), *Dilemmas of Democracy in Nigeria*, University of Rochester Press, 1997.

Lukman, Salihu M*, Nigerian Civil Society Organizations: How well and How Right?"*

Momah Abubakar, Civil Society and Political and Federalism in Nigeria", in Aoron T. Gana& Samuel G. Egwu (eds*). Federalism in Africa: The imperatives of Democratic Development*, Africa World Press, Trenton & Asmara.

National Commission for Refugees, The Presidency Federal Secretariat, 18th March 2008, Maitama, Abuja.

- *The Changing Balance in State*- Labour *Society Relations: A Review of Selected Regimes in Africa, in Beckman et.al. op cit.*

Osaghae, Eghosa, "The Role of Civil Society in Consolidating Democracy: An African Comparative Perspective" , Africa Insight, Vol. 27, No.1, 1997.

Petras James, NGOS; In the service of Imperialism," Journal of Contemporary Asia, 1999,29,4 Academic Research Library 429.

Sachikonye, Lloyd M., "Democracy Sustainable and Poverty: Are they compatible?", in Development Policy Management Forum, *Proceedings of the Conference on Democracy, Sustainable Development and Poverty Reduction: Are They Compatible?" , 4-6 December, 2001, Addis Ababa*

Shetima Kole, Interview John D & Catherine McAthur Foundation Office, Interview, 7 May 2008.

Wabara, Comfort C., "Women in the Third Republic", *Nigeria Journal of Policy & Strategy,* Vol. 2 No.1, June 1987.

Wheeler, David C., "Notes from Academe", The *Chronicles of Higher Education,* March 5, 1999.

CIVIL SOCIETY AND TRANSITION POLITICS IN ETHIOPIA

Merera Gudina

Introduction

Since the change of regime in 1991 Ethiopia has been undergoing a major political metamorphosis, the main task being the democratization of state and society. The country's constitution not only recognizes the 1948 Universal Declaration of Human Rights, but also fully recognizes the right to association and expression. Furthermore, the importance of civil society institutions as pillars of democracy and democratic governance have been accepted by the architects of the Ethiopian democratization, which initially led to the mushrooming of civil society organizations across the country.

However, despite several elections and some attempts at the building of democratic institutions, because of the philosophy of 'revolutionary democracy', which is the ideological foundation of the new Ethiopian regime, the creation of independent democratic institutions including civil society organizations are accepted in theory while undermined in practice. In fact, currently the country's ruling-party is equating independent civil society organizations with political parties competing for power, and appears to put the same pressure on the former. Especially targeted are civil society organizations engaged in advocacy. Of late, the ruling-party has submitted to parliament a controversial draft law on "Charities and Societies", which some critics regard as passing 'a death sentence on the country's civil society organizations'.

This paper argues that the structural limits and opportunities given to civil society organizations have been organically linked to and reflective of the nature of the successive Ethiopian regimes in power. Accordingly, the paper traces the origin and evolution of civil society organizations to the last days of the imperial regime in the 1960s, and goes on to discuss the major challenges currently faced by civil society organizations in their attempts to contribute to democratic transition in the country.

The Creation and Evolution of the Ethiopian Empire

The modern empire state of Ethiopia was created through blood and fire in the second half of the 19th century. What emerged was an autocratic political culture of domination where civil and political rights were virtually unknown for generations to come and the inhabitants were considered subjects, not citizens.

While the 'nation-building' process had continued as the unfinished business of conquest with a far deeper institutionalization of the new system of political control as well as cultural and linguistic domination, simultaneously the introduction of European education and technology started by the first decade of the twentieth century. An appetite for European technology had begun earlier, but it was Menelik - the real creator of the Empire-state - who crafted it in a more feasible and tangible manner. The railway, bank, modern education, roads and bridges, international trade, a semblance of modern ministerial system; Addis Ababa as an emerging political and commercial centre of the new empire were all part of Menelik's modernization drive in the post-empire creation period. (See Bahru, 1991). The modernization drive was initiated partly to facilitate the "nation-building" project and partly to catch up with Christian Europe. The endless power struggle that followed the death of Menelik in 1913 that lasted until 1930 seriously affected the drive to modernize Ethiopia. It had the additional effect of exposing the country to the Italian invasion and subsequent defeat by the Italians in 1936.

Emperor Haile Selassie, who dominated the country's politics as a quasi-divine for more than half a century, started his career in 1916 as a modernizing prince and assumed absolute power in 1930 as king of kings. He introduced a written constitution in 1931 with a provision for a proto-type modern Parliament.

After his restoration to power in 1941 Haile Selassie's preoccupied himself with consolidating his power base by resuming his pre-war centralization drive. (See Greenfield, 1965; Bahru, 1992; Andargachew T. 1993). By using Machiavellian methods, he restructured a new government out of the ruins of the war. With the help of the British, who supported his restoration to power against mild local resistance, and later the Americans he embarked upon building a modern civilian and military bureaucracy (See Clapham, 1969; Markakis, 1974; Marcus, 1983) (2). As such modern institutions need a large class of educated elite; Haile Selassie initiated the building

of modern schools and sponsored hundreds of young men abroad to obtain foreign education. (Bahru, 1991 & 1992). He opened schools and military training centres, which produced the needed educated human resource that would be loyal to him as he embarked on ensuring that he had absolute power. But, the Emperor's 'modern state' was neither modern in the true sense of the word nor prepared to meet the growing demands of the nation desperately in need of radical societal transformation.

The traditional political elite felt threatened by the modern elite and were drawn into an endless competition and conflict with the modern elite. The result was endless intra elite struggles that have frustrated the twin goals of creating a democratic state with institutionalised democratic institutions, and meaningful development. Put differently, despite, some changes in the *modus operandi* of the state, the Ethiopian empire continue to rot under the heavy burden of an outdated autocracy in which political parties and modern civil society organizations were virtually non-existent until the end of the *ancien regime* in 1974.

The 1974 Revolutionary Upheaval and the Bloody Military Interlude

By the turn of 1970s both the failure of 'nation-building' project and the modernization drive had led to the rise of various opposition groups. The Eritrean movements including the proto-nationalism among the hitherto marginalized ethnic groups like the Oromos and Tigrayans had also begun to take some shape, albeit it's clandestine nature. The most affected social sector, peasants in Bale (1963 - 70) and Gojjam (1968) had already risen against the arbitrary actions of the imperial regime and its agents. (See Gebru T., 1996). The Bale Oromo uprising had both ethnic and religious dimensions and was a more sustained struggle with reverberating effects among the radical Ethiopian students in general and the Oromo intelligentsia in particular. (Gebru T., 1996; Kiflu, 1993).

A far more inclusive and extensive struggle was, of course, the one fought by the country's students. Inspired by the popular Marxist ideology and socialist revolutions in Russia, China, Cuba and Vietnam, the students assumed the role of a revolutionary vanguard in the all-out battle against the decaying imperial regime. (Balsvik, 1985; Bahru, 1991; Kiflu, 1993) In fact, it was the students' defiance and determination in a decade that preceded the 1974 democratic upsurge which later moved the other

sectors of the population - the teachers, the workers, the taxi drivers, lower government employees and finally the army - the hitherto custodian institution of imperial rule for revolutionary actions. And, in what appeared to be the loss of the "mandate of heaven" by His Majesty, even the lower echelon of the Ethiopian Orthodox Church, one of the pillars of imperial rule in Ethiopia came out against the Emperor's government with the grievances of their own, breaking the tradition of trinity between the Monarch, Church and state in Ethiopian history. (Andargachew T., 1993; Kiflu, 1993).

The Ethiopian military with its own limitation as an inheritor of imperial Ethiopia wanted to transform the country without making a major break with the imperial past in terms of national equality. The military rulers wanted to lead a revolution without revolutionaries. (See Markakis & Nega, 1986; Markakis, 1987). And as prisoners of the imperial past, the soldiers who turned Marxist revolutionaries' overnight failed to resolve the national/regional inequalities, factors that precipitated the revolution itself. In its lust for power, the military elite mercilessly decimated the very people who brought about the revolution in the first place, and began to manufacture half-backed cadres who could understand neither the intricacies of social change nor the complexities of the Ethiopian society. (See Dawit W., 1989; Andargachew T., 1993) The result was neither fully a positive social transformation nor a successful "nation-building" project, but one of the most destructive periods in the country's long-recorded history - under what can be characterized, for want of a better term – "Garrison Socialism." The failure provoked massive resistance from many quarters – especially the ethnic/regional based armed movements - which finally sealed the fate of the military regime itself in May 1991.

The Post - 1991 Attempts at Democratization and State Transformation

The Ethiopian democratic transition was publicly inaugurated with the accord of the London Conference of May 1991. At this Conference, which was brokered by the Americans, a consensus was reached to establish a broad-based transitional government of Ethiopia whose responsibility was to oversee an internationally monitored "free and fair" election for the Constituent Assembly. The Constituent Assembly, a body was entrusted to prepare a permanent constitution for the country within a year. And, in what appears to be the first major step to implement this broad consensus, the 1991 July Conference of Addis Ababa was convened, whose representatives formed a Council

of Representatives (COR) which approved the Charter for the transitional period and established a Transitional Government of Ethiopia (TGE).

During the entire period of the transition, the ruling-party's main concern appears to be not the building of democratic institutions and their institutionalization, but intimidation and marginalization of the opposition, repression of the emerging civil society organizations as well as the independent press, on the one hand, and building of its own institutions of control on the other. Accordingly, the first major step in the drive to consolidate power after the establishment of the TGE was the June 1992 regional elections. As the stake was high, the confrontation between the OLF, the only real competitor for power at the time, and the EPRDF exploded. Consequently, the EPRDF and its satellites claimed to have won the elections and formed their own regional governments across the country.

After four years of constitutional engineering, the lingering transition came to an end with the election of 1995, which the ruling party claimed to have won with a landslide victory of 90.1 percent of the seats. Judged by any standard of democratic elections, the Ethiopian exercise was neither 'free nor fair'. In fact, the big 'democratic' promise of the Charter on which the whole transitional process was hinged on the transfer of power to a democratically elected party was pushed aside and a *de facto* one-party state was further institutionalized. Moreover, under what appears to be a "transition without change", violations of human and democratic rights, and repression of civil society organizations continued. Five years later, the May 2000 elections were held under similar political environment i.e. the administration of the election was as flawed as ever, and the real opposition parties were allowed to win only 13 seats in the 547-Federal parliament.

The May 2005 Elections

After several years of non-competitive elections Ethiopia made a great leap forward in the direction of 'free and fair' elections with the May 2005 national and regional elections. The leap has been made possible as the result of a combined national and international pressure. Although there were many irregularities as confirmed by the European Union observer Mission, (See EU-EOM 2005: 1) the 2005 these were certainly the nearest to 'free and fair' elections in the country's long recorded history.

In a nutshell, the most difficult part of the Ethiopian democratization is what emanates

from the contradictory interests and vision of a minority who controls the Ethiopian State without the consent of both majorities and minorities. The TPLF seems to have failed to make a radical break with the country's authoritarian past. Instead what it has achieved is "a tyranny of a minority over majorities and minorities." (Merera 2002) As our subsequent discussion shall show, the role and function of civil society organizations in Ethiopia have been directly linked to and reflective of the nature of the regimes in power from the imperial days to the present.

The Role of Civil Society Organizations under Ethiopia's Successive Regimes

In the West, it is generally accepted that civil society is essentially that part of the wider society which consists of individuals and groups whose living and livelihood do not depend on the pleasure or support of government. Civil society is the other 'public arena' consisting of private citizens/individuals and groups who enjoy relative autonomy, or 'distance' from government in the pursuit of their varied activities. Civil society could thus be distinguished from organizations, like the armed forces and police, parastatals, schools, civil service, and any other organized activity which is publicly funded or managed and thus amenable to government control or directions (Mohiddin, 1995: 2 quoted in Bujra, 2003: 26)

Seen in the above light, CSOs are autonomous institutions created by individuals independent of governments and freely carry out their activities in a given society in order to promote their set societal goals. Generally, the role of civil society organizations include, helping their members receive material, administrative and legal services as well as solving their other problems; preventing the negative pressures of the state, and creating and expanding the necessary forums whereby the state and their members, as well as the general population, can engage in dialogue (Dessalegn, 2020:104). Civil society organizations can also participate in advocacy with regard to respect for human and democratic rights, promotion of education and health, improved production technologies, relief and legal counselling services, youth associations, credit services and civic education among others.

The general trend in the conceptualisation of civil society is to include trade unions; professional associations, religious organizations; non-governmental organizations; cooperatives; and free press agencies. As such in the Ethiopian context, those that

are considered to be CSOs are economic groups, such as the chamber of commerce, cultural associations, trade unions and professional associations, aid organizations, including NGOs, women's and youth associations, human rights organizations and others of a similar nature. The Ethiopian anomaly is that, CSOs were generally created by the regime in power to promote the interests of the rulers, and very often acting contrary to the interest of the wider society and the democratization enterprise. CSOs in Ethiopia have thus been part of the instruments of control in the hands of the state rather than autonomous institutions in the service of the larger society.

Civil Society Organizations Under the Imperial Regime

Broadly speaking, Ethiopia has traditional cultural groups and associations such as faith-based groups (*mahber, sanbate*, etc); *iqqub* and *idir*, which existed for centuries in both the rural and urban areas. The country also has modern CSOs, which begun to emerge in the 1960s during the last days of the imperial regime. The oldest of such organization was the Confederation of the Ethiopian Labour Union (CELU), which came to existence in 1962. Its members carried out strikes, e.g. Ethiopian Airlines employees in October 1965 and 1967; bus drivers and printing workers in 1967/68; and bank employees in 1973. CELU was one of the few organized movements, which participated in the Ethiopian revolution of 1974. The more conscious and dynamic groups were student associations, which emerged at the turn of 1960s. They became increasingly radicalised by the mid-1960s. It was the Ethiopian Student Movement, which was a real grave digger of the Emperor and his rotting empire.

The drought and famine that beset the country in the early 1970s further led to the rise of local and international civil society organizations, as well as a few local NGOs whose activities largely limited to deliver services to the needy. To put in the nutshell, except the community based traditional organizations, the country's political landscape under the imperial regime was not supportive of CSOs except in few areas.

The Fortune of CSOs Under the Military Regime

The military regime that replaced the monarchy did not encourage the creation of civil society organizations. During military rule, the urban *qebele* associations and the rural peasant associations dominated the space meant for civil society organizations. The workers' and teachers' associations, trade unions, women's and youth associations were captured, transformed and placed in the service of "Garrison Socialism". Later, when

the military officers changed their uniform and created the Workers Party of Ethiopia (WPE) in 1984, existing civil society organizations were also instantly changed to the mass organizations of the '"Workers Party".

The 1980s drought and famine had led to the creation of large groups of non-governmental organizations (NGOs), but their activities were limited to providing humanitarian aid. They were regarded with suspicion by the military regime and its cadres. Far worse, the creation of advocacy groups had been out of question under the situation of the one-party state using a Marxist-Leninist ideological façade. Consequently, under what was the infamous "red-terror", not only the right to organization and free expression were made illegal outside the control of the regime, but the cream of one dynamic generation was ruthlessly decimated. (Dawit, 1989; Africa Watch, 1991)

The Fortune and Fate of CSOs Under the Present Regime

After the EPRDF's took over power, the Charter of the transitional period of 1991 Ethiopia's Federal Republic constitution of 1994 recognized the right of citizens to freely organize themselves. It was during this period that many political parties, international and local non-governmental organizations, trade unions, organizations working in the area of human rights and the rule of law, free press associations, regional development organizations, were created to operate independently. But before long, the new leaders began to perceive CSOs as enemies, not as partners in the building of democratic society. The confrontation was particularly evident between the state and the CSOs working in areas of human rights and advocacy. In this regard, as Dessalegn (2002:105), argues:

> ...Where NGOs have ventured into advocacy, it has often been over safe issues such as, for example, promoting the rights of the child, and campaigning against cultural practices harmful to women. The organizations are not keen to challenge the state on any issue or even to draw attention to the need for alternative approaches or reforms in public policy ….The government is particularly hostile to NGOs taking up policy advocacy, and this has been one of the reasons why most of them have shunned it" (Dessalegn 2002:109).

A few studies on Ethiopian CSOs indicate that these organizations suffer from several innumerable difficulties (Dessalegn, 2002:116-117; Kassahun, 2002:127-129). The internal problems emerge from the organizations' own weaknesses and limitations in capacity, while the external problems result from unfavourable government policy and

attitude. Dessalegn and Kassahun further noted that the civil society organizations in Ethiopia have additional problems These include the fact that their sustainability is not guaranteed, the lack of internal democracy within the CSOs, poor leadership and work ethic; inadequate opportunities and forums for engaging in dialogue on matters of common interest with the government, inadequate communication networks by which to publicize their aims and activities to the population at large (Dessalegn, 2002:118; Kassahun, 2002:127-129).

The Future of Civil Society Organizations in Ethiopia

As far as the political space and the policy environment thereof are concerned, there is very little positive change that CSOs, especially those based on human rights and advocacy groups are expecting. The challenges are many. Firstly, the politicization of ethnicity and the reordering of the Ethiopian state along ethnic–linguistic lines, has led to competing ethnic nationalisms. This in turn has given rise to multiple competing interests, contradictory visions especially among the contending elites who are the moving spirit of ethnic nationalism. Moreover, the contradictory perspectives of the competing ethnic nationalisms have fragmented the opposition, undermined their unity of purpose, and action while adversely affecting the activities of civil society organisations. The organisations are fragmented with some pitted against each other.

Secondly, the determination of the ruling-party to use emerging institutions to promote its partisan interests has had the debilitating effect political and civil societies that are created independently of the regime. For instance, the major institutions, such as the Election Board, parliament, the judiciary, the police, the army and the civil administration as a whole which are supposed to act impartially and promote democratic governance are not able to fulfil their duties impartially. The result is fusion of power between the three branches of government. There is also a strong fusion between party and state as was the case in the old socialist days. Consequently, what is being institutionalized is what can be termed a "shadow state"[80]. These institutions work mainly in the service of the leaders. The country's civil society organizations too are not spared in such scheme of things.

---

[80] The concept of the "shadow state" was developed by William Reno. This concept is used to explain the use of the state as a private property to ensure one's own survival. For a detailed discussion see Clapham (2000: 249 - 266).

Thirdly, under what can be termed the new regime's novelty, it creates its own civil society organizations, notoriously known as Government Non-Governmental Organizations (GONGOs). The twin missions of the GONGOs are to displace the real NGOs and channel international resources to the ruling-party. It also has the additional objective of giving the semblance of existence of the CSOs for the donors.

Fourthly, civil society organizations are facing serious challenges in terms of financial, material and human resources, which have forced them to depend on external sources, which in turn affect their autonomy. Lastly, but most alarming is the draft law which targets CSOs. In fact, the draft legislation has already invited national and international condemnation. An Ethiopian critic, who strongly opposes the draconian draft law, writes:

> The so-called Charities and Societies Draft Proclamation --- currently under review by the Ethiopian Parliament is one mean-spirited and uncharitable edict masquerading as a legislative measure. It is an understatement to say the proclamation is incredibly oppressive, intrusive and arbitrary. --- It offers a classic case study of law-making in a police state --- sweeping, stealthy, harsh, heavy-handed and irrational.

The draft law even alarmed the non-Ethiopian Human Rights Watch (see www.hrw.org), which has noted that:

> The draft law purports to be a tool for enhancing the transparency and accountability of civil society organizations working in Ethiopia. In fact, its provisions would create a complex web of onerous bureaucratic hurdles, draconian criminal penalties, and intrusive powers of surveillance and mechanisms to allow for direct government control over the work civil society engages in. In our view the intended and actual result of this law would be to make it almost impossible for any civil society organization to carry out work that the government does not approve of. Most notably, the law would criminalize human rights-related work carried out by non-Ethiopian organizations while at the same time making it impossible for domestic human rights organizations to operate with any real degree of effectiveness or independence.

It has further argued that:

> Much of the draft appears to be modelled after a similarly restrictive law passed in Zimbabwe in 2004 that was harshly criticized by Western governments. With regard to many key provisions, the primary difference between the two pieces of legislation is that the Ethiopian draft is more thorough in its assault

on independent civil society and includes harsh penalties for a much broader range of conduct— including the exercise of rights that are protected under international law.

The climate for independent civil society organizations in Ethiopia has long been inhospitable. This law would consolidate the trend narrowing political space by giving government the power to silence some of Ethiopia's few remaining independent civil society voices. And the likely impact of this bill is still more ominous when understood in broader context. Ethiopia's already-limited political space has already been narrowed through patterns of government repression, harassment and human rights abuse since the controversy that followed the country's 2005 elections.

As the above quotes as well as the preceding discussions demonstrate, despite much talk about democracy - what has emerged in Ethiopia is 'electoral authoritarianism' without a fundamental break with the country's autocratic/authoritarian past. Under these circumstances the future of civil society organizations is far from rosy. Our advice is that CSOs in Ethiopia should join the rest of the country's democratic movements for the common struggle to open up the democratic space.

CHAPTER EIGHT

REFLECTIONS ON DEMOCRACY AND CIVIL SOCIETY IN ZANZIBAR

Haroub Othman

Introduction

The struggle for self-determination and independence in Africa was a struggle for the realization of democratic principles and the observance of human rights norms. It was not a racial struggle. It was only perceived to be so because the majority of whites in countries like Kenya, Southern Rhodesia, Algeria and South Africa benefited from colonialism and white settler domination. But in these countries there were people of non-African descent who fully identified themselves with the independence struggle. People of Asian origin, like Markhan Singh and Pio Gama Pinto in Kenya, Amir Jamal in the then Tanganyika and Dr Yusuf Dadoo in South Africa, joined this struggle. There were also people of European origin, like Bram Fischer and Joe Slovo who made personal sacrifices for the achievement of those countries independence. People like D. N. Pritt and Kapadia who defended Mzee Jomo Kenyatta and others at Kapenguria. George Bizos who defended Nelson Mandela and others at the Rivonia Trial. They did so not only as a result of their professional commitment as lawyers but more so because of their conviction that every people have a right to independence and human dignity.

This struggle was joined by different groups and individuals. Ethnic groups, religious denominations, professional bodies, peasants' movements, trade unions and market women societies – all joined in. As Chairman Mao would have said, it was necessary to unite all the forces that could be united. We saw also individuals joining the struggle outside their own countries. Amilcar Cabral, born a Cape Verdian, led an independence movement that united the people of Cape Verde and Guinea-Bissau. Frantz Fanon, a Martiquean, working as a doctor in colonial Algeria, joined the Algerian National Liberation Front that fought for that country's independence; and Aquino Braganza, born a Goan, was fully involved in the Mozambican people's struggle for independence and died with Samora Machel in a plane crash that was engineered by the apartheid

regime of South Africa. We should not forget that Milton Obote was politically baptized in Kenya before he returned home to Uganda to become that country's first Prime Minister after independence. Whatever interpretation the Zanzibar Establishment historians want to make of John Okello's role in the 1964 Zanzibar Revolution, the fact of the matter is that the poor Ugandan mason was there in Zanzibar and played a role in the Revolution.

The Independence Period

At independence almost all the African countries had written constitutions which embodied a Bill of Rights and a multi-party democracy. Tanganyika was one of the exceptions; its leadership preferred a general human rights statement in the Preamble to the Constitution. This led to some law experts to argue that Tanganyika did not have a Bill of Rights. But to some of us trained in the non-Anglo-Saxon legal tradition, everything in the Constitution is binding.

The first victim of independence constitutions in Africa was democracy itself and the rights of the people. The Independence Constitution, whether modelled along Westminster or Gaullist lines, was abrogated. In its place there came a constitutional model that vested enormous powers and institutional resources in the Executive. The checks and balances, powers of Parliament and the Judiciary were curtailed, and the restraint bodies were marginalized. Starting with Ghana in 1959, one country after another in Africa passed a Preventive Detention Act (PDA). This gave the President wide powers to detain anybody without trial and at his own pleasure. The irony of this was that those Ministers who went to Parliament to seek the Bills' approval became the first victims themselves. This happened to Timothy Adamafio in Ghana, Jaramogi Oginga Odinga in Kenya and Orton Chirwa in Malawi. Oscar Kambona in Tanzania was lucky in that he managed to run away to London before could be served with a detention order.

The Preventive Detention Act was followed with the establishment of a one-party system and military regimes. I do not have to go here into a discussion as to why and how this phenomenon developed, but Kenyans would remember how Charles Njonjo, the then Attorney General, rushed to Parliament with a Bill seeking an establishment of a one-party state. In many African countries the establishment of one-party system or the imposition of military rule led to the eradication not only of political dissent but the shutting down of organizations of civil society. Trade unions, women organizations,

professional societies and youth and students bodies all fell under the hegemony of the ruling parties. All political activities had to be conducted under the auspices of the ruling parties. People's initiatives and enthusiasm were crushed. The concept of party supremacy prevailed. Thus a democratic culture of tolerance for different views was not allowed to flourish.

The economic policies pursued by our African countries, especially in the seventies and eighties, did not produce the results that were expected. If anything, the structural adjustment programmes (SAPs) did cause havoc in our societies. I remember doing research in Mozambique in 1994, and a poor peasant telling me that what RENAMO did in the rural areas was what SAPs were doing in the urban areas! The result of all this was the deep economic and political crises of the nineties. Demands for democracy, multiparty system and observance of human rights were heard all over the continent – from Cairo to Maputo and Accra to Zanzibar. Some people have characterized this as the struggle for the Second Liberation!

The two countries of Tanganyika and Zanzibar were administered separately during all the time of the colonial rule. When Tanganyika fell into German hands as a result of the Berlin Conference of 1884-1885 which carved up Africa amongst the European powers, Zanzibar had already fallen under Arab rule. Seyyid Said bin Sultan of Oman moved his capital to Zanzibar in 1832 and established a Busaidy dynasty in the islands. As a result of inter-imperialist rivalry in the region, Seyyid Said's son, Seyyid Ali bin Said, accepted British protection, and so the islands formally became a British protectorate on 4th November, 1890.

When Germany was defeated in the First World War, its colonial possessions were divided amongst the victor powers, and Tanganyika became a British-administered territory under the League of Nations mandate and later the United Nations' Trusteeship System. But even when the two countries were ruled by the same colonial power their administrations were different.

A number of ethnic and cultural organizations were established by the peoples of the two countries to deal with their social, religious and cultural concerns. In 1929 an African Association was founded in Tanganyika mainly as a social and cultural organization of the African elite in Dar es Salaam and other urban areas. A branch of this Association was established in Zanzibar in 1934 with its membership mostly Zanzibaris of Mainland origin.

Prior to the formation of nationalist parties in Tanganyika and Zanzibar, semi-political organizations and trade unions had already been operating: the Tanganyika Territory Civil Servants' Association was established in 1922, and a decree legalizing the formation of trade unions was passed in Zanzibar in 1931. The ports of Dar es Salaam and Zanzibar had experienced their major dockworkers' strikes in 1947 and in 1948 respectively. In fact the Zanzibar strike was led by somebody nicknamed Kenyatta!

Zanzibar's road to independence was a bumpy one. Independence was attained on December 10th, 1963, with the Sultan as a Head of State, with a power also to nominate his successor. On 12th January 1964 a radical revolution took place which not only overthrew the ZNP/ZPPP coalition government, but immediately abolished the monarchy. What surprised many people outside the islands was how could there occur a 'sudden' revolution barely one month after the attainment of 'flag independence'. According to Michael Lofchie, a political scientist at UCLA, in his book, *Zanzibar: Background to Revolution,* the revolution set as its objective:

> To transform Zanzibar into a wholly egalitarian society…. [and undertook measures to bring about a fairer distribution of the arable land. [It] also sought to eliminate from Zanzibar all symbolic vestiges of racial clubs and organizations and sought to infuse the society with radical socialist methods stressing class and national solidarity rather than race.

The first action of the revolutionary government was to abrogate the Independence Constitution of 1963 and proclaim a 'Constitutional Decree' [Decree No. 5 of 1964] which provided that the "*legislative power resides in the Revolutionary Council and is exercised on its behalf and in accordance with its laws by the President. The principal executive power is exercised on behalf of the Revolutionary Council and with its advice by the Cabinet of Ministers individually and collectively; the principal judicial power is exercised on behalf of the Revolutionary Council by courts, which shall be free to decide on issues before them solely in accordance with the law and public policy"*. The Revolutionary Council became a legislative, executive and a judicial organ. And when immediately after the revolution, the ruling Afro-Shirazi Party was declared a sole political party, the thin line separating the state from the party was removed. All organizations of civil society were banned.

It took Zanzibar 15 years, namely in 1979, before a new constitution was promulgated. But this constitution only recognized the ruling party and organizations affiliated to

it. It ushered in a House of Representatives but its members were not directly elected. In 1984, as a result of what has been described in Tanzania as a "polluted political atmosphere" that led to the resignation of Sheikh Aboud Jumbe, then President of Zanzibar and Vice-President of Tanzania, a new Constitution was passed which is still in operation. This constitution has two major elements which were non-existent in the 1979 one: it recognizes separation of powers and has enshrined in it a Bill of Rights.

The Merger of Tanganyika and Zanzibar

On 26th April 1964, the People's Republic of Zanzibar and the Republic of Tanganyika merged to form a single united republic of Tanzania. Many questions have been raised and continue to be raised regarding the legal basis of the Union. It is not my intention here to go into that. Human rights lawyer and activist, Professor Chris Peter, and myself have edited a book called *Zanzibar and the Union Question* published in 2006 by the Zanzibar Legal Services Centre which attempts to address itself on this question; and two months ago, Issa Shivji, Mwalimu Julius Nyerere Research Professor in African Studies at the University of Dar es Salaam, published a book called *Pan-Africanism or Pragmatism? Lessons of Tanganyika-Zanzibar Union* which also deals with this question.

At the time of the formation of the Union, Zanzibar and Tanganyika were ruled by different political parties, Afro-Shirazi Party (ASP) and Tanganyika African National Union (TANU) respectively. The *'Articles Union'* did not require the formation of a single political party for the United Republic. Thus in the period 1964-1977 each party operated within its own geographical area. Section 3 (2) of Act No. 43 0f 1965 stated:

> Until the union of Tanganyika African National Union with the Afro-Shirazi Party (which united party shall constitute the only political party), the Party shall in and for Tanganyika, be the Tanganyika African National Union and in and for Zanzibar, be the Afro-Shirazi Party.

Only in 1977, after a national survey of members of both parties, did the two parties merge to form the *Chama cha Mapinduzi (CCM)* with the authority over the whole country. But why did the Zanzibaris agree to such a merger? Julius Nyerere was always

expressing surprise when recalling the radiant faces he saw and the jovial mood of the Zanzibaris the day CCM was proclaimed at the Amaan Stadium. The fact is that Zanzibaris were celebrating not only the birth of CCM but also the demise of ASP. By that time the general feeling in the islands was that ASP had outlived its usefulness. The revolution which it has championed and many of us supported had stooped so low as to devour its own sons; most of the leaders were busy amassing wealth; prison and death were the only options open to political dissent; and political thuggery was a virtue.

In 1983/84 extensive political debates took place in Tanzania. What prompted this was the paper published by the ruling CCM asking the population to discuss and make recommendations on political and constitutional steps to be taken but within a framework of one-party system and two-government structure. The debates that took place went beyond the stipulations given by the ruling party. From the mainland there came a call for a multiparty system; and from Zanzibar, there was a demand, supported by the ruling elite, for a federal structure for Tanzania. In the case of the former demand, an opposition politician, James Mapalala was served with a detention order and deported to the island of Mafia. When he was forced to 'sing', he mentioned the people who had helped him to draft his petition to the ruling party calling for a multiparty system, and two of them were lecturers at the University of Dar es Salaam. Those were also arrested, their offices on campus searched and put under police custody. When that happened, I was the chairman of the Academic Staff Association, UDASA. An emergency meeting of UDASA members was held on a Saturday and members demanded for the release of their colleagues and threatened that if they were not released by Monday, they would go on strike. Before lunchtime on Sunday they were released. The whole Executive Committee of UDASA was later invited by the Prime Minister in his office. The Prime minister apologized to the Committee on behalf of the President and promised that in future no security forces would be deployed at the university without the Vice-Chancellor's consent.

The demand by the Zanzibaris for a federal structure in the Union was strongly condemned by the ruling party, and led to the resignation of Aboud Jumbe from all his state and party positions, the sacking of his Chief Minister.

As stated above, the deep political and economic crises of the eighties facing a number of African countries led to demonstrations, protests and in some places, violent

confrontation between state organs of coercion and the civil society. Because the state was shirking off from its responsibilities, a number of organizations of civil society emerged. The people started to act.

The Re-introduction of Multi-party Politics

The ruling party in Tanzania, taking cognizant of political events around the world in general, and in its surrounding areas in particular, decided to 'manage' change. In 1991, the President of the Republic appointed a commission, popularly known as the Nyalali Commission, to find out from Tanzanians whether they would want to continue with a one-party system or to move to a multiparty one. The Commission was given a year to do its work and report back to the President.

The Commission, of which I was a member, toured all the regions and districts in the country and hundreds of villages. We even went to some countries abroad to meet fellow Tanzanians residing in those countries and to learn from the experiences of those countries. Since independence I had never seen such an intense, in-depth national debate taking place in Tanzania during that period. Politicians and the '*machingas*', students and professors, workers and peasants – almost everybody – were expressing their views. The nation was talking to itself, and talking frankly and honestly.

When the Report came out it showed almost 80% of Tanzanians wanted a continuation of a one-party system and about 20% wanted a multiparty system. But the Commission strongly recommended for a multiparty system. This was because of the 80% who wanted a one-party system, 55% put conditions for its continuation, and those conditions could only work under multipartyism. Moreover 46% of Zanzibaris wanted a multiparty system of government.

Both the Union and Zanzibar governments accepted the Commission's major recommendation and amendments to the 1977 Union Constitution and the 1984 Zanzibar Constitution. But there were other recommendations that the Commission had made, namely the drafting of new constitutions, enactment of new electoral laws both for Zanzibar and Tanzania, separation of the state from the party, reducing the powers of an 'Imperial Presidency', etc,.on which the authorities were quiet.

Three general elections have been held in Tanzania since the country adopted a multiparty system in 1992. On Tanzania Mainland even though the opposition has performed poorly, there has not been much controversy. It is in Zanzibar where every

election has been fought with great fervour, and there has been an intense controversy on every result. The country is due to hold its fourth multiparty elections in 2010 yet a lot of governance issues remain unresolved. The opposition political parties, a number of non-governmental organizations, media institutions, academics and others are calling for a new constitution, a new electoral law and a more democratic and transparent way of appointing members of the Electoral Commission. In the case of Zanzibar, there are still many unresolved matters resulting from *Muafaka I* and *Muafaka II* that need to be thrashed out before new elections are held. Otherwise the country would be heading towards a disaster with its eyes wide open.

The Zanzibar society is highly polarized. There is a joke there that one joins a political party from the time when one is still in his/her mother's womb. Organisations of civil society have unfortunately been affected by this situation. Every issue is perceived along political lines and individuals are judged according to either their places of origin or their own or their parents' political affiliations. Sense of objectivity, tolerance of different views and normal social civility has been sacrificed at the altar of political expediency. Zanzibar is still haunted by its past. It needs to be saved from itself.

Discourses on Civil Society in Kenya examines the contribution of Civil Society in addressing the many governance challenges facing the country. This is done through a comparative analysis of civil society from other regions of Africa. The adoption of this approach was inspired by the knowledge that what works in one country may not work in another. The publication has also explored some of the changes that Civil Society in Kenya has undergone and how these changes affect the effectiveness of the sector.

The volume aims to stimulate further debate on Civil Society in Kenya. The aim is to enhance the understanding of the role of this sector in the management of public affairs. The book will be useful to policy makers, scholars, players in civil society and the general readership.

The contributors to this volume are senior scholars, lecturers and researchers familiar with the activities of civil society in Kenya, Ethiopia, Zanzibar, Nigeria and Southern Africa.