

**University of Nairobi  
Institute of Diplomacy and International Studies**

**ROLE OF DONORS IN THE  
DEMOCRATIZATION PROCESS IN  
KENYA 1991-2010**

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## **Declaration**

### **Declaration by Student**

I, IRENE W. NDUNGU hereby declare that this research project is my original work and has not been presented for a degree in any other University.

Signed..... Date.....

### **Declaration by Supervisor**

This research project has been submitted for examination with my approval as the University of Nairobi Supervisor.

MR. MARTIN NGURU Signed..... Date.....

## **Dedication**

I thank God for His guidance throughout my studies and dedicate this project to my family and especially to Tony and Kien; for their patience, encouragement and support.

## **Acknowledgements**

I also take this opportunity to give my sincerest gratitude to my family and mentor/supervisor Mr. Martin Nguru, who all played key roles in ensuring that I remained committed and motivated throughout my research.

## **Abstract**

Since the end of the Cold War, international politics have taken on ideals of liberalism on argument that participatory governance supports domestic and international peace. The expansion of liberal markets and politics has been fronted by powerful states and international organisations as the most preferred state systems. In Africa, which only got integrated into the World economy and political arena just over half a century ago, the task of state-building and adopting international systems has proved challenging prompting development partners to provide assistance and use their leverage to influence the liberalist trajectory. Economic liberalisation preceded democracy and albeit the challenges encountered, political liberalization has also posed challenges in democratizing states. Kenya as the focus of this study has oscillated from a democracy to an autocracy before resuming on the liberal trend. This process has been moved by both domestic and international actors with the latter playing a political as well as financial role. Kenya's democratization experience has faced challenges including instability occasioned by election-related conflicts. This study will look into the details of Kenya's democratic trajectory, exploring the extent to which international actors influence the trajectory and the outcomes of democratic processes. This research finds that Kenya has fully transitioned into a functional democracy and all actors are recommended to continue working on consolidating the gains achieved so far while further entrenching democratic ideals.

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## **List of Abbreviations**

ACP	African, Caribbean and Pacific Nations
APRM	African Peer Review Mechanism
AU	African Union
CIPEV	Commission of Inquiry on Post-Election Violence
COTU	Central Organisation of Trade Unions
CRS	Credit Reporting System
DFID	Department for International Development
ECK	Electoral Commission of Kenya
EIDHR	European Initiative for Democracy and Human Right
ERSWEC	Economic Recovery Strategy for Wealth and Employment Creation
EU	European Union
FORD	Forum for the Restoration of Democracy
GEMA	Gikuyu, Embu, and Meru (ethnic groups)
GJLOS	Governance, Justice, Law & Order
ICC	International Criminal Court
IPPG	Inter-Parties' Parliamentary Group
JPC	Justice and Peace Convention – Kenya
KADU	Kenya African Democratic Union
KANU	Kenya African National Union
KASA	Kenya African Socialist Alliance
KJAS	Kenya Joint Assistance Strategy
KNCHR	Kenya National Commission on Human Rights
KNDR	Kenya National Dialogue and Reconciliation
KPU	Kenya People's Union
LSK	Law Society of Kenya

MAP	Moral Alliance for Peace
NARC	National Alliance Rainbow Coalition
NCEC	National Convention Executive Council
NCEP	National Civic Education Programme
NEPAD	New Partnership for Africa's Development
ODA	Official Development Assistance
ODM	Orange Democratic Movement
PNU	Party of National Unity
SAP	Structural Adjustment Program
SDP	Social Democratic Party
SofS	Secretary of State
TJRC	Truth, Justice and Reconciliation Commission
UDHR	Universal Declaration on Human Rights
UK	United Kingdom
UN	United Nations
US	United States
UNDEF	United Nation Democracy Fund
UNDP	United Nations Development Program
UNSC	United Nations Security Council
USAID	United States Agency for International Development

# CHAPTER ONE

## 1.0 INTRODUCTION TO THE STUDY

### 1.1 Introduction

Democratic governance, drawn from the ideals of liberalism, is a desirable form of political organization presumably because it promotes peaceful coexistence and stability within a state; consequently contributing to world peace. The concept of democracy denotes a form of political organisation that is representative of the people, thrives on the rule of law, is subject to checks and balances, offers basic political and civil liberties and by extension, liberal market economies. The government of a democratic state derives its legitimacy and authority from the citizens.

The democratization process is primarily a political struggle that seeks rebuilding of the state and its governance structures towards liberalist ideals. While the road to democracy may be conflict-ridden, empirical studies confirm that mature democracies, whose leadership is voted into office by the citizens, are apprehensive to violence due to the human, financial and political implications and also consistently avoid military confrontation with other democracies.<sup>1</sup>

In their relations with other nations, states have a variety of tools that they can use to promote and influence the political organisation within a state. They include “soft” diplomatic approaches such as policy dialogue with leaders intended to influence the agenda and outcomes of decision making; and issuing of policy statements and publications such as commentaries and editorials in dailies. They can also use political conditionality along aid

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<sup>1</sup>Huth, P. K. & T. L. Allee, *The Democratic Peace and Territorial Conflict in the Twentieth Century*, Cambridge, Cambridge University Press, 2002. p. 288

disbursement by inducing a certain course of action through aid provision or suspension.<sup>2</sup> The third and least preferred in diplomatic relations is military intervention due to its coercive and disruptive nature.

## **1.2 Background of the Research Problem**

Promotion of democracy has been touted as an aspect of globalisation of liberal political and economic values key to integrating African states into the international economic system. To this end, the marginal aid flows to Africa provide a substantial clout to implement foreign policy objectives that advance political, economic, commercial and even humanitarian and ideological interests of bilateral and multilateral donors who are the bearers of liberal ideals.

In concurrence with democratic experiences across the world, the view that democracy in Africa can contribute to solving common challenges across the country has been substantiated by Halperin et. al who found that democratic states realised stable growth rates that were double those of autocratic states; thus offering better living conditions for their citizens.<sup>3</sup> Studies also found that since the end of Cold War, upon which democratization of African states gained momentum, the continent has marked a 60 percent decline in civil conflicts.<sup>4</sup>

The political-economy interplay of foreign aid presents itself in the goals of aid disbursement by the donor country and in the subsequent intertwining of the aid with the domestic politics of the recipient country. Foreign aid in modern international cooperation can be traced back to the reconstruction efforts in Europe after the first cold war where the Marshall plan offered

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<sup>2</sup> Brown, S., "Changing Donor Roles in Kenya's Democratization Process' in Murunga, R. G. & Nasong'o W. S., eds, *Kenya: The Struggle for Democracy*. London and Dakar, Zed Books and Council for the Development of Social Science Research in Africa, 2007 pp 303-331

<sup>3</sup> Halperin, M. et al. *The Democracy Advantage: How Democracies Promote Prosperity and Peace*, New York, Routledge Publishers, 2004.p. 10

<sup>4</sup> Siegle J., Effective Aid Strategies to Support Democracy in Africa , for "Africa Beyond Aid" conference, June 24-26,2007, Brussels Belgium, unpublished.

by the US, as a case of bilateral aid, and the creation of the International Bank for Reconstruction and Development, as a preface of multi-lateral aid; sought to rebuild individual states' economies, reduce human suffering, and restore the international economic system.

However, as international relations diverted to creating strategic alliances in a bipolar system, diplomatic relations including foreign aid motivation was drawn to appeasing allies based on ideological factors. The United States, while endorsing the promotion of democracy abroad in the 1961 Foreign Assistance Act, instead weighted security concerns and containing the spread of communism and soviet expansionism in disbursing foreign aid.<sup>5</sup> This laxity in ensuring democratic ideals by the superpower, and former colonial powers prioritizing maintenance of economic and financial control in their former colonies, only served to prop dictatorial regimes in Africa.

This would only change after the end of the alignment period, when international politics were subsequently re-organised and the US and Western European states shifted into the domestic politics of weaker states in the guise of promoting democracy and good governance for development. Consequently, a substantial amount of foreign aid was allocated to promotion of democracy especially in Africa and political conditionality became an explicit consideration in disbursement of aid; leading to the advancement of democratic assistance within bilateral and multilateral donors.<sup>6</sup>

Sub-Saharan African countries are home to the poorest populations in the world; ranking at the bottom of the human development indices; which makes them the most aid-dependent and

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<sup>5</sup>Carothers, T., *Aiding Democracy Abroad: The Learning Curve*, Washington, Carnegie Endowment for International Peace, 2011;pp 23

<sup>6</sup>Brown, S., "Foreign Aid and Democracy Promotion: Lessons from Africa" *European Journal of Development Research*, 2005, Vol. 17 (2): pp. 179-198: 181-182

thus less economically and military strategic partners to the largely Western development partners. This provides leverage for donor states to impart political conditionality to spur economic and political reforms; including the democratization of states.

Motivation for donor-driven reforms are hinged on the argument that political and economic factors develop good governance and respect for human rights within regime structures; both of which provide a conducive environment for the effective delivery of aid objectives, and human as well as economic development. Svensson who measured the impact of political variables on aid effectiveness found a positive correlation between aid and economic growth in democratic states; within which government authority was subjected to checks and balances through democratic institutions such as parliament, political parties and civil society organisations.<sup>7</sup> Also, ineffectiveness of aid has been linked to corrupt and dictatorial regimes which divert resources for public benefit to enrich themselves or reward patronage. The severity of the impact of corruption on development and governance attracted the attention of the United Nations in the 2000s leading to the ratification of the UN Convention against Corruption which came into force in 2005 and commits state parties to undertake institutional reforms to enhance public accountability and transparency.<sup>8</sup> In supporting the growth of democracy and hitherto good governance, development partners make use of diplomatic structures and increasingly, of non-state actors to implement their objectives.

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<sup>7</sup> Svensson, J., 'Aid, growth and democracy', *Economics and Politics*, (1999) Vol 11(3), pp 275–297: 293-294

<sup>8</sup> The UN System Task team on the Post-2015 UN Development Agenda, "Governance and Development Thematic Think Piece", May 2012, Accessed on August 2, 2014 on:  
[http://www.un.org/millenniumgoals/pdf/Think%20Pieces/7\\_governance.pdf](http://www.un.org/millenniumgoals/pdf/Think%20Pieces/7_governance.pdf)

### **1.3 Statement of the Research Problem**

The surge in political conditionality of foreign aid by bilateral donors was preceded by the Structural Adjustment Programs (SAPs) of the IMF and World Bank introduced in the 1980s aiming at liberalising African markets. Though the benefits of introducing SAPs in weak African economies are contestable, they definitely lay the ground for political reforms imposed at the end of the bipolar world order in the late 1980s. In Kenya, the radical economic reforms under the SAPs eroded resources to reward patronage under the authoritarian rule of President Daniel Moi. Coupled with economic stagnation that deteriorated health, education and employment; and increasing graft, they contributed to public antagonism laying the ground for the protests that would pressure the government to open a transition to democracy.<sup>9</sup>

Following the end of the Cold War and the third wave of democratization in Latin America and Eastern Europe, donor states and agencies reviewed their assistance programs to prioritise the promotion of democracy through political conditionality under the guise of promoting good governance. This was aimed at stimulating regime change and institutional reforms using economic assistance as either carrots or sticks. This period would also see the embedment of democratic ideals into instruments of international law. In the study context, foreign missions in Nairobi started criticising the Moi government's suppression of increasing political activism in the media, and proactively cut or suspended aid to pressure the government into reforms. Following the democratic transition opened by the 1991 constitutional amendment and the 1992 multi-party elections, the international community has continued to be an integral partner in political and economic institution building through both cooperative and divergent means.

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<sup>9</sup> Brown, S., *Op cit* Note b, p 308



The question of whether democratic assistance does promote the growth of democracy produces an ambivalent answer. Jeroen de Zeeuw<sup>10</sup> argues that while international assistance has been instrumental in setting up new organizations, it is relatively unsuccessful in consolidating effective democratic institutions mainly due to its nature for short-term project-oriented support. However, a study by Bratton and de Walle<sup>11</sup> which narrows its focus geographically; finds that in largely authoritarian states in sub-Saharan Africa; there was a substantial impact of aid conditionality in influencing democratic transitions. They nonetheless note that aid was most effective in promoting democratic transitions when authoritarian regimes were faced with increasing domestic pressure and threats to declining popular support.

Consequently, this study will seek to identify whether and if so, how diplomatic interactions have influenced the process of democratization in Kenya between 1991 and 2010. It will explore the individual behaviour of bilateral and multilateral partners in the democratic process in Kenya from 1991 when the domestic clamour for constitutional amendments to create a political space for multipartyism gained momentum leading to a political opening for a democratic transition. Of note though is that subsequent democratic processes in Kenya have mainly been challenged by inter-ethnic violence especially after the introduction of multi-party elections.

This research will thus offer insight into the impact, efficacy and sustainability of the tools of diplomacy employed by development partners in promoting democracy including political

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<sup>10</sup> De Zeeuw, J., 'Projects do Not Create Institutions: The Record of Democracy Assistance in Post-Conflict Societies', *Democratization*, August 2005, vol. 12, no. 4, pp. 481-504: 481

<sup>11</sup> Bratton, M. & N. van de Walle, *Democratic Experiments in Africa: Regime Transitions in Comparative Perspective*, Cambridge, Cambridge University Press, 1997. p 219

conditionality, assistance in the democratization process and the role of non-state actors in fostering political and social stability in the country.

## **1.4 Objectives of the Research**

The overall objective of this study is to:

- 1) Identify the role of international actors in Kenya's democratic processes

The other objectives include to:

- 1) Determine the relationship between democratic assistance and the growth of democracy in Kenya
- 2) Examine the effectiveness of the tools of diplomacy employed by foreign actors to influence the development of democracy in Kenya
- 3) Determine whether political conditionality on aid has influenced Kenya's foreign policy stance

## **1.5 Justification of the Study**

### **1.5.1 Academic Justification**

This study will expand the berth of academic knowledge on the role and effect of international actors in Kenya's democratic process, assessing the form of assistance and influence it takes. As Joseph Siegle noted, there are few country-specific studies assessing the impact of donor activity on democracy and the available cross-national studies do not differentiate the forms of assistance and time periods.<sup>12</sup> Stephen Brown also observed that there were few scholarly works on the role and effect of external actors in the promotion of

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<sup>12</sup> Siegle, J., Effective Aid Strategies to Support Democracy in Africa, for "Africa Beyond Aid" conference, June 24-26, 2007, Brussels Belgium, unpublished

democracy in African states.<sup>13</sup> In this respect, this study will provide insight into the magnitude of impact of donor activities in democracy-related agendas in Kenya within a specific time period; the post-cold war era, a research area that has not been delved into in a lot of details.

### **1.5.2 Policy Justification**

On a policy level, this study will assess the benefits and challenges of the strategies adopted by international actor while promoting democratization in Kenya. Thus, this will help policy makers identify the best strategies to promote democracy in the country; those which promote political liberalisation while also enhancing stability and cohesive domestic and international relations.

## **1.6 Literature Review**

The literature for this study will examine the basic concepts of democracy and international cooperation then delve into motivation and impact of democratic assistance in transforming political organisation and rebuilding states institutions.

### **1.6.1 Basic Concepts**

Democracy is etymologically a Greek concept drawn from the words demos, “the people,” and kratia, “to rule” thus referencing a people-sanctioned rule. Being a political model, democracy has evolved over time and its concepts today remain relative to its context.

However, despite a variety of models of democracy being developed over time including social, participatory, deliberative, radical and cosmopolitan democracy, the liberal democracy

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<sup>13</sup> Brown, S., “Foreign Aid and Democracy Promotion: Lessons from Africa,” *European Journal of Development Research*, 2005, Vol. 17 (2): pp. 179-198:180

model remains the most prominent in international relations and has remained marginally unchanged since the 1980s.<sup>14</sup>

Therein are two main models of liberal democratic theory: the minimalist or procedural conceptions and the maximalist. The minimalist model is attributed to Schumpeter, Samuel Huntington, Giuseppe Di Palma and Robert Dahl. These scholars attempt to provide a measurable concept of democracy; defining it as the use of electoral procedures and institutions characterised by universal suffrage, fair competition and participation; as a mechanism of governance.<sup>15</sup> This notion has been criticised for presenting western ideas of democracy that focus on the political process while ignoring the outcome of the elect regime; thus denying the basic intention of democracy in the developing world.<sup>16</sup>

On the other hand, the maximalist conception of democracy is drawn from the reality of the experiences of electoral democracy and seeks a broader definition that encompasses the consolidation of democracy. It expands the view of democracy from just elections and basic political values to include economic, cultural and social value systems.

Most scholarly works propping this theory emerged after the cold war and following the experiences of democracy in third countries regarded as the third wave of democracy. They include Schmitter and Karl (1991), David Held (1993) Zakaria (1997), Larry Diamond (1993, 1999, 2000, 2001, 2008), Boussard, (2003), Chandler (2001).<sup>17</sup> While there has been debate on the empiricism of the maximalist concepts due to volatility, a close look at the democracy in developing countries reveals that successful elections alone do not guarantee economic

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<sup>14</sup> Kurki, M., "Democracy and Conceptual Contestability: Reconsidering Conceptions of Democracy in Democracy Promotion", *International Studies Review*, 2010, Vol. 12 (3): 362-386:370

<sup>15</sup> *Ibid*

<sup>16</sup> Sartori, G. *The Theory of Democracy Revisited: Part One – The Data for Decision Making: Project 45 Contemporary Debate*. New Jersey, Chatham House Publishers. 1987a, p 152

<sup>17</sup> See: Milja Kurki (2010), "Democracy and Conceptual Contestability: reconsidering conceptions of democracy in democracy promotion", *International Studies Review*, 12 (3): 362-386:367:377

development, political stability or even social equity. This has led a shift in democratic thinking; broadening it to encompass a culture of liberalism that extends the spectrum to political, economic, social and cultural rights, values; and the participation of the civil society.<sup>18</sup> Based on the need for democracy promotion to result in improved citizen welfare, economic growth, human rights; and the universal goal of democracy in promoting peace and security, this study will adopt the conceptions of maximalist liberal democracy promotion.

### **1.6.2 Modelling Democratization**

The development of democracy in western countries was a gradual process that developed across time and within their culture. This is aptly captured in the work of Marcel Gauchet who argued that the concept democracy is an interplay between politics, law and history; marking the progressive rebuilding of the nation state, political re-organization, and entrenchment of human rights through collective action.<sup>19</sup>

It has thus come to be considered that democracy is inherently a value of western systems that needs to be inculcated into developing countries which are culturally, historically and contextually distinct from the developed democracies. In developing countries, particularly in Africa, democracy is a relatively alien concept that was introduced alongside the state system following colonization, a little over half a century ago. Further owing to political, economic and humanitarian challenges, the implementation of liberal ideals into African states has proved an uphill task that necessitated support and intervention of other states as the world inclines towards entrenching democracy as a human right.

And while states dynamics cannot be similar and linear across-board due to differences in characteristics and circumstances of the specific societies, scholars have attempted to define

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<sup>18</sup> *Ibid*

<sup>19</sup> Gauchet, M., *L'Avènement de la démocratie I. La Révolution moderne*. Paris: Editions Gallimard, 2007., pp. 20-21

the stages of political re-organization for states that are transitioning from authoritarianism towards democracy. Carothers posits that liberalising states usually undergo four main stages, the opening, breakthrough, transition and eventually consolidation.<sup>20</sup> The opening of democratic space is usually marked a split in an authoritarian regime which sparks debate within the public and ruling class on legitimizing government through elections. In their seminal work, O'Donnell et al, note that the opening stage ends when a popularly elected government takes office or when the old political elite is legitimized in an electoral process.<sup>21</sup>

A democratic breakthrough is marked by the collapse of dictatorship and entrenchment of an electoral system, basic freedoms more often than not through a new constitution. The re-alignment of political institutions to the new law or rather within democratic values is regarded as the transition phase and normally takes more than a decade; with most democratizing states experiencing a regression in their progress. The last phase of the process is consolidation during which democratic values and processes are accepted and observed as the only legitimate form of political organisation. It is a slow process marked by institutional reforms and development of civil society.<sup>22</sup>

With promotion of democracy and good governance getting oriented as an objective and condition of development cooperation following the fall of the Berlin Wall, scholars have suggested a progressively collaborative attempt to develop an international norm sanctioning the legitimacy of states with regard to their democratic record. These efforts compound the quest to guarantee democratic governance as a right across all states.<sup>23</sup>

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<sup>20</sup> Carothers, T., "The End of the Transition Paradigm" *Journal of Democracy* 2002, Vol 13:1 pp 5-21:7

<sup>21</sup> O'Donnell G. et al., *Transitions from Authoritarian Rule: Comparative Perspectives*, John Hopkins University Press, 1986, p 6

<sup>22</sup> Carothers, T., "The End of the Transition Paradigm" *Journal of Democracy* 2002, Vol 13:1 pp 5-21:7

<sup>23</sup> Santiso C., "International Cooperation for Democracy and good governance: moving toward a second generation" *European Journal of Development Research*, June 2001, Vol 13, No. 1, pp 154-180:155

### **1.6.3 Democratic Assistance and International Law**

There is a disconnect between the promotion of democracy in other states vis a vis classical international law which was based on the concept of sovereignty in foreign relations. The UN charter in Article 2 (7) entrenches the principle of non-interference in internal affairs of states during diplomacy thus giving states a free hand to determine their political organization. It nevertheless does recognise the democratic concept of the 'rule of the people' in its opening stanza- "We the Peoples" which reflects the sanctioning of authority from the citizens to their governments who ratify the Charter's provisions.

However, scholars as early as in 1795 disputed the sustainability of sovereign equality as demonstrated by the failure of the Westphalia treaty to hold peace among European states which descended into the bloodiest hundred years wars. As Immanuel Kant argued, the democratic peace could be an eternal solution to the ravages of wars since republican polity inspires states to respect international dictates on restraint against violent confrontation.<sup>24</sup> The perpetration of the notion of human rights protection in the 20<sup>th</sup> Century provided an opportunity to bring democracy into normative statutes. In 1948, the Universal Declaration on Human Rights (UDHR) in Article 21 proclaimed political rights and the will of the people, expressed through genuine and periodic elections. Subsequent global and regional instruments notably the International Covenant on Civil and Political Rights of 1966 which has been endorsed by 149 states, the European Convention on Human Rights in article 3 of the First Protocol, the American Convention on Human Rights in Article 23 and the African Covenant on Human and People's Rights in Article 13 validate article 25 of the UDHR.

During the cold war period when foreign policy was hinged on geo-strategic alliances, efforts to promote democracy abroad were viewed with suspicions and took a back seat. This would

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<sup>24</sup> Wouters J., et al. *Democracy and International Law*. LIRGIAD Working Papers No. 5, June 2004:p 6

change as 13 countries convening under the International Conference of Newly Restored Democracies, in Manila in June 1988 resolved to cooperate in strengthening democracy amongst themselves and promoting emerging democracies.”<sup>25</sup> The momentum picked in the 1990s with the United Nations serving a key role in the normative process.

Moving forward, the United Nations has contributed to the development of norms on democracy through conference diplomacy yielding declarations, resolutions and conventions; thus providing a platform for the expansion and consolidation of democracy as a universal value; and as a means to achieving its key goal of maintaining world peace. Key among these is the 1993 World Conference on human rights which adopted the Vienna Declaration and Programme of Action; the UN Commission on Human Rights Resolution 57 of 1999 on Promotion of the Right to Democracy, and Resolution 2000/47 on Promoting and Consolidating Democracy; all of which emphasise an interdependent and mutually reinforcing relationship between development, human rights and democracy. Nonetheless as Boutros Ghali emphasises, democratisation encompasses more than human rights and elections to include respect for the rule of law, minorities, social development and gender equity.<sup>26</sup>

Further, the UN has been expanding its operational activities towards promoting democratic values and good governance since the 1990s with a focus on electoral assistance, peace-keeping missions aimed at restoring democracy and protecting human rights, as well as programmes to support the state in institutional development, the rule of law, delivery of justice, growth of civil society and civic education especially on political participation.<sup>27</sup> In 2005, the UN established the United Nation Democracy Fund (UNDEF) as a UN General

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<sup>25</sup> Rich, R., “Bringing Democracy Into International Law” *Journal of Democracy*, July 2001, Vol 12 No. 3, p 25

<sup>26</sup> Boutros, Ghali, B., *An Agenda for Democratization*, New York, United Nations, 1996, p 2

<sup>27</sup> *ibid*



Trust Fund aimed at supporting democratic processes categorised as” constitution making and reforms, elections, multi-partyism, parliamentary processes, justice and the rule of law, human rights, transparency and accountability, civil society participation, freedom of expression and association, and access to information.<sup>28</sup> The United Nations Development Program (UNDP) undertakes programmes in the aforementioned core areas as well as local governance and decentralisation, public administration and civil service reform.

The European Union/Commission (EU) has also been a key agent in the spread of democracy in Europe and beyond. Notably, the formation of the EU was based on the need for European States to cooperate to curtail the ravages of historical wars over land, religion, and resources perpetrated by the despotic regimes of the likes of emperor Charlemagne (9<sup>th</sup> century), Napoleon Bonaparte (early 19<sup>th</sup> Century) and Adolph Hitler (1930’s) who aspired to dominate, control or conquer the European continent. The disintegration of the Soviet Union and former Yugoslavia and the birth of new Central and Eastern European states provided a ripe moment for the European Commission/Union to introduce political conditions for new members seeking accession to the union.

Based on the ideals of the democratic peace theory, the Framework of the European Political Cooperation (1991) and *the Copenhagen Conditions (1993)*, entrenched democracy, rule of law and human rights as a condition for state recognition in addition to the classic criteria for state recognition- territory, permanent population, government authority and capacity to engage in international relations.<sup>29</sup> In Europe and beyond, the EU’s agenda is best defined in the 2005 European Consensus on Development which outlines common development values

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<sup>28</sup> See: <http://www.un.org/democracyfund/XSituatingDemocracy.htm>

<sup>29</sup> *Bulletin of the European Communities* (12-1991), pp 120-120; paras 1.4.5-1.4.6

and priorities to include governance, democracy and human rights.<sup>30</sup> The EU has also established a financial instrument to support democracy and human rights programmes – the European Initiative for Democracy and Human Rights (EIDHR).

In Africa, the EU continues to pursue democracy promotion agenda by providing for democracy and human rights in trade and co-operation agreements as well as pursuing it through partnerships. In context is the 2000 Cotonou agreement and Development policy between the EU and African, Caribbean and Pacific Nations (ACP) which provides for human rights, rule of law and democratic principles as vital elements in trade cooperation with the regional bloc; and provides for possible sanctions including suspension or even termination of bilateral agreements in case of violation.

Until recently, the African Union did not develop instruments to promote democracy and good governance as a strategy towards achieving democracy in the continent. However, in attempts to adapt to donor aid policies on good governance, the African Union established the New Partnership for Development as a peer review mechanism for good governance aimed at attracting more aid, debt relief, and investment.<sup>31</sup>

Realizing the magnitude of the problem, the African Union has made good governance one of its priorities as a necessary element in developing The New Partnership for Africa's Development (NEPAD) program was thus supplemented with the Declaration on Democracy, Political, Economic and Corporate Governance in 2002, which reiterates the commitment to adhere to democratic values and, in particular, good governance.<sup>32</sup>

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<sup>30</sup> The European Union Consensus on Development, 14820/05, 22 November 2005. <http://www.dfid.gov.uk/eupresidency2005/eu-consensus-development.pdf>

<sup>31</sup> Leon, T., 'The State of Liberal Democracy in Africa: Resurgence or Retreat?' *Development Policy Analysis*, 2010, No. 12; p 13

<sup>32</sup> The New Partnership for Africa's Development (NEPAD): Declaration on Democracy, Political, Economic and Corporate Governance, retrieved June, 10th 2014 from <http://www.nepad.org/2005/files/documents/2.pdf>

#### 1.6.4 Modelling Democratic Assistance

International actors have a range of tools they can use to pressure or influence the trajectory of political organization in target nations including rhetoric, policy dialogue and statements, foreign aid and military action.

Democracy assistance is defined as “Aid specifically designed to foster a democratic opening in a non-democratic country or to further a democratic transition in a country that has experienced a democratic opening.”<sup>33</sup> He further conceptualises three strategies relied upon by international actors in promoting democracy: the democracy template, political sequencing and institution modelling.

From a donor perspective, democracy and good governance in developing countries is anticipated to provide structural frameworks to address economic growth, social development and conflict and security challenges. Indeed empirical studies confirm that in democratizing states, aid provides incentives to accelerate the quality of life offered to citizens while on the contrary, it has an inverse effect in autocratic regimes.<sup>34</sup>

As Laurence Whitehead argues,<sup>35</sup> the perception of democracy concepts are country-specific and are demonstrated in the priority components given to bilateral democracy promotion programs which in turn institutionalise the donor states’ implicit assumptions on the nature of democracy. In retrospect, German programs focus on political parties’ development, the United States on electoral processes, the Westminster Foundation on Parliamentary strengthening and Sweden in social solidarity. As he further posits, while there has been

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<sup>33</sup> Carothers, T., *Aiding Democracy Abroad: The Learning Curve*, Washington, Carnegie Endowment for International Peace, 2011; p 8

<sup>34</sup> Kosack, S., ‘Effective aid: How democracy allows development aid to improve the quality of life’, *World Development*, 2003, Vol 31(1), pp: 1–22: 11.

<sup>35</sup> Whitehead, L., “On Cultivating Democracy: Enlivening the imagery for democracy promotion” in Hobson C. & Kurki M., ed, *The Conceptual Politics of Democracy Promotion*, New York, Routledge Publishers, March 12, 2012. p 25

marginal ideological challenges to democracy, the concept of democracy is a highly adoptive collective initiative that metamorphoses to adapt to the context of individual citizens who are the basis of all democratic political organisation.

### **1.6.5 Development Cooperation in Africa**

Historically, development assistance assumed that economic growth would ultimately alleviate poverty and human suffering across the world as seen in the Marshall Plan and Official Development Assistance (ODA) direct financing up until the 1980s.<sup>36</sup> This would transform in the 1980s when donors shifted to promote market liberalism implemented in the form of Structural Adjustment Programs in Africa (SAPs) propelled by International Financial Institutions.

However, as the SAPs proved more counter-productive to local economies especially in sub-Saharan Africa, and with the end of the cold war, attention shifted to the marginal impact of the billions of aid disbursed on improving welfare of the target populations. Incredibly, prioritizing strategic interests at the expense of aid efficiency had only propped authoritarian and corrupt regimes at the height of the cold war. Most of the newly-independent African states were laden with internal dissent and with 60 successful coup attempts between 1956 and 1985; those who were spared the nationalist uprisings turned into single-party dictatorships. This was however justified as compromising democracy in pursuit of the much-needed development for the population.<sup>37</sup>

A cross-country assessment shows that the democratic trajectory in Sub-Saharan African states has taken a pattern across time with most being reasonably democratic in the early

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<sup>36</sup> Gilbert, C. L. & Vines, D., *The World Bank: Structure and Policies*, Cambridge, Cambridge University Press, 2000, p.88

<sup>37</sup> Shivji, I., *The Struggle for Democracy*, 2003. Available on <https://www.marxists.org/subject/africa/shivji/struggle-democracy.htm>. Retrieved on July 21, 2014.

post-independence in the 1960s before spiralling to authoritarian developmentalism in the 70s and 80s at the height of the cold war; then returning to democracy in the post-cold war era- the 1990s and 2000s.<sup>38</sup>

The end of the East-West ideological rivalry and the economic slump from the 1970s provided a chance to re-arrange international relations and shift focus on improving livelihoods among the poorest populations especially in Africa. This resulted in a re-assessment of donor policy to focus on the promotion of liberal domestic political regimes as a means of ensuring efficiency in use of resources to spur economic development and thus reduce poverty. Strengthening good governance became both an objective and condition of foreign aid in developing states. Bratton and de Walle in an empirical study of political conditionality on foreign aid confirmed that indeed eight of the 25 Sub-Saharan Africa countries examined did transition to democracy.<sup>39</sup>

This goal would be reinforced in the wake of the 9/11 attacks in the United States following which lack of democracy and poor governance in fragile states was viewed as a threat to national and global security. Thus the concepts of state-building and democracy promotion became intertwined with global security goals in the international development and political context.<sup>40</sup>

Notably too, the context of development assistance has over time crossed the boundary of bilateral and multi-lateral diplomacy to include private foundations and individuals as donors

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<sup>38</sup> Burgess, R. et al “The Value of Democracy: Evidence from Road Building in Kenya” August 2013. pp 3-4 Accessed July 15, 2014 from: <http://sticerd.lse.ac.uk/dps/seminarpapers/eopp45.pdf>

<sup>39</sup> Bratton, Michael and Nicholas van de Walle, *Democratic Experiments in Africa: Regime Transitions in Comparative Perspective*. Cambridge: Cambridge University Press, 1997, p 219

<sup>40</sup> Rakner L. et al., *Democratisation's Third Wave and the Challenges of Democratic Deepening: Assessing International Democracy Assistance and Lessons Learned*. Working Paper 1, August 2007. Overseas Development Institute, Westminster, p 2

and non-state actors, particularly the civil society as a vehicle for the implementation of aid.<sup>41</sup> The civil society refers to individuals and organisations that are voluntarily organised and are independent of the state thus enhancing their role in the democracy which ranges from pressurising the government into or against a course of action, and engaging citizens in civic and political participation.<sup>42</sup> The civil society is thus a critical component in the implementation of donor policies on democracy in target populations which Boussard categorises into four ‘broad but partly overlapping’ functions as “an agenda setter, an educator, a counterpart, and a source of new political alternatives.”<sup>43</sup>

### **1.6.6 Conclusion**

In summary, there have been concerted efforts to embed democracy as a universal value, develop a “right to democracy” through international legal instruments and to entrench it as a condition for state recognition and membership in international organisations across regions of the world. Due to the volatility of the conceptualisations of democracy, the context of defines the approaches implementation of democracy takes. In Africa, donors are increasingly important in supporting democratic processes since the end of the Cold War, with aid providing an apt leverage to influence decision making processes.

Democracy in Africa is advanced as being complementary to economic development and stability. However, the road to democracy has not always proved peaceful and in instances fuels domestic ethnic violence further derailing the anticipated economic development. Democracy promotion programs have also expanded actors in the international cooperation scene to include non-state actors as agencies of implementation of foreign policy goals and

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<sup>41</sup> Rosenkranz, Rolf (2011) *Development Aid: What You Need to Know* <http://www.devex.com/en/news/development-aid-what-you-need-to-know/74725>

<sup>42</sup> Cheema, G., & Shabbir, P. V. (2010) *Engaging civil society: Emerging trends in democratic governance*. Geneva: United Nations University Press. p 3

<sup>43</sup> Boussard, C., *Crafting Democracy. Civil Society in Post-Transition Honduras, 2003*, Lund: Bloms Tryckeri, p101

critical to domestic politics. The democracy promotion agenda has been complemented by concerted efforts by international organisations to development instruments that promote the entrenchment of democratic principles among member states. Democracy and good governance have also been embedded in trade and development pacts.

## **1.7 Theoretical Framework**

This study will be hinged on two theoretical frameworks – liberalism and the liberal democratic model.

Liberalism views the state as a disaggregated actor whose decision making is a negotiated compromise among its components; and is unique to its needs which transcend beyond national security to include socio-economic or ideological issues. It emphasises interdependence, cooperation, norms and institutions in international relations. This study will rely on this theory to examine whether cooperative carrots rather than sticks served better in promoting political reforms in Kenya. In this perspective still, the study will look into the role of non-state actors in the promotion of democratic governance including the civil society as a medium of influence in political organization and marshalling public participation in governance processes.

In defining the scope of work, this study will adopt the liberal democratic model. However, owing to the empirical challenges of the electoral and pluralist conceptualisations of the model, the variables will be adopted from the classification provided by Thomas Carothers, one of the key scholars and practitioners of democracy promotion.<sup>44</sup> Therein the democracy template, he posits that democratic assistance is modelled on three sectors: electoral processes, state institutions and civil society.

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<sup>44</sup> Carothers, T., *Aiding Democracy Abroad: The Learning Curve*. Washington: Carnegie Endowment for International Peace, 1999, p. 88

Table 1: The Democracy Template

<b>Sector</b>	<b>Sector Goal</b>	<b>Type of Aid</b>
Electoral Process	Free and fair elections	Electoral aid
	Strong national political parties	Political party building
State Institutions	Democratic constitution	Constitution Assistance
	Independent, effective judiciary and other law-oriented institutions	Rule-of-law aid
	Competent, representative legislature	Legislative strengthening
	Responsive local government	Local government development
	Pro-democracy military	Civil-military relations
Civil Society	Active advocacy NGOs	NGO building
	Politically Educated citizenry	Civic education
	Strong independent media	Media Strengthening
	Strong independent institutions	Union building

Source: Carothers T., *Aiding Democracy Abroad: The Learning Curve*, 1999, Washington: Carnegie Endowment for Peace, p88



This concurs with Deborah Bräutigam who models decision-making in developing countries as a tripartite playoff among; the regime (bureaucrats and politicians), non-state actors (interest groups, civil society), and development partners (donors).<sup>45</sup> This is also consistent with the five key themes of democracy promotion that are prevalent among donors in Kenya: 1) Electoral assistance; 2) Constitutionalism and the Rule of Law; 3) Governance and Administrative Reforms; 4) Institutional strengthening; and 5) civic education and political participation. These are also drawn from the components of democracy as defined by UNDEF and UNDP.

## **1.8 Hypotheses**

This study's posits that:

1. There was a positive correlation between donor support and democracy in Kenya between 1991 and 2010.
2. Democratic processes have contributed to instability in Kenya

## **1.9 Methodology of the Research**

This research project aims to identify how international actors have gotten involved in democratic processes in Kenya and the impact of such activities.

As Bryman<sup>46</sup> argues, case studies provide a better understanding of complex issues and thus this study will narrow its focus to the activities of three bilateral donors – United States, United Kingdom and Japan; based on their overall level of cooperation with the Kenyan government, and multilaterally, the United Nations and the European Union to analyse its objectives.

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<sup>45</sup> Bräutigam D., 'Aid Dependence and Governance', Expert Group on Development Issues, Almqvist & Wiksell International, Dec 1, 2000: p 6

<sup>46</sup> Bryman, A. (ed) (2008) Social Research Methods. New York: Oxford University Press, p 53

The bias is drawn from the United States' historical commitment of promoting democracy abroad, the United Kingdom's close historical ties with Kenya dating back from colonialism – which was grounded on authoritarian resource exploitation, Japan as a key economic partner for Kenya from the Asian region, the EU as a bilateral partner acting in the interest of a multitude of nations and the United Nations as the key International organisation in the diplomatic arena.

This study will rely on qualitative analysis of both primary and secondary data. Primary data will be acquired from individual donor reports including those in the Organisation of Economic Cooperation and Development (OECD) Credit Reporting System (CRS). The primary sources will provide data for direct synthesis of the problem questions. Secondary data will be obtained from literature reviews of books, journals and evaluation reports providing material for re-examination and interpretation in the context of this study.

### **1.10 Scope and Limitations of the Research**

This study explores the changes in Kenya's political organisation and behaviour of bilateral and multilateral partners in the democratic process in Kenya from 1991 to 2010 with a view that the 1991 constitutional amendment opening the democratic space to allow multi-party politics marked the transition from authoritarian rule.

The scope of the study is limited to processes occurring until 2010 when a new constitution was promulgated thus entrenching basic principles of democracy in law. The study will also limit itself from analysing all bilateral donor activities. Instead, it will focus on the initiatives by the United States, United Kingdom, Japan, the European Union and the United Nations.

Due to time and financial constraints, this study will narrow its research method to qualitative analyses of past studies by various scholars, reports from donors, and the OECD CRS system.

While the study aims to demonstrate outcome of democratic support; Finkel et al., who assessed the effectiveness of USAID democracy programmes, warn that it is hard to determine the extent of impact of donor interventions since some are lagged and may take years to mature.<sup>47</sup>

## 1.11 Chapter Outline

**Chapter One:** This chapter will offer an introduction to the study.

**Chapter Two:** will look into changes in Kenya's political organisation in efforts towards democratic governance.

**Chapter Three:** will examine the role of diplomacy for democracy by bilateral and multilateral donors. This chapter will discuss the role, tools and channels used by international actors to influence the entrenchment of democratic ideals.

**Chapter Four:** Will explore the trends and patterns of donor funding for democracy in Kenya. This chapter will study and document instances of donor support to the state and non-state actors, Bilateral and Multilateral approaches, and multi-track approaches – “Basket funding”.

**Chapter Five:** This chapter will present the findings, recommendations and conclusion of the study

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<sup>47</sup> Finkel, S., et al, Effects of US Foreign Assistance on Democracy Building: Results of Cross-National Quantitative Study. January 12, 2006. Vanderbilt University., p. 7. Accessed August 10 , 2014 from [http://pdf.usaid.gov/pdf\\_docs/Pnade694.pdf](http://pdf.usaid.gov/pdf_docs/Pnade694.pdf)

## **CHAPTER TWO**

### **2.0 DEVELOPMENT OF KENYA'S FOREIGN POLICY, 1963-2010**

#### **2.1 Introduction**

This chapter will explore the development of Kenya's foreign policy for the period preceding the study, which was spent under the Kenya African National Union (KANU) rule, to inform the background context of the subsequent sections. It will focus on the political and administrative structures at independence and how they evolved in the post-colonial period. Specifically, it will seek to explore the role of the state and donors as Kenya degenerated from multiparty democracy at independence in 1963 to a single party regime between 1978 and 1990 before restoring multi-party democracy in 1991.

In the period under focus, Kenya underwent three leadership transitions: a democratic transition from colonialism to the Presidency of Jomo Kenyatta who regressed to authoritarianism, the rule of President Daniel Moi under an autocratic system -later transitioning back to democracy, and the democratic transition to the rule of President Mwai Kibaki marking the end of Kanu's 40-year rule.

This chapter will also look into Kenya's foreign position as much of the post-independence state and KANU rule was spent under the Cold War era; examining if ideological factors played into domestic political decisions by the regime at the time.

#### **2. 2 Making of the State: Pre-Colonial Era**

Prior to 1895, Kenya was devoid of international and political boundaries with local communities organised with respect to ethnic values and more often patriarchal leadership systems. The inhabitants had their own typical forms of governance and interacted with each other through barter trade, intermarriage and cultural practices including cattle rustling and

dances<sup>48</sup>. The Indian Ocean provided a point of contact for inhabitants with the Arabian Peninsula; mostly ivory and slave traders and thereafter an entry point for explorers and missionaries from Western Europe to explore the vast country land ahead of the European ‘scramble for Africa’.

### **2.3 Colonialism**

The Berlin Conference of 1884 divided the African continent into administrative units for colonial administration. The colonial period was a period of economic exploitation, and political and cultural condemnation by the authoritarian rule of imperialists. Existing ethnically organised political structures were ignored as the colonial powers established their own administrative units hinged on a principle of ‘divide and rule’<sup>49</sup>. These would later come to haunt the security and stability of post-independence states with the *Shifita War* of 1964, pitting the Kenyan Government and Somali communities in the Northern frontier who wanted to secede and join the larger community in Somalia.

As a British Protectorate and later colony since 1890, most of the local communities were relegated to small scale land holders and the rest were concentrated in camps as workers in the large settler commercial farms. This disenfranchisement fuelled the nationalist independence movements across the colony accentuated by the Kikuyu’s Mau Mau at the highlands.

In preparation for independence, a small group of learned elites formed the political class still on an ethnic basis with the majority Luo and Kikuyu led by Jaramogi Odinga and Jomo Kenyatta respectively controlling KANU while the minority ethnicities consolidated in

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<sup>48</sup> Ndege, P.O. “Colonialism and its legacies in Kenya” Lecture delivered during Fulbright – Hays Group project abroad program: July 5th to August 6th 2009 at the Moi University Main Campus, pp 1-3, unpublished

<sup>49</sup> Ibid

KADU.<sup>50</sup> The ethnicization of political organisation in the country dated back to the late colonial pre-independence days as the British implemented marginal land reforms allocating Kikuyus (displaced from the highlands) lands in the Rift Valley creating dissent by the initial inhabitant Kalenjin against the immigrant Kikuyu.

The British colonial rule was based on an indirect rule strategy in which the colonial governors utilised local district officers as intermediaries of their rule to the local people. This system of administration ignored the indigenous leadership; as cronies of the colonialists wielded massive authority for implementing colonial policies; including mobilisation of free labour, tax collection, controlling movement of people and suppressing anti-colonial movements.<sup>51</sup> This grassroots leadership system was inherited upon independence and entrenched as the provincial administration.

Generally, the struggle for liberation across Africa was a collection of nationalist efforts for liberation from colonization; and self-rule aimed at struggle for liberation and regional integration.<sup>52</sup>

## **2.4 Post-Colonial Kenya**

Upon independence on 12<sup>th</sup> December 1963 with Kanu's Jomo Kenyatta ascending to Presidency, Kenya, like other African states inherited the former colonial governance systems including the Lancaster Constitution. It also became an independent member of the Commonwealth. The new state inherited the colonial administrative system which mimicked neo-federalism with a bicameral legislature and provincial administrators who basically acted

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<sup>50</sup>Galaty, John G. (2005). Double-Voiced Violence in Kenya. *Violence and Belonging: The quest for Belonging in Post-colonial Africa*, in Vigdis Broch-Due, Ed., London: Routledge. pp. 173-195: 179

<sup>51</sup> Ndege, P.O. "Colonialism and its legacies in Kenya" Lecture delivered during Fulbright – Hays Group project abroad program: July 5th to August 6th 2009 at the Moi University Main Campus, pp 3-4

<sup>52</sup> Veney R. C., & Zeleza T. P., "The Political Economy of Development and Democratic Transitions in Kenya" *Yale Journal of International Affairs*, 2013. Accessed on July 10, 2014 from: [http://yalejournal.org/article\\_post/the-political-economy-of-development-and-democratic-transitions-in-kenya/](http://yalejournal.org/article_post/the-political-economy-of-development-and-democratic-transitions-in-kenya/)

as a stamp of imperial presidential authority. The new state also inherited a Westminster-modelled constitution which was developed and negotiated by the British and political elites with minimal public participation within the Lancaster conferences.

The Lancaster conferences had been negotiated by the British and adopted a compromise between the KANU and KADU leadership with the former conceding to a bi-cameral parliament and the latter dropping demands for a *majimbo* (federal) system of government. In compromising, the KANU delegation, which comprised of majority ethnic groups, hinged on hope that once elected they could amend the Constitution to entrench a unitary system. On the other hand, the KADU delegation representing minority ethnic groups, led by Ronald Ngala hinged on the provisions for further amendments to the Constitution upon independence.

Due to protracted disagreements, the British government, especially the Secretary of State (SofS) for the Colonies Reginald Maudling and his successor Duncan Sandys used their leverage to coerce the two teams into concluding the negotiations before independence was granted to the new state.<sup>53</sup>

## **2.5 Authoritarian Single -Party Rule 1963-1990**

### **2.5.1 The Rule of President Kenyatta – Descent to Autocracy (1963-1978)**

The birthing of the Kenyan state was through electoral democracy, in contrast to the authoritarianism of colonial rule, as Kenya held its first multiparty elections in 1963; ascending KANU's Jomo Kenyatta to the Presidency and constituting the first bicameral parliament. Like in most post-colonial governments across Africa, the Kenyatta administration took power with gusto to rectify the ills of colonialism by delivering

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<sup>53</sup> Maxon, R., "Constitution-Making in Contemporary Kenya: Lessons from the Twentieth Century", *Kenya Studies Review*, December 2009, Vol. 1, No. 1, pp 11-30: 12-13

development through all possible means. This “development” was skewed towards areas which patronized the government and to entice more support, the administration dissolved the official opposition KADU by offering its leaders positions in cabinet. The opposition led by Ronald Ngala justified the move as important in collective pursuit of national unity and development goals.<sup>54</sup>

The first discord within the Kenyatta administration was based on ideological differences as his Vice-President Oginga Odinga preferred dalliance with the soviet ideals of socialism – *majimboism* and redistribution of resources- while the President and allies were pushing for a capitalist economy with support from the West.<sup>55</sup> To imprint the ideological preference and subdue political dissent that had hatched the Kenya People’s Union (KPU) formed by Mr Odinga after resignation from government; a KANU conference forced the dissidents to seek a fresh mandate to Parliament in what was termed as the “Little General Election” of 1966. The KPU performed dismally and was later banned by the government on grounds on national interests at the backdrop of the bipolar world order.<sup>56</sup>

With possible political dissidence eliminated and the state turned into a *de facto* single party state, and the executive was left without an instrument to keep its activities in check within Parliament where it took its next onslaught.<sup>57</sup> The Kanu government orchestrated a series of constitutional amendments which entrenched authoritarianism by abolishing regionalism and the Senate in 1966; and creating an imperial presidency crowned with powers to control

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<sup>54</sup> Wanjohi, N., *Challenges of Democratic Governance, Parliament, Executive and the Citizen in Kenya*, 1993, National Council of Churches of Kenya (NCCCK), Nairobi. pp 26-27

<sup>55</sup> Muli, K. *The Struggle for Democracy in Kenya Through the Electoral Process* Presentation at ‘The Regional Stakeholders Round-table on Elections and Democracy’, Zimbabwe, March 2007.

<sup>56</sup> Burgess, R. et al “The Value of Democracy: Evidence from Road Building in Kenya” August 2013. p 10 Accessed July 15, 2014 from: <http://sticerd.lse.ac.uk/dps/seminarpapers/eopp45.pdf>

<sup>57</sup> Getzel, C. (1970) *The Politics of Independent Kenya*, 1963-68. Nairobi: East Africa Publishing House



Parliament and Judiciary.<sup>58</sup> The Parliamentary calendar and the recruitment of judges were also placed at the discretion of the President. By the time of his death in 1978, Kenyatta had consolidated an authoritarian rule through tribal alliances and amendments to the constitution; and accumulated Kanu's monopoly by eliminating rebelling voices.

### **2.5.1.1 Foreign Relations**

The country was however regarded as a success and enjoyed relative good ratings in the international community owing to its stability in relation to other post-independence states that had been disrupted by military coups with as many as 60 successful coups between January 1956 and December 1985<sup>59</sup>. The country also recorded relatively high growth rates in the 'Golden Years' averaging at 6.6per cent between 1963 and 1973.<sup>60</sup>

Kenya's foreign policy under Kenyatta clearly converged with the West in pursuit of capitalist economic policies and cooperation. Apart from the expulsion of socialist-minded dissidents from Kanu, the government signed military cooperation agreements with the US; which established the latter as the largest supplier of arms and military support to Kenya; overshadowing Kenya's military ties with its former colonial masters.<sup>61</sup>

## **2.5.2 Kenya under Daniel Moi - 1978-2002**

### **2.5.2.1 Neo-Patrimonialism (1978-1990)**

Coming at the backdrop of instability in Africa occasioned by military coups, Kenya under Kenyatta and Moi, like most regimes which escaped the coups, was turned into a single-party autocracy with limited civil freedoms which was perceived as a compromise of democracy

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<sup>58</sup> Muli, K. *The Struggle for Democracy in Kenya Through the Electoral Process* Presentation at 'The Regional Stakeholders Round-table on Elections and Democracy', Zimbabwe, March 2007.

<sup>59</sup> Hutchful, E., 1991, 'Reconstructing Political Systems: Militarism and Constitutionalism,' in Shivji, I. G., ed. *State and Constitutionalism: An African Debate on Democracy*, Harare: SAPES. Pp. 183

<sup>60</sup> Venev R. C., & Zeleza T. P., "The Political Economy of Development and Democratic Transitions in Kenya" *Yale Journal of International Affairs*, 2013. Accessed on July 15, 2014 from

[http://yalejournal.org/article\\_post/the-political-economy-of-development-and-democratic-transitions-in-kenya/](http://yalejournal.org/article_post/the-political-economy-of-development-and-democratic-transitions-in-kenya/)

<sup>61</sup> Prinslow K E 1997, 'Building Military Relations in Africa' Foreign Military Studies Office 1997

<http://fmsopubs.leavenworth.army.mil/fmsopubs/issues/africa97/africa97.htm> Accessed 10 June 14

for the much-needed development. Kenya under Daniel Moi saw the expansion of neo-patrimonialism in-country and a close dalliance with the West as a key ally in the Horn region enjoying incremental aid allocations despite diminishing human and political rights. Neo-patrimonial rule has been defined as a system of authority that centres on the leader of the regime and characterised by a patron-client system where loyalty is rewarded with public resources and dissenting voices are suppressed.<sup>62</sup>

Moi, who had succeeded Odinga a Vice-President in 1967, took over power after Kenyatta's death in August 1978 and inherited the structure of power and authority established by his predecessor. Rather than address the discontent of minority communities which had been side-lined from development and the widening socio-economic inequalities, he continued to expand presidential imperialism and tendencies of rewarding loyalty with state resources further pushing the country to authoritarian rule.

The failed coup attempt in 1982 ended the populist phase of Moi's rule and made him more politically intolerant and tyrannical. He orchestrated the repeal of Section 2 (a) of the Constitution turning Kenya into a *de jure* single party state; heightened repression of political opposition, curtailed media freedom and there were massive violations of human rights especially through arbitrary arrests, torture and detentions. The first casualties of Moi's political bigotry were Oginga Odinga and George Anyona were detained under the Preventive Detention Act for attempting to form a new party - The Kenya African Socialist Alliance (KASA). Regime gradually suppressed the rule of law and constitutionalism and

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<sup>62</sup> Van De Walle, Nicholas and Bratton, Michael, "Neo-patrimonial Regimes and Political Transitions in Africa", *World Politics*, 4(46), 1994 pp.453-489:461

was keen to eliminate any voices that challenged its authority or had the clout to influence its international image; by either detention or assassinations.<sup>63</sup>

### **2.5.2.2 Foreign Relations**

There was also increased corruption but the international donor community turned a blind eye with aid flows into Kenya tripling from \$334million in 1978 to \$1.2billion in 1990.<sup>64</sup> Following the exit of left-wing Odinga from the periphery of post-independent authority, the United States' became a better bedfellow with Kenya as a focal point of its capitalist ideals in the region amongst socialist-Tanzania and ambivalent Uganda, Somalia and Ethiopia. As was typical with unbridled exchange of foreign aid for strategic alliance, the US continued to increase aid allocations to Kenya making it the largest recipient of US and total aid in the region.<sup>65</sup>

The relationship was enhanced by a confluence of development and military needs with Kenya seeking support to defend itself from Somalia aggression in the Ogaden conflict and the United States need for a surveillance base at the Indian Ocean to monitor Soviet activities at the Persian Gulf. This culminated in the signing of the 1980 Facilities Access Agreement in which Kenya granted the US military access to the Indian ocean in return for military assistance to Kenya pegged at \$20million in 1980; rising to \$30 million by 1983.<sup>66</sup>

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<sup>63</sup> Kenya Human Rights Commission, *Killing the Vote: State Sponsored Violence and Flawed Elections in Kenya*; 1998, Nairobi , KHRC, p 6

<sup>64</sup> Brown, S., "Changing Donor Roles in Kenya's Democratization Process", in Murunga, G. R. & Nasong'o, S. W. eds. *Kenya: The Struggle for Democracy*. London & Dakar: Zed Books and Council for the Development of Social Science Research in Africa, 2007: 303-331. p 307

<sup>65</sup> *Ibid* Brown S., p 308

<sup>66</sup> Gordon, F. D, 'International Economic Relations: Regional Cooperation and Foreign Policy' In Joel Barkan (ed.) *Beyond Capitalism vs. Socialism in Kenya and Tanzania*, London, Lynne Rienner Publishers, 1994, p 248

### 2.5.2.3 Structural Challenges

Following the global economic slump occasioned by the oil crisis of 1970s, Kenya's economy, like of most African states, stagnated as inflation spiked and earnings from exports declined. This led to balance of payments challenges which in turn worsened living conditions and governments became highly indebted. In the background, the powerful industrialised states helped assassinate the quest for a New International Economic Order by developing countries which was pegging for more favourable international trade and development assistance. Instead, led by the G-7, the development nations endorsed proposals by the IFIs to tighten their loan conditionalities when lending assistance to the crippling third world economies in what were referred to as Structural Adjustment Programs (SAPs)- this was despite the portrayal of the IFIs as apolitical institutions.<sup>67</sup>

The United States which was heading the G-7, and embroiled in ideological differences with the Soviet Union, justified the adjustments as intended to open international markets, ingrain former communist states into the mainstream economies, promote economic reforms in third world countries where the majority population lived and to promote the role of IFIs in the international economic system<sup>68</sup>. The SAPs were basically aimed at imparting neo-liberal ideals in a bid to control foreign debt and improve the balance of payments. Typically, implementing states were to liberalise their markets, promote private sector development, devalue their currencies, tighten their public expenditure to balance budgets, privatize state corporations and reduce spending on social services- including education and health.<sup>69</sup>

Left without an option for the crippled economies in the face internal and external challenges, developing states gave in to the SAPs. Kenya started introducing the SAPs in the 1980/81

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<sup>67</sup> Ould-Mey, Mohameden. *Global Restructuring and Peripheral States: The Carrot and the Stick in Mauritania*, 1996, Lanham, Rowman & Littlefield, pp. 29-35

<sup>68</sup> Ibid, Ould-Mey, p. 30

<sup>69</sup> Heidhues, F., & Obare, G., "Lessons from Structural Adjustment Programmes and their Effects in Africa" *Quarterly Journal of International Agriculture*, 2011, Vol. 50, No. 1: 55-64. p 58

fiscal year and the adjustment policies were subsequently integrated into the country's economic policy in the Sessional Paper No. 1 of 1986.<sup>70</sup>

However, by 1990, it was evident that the SAPs they did not achieve much in reviving the local economy with Kenya's economic growth spiralling from 6% in the "Golden decade" to an average of 0.3% between 1980 and 1993<sup>71</sup>. This translated to worsening living conditions for Kenyans due to inflationary pressure and widened the poor-rich strata as social welfare programs budgets were cut; and this affected even provision of basic services such as education and healthcare. In effect, public support for the regime fell tremendously, while the economic reforms reduced the availability of state resources to entice support.

Desperate to retain power, the Moi regime reviewed the electoral laws to introduce a queuing "mlolongo" voting system and outright endorsement for those who received over 70per cent votes during nominations. The legal framework coupled with intimidation was crucial to retaining regime incumbency as over half of the 188 parliamentary seats were unopposed and imposed on loyalists during the 1988 general elections.<sup>72</sup>

#### **2.5.2.4 Return to Multi-Party Elections 1990-1991**

As covered in the last section, structural and economic factors; both internally and from without; led to public exhaustion with the regime and increased political agitation which set the stage for political reforms in Kenya. With the associational freedoms strangled and intimidation of dissidents through state instruments, civil society organisations had been silenced and cowed; while the remaining ones such as *Maendeleo ya Wanawake* and the

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<sup>70</sup> Rono, K., J., "The impact of the structural adjustment programmes on Kenyan society" *Journal of Social Development in Africa*, 2002, Vol. 17, No. 1: 81-98, p. 83

<sup>71</sup> World Bank, *World Development Report 1995*, 1995, New York, Oxford University Press. pp. 162-163

<sup>72</sup> Throup, D. and Hornsby, c., *Multi-party Politics in Kenya: The Kenyatta and Moi State and the Triumph of the System in the 1992 Election*, 1998, Nairobi, East African Educational Publishers. p 120

Central Organisation of Trade Unions (COTU) had been co-opted into serving the regime interests.<sup>73</sup>

However, this would change in the late 1980s, as dissidents who had been kicked out of KANU became vocal in opposing the Moi's dictatorship and the ineptitude of the regime. The dissidents were of the elite political class who united to form an opposition and they started marshalling support; which they got from within the non-state actors – The Law Society, the Kenya Human Rights Commission and religious leaders. Emboldened from within, their riots and protests calling for increased democratic freedoms including multi-partyism began to gain momentum. This created tension across the country that would culminate during *Saba Saba* – marked by countrywide protests against the regime on July 7, 1990. In retaliation, the government deployed security forces to quash the protests with a shoot-to-kill order; leading to the death of tens of protestors while hundreds others were injured and detained.<sup>74</sup> The state reaction did not however deter the countrywide dissent fever, and President Moi was repeatedly vocal in opposing introduction of pluralistic politics on grounds that it would balkanize the country along ethnic lines and cause civil strife.

#### **2.5.2.5 Political Conditionality and the Transition to Democracy**

All this while, the donor community remained oblivious to the political tensions, until the US posted a new Ambassador Smith Hempstone in 1989 at the end of the cold war. Amb Hempstone did not reserve his criticism of the Moi government and articulated Washington's renewed stance on democratic values as a factor in aid disbursement; this earned him the tag 'rogue ambassador'. However, wary of frosting its relationship with Kenya which served strategic interests, the Assistant Secretary of State for African Affairs H. Cohen visited the

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<sup>73</sup> Adar, Korwa G., "Ethnicity and Ethnic Kings: The Enduring Dual Constraint in Kenya's Multiethnic Democratic Experience", *Journal of the Third World Spectrum*, 1998, Vol. 2, No. 5, pp.71- 98: 78

<sup>74</sup> Wanjohi, N., *Challenges of Democratic Governance, Parliament, Executive and the Citizen in Kenya*, 1993, Nairobi, National Council of Churches of Kenya (NCCCK).p 34

country later in May 1990 with assurances that the US's policy was not an endorsement of multi-partyism in Africa.<sup>75</sup> It was a period of bilateral donors' double speak as they apparently waited for a ripe moment to implement their capitals' changing policy on democracy and good governance as a condition of foreign aid. In instance, in June of 1990 at the height of domestic political activism, as London announced it would attach political conditionalities to aid, its High commissioner in Nairobi Sir John Johnson assured that Britain had no intention to cut its aid to Nairobi.<sup>76</sup> However, the position of the international community would change following the brutality unleashed on July 7 (*saba saba*) 1990 day protesters.

### **2.5.2.6 The Democratic Opening**

Moi's allies in government including Kenneth Matiba and Mwai Kibaki had resigned to join the opposition wave which was supported by the civil society, religious fraternity and professionals in pressuring the regime for basic civil and political freedoms.

In addition, bilateral donors began reacting to the gross abuse of human rights and suppression following the brutality of the regime in crushing the pro-democracy protests of July 7, 1990. The US congress froze military aid to Nairobi and Nordic missions- Denmark, Finland and Sweden- issued a joint statement indicating their intention to carry out cut aid if reforms were not implemented. In November of 1991, a Consultative Group meeting of western donors in Paris collectively resolved to suspend aid to Kenya until political and economic reforms are implemented.<sup>77</sup>

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<sup>75</sup> Hempstone, S., *The Rogue Ambassador: An African Memoir*, 1997, Tennessee, University of the South Press. p 94

<sup>76</sup> African Watch, *Kenya: Taking Liberties*, 1999, New York, Washington and London: Africa Watch , p. 363

<sup>77</sup> Brown, S., "Changing Donor Roles in Kenya's Democratization Process' in Murunga, R. G. & Nasong'o W. S., ed, *Kenya: The Struggle for Democracy*. London and Dakar, Zed Books and Council for the Development of Social Science Research in Africa, 2007 pp 303-331: 313

This marked the turning point for the country. Within, the Moi regime was under economic and political stress owing to poor economic performance and political tensions and without the donors was threatening to withdraw their support to Kenya. The government was literally cornered and within a week of the Paris donor consultative forum; on December 3, 1991, President Moi announced the repeal of Section 2 (a) of the Constitution to allow multipartyism. The Constitution would be further amended to limit the presidential tenure to two terms ahead of the December 1992 elections.

The transition from authoritarian rule is marked by an opening when loyalty within the regime elite is split with the dissidents questioning legitimacy of the government and pushing for reforms. This stage ends when an election is held and either the old political elite is legitimised or a replaced.<sup>78</sup> In Kenya this was the period between the mid-1980s and 1991. The constitutional amendment marked the return of multi-party electoral democracy but the incumbent President Moi retained power in both the 1992 and 1997 elections.

The retention of the old political elite was blamed on the fragmentation within the opposition which rendered it too weak to coordinate an onslaught against Moi who not only had grassroots patronage networks built through his 24-year rule; but also had the provincial administration campaign for him.

### **2.5.3 The Kibaki Era – Era of democracy and development**

The 2002 elections were a culmination of the pro-democracy activism for political liberalism, accountability for state institutions, media freedom, civic education and a level electoral playing freedom. President Moi opted out of the race paving the way for the opposition groups to unite and challenge his nominee Uhuru Kenyatta. With a voting population that

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<sup>78</sup> O'Donnell G. et al., *Transitions from Authoritarian Rule: Comparative Perspectives*, John Hopkins University Press, 1986, p6



was enlightened on their political and civil rights, and charged from years of anti-Moi sentiments, the National Rainbow Coalition (NARC) candidate Mwai Kibaki easily won the elections with 62% of the votes and a 125 majority in Parliament against Kenyatta's 31% and 64 parliamentary seats<sup>79</sup>.

The Kibaki regime began in high reforms and development momentum favoured by enhanced support from the donor community and civil society. During his first term in office, the economy buoyed from 0.6% in 2002 to about 7.0% in 2007. Real per capita incomes increased by 3% and poverty declined from 56% in 2000 to 46% in 2007.

However, corruption scandals soon rocked the regime while internal power wrangles led to the break-up of NARC after the state-sponsored 2005 draft Constitution referendum was defeated with 42% against 58% of the total votes. The NARC dissidents leading the anti-referendum campaign, the 2007 elections were a tight contest that unfortunately saw the country disintegrate after the violence broke out following disputes over the December 2007 elections.

#### **2.5.4 Conclusion:**

The regime in post-colonial Kenya was characterised by state patronage which compromised the hopes of the independence nationalist movements to deliver development and national unity.

With international politics focusing on the Cold war dynamics, development cooperation was mainly considered on the basis of geo-strategic interests. This provided a shield for the Kenyatta regime which had regressed from the electoral democracy at independence to autocracy, as well as the Moi regime, to continue receiving unrestrained aid due to the

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<sup>79</sup> Observing the 2002 Kenya Elections, May 2003, Atlanta: The Carter Center, pp 35-36

county's strategic importance as a reference point of capitalism and stability in the region and for the US's military interests in regards to the Persian Gulf. Initially, during the Golden years- decade of independence, the high economic growth rates were used to justify lack of democracy as a trade-off for development.

The Moi regime which pursued the same neo-patrimonial strategies to maintain occurred at a time of domestic and international economic challenges. The poor impact of SAPs, domestic pressure and aid cut threats compelled the administration to concede to the return of pluralism by amending the Constitution which set the stage for Kenya's transition to democratic political organisation.

With the end of the bipolar order, donors hinged their foreign aid on democratic developments seeking minimalist provisions of electoral democracy. This also saw the re-emergence of civil society activism and increased transmission of foreign aid through non-governmental organisations in utter protest of increased corruption within the state system.

The emergence of pluralist politics did pose another challenge to democratic growth. One was the fragmentation of the opposition with the parties formed being hinged on ethnicity and the egotistic ambitions of their founders; and thus failing to move their agenda on a united front. This helped Moi retain power in the 1992 and 1997 general elections, with a mere 36.6 per cent and 40.1 per cent of the votes cast against.<sup>80</sup>

The second was state-sponsored electoral ethnic violence and intimidation of opposition leaders. The disunity of the opposition rendered its leaders vulnerable to intimidation,

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<sup>80</sup> Veney R. C., & Zeleza T. P., "The Political Economy of Development and Democratic Transitions in Kenya" *Yale Journal of International Affairs*, 2013. Accessed June 30, 2014 from: [http://yalejournal.org/article\\_post/the-political-economy-of-development-and-democratic-transitions-in-kenya/](http://yalejournal.org/article_post/the-political-economy-of-development-and-democratic-transitions-in-kenya/)

harassment and enticement by the state and its organs which was keen to maintain control. The 1992 and 1997 elections were characterised by ethnic clashes at the rift valley and the coastal province which served to undermine the appeal of multi-party politics. The 2002 elections that saw the end of the KANU rule were however free of any violence which may have led to the 'surprise' element with the 2007/8 post-election violence.

Efforts to have a citizen-endorsed Constitution that would entrench basic democratic ideals on civil and political liberties and human rights for all gathered momentum in the run-up to the 1997 elections, but were overshadowed as focus remained on delivering the December elections. This constitutional dream culminated in the first draft referendum in 2005 which was rejected by a majority vote.

## **CHAPTER THREE**

### **3.0 THE ROLE OF INTERNATIONAL ACTORS ON DEMOCRATIC IDEALS**

#### **3.1 Introduction**

This chapter will examine the role of Diplomacy for Democracy by Bilateral and Multilateral Donors; examining the role, tools and channels used by international actors to influence the entrenchment of democratic ideals. It will also demonstrate how the quest for political liberalisation in Kenya has been closely linked to its Constitutional processes; and paying credence to conceptualization of the maximalist liberal model of democracy that electoral outcomes do not necessarily translate to amalgamation of democratic gains and socio-economic development. Therein, the study will explore the role of the regime and the international community in consolidating or diffusing the gains of the transition to democracy post 1992.

#### **3.2 Kenya's Democratic Transitions and International Actors**

Kenya's democratization process will be studied under four distinct phases in this section. First is the phase leading to the democratic breakthrough realised in the 1992 multiparty elections, the second is the period of single-party authoritarianism during which Kanu remained in power despite being largely unpopular, the third is the democratic transition occasioned by the 2002 elections which ended Kanu rule through a largely free and fair election. The fourth phase is the period between 2002 and 2010 when the country underwent a democratic wave; regressing into post-election chaos then rising to realise a new Constitution that entrenched democratic principles setting the stage for institutionalization and consolidation of democracy.

### **3.3 Political Conditionality and Kenya's Democratic Opening (1989-1992)**

As discussed in the previous chapter, prior to and had uninterrupted support in terms of aid to the Moi government, despite its deteriorating human rights record and corruption which only served to prop the corrupt authoritarian regime. Donors' focus on domestic affairs in Kenya prior to 1990 was on economic reforms through the Structural Adjustment Programs which nonetheless contributed indirectly to a democratic opening in 1992 by eroding state resources that had previously been used to promote patron-client relations.

The implementation of the SAPs and a stagnated economy also fuelled support for political reform both by the citizens and the political elite; and offered donors more leverage to influence domestic affairs as the regime was increasingly dependent on foreign aid. The political scene was censored through the constitutional entrenchment of single-party rule and open criticism of the regime was intolerable. President Moi had continually entrenched a system of presidentialism built on neo-patrimonial systems and suppression of associational freedoms. The civil society was repressed and the media was basically in a state of self-censorship as they were compelled by the State to increase coverage of KANU activities and blur positive coverage of the opposition.<sup>81</sup>

The US Ambassador Smith Hempstone is remarked as initiating an active role for donors in Kenya's political processes owing to his criticism of the ills of the regime starting in 1990 at a time of heightened political activism which was being suppressed by the regime through gross human rights violations. He had been the only diplomat who criticised the detention of pro-democracy activists ahead of the planned July 7, 1990 *Saba Saba* protests and even assisted Gibson Kamau Kuria and Paul Muite, both human rights lawyers, to evade arrest

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<sup>81</sup> Barkan, J. D., "The rise and fall of a governance realm in Kenya", in, Hyden, G. and Bratton, M. (Eds.). *Governance and politics in Africa*, Boulder: Lynne Rienner Publishers, 1992, pp.167-192: 182

and to later flee the country.<sup>82</sup> However, at a time when donor capitals disjointed policy implementation on aid conditionality, a day after his Hempstone's protest statement, the US government disbursed \$5million in military support to Kenya. Previous US-Kenya relations had been guided by neo-realist principles, based on strategic military ties nursed during the cold war era when Kenya provided coastal military bases convenient to the US erstwhile core agenda of controlling communist expansion in the Gulf.

The American congress, keen on ensuring its policy on tying aid to democratic principles of human rights, pluralist politics and liberal institutions was implemented, in November of 1990 voted to suspend \$25million of military aid to Kenya until the regime carried out a series of corresponding reforms. In particular, the Congress asked the Moi regime to release or charge political detainees, terminate torture for prisoners; restore the security of tenure for judges and to restore the freedom of expression.<sup>83</sup> Adamantly, the Moi government only complied with the demand on tenure of judges. However, it first reorganised the Judiciary and placed its cronies in power.

Though initially demure, donors in the country followed the American envoy's stance and started getting actively in making statements to criticise the regime and advanced to attaching political conditions to aid to compel the government into providing for pluralist politics. In mid-1990 Denmark, Finland and Sweden protested the ill treatment of opposition leaders in a joint communique that also threatened to suspend its foreign assistance to the country if the regime continued violating human rights.<sup>84</sup>

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<sup>82</sup> 'Moi's uneasy relations with foreign missions' The Standard, Nairobi, 8 August 2013

<sup>83</sup> Adar, K., & Munya, I., 'Human Rights Abuse in Kenya Under Daniel Arap Moi, 1978-2001', *African Studies Quarterly*, Volume 5, Issue 1, Winter 2001. pp 1-17: 13

<sup>84</sup> Brown, S., "Changing Donor Roles in Kenya's Democratization Process", in Murunga, G. R. & Nasong'o, S. W. eds. *Kenya: The Struggle for Democracy*. London & Dakar: Zed Books and Council for the Development of Social Science Research in Africa, 2007, pp 303-331: 310

Consequently, when Norway protested Koigi wa Wamwere's trial for treason, its diplomatic ties with Kenya were terminated which translated to a loss of about \$20million in annual aid to Kenya. Seeing as threats did not deter the Moi regime from its gross violations of human rights, the donors started implementing their threats. The Danish government pegged its aid to Kenya on the status of human rights and good governance, effectively cutting it by a quarter in November 1990. This translated to a loss of \$9million of the Danish aid to Kenya.<sup>85</sup> However, the country's largest donors- Britain, Germany and Japan initially refrained from making any outspoken criticism of the political and governance situation in the country. At the same time, the country's economy continued to deteriorate amidst public exhaustion with the regime and increased agitation for political liberalism, and basic civil and human rights.

In late 1991, Kenya's key development partners reviewed their stance on the status of governance in the country and in November, the US, Canada, Germany, Sweden, Denmark, Finland, Australia and the United Kingdom (UK)-for the first time- protested the harassment of pro-democracy activists.

In response, the World Bank rejected a loan request of a \$100million for the energy sector while the British government cancelled \$7million in oil subsidies and blatantly informed that the international community would take a decisive action on Kenya in the November Donor Consultative Meeting.<sup>86</sup> Locally, pro-democracy activists coalesced under the Forum for the Restoration of Democracy (FORD) urged donors to consider suspending aid to Kenya to compel the regime into beginning political and governance reforms.

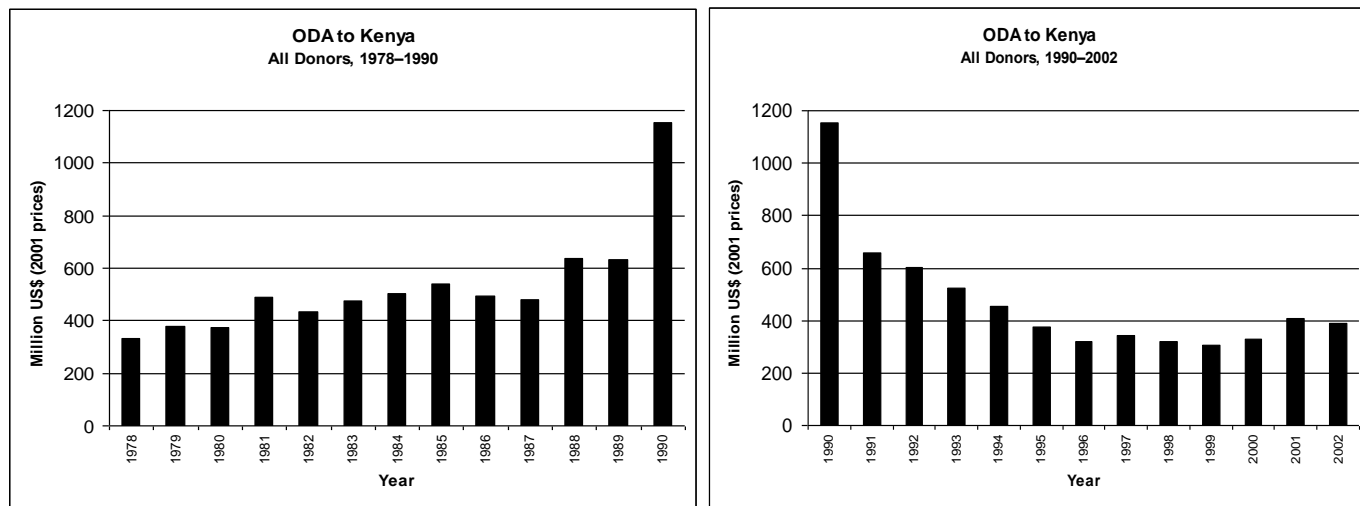
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<sup>85</sup> Brown, S., "Changing Donor Roles in Kenya's Democratization Process", in Murunga, G. R. & Nasong'o, S. W. eds. *Kenya: The Struggle for Democracy*. London & Dakar: Zed Books and Council for the Development of Social Science Research in Africa, 2007:, p 303-331:310

<sup>86</sup> wa Maina, Kaniaru. 1992. "The Future of Democracy in Kenya." *Africa Today*, vol. 39, nos. 1-2 (1st and 2nd Quarters).wa Maina 1992: p: 124

The decisive moment for a democratic breakthrough was pressured by the Paris Consultative Group meeting of all donors, chaired by the World Bank, which resolved to suspend further aid to Kenya – about \$1billion- until the government undertook political reforms to restore the rule of law and respect for human rights, liberalise the political playing field and decisive action against corruption<sup>87</sup>. This marked the reduction of aid to Kenya as illustrated in the table below that offers an outlay of aid flows before the end of the cold war and after donors introduced political conditionality in the push for political reforms:

Figure 1: Aid flows to Kenya: 1978 - 2002



Source: Brown, S., “Changing Donor Roles in Kenya’s Democratization Process”, in Murunga, G. R. & Nasong’o, S. W. eds. *Kenya: The Struggle for Democracy*. 2007, London & Dakar: Zed Books and Council for the Development of Social Science Research in Africa: pp 5-10

Owing to Kenya’s economic dependence in foreign aid, the abrupt cut on aid taps marked a turning point and consequently the government amended the Constitution to legalise the establishment of opposition parties ahead of the 1992 elections. The concerted domestic and

<sup>87</sup> Barkan, J. D. “Kenya: Lessons from a Flawed Election.” *Journal of Democracy*, 1993, vol. 4, no. 3 (July), p. 91



international pressure led to political liberalisation and bore further constitutional changes to limit the presidential tenure to two terms of five years each.

In the early 1990s, donor interest in promoting democracy in Kenya focused on seeking minimalist electoral democracy. This was achieved with the return of multi-party elections in December 1992 after Section 2(a) of the Constitution had been repealed.

### **3.3.1 Civil Society and the Transition**

The main pressure group Forum for the Restoration of Democracy (FORD), the Church and the Law Society of Kenya (LSK) were critical actors in the second liberation and in 1991, united their organisation under the Justice and Peace Convention – Kenya (JPC). The JPC organised countrywide prayer rallies during which it would enlighten the citizens on their civic rights and responsibilities as FORD relied on radical press to reach the citizens with its ideas of political reform. Another was the Moral Alliance for Peace (MAP) formed by Rev. Njoya in October 1991; with the aim of uniting all groups involved in the liberation from autocracy movement to consolidate their agendas.<sup>88</sup> The civil society movement was instrumental in pressuring the Moi regime into allowing pluralist politics and seeking regime respect for human rights and press freedom.

Following the opening of the democratic space in 1991, the main pressure group – FORD- which was constituted by defiant political elites who had abandoned Kanu over leadership differences was registered as a political party after the amendment of section 2A of the Constitution in December 1991 to permit the establishment of opposition political parties.

However, the gains of the civil society and opposition FORD on political reforms was seriously depleted by power struggles, ethnic differences and personality clashes within

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<sup>88</sup> Matanga, F. K., Civil Society And Politics In Africa: The Case Of Kenya, Presented at the Fourth International Conference Of ISTR, Trinity College, Dublin, Ireland, July 5-8, 2000

FORD- which saw it disintegrate into FORD Asili and Ford Kenya- as other multiple parties were formed. The divisions made it easy for Moi to retain presidency in the 1992 elections.

### **3.4 Period of Electoral Authoritarianism: 1992-2002**

Despite wide-spread unpopularity, Moi's rule was legitimated in the 1992 and 1997 elections after garnering 36.3per cent and 40.1per cent of the total votes respectively. His cling to power in both elections can be attributed to similar set of conditions that gave him an edge over the opposition; including: an uneven institutional and legal playing field, restrictions on media coverage of the opposition, restraining opposition campaigns, blatant theft of votes, violent intimidation and pre-election ethnic violence.

The first wave of pre-election violence in Kenya broke out in late October 1991 - when pro-democracy rallies were at their peak- and just before the 1997 elections, and was aimed at intimidating communities who posed a threat to KANU's win the elections. They were masterminded by Moi's allies and executed by members of his Kalenjin community starting from the Rift Valley which was KANU's largest support base; against members of the Kikuyu community who represented about 30 per cent of the voting quota. The violence was concentrated in the Rift valley in 1991-92 and at the coast region in 1997; all targeted at seemingly opposition supporters. In addition, the KANU hardliners played the ethnic card, portraying the opposition movement as a Kikuyu agenda and playing on fears of Kikuyu domination. The violence served to intimidate and disenfranchise voters perceived to be

hostile to the regime.<sup>89</sup> In both instances, an estimated 2,000 people were killed while 500,000 others were displaced.<sup>90</sup>

Institutionally, Moi handpicked officials of the electoral agency and influenced the delimitation of electoral areas with areas loyal to the regime getting more constituencies—estimated at 13 if the division had been done based on population distribution - with the intention of maximizing KANU's representation in the Legislature. In addition, the powerful provincial system and security agencies had been turned into an instrument of executing the regime's political agenda against the opposition leaders by denying them permits to hold rallies as well as intimidating and harassing them during the campaign period<sup>91</sup>. The state's ability to exploit the system to its advantage was enhanced by the fact that the regime still had access to state resources which it used during campaigns to bribe voters and strategic individuals including the Judiciary.

Further, the Elections Act seemingly favoured KANU at a time when the opposition was highly fragmented on ethno-regional bases, by prohibiting the formation of coalition governments which was the only possible way for the opposition parties to take over power since none could have achieved the support of five of the eight provinces as required by the law.<sup>92</sup>

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<sup>89</sup> Klopp M., Jacqueline, "Kenya's Internally Displaced: Managing Civil Conflict in Democratic Transitions" in eds. Bekoe A., Dorina, *East Africa and the Horn: Confronting Challenges to Good Governance*. 2006. Colorado & London: Lynne Rienner Publishers Inc. pp. 59-79: 63

<sup>90</sup> <sup>90</sup> Veney R. C., & Zeleza T. P., "The Political Economy of Development and Democratic Transitions in Kenya" *Yale Journal of International Affairs*, 2013. Accessed on July 15, 2014 from: [http://yalejournal.org/article\\_post/the-political-economy-of-development-and-democratic-transitions-in-kenya/](http://yalejournal.org/article_post/the-political-economy-of-development-and-democratic-transitions-in-kenya/)

<sup>91</sup> National Elections Monitoring Unit (NEMU), *The multi-party General Elections in Kenya 29 December 1992: The Report of the National Election Monitoring Unit (NEMU)*, 1993. NEMU: Nairobi, ,p40

<sup>92</sup> Brown, S., 'Authoritarian Leaders and multiparty elections in Africa: How foreign donors helped keep Kenya's Daniel Arap Moi in power' *Third World Quarterly*, 2001, Vol 22, No. 5, pp 725-739:726-727

After the 1992 elections, focus shifted on implementing economic reforms to re-awaken the economy that had been declining over the decade. There was little progress on the democratic path Kenya had initiated after the elections except for about 20 by-elections which were mostly triggered by opposition MPs who had defected to KANU and they reclaimed their seats with the support of Moi.

The 1992 and 1997 elections were marked with massive irregularities yet both were endorsed by the international community despite foreign election observers' reporting that KANU manipulated the electoral process including voters.

Table 2: Results of the 1992 Presidential Election Results

Candidate	Party	1992 Elections	Parliamentary Seats (Elective total =188)
		Votes garnered	
1. Daniel Moi	KANU	1,962,866	100
2. Kenneth Matiba	FORD-A	1,404,266	31
3. Mwai Kibaki	DP	1,050,617	23
4. Oginga Odinga	FORD-K	944,197	31
6. Other		38,378	3
TOTAL		3,996,058	188

Source: 'Kenya: The December 29, 1992 Elections', 1993, Washington: The International Republican Institute, Appendix 9. Accessed June 10 on: <http://www.iri.org/sites/default/files/Kenya's%201992%20Presidential,%20Parliamentary%20and%20Local%20Elections.pdf>

Table 3: Results of the 1997 Presidential Elections

Candidate	Party	1997 Elections		Parliamentary Seat (Elective total 210)
		Votes garnered	% of total	
1. Daniel Moi	KANU	2,500,856	40.64 %	107
2. Mwai Kibaki	DP	1,911,472	31.49 %	39
3. Raila Odinga	NDP	667,886	11.06%	21
4. Michael Wamalwa	FORD-K	505,704	8.40%	17
5. Charity Ngilu	SDP	488,600	7.81%	15
6. Other		98,653	0.60%	11
TOTAL		6,173,171	100	210

*Source: Daily Nation 10 January 1998; The Daily Nation and the East African Standard Newspapers [January 1-3, 2008], Amutabi, 2009, pp. 66-67*

### **3.5 The Constitution Agenda: Phase 1(1992-2002)**

A Constitution provides the supreme legal framework for relations within a state, between state institutions, and between the state and society. In a democracy, the constitution provides the legal basis for the exercise of political, civil liberties, human rights, institutional powers and a framework for accountability.

In Kenya, the first Constitution was aimed at transferring authority from the colonialists to the nationalist movements and was soon mutilated to serve the interests of the elites who sought to centralise and consolidate Presidential authority. This was justified as necessary to marshal all communities to expedite development in the young state. However, the autocratic

rule bred dissent as the economy started declining due to internal and external challenges starting in the 1970s leading to demands for economic and political changes in the 1980s.

The calls for Constitutional reforms by pro-democracy activists in the early 1990s were driven by the sole agenda of providing a conducive environment for multiparty politics as they wrongly believed they would succeed in ejecting Moi from power in the 1992 elections. With failing aid flows and popular support, the KANU yielded to minimal reforms allowing multipartyism and limiting the presidential tenure to two terms of five years each. However, after the 1992 elections, democratic advances stagnated as the government and donor agencies concentrated on domestic stability following the pre-election violence and implementing economic reforms to salvage the declining economy.

The momentum for constitutional reforms resumed in late 1995 and 1996 ahead of the 1997 general elections; championed by an amalgamation of reformers acting as the National Convention Executive Council (NCEC). The NCEC had representation of the civil society, the elite, political class and religious bodies and championed for an overhaul of the constitution and taming of Presidential authority under the “No reforms, no election” slogan. The NCEC activities adopted the 1990s Saba Saba approach rallying public demonstrations and protests in across the country. Predictably, the Moi government reacted with violence and about 65 protestors were killed security forces who brutally quashed the protests on July 7 and August 8, 1997.<sup>93</sup> Locally, the unity of purpose of the pro-democracy movement was losing traction while the international coverage of state repression had caused uproar among the international community.

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<sup>93</sup> Barkan, D. J.. and Ng'ethe, N., "Kenya tries again", *Journal of Democracy*, Vol. 9(2), April, 1998. p.37

Cautious not to lose international support and keen to quell the increasing dissent ahead of the polls, the regime initiated reform negotiations through the Inter-Parties' Parliamentary Group (IPPG) which comprised of and MPs championing who had abandoned the NCEC and KANU moderates. Though the "no reform, no election" agenda was seeking an overhaul of the Constitution, the IPPG talks focused on addressing issues which had hindered fairness in the 1992 elections including the restriction of freedoms of assembly and expression by the provincial administration, the undoing of the electoral agency, media bias on political coverage and the limitation of presidential powers.

The Bomas and Safari Park talks alienated the NCEC drawing a sharp division of purpose between the pro-democracy politicians and civil society which undermined the search for comprehensive Constitutional reforms agenda as the IPPG agreed on minimal changes focusing on levelling the election playing field by flexing the rules on election campaigns, fair media coverage and non-interference of the electoral process by the provincial administration.<sup>94</sup> The IPPG reforms have been accredited for the increment in the number of registered parties increase threefold from 8 in 1992 to 27 in 1997. While this was indicative of the developing political pluralism, it further fragmented the possibility to dethrone Kanu as 14 presidential candidates were fronted to challenge Moi and a total of 22 parties participated in legislative elections.

The IPPG also agreed on a framework for negotiating comprehensive reforms but the Constitutional momentum only intensified after the 1997 general elections and Moi tasked a Parliamentary team by Raila Odinga to review the reform issues. This resulted in the enactment of the Constitution of Kenya Review Act of 2002 which established a framework

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<sup>94</sup> Brown, S., 'Changing Donor Roles in Kenya's Democratization Process'. In Godwin R. Murunga and Shadrack W. Nasong'o, ed, *Kenya: The Struggle for Democracy*. London and Dakar: Zed Books and Council for the Development of Social Science Research in Africa, 2007: pp 303-331: 318

for the review of the existing Constitution through a Commission appointed by the President, constituency deliberation forums and a national constitutional conference; of which all sitting MPs would be members.

The decision by Moi to take the reform agenda to Parliament caused jitters among the civil society and religious activists who coalesced under the Ufungamano initiative amidst fears that the Kanu-dominated House would be co-opted. In response to the increasing agitation, Moi established the Constitution Review Commission led by prominent lawyer Yash Pal Ghai who managed to reconcile the legislature and civil society initiatives and redefined the agenda of the commission from revising the existing constitution to delivering a new constitutional order.<sup>95</sup> The Ghai-led team tabled its report in 2002 alongside a new draft constitution, popularly referred to as the Bomas Draft. The Bomas draft formed the core of subsequent constitutional development processes after the 2002 elections.

### **3.7 Donors Role in the Democratic Stagnation**

In the run-up to the 1992 multi-party elections, the international community was crucial in pressing for constitutional reforms for political liberalisation and supporting the electoral process. Donors imposed political conditionalities on aid to coerce the Moi government into changing the rules of political organisation and legalising opposition parties. They also offered material and technical support for the Election Day processes to a tune of over \$2million and sent delegations of election observers.<sup>96</sup>

However, donors excessively focused on delivering a multiparty election rather than stimulating conditions for a free and fair election. Brown notes that there were three attempts

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<sup>95</sup> Nasong'o, S. W. eds. *Kenya: The Struggle for Democracy*. London & Dakar: Zed Books and Council for the Development of Social Science Research in Africa, 2007: Pp 29-30

<sup>96</sup> Brown, S., "Changing Donor Roles in Kenya's Democratization Process", in Murunga, G. R. & Nasong'o, S. W. eds. *Kenya: The Struggle for Democracy*. London & Dakar: Zed Books and Council for the Development of Social Science Research in Africa, 2007: 303-331:316



by the oppositions to call for a boycott on the 1992 elections between June 1992 and January 1993 due to the until fairness was accorded to all parties, but donors, led by US Ambassador Smith Hempstone implored on the opposition actors to drop the calls as the regime took only conceded to a few modifications.<sup>97</sup> Various observer missions reported that the 1992 elections were deeply flawed, but donors nonetheless endorsed them as having met the basic criterion; stressing on the voting process rather than the credibility of the entire electoral process for fear of civil unrest.<sup>98</sup>

The agenda of the international community in Kenya following the 1992 elections shifted from political reforms to prioritising internal stability and thereafter focusing on economic reforms. In its characteristic self-preservation behaviour, the regime undertook some economic reforms as an impetus to maintain donor funding and these reforms blinded the donors from reaction on the declining state of democracy. As the government partially implemented economic reforms, it diminished the democratic space by limiting the freedom of the media and violently suppressing the opposition.

During the Donor Consultative meeting held in 1993, the international community was non-committal on neither of Kenya's political or economic trajectory. While there was little mention of political liberalisation, the meeting noted the need to enhanced economic reforms and thereafter donors resumed aid disbursement to Kenya despite protests from pro-democracy activists and evidence of the receding political space. Though the European Union attempts to marshal its bilateral donors into invoking political conditions on aid, the proposals was defeated as Kenya's key development partners Germany, Britain, Japan and the US

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<sup>97</sup> Brown, S., 'Authoritarian Leaders and multiparty elections in Africa: How foreign donors helped keep Kenya's Daniel Arap Moi in power' *Third World Quarterly*, 2001, Vol 22, No. 5, pp 725-739:731

<sup>98</sup> Brown, S., "Changing Donor Roles in Kenya's Democratization Process", in Murunga, G. R. & Nasong'o, S. W. eds. *Kenya: The Struggle for Democracy*. London & Dakar: Zed Books and Council for the Development of Social Science Research in Africa, 2007, pp 303-331: 316

maintained a 'business as usual' affair with the regime in spite of requests by the opposition for sustained political pressure on the regime.

It was until international media widely covered the July 7 and August 8, 1997 brutality of the state on pro-democracy supporters that donors resumed criticism of the local political conditions and considered suspending aid in protest of the gross violations. A coalition of 22 bilateral donors urged Moi to enter into dialogue with the dissidents; as the IMF and World Bank suspended \$400million in grants and loans citing poor corruption and poor economic governance.<sup>99</sup>

The Moi government then established the IPPG forum as to address prevailing reforms demands. Donors lauded the initiative as a positive step by the regime and pressing on the NCEC to drop its calls for radical reforms in the interest of mitigating resurgence of violence ahead of the elections.

In sheer subjugation of the quest for democratic growth, donors intentionally concealed evidence of electoral malpractices in the 1997 elections in the electoral monitoring reports they released to the public. An election evaluation report of the Donor Democracy Development Group (DDDG) indicated that had the Parliamentary elections not been rigged, KANU would have lost the majority in parliament to the opposition by about 106–108 seats to KANU's 102–104. However, donors endorsed the mutilation of the report's conclusion on two grounds; it might have provoked the regime and would have be sub judicial to court

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<sup>99</sup> Brown, S., 'Authoritarian Leaders and multiparty elections in Africa: How foreign donors helped keep Kenya's Daniel Arap Moi in power' *Third World Quarterly*, 2001, Vol 22, No. 5, pp 725-739:733

cases challenging the elections.<sup>100</sup> The election petition was dismissed by the High Court as expected in a compromised judiciary.

Yet again, after the 1997 elections, donor attention shifted to the promoting economic reforms as the local political arena was dominated with the push for far-reaching constitutional reforms. In 1998, donors resumed aid even though the Moi government had not fully met the conditions set out for the resumption of disbursement.

During the period 1998-2003, donors did little to pressure the government into any political reforms with only one incidence of political conditionality for aid by the Dutch government in June 1999 over the stalled Constitutional reform process as well as the slow pace of economic reforms and corruption.<sup>101</sup> Other bilateral partners did however occasionally criticise the government and as the 2002 election approached, the focus moved to ensuring a peaceful transition as Moi concluded his second term as prescribed in the Constitution. Drawing from the experience of the 1992 and 1997 elections when disjointed opposition agenda's undermined the possibility of dethroning Moi, donors encouraged opposition political parties to unite ahead of the 2002 elections; bringing together the divergent ethno-regional communities and civil society activists under Rainbow coalition.

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<sup>100</sup> Brown, S., 'Changing Donor Roles in Kenya's Democratization Process'. In Godwin R. Murunga and Shadrack W. Nasong'o, ed, *Kenya: The Struggle for Democracy*. London and Dakar: Zed Books and Council for the Development of Social Science Research in Africa, 2007: pp 303-331:319

<sup>101</sup> Brown, S., "Changing Donor Roles in Kenya's Democratization Process", in Murunga, G. R. & Nasong'o, S. W. eds. *Kenya: The Struggle for Democracy*. London & Dakar: Zed Books and Council for the Development of Social Science Research in Africa, 2007, pp 303-31: 320

Table 4: Results of the 2002 Presidential Elections:

Candidate		Party	2002 Elections	Parliamentary Seats (total =188)
			Votes garnered	
1.	Mwai Kibaki	NARC	3,646,277	125
2.	Uhuru Kenyatta	KANU	1,853, 890	64
3.	Charles Nyachae	FORD-P	345, 152	14
4.	James Orengo	SDP	24, 524	-
5.	Others		10, 061	7
	TOTAL		5,975,809	

*Source:* 'Observing the 2002 Kenya Elections', May 2003, Atlanta: The Carter Center, pp 35-36

### **3.8 Democracy & Development under Kibaki Rule 2003-2010**

#### **3.8.1 Democracy and Constitutional Reforms (2002-2007)**

The 1992 constitutional amendment provided a limitation for presidential tenure two terms of five years each. As Moi's second term came towards an end, there were concerted efforts to ensure that the Moi would hand over power and to unite the opposition parties to avoid splitting their vote. Despite pessimism that Moi would easily let go of power, during the election campaign period in on June 2002; Moi announced he would not seek re-election and instead handpicked Uhuru Kenyatta- son of the first President – to seek the Presidency on a Kanu ticket. On the other hand, opposition parties united under the National Rainbow Coalition (NARC) and sponsored Mwai Kibaki to contest the Presidency.

It was an easy win for the opposition with Mwai Kibaki garnering 62 per cent of the total votes while Kanu's Uhuru Kenyatta got 31 per cent marking the end of almost 40-years of

single-party rule. NARC also won a majority in Parliament with 125 out of the 210 seats while KANU retained only 64 seats. The end of the Kanu-Moi regime was attributed to various factors: the unity of the opposition that eventually brought together the various ethno-regional aligned opposition leaders and civil society activists to unite under with an agenda of ousting the rule of both Moi and KANU. The 2002 election was held under a better policy framework than the previous multi-party elections, with fairness in media coverage and holding of election campaigns. The election was marked by high voter turn-out attributed to years of civic education that had been enhanced during the Constitutional review process. Donor activities towards the 2002 elections include political party mobilization and most notable the National Civic Education Programme (NCEP) running between 2001 and 2002 and focusing on elections and the constitutional reform process. According to an empirical analysis of the contribution of the NCEP to the democratic process, the civic education programs had an overall influence (including secondary reach) for between 40 and 50 per cent of all Kenyans.<sup>102</sup>

Kibaki took power amidst euphoria from Kenyans and high expectations from both the public and the international community that his administration would exceedingly delivery development and the necessary reforms especially on eradicating corruption, restoring the economy which had slumped to a 0.6% growth rate in 2002 and delivering a new constitution. With a peaceful transition and a campaign platform of reforms, civil society organisations and development partners enhanced their relations with the new government to help expedite its agenda. However, political differences watered the initial momentum of the regime building up to post-election violence over the disputed 2007 poll.

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<sup>102</sup> Finkel, S. E., 'Civic Education, Political Discussion, and the Social Transmission of Democratic Knowledge and Values in a New Democracy: Kenya 2002' *American Journal of Political Science*, April 2011, Vol. 55, No. 2, pp. 417-435: 433

### **3.8.2 Governance Reforms:**

With the support of the bilateral and multilateral donors, the Kibaki administration immediately took measures to increase the democratic space, promote human rights and improve governance especially by fighting corruption. The Kibaki administration immediately established a raft of commissions and taskforces to address governance challenges, and a sector-wide programme – Governance, Justice, Law and Order- that brings together multiple institutions to guide governance and justice reforms.

The government established the Kenya National Commission on Human Rights (KNCHR) and tasked it to promote and protect fundamental rights and freedoms. To enhance the war against graft, President Kibaki appointed anti-corruption czar John Githongo as Permanent Secretary of Governance and Ethics and instituted multiple reforms intended to reduce incidences of graft through the Anti-Corruption and Economic Crimes Act, 2003. The new administration also initiated judicial reforms through the Integrity and Anti-Corruption Committee headed by Justice Aaron Ringera which investigated corruption among judicial officers and resulted in the exit of almost half of Kenya's senior judges.<sup>103</sup> Other commissions included the Ndungu land commission mandated to investigate protracted land injustices. The Kibaki government also initiated development projects under the Economic Recovery Strategy for Wealth and Employment Creation (ERSWEC) and increased external borrowing to fund infrastructure projects.

However the honeymoon was short-lived as soon the coalition was marred by power battles that split NARC over an alleged pre-election understanding to apportion power to the LDP leader Raila Odinga. The Kibaki regime also manifested ethnic bias with members of the GEMA (Gikuyu, Embu, and Meru) dominating senior state positions.

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<sup>103</sup> “Kenya: Judicial Independence, Corruption and Reform”, International Commission of Jurists, April 2005, Switzerland. Pp 15-16

### **3.8.3 The Constitutional Reform Agenda – Phase II (2002-2007)**

The political differences spilt over into the constitutional process with the President's allies pushing for a review of the Bomas draft to install a Presidential system of leadership while Mr. Odinga's wanted the draft maintained as it was; providing for a devolved system of government and the post of a Prime Minister with strong executive authority. The government went ahead to amend the draft to suit the incumbent. The new draft, dubbed the Wako draft was put on a referendum in 2005. The NARC dissidents formed the 'NO' campaign which argued that the proposed law was aimed at maintaining presidential domination and succeeded in defeating the referendum with 58% against 42% of the total votes.<sup>104</sup>

Despite the political turbulence, the Kibaki regime, buoyed by domestic and international support managed to recover Kenya's economic growth from 0.6% in 2002 to about 7.0% in 2007. Real per capita incomes increased by 3% and poverty declined from 56% in 2000 to 46% in 2007.<sup>105</sup>

### **3.8.4 Democratic Regression – 2007/8 Electoral Violence**

As the general elections approached, the 'No' campaigners, who were purged from government after the referendum united to form an opposition outfit – the Orange Democratic Movement (ODM). The subsequent election campaigns were polarised along ethnic lines and characterised by violence and verbal abuse between supporters of pitted Kibaki's Party of National Unity (PNU) and Odinga's ODM. While the parliamentary elections were won by the ODM with 99 seats against PNU's 43, Kibaki was declared winner of the Presidential poll with a slim margin over Odinga.

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<sup>104</sup> Damdinjav, M., et al, 'Institutional Failure In Kenya And A Way Forward', 2013. *Journal of Political Inquiry* at New York University, 2013 Spring Issue

<sup>105</sup> Kanyinga, K., "Kenya: Democracy and Political Participation" March 2014, Nairobi, Open Society Initiative for Eastern Africa

Table 5: Results of the 2007 Presidential Elections

Candidate	Party	2007 Elections		Parliamentary Seats Elective total 210
		Votes garnered	%of total	
1. Mwai Kibaki	PNU	4,578,034	46.38%	78
2. Raila Odinga	ODM	4,352,860	44.10%	102
3. Stephen Kalonzo	ODM-K	879,899	8.91%	16
4. Others		59,408	0.60%	14
TOTAL		9,870,201	100%	

*Source:* 'Kenya Presidential, Parliamentary and Local Elections December 2007 Election Observation Mission Final Report', 2003. Washington: The International Republican Institute, pp 31-41

Immediately the presidential results were announced, Mr Odinga reject the outcome and no sooner, there was an outbreak of systematic killings targeting perceived PNU sympathisers and especially the Mwai Kibaki's community, mostly in the Rift Valley which was long a hotbed of ethnic clashes and land tussles between the Kalenjin and Kikuyu and in Nyanza region which was Odinga's political backyard. Counter-attacks in Naivasha and other PNU dominated regions targeted ODM sympathisers and the end result was the death of at least 1,133 people and displacement of about 600,000 others. The police were also implicated in extra-judicial killings especially in ODM strongholds.

The elections were seen as a trigger for the explosion of historical injustices dating back to independence time which had been fuelled by poor governance and institutional factors that fuelled ethnicity and promoted patronage politics. The campaign period had been very tense and filled with warning signs of violence such as instances of hate speech, pre-electoral



violence and extra-judicial killings by the police; but which neither the state nor donors anticipated would escalate into full blown conflict.<sup>106</sup>

The outcome of the presidential election was disputed even by the electoral agency and all domestic and foreign election observer missions concurred that the election was deeply flawed and pointed at both PNU and ODM being involved in rigging both at the voting and tallying stages.<sup>107</sup> Even though donors have invested a lot in the electoral process, the Electoral Commission of Kenya (ECK) barred them from observing the final tallying of the Presidential polls which was taking place at the KICC in Nairobi. To forestall a disaster owing to rising tensions, several diplomats are on record as having pleaded with the ECK to further delay announcing the results until they were verified.

However, ECK chairperson Samuel Kivuitu maintained that a recount could only happen if both PNU and ODM agreed; PNU declined and Kivuitu went ahead to declare Kibaki the winner. The masses were highly charged from the election tensions and a day after Kibaki was sworn into office for a second term, on December 31, 2007, 104 people were reported dead in the Rift Valley, Nyanza and Nairobi which had been Odinga's key support regions<sup>108</sup>.

### **3.8.5 International Mediation**

In retrospect, most donors had a false impression of domestic stability from the successes of the 2002 elections and the peaceful 2005 referendum, and overlooked signs of impending crises, the African Union's African Peer Review Mechanism (APRM) report of 2006- that was compiled after the divisive referendum - had predicted an electoral predicament if the government did not undertake reforms to address ethnicity, corruption, poverty and poor

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<sup>106</sup> Cheeseman, N. 2008. The Kenyan elections of 2007: An introduction. *Journal of Eastern African Studies* 2, no. 2: 166–84. Pp. 170

<sup>107</sup> Ballots to Bullets, Human Rights Watch pp 22-23

<sup>108</sup> "Election riots worsen in Kenya", Al Jazeera, December 31, 2007.

governance.<sup>109</sup> However, the implementation of the report recommendations on reforms to maintain stability was overcome by time mainly due to the wide number of issues it was seeking to address.

International observer missions including team from the EU, commonwealth, the US-based International Republican Institute and the East African Community declined to endorse the election result.<sup>110</sup> The United States which had initially congratulated Kibaki on re-election and even urged Kenyans to ‘accept and move on’ soon after dismissed the endorsement as an error in a statement that called for aggrieved parties to seek judicial redress. Thereafter, the US government indicated its attention to restoring peace without reference to the credibility of the election.<sup>111</sup> Other bilateral donors were careful in their pronouncements as there was consensus that the international community could play a more effective role in ending the violence if they portrayed themselves as neutral parties. This strategy seemingly included refraining from imploring on Kibaki to resign until the election disagreement was resolved; impressively legitimizing his claim of Presidency.

There was wide coverage of the violence by international media and the chaos soon affected communication and economic activities in the east African region prompting intervention by the international community. The aggrieved party ODM declined to seek judicial redress on grounds that the courts were compromised and instead called for mass action to protest their ‘stolen victory’ on January 3, 2008. However, the government banned all demonstrations and Human Rights Watch attributed attempts by the police to enforce the ban to the violent

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<sup>109</sup> Kanyinga, K and Walker, S.P.R. 2013. Building a Political Settlement: The International Approach to Kenya’s 2008 Post-Election Crisis. *Stability: International Journal of Security and Development* 2(2):34, DOI: <http://dx.doi.org/10.5334/sta.bu>

<sup>110</sup> Brown, S, ‘Donor Responses to the 2008 Kenyan Crisis: Finally Getting it Right?’ *Journal of Contemporary African Studies*, July 2009, Vol. 27(3): 1–15, pp4

<sup>111</sup> Ibid

confrontations between security agents and opposition protestors leading to excessive use of force and extra-judicial killings estimated at 205 in mid-February.<sup>112</sup>

In the prevailing political impasse, the United Kingdom which shared historical ties with Kenya and was the second largest donor to the country, was the first to propose a power-sharing agreement when Prime Minister Gordon Brown first telephoned Kibaki and Odinga – separately- a day after the violence broke out on 31<sup>st</sup> December 2007. However, at the time, neither party was willing to concede their claim of victory.

With Kibaki and Odinga taking hard-line positions as conflict escalated the international community begun efforts to peacefully resolve the crisis through dialogue in the first week of January 2008. Kibaki and his allies preferred an African-led mediation process and the first attempt was by South Africa's Archbishop Desmond Tutu acting under the All Africa Conference of Churches. While he was attempts to intervene were immediately dismissed by the government, he initiated international engagement with the Kenyan leaders and met other stakeholders including the church and donors.<sup>113</sup>

Immediately after, the US dispatched Assistant Secretary of State for African Affairs, Jendayi Frazer who arrived in Nairobi on 5<sup>th</sup> January, with the goal of breaking the ice and bringing Kibaki and Odinga to the table to negotiate a power sharing agreement. Other Western donors continued meeting with ODM and PNU officials to appeal to them on the need for dialogue and compromise. Mr. Odinga and his allies were accessible to the donors but only the World Bank Country Director Bruce was able to meet Kibaki in person owing to their personal relationship. His role as a peace-dealer was however watered down when a

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<sup>112</sup> Ballots to Bullets, Human Rights Watch, pp 26-27

<sup>113</sup> Juma M., African Mediation of the Kenya post-2007 Election Crisis, in eds Kagwanja P. & Southall R., *Kenya's Uncertain Democracy: The Electoral Crisis of 2008*; 2013, London: Routledge Publishers, Pp 152

confidential memo he wrote claiming the UN had endorsed Kibaki's presidency was public in a local daily.<sup>114</sup>

On 8 January 2008, former African presidents Benjamin Mkapa (Tanzania), Joaquim Chissano (Mozambique), Ketumile Masire (Botswana) and Kenneth Kaunda (Zambia) arrived in Kenya with the intention of convincing President Kibaki to accept the mediation of Ghanaian President John Kufuor- who was the chairperson of the African Union. Buoyed by his leverage within the AU, Mr Kufuor succeeded in convincing both Kibaki and Raila to enter into negotiations with the AU as the mediator and to end violence; setting the stage for a negotiated settlement. However, a verbal agreement brokered by Kufuor that included the recounting of the votes and a re-run if need be; was quickly disowned by PNU and ODM prompting Kufuor to ask the former UN Secretary-General Kofi Annan to take over the process.<sup>115</sup>

On 10 January 2008, Mr. Kofi Annan who was chairing the African Union Panel of Eminent Personalities was accepted by both ODM and the PNU as the African Union Chief Mediator; discharging alongside Mozambique's Graça Machel and Tanzania's Benjamin Mkapa. While Mr Annan had an international appeal and wide experience having served as the United Nations Secretary General, Mkapa and Machel brought in a contextual understanding of the conflict dynamics in Kenya and East African regional relations; with Machel having sat in the APRM of 2006 that had explored the underlying governance challenges in Kenya. The Annan team was supported by bilateral and multilateral international actors, with the AU holding a special session to consider and support the restoration of peace and a political settlement in Kenya under a mediation framework and declaring the impartiality of the AU-

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<sup>114</sup> Brown, S, 'Donor Responses to the 2008 Kenyan Crisis: Finally Getting it Right?' *Journal of Contemporary African Studies*, July 2009, Vol. 27(3): 1–15, pp 5; (*Financial Times*, 10 January 2008)

<sup>115</sup> Ibid, Brown S., 2009, p. 6

led mediation team.<sup>116</sup> There was sustained support of the mediation process maintaining daily contact with Annan and coordinating their pressure on PNU and ODM with the mediation process. Owing to the hard-line positions taken by both factions, in mid-January, the US alongside 13 other donors issued a statement warning that there would no longer be “business as usual” in their relations with Kenya until the political crisis was resolved.<sup>117</sup> Meanwhile, the European Parliament voted to suspend €383 million in aid allocated to Kenya for the 2008-2013 periods<sup>118</sup> - a move supported by local civil society organisations.

The formal negotiations dubbed– the Kenya National Dialogue And Reconciliation (KNDR) - commenced on 29 January with the signing of an agenda document by both PNU and ODM committing to immediately end the violence and address the humanitarian crisis, and to ensure that within two weeks they reached a settlement on the immediate impasse and a framework for resolving the underlying issues in the conflict. The goals of the mediation process was divided into four: Agenda one – to reach an immediate ceasefire and end violation, Agenda two – to address the humanitarian crisis occasioned by the conflict, Agenda three – to overcome the political impasse; and Agenda four to establish a framework for resolving historical factors underlying the conflict.<sup>119</sup>

There was sustained pressure from the international community to ensure the mediation agenda was met, and on February 1, UN Secretary-General Ban Ki-Moon arrived in Nairobi to show support for the mediation process as French Foreign and European Affairs Minister,

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<sup>116</sup> African Mediation of the Kenya post-2007 Election Crisis, in eds Kagwanja P. & Southall R., *Kenya's Uncertain Democracy: The Electoral Crisis of 2008*; 2013, London: Routledge Publishers, pp 153-154

<sup>117</sup> Daily Nation, 17 January 2008; New York Times, 17 January 2008; East African, 22 January 2008

<sup>118</sup> *Kenya in Crisis*, International Crisis Group Africa Report No. 137, 21 February 2008, pp.28

<sup>119</sup> The Annotated Agenda for the Kenya Dialogue and Reconciliation, February 1, 2008. Available on: <http://www.dialoguekenya.org/Agreements/1%20February%202008%20-Annotated%20Agenda%20for%20the%20Kenya%20Dialogue%20and%20Reconciliation.pdf> Accessed on September 1

Bernard Kouchner, to appealed to the United Nations Security Council (UNSC) to consider a declaration on the situation in Kenya in the interest of its " responsibility to protect". Tanzanian President Jakaya Kikwete, the US Secretary of State Condoleezza Rice and European Commissioner for Development and Humanitarian Aid, Louis Michel also visited the country during the mediation period to support and increase leverage of the Annan team in facilitating a settlement. The United States, Britain, Switzerland and Canada further imposed a travel ban unnamed Kenyan leaders over their alleged role in the post-election violence. Pressure from the international community and domestic non-state actors contributed to the success of the mediation process.<sup>120</sup>

Two months after the contested elections on 28 February 2008, Kibaki and Odinga signed a power-sharing framework, 'the Agreement on the Principles of Partnership of the Coalition Government' and surprisingly, immediately after the signed, the violence ended. The agreement was entrenched into law through the National Accord and Reconciliation Act which retained Kibaki as President and installed Odinga as Prime Minister with authority to coordinate and supervise government functions.<sup>121</sup> The agreement also protected the tenure of the coalition government to until the next elections were held, a move seen to ensure that the two factions worked in entrenching institutional reforms to address the causes of the conflict. The new coalition government announced their 42-member cabinet in 14<sup>th</sup> April 2008 with an equal sharing of the 40 ministerial slots.<sup>122</sup>

Meanwhile, Annan left and Nigerian diplomat Oluyemi Adeniji proceeded with the negotiations on a framework for the resolution of protracted grievances including political

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<sup>120</sup> Lindenmayer, E., & Kaye, L. J, A Choice for Peace? The Story of Forty-One days of Mediation in Kenya, August 2009, New York: International Peace Institute, p 10-18

<sup>121</sup> Juma M., African Mediation of the Kenya post-2007 Election Crisis, in eds Kagwanja P. & Southall R., *Kenya's Uncertain Democracy: The Electoral Crisis of 2008*; 2013, London: Routledge Publishers, p 160

<sup>122</sup> Kenya: Kibaki Names Cabinet", The East African Standard, January 8, 2008.

reforms, land and economic injustices, and human rights violations. In May, the parties agreed on Agenda Four framework on institutional and political reforms including expeditiously delivering a new Constitution and establishing commissions to address the post-election violence, historical injustices, land grievances and economic imbalances and rehabilitate the hundreds of thousands of people who had been displaced during the conflict.

### **3.9 The Birth of the Second Republic**

In accordance with the Agenda Four framework reached during the KNDR process, the coalition government established the Commission of Inquiry on Post-Election Violence (CIPEV- Waki commission) to probe the post-poll chaos, the Truth, Justice and Reconciliation Commission (TJRC) on historical injustice, and the Independent Review Commission on the General Elections (the Kriegler commission) on the conduct of the elections.<sup>123</sup> There was also established an Interim Independent Electoral Commission of Kenya (IIEC) which replaced the ECK and conducted the 2010 referendum on the harmonised draft constitution, and the National Cohesion and Integration Commission established in 2008 and mandate to help construct sustainable peace and harmonious existence among all Kenyans.

The CIPEV handed over its report to the coalition principals on 15<sup>th</sup> October 2008, linking impunity of state officials to the violence and recommending that the government set up a Special Tribunal to probe persons bearing the highest responsibility in the post-election violence. There was a caveat though, stating that the Special Tribunal had to be set up by December 17, 2008 failure to which a list of alleged perpetrators would be handed over to the International Criminal Court (ICC) for prosecution. To this end, Justice Waki who chaired the commission handed to Annan a sealed envelope bearing the names of the alleged

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<sup>123</sup> Brown, S, 'Donor Responses to the 2008 Kenyan Crisis: Finally Getting it Right?' *Journal of Contemporary African Studies*, July 2009, Vol. 27(3): 1–15, p 8

perpetrators of the violence. The government failed in its two attempts to establish the Tribunal and consequently, the ICC Prosecutor Luis Moreno Ocampo announced in November 2009 that the ICC was opening investigations into the post-election violence with the aim of charging persons most responsible for violence.<sup>124</sup>

After the mediation period, the donor community sustained pressure on the government to implement the Constitutional and institutional reforms agreed in the KNDR process, though most their approach was more conciliatory. The coalition government also took steps to advance the constitutional process and in May 2010, the Attorney General published the Proposed Constitution that was massively endorsed by the public in the in the August 4 referendum which marked an 72% voter turnout of which 67% voted in favour of the Constitution while 31% voted in the negative.<sup>125</sup>

The new law was promulgated on August 28, 2010; marking the birth of the Second Republic.

### **3.10 Conclusion**

This chapter has used general elections as a benchmark of the progress made in advancing democratic rule in Kenya since it is clear that donor interest in domestic politics always heightened ahead of an election. Donors' interest in the domestic political arena ranged from promoting political knowledge among the citizens through civic education programs which in turn enhanced political participation in democratic processes including elections. On the other hand was the state-directed activities which took the form of political conditionality on aid in pursuit of certain political goals and empowering non-state actors to enhance the pressure on

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<sup>124</sup> Halakhe, B. A., "R2P in Practice": Ethnic Violence, Elections and Atrocity Prevention in Kenya, 2013, New York: Global Centre for the Responsibility to Protect pp 14-15

<sup>125</sup> The Kenya National Dialogue and Reconciliation (KNDR) Monitoring Project, October 2010 Review Report. Pp 19



the government. There is demonstration that the trajectory of democracy was influenced by the tripartite interplay between the state, donors and civil society. There is further evidence that negative political conditionality was effective in compelling the regime to undertake both economic and political reforms. The crisis following the 2007 elections seemed to have caught the international system by surprise. Arguably, there were tell-tale signs of an impending catastrophe owing to systemic governance failures but the international community, perhaps due to lack of institutional memory of the violence in the 1992 and 1997 elections, presumed Kenya was a peaceful and stable state.

## CHAPTER FOUR

### 4.0 FOREIGN AID VIS-À-VIS DEMOCRACY IDEALS

#### 4.1 Introduction

This chapter explore the trends and patterns of donor funding in Kenya in relation to the democratization process. It will focus on thematic support for the donors under study; in bilateral, multilateral and cooperative frameworks. It will focus on the five key themes identified in Chapter one which are based on the pluralist conceptualisation of liberal democracy and are isolated based on country-specific context.

The chapter will study and document instances of donor support to the state and non-state actors, bilateral and multilateral approaches, and multi-track approaches – “basket funding”. This chapter will collect and review data on democratic assistance programs under the guidance of the democracy template designed by Carothers.<sup>126</sup>

Previous chapters have in defining Kenya’s political reform process identified instances when development partners actively or passively participated in democratization. Most of these activities varying from bilateral engagements with the political class, statements, publications or even communiqués arose from the diplomatic missions and their representatives. This only covers one aspect of democratic assistance.

In light of assessing the contributions therein, below is a table on the programmatic distribution of aid to Kenya for the period under study:

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<sup>126</sup> Carothers, T., *Aiding Democracy Abroad: The Learning Curve*. Washington: Carnegie Endowment for International Peace, 1999, p. 88

Table 7: Annual Volumes of Aid Flows to Kenya (1990-2010)

Sector/Focus Area	Annual Volumes of External Support (thousands of US \$)											
	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2005
Agriculture	169,809	106,680	106,699	55,503	91,388	99,170	68,842	119,121	183,081	58,247	43,609	28,045
Civil Society Development	3,259	6,872	5,369	1,307				6,519	6,576		2,798	3,924
Conflict Resolution											710	143
Economic Management & Policy	766,050	142,389	360,078	403,619	122,457	78,646	122,671	38,230	30,294	8,773	19,781	4,983
Education	70,947	46,380	66,976	21,583	16,606	57,748	72,222	41,915	39,023	42,919	27,136	36,873
Emergency Response/Disaster Management	5,695	8,586	97,559	145,845	55,617	66,712	48,360	62,823	73,784	73,159	215,113	129,359
Energy	28,305	26,505	20,479	899	1,906	2,321	1,951	475	26,752	44,581	14,731	91,936
Forestry and Environment	3,084	9,008	6,650	17,516	2,021	13,038	4,240	7,397	3,319		7,187	5,988
Governance and Public Administration	13,147	14,492	23,541	11,127	9,122	6,959	6,129	9,777	10,755	9,258	28,608	78,149
Health & HIV/Aids	72,608	70,859	57,037	16,354	35,682	68,365	63,637	68,241	101,705	93,738	51,372	63,054
Housing/Shelter(Rural Urban Development)	7,195	6,662	2,645	518	2,141	9,809	10,351	21,345	10,575	7,521	8,294	36,181
Infrastructure(Road and Communications)	120,633	183,390	61,395	22,539	55,012	119,838	61,289	99,162	43,997	78,104	56,329	36,773
Multisector	43,722	22,894	16,990	13,569	3,035	29,774	23,925	37,752	43,333	34,570	22,751	31,673
Natural Resource Management	27,528	33,232	43,098	37,655	44,168	4,279	22,618	26,207	34,675	7,013	2,446	4,104
Other sectors			1,032		35,361		406	365	1,590	4,399	23	33
Private Sector Development/Finance	30,107	32,572	13,587	4,516	12,869	74,004	10,618	21,375	10,271	10,646	19,920	6,878
Sanitation/Water	47,751	47,601	12,870	2,596	19,885	30,025	49,300	26,502	12,345	26,986	10,516	9,775
Social Protection	1,588	729	1,385	61		604	29,489		195		4,007	5,086
Vocational Training	1,536	11,448	3,712	3,604	5,632	7,383	4,600	4,277	3,921	2,803	55	112
Wildlife, Trade Hotels & Tourism	44,995	71,318	96,636	98,124	8,038	3,215	21,233	36,776	18,960	23,747	379	1,641
<b>TOTALS</b>	<b>1,457,959</b>	<b>841,617</b>	<b>997,738</b>	<b>856,935</b>	<b>520,940</b>	<b>671,890</b>	<b>621,881</b>	<b>628,259</b>	<b>655,151</b>	<b>526,464</b>	<b>535,765</b>	<b>574,710</b>
Sources: Development Cooperation Reports (various years)												

## 4.2 Bilateral Donors' Approach to Democracy

### 4.2.1 The United States

Kenya's relations with the United States had been bolstered during the cold war when the two signed the Facilities Access Agreement in 1980; offering the US military bases strategic to its anti-communist strategic in the Persian Gulf. This gesture was complimented with \$20 million of military assistance which gradually rose to \$30million by 1982.<sup>127</sup> By the end of the cold war, the US was Kenya's largest economic and military partner giving it the highest leverage amongst bilateral donors to influence government policy. When the bipolar world order ended, the US redefined its development cooperation to strategically expand liberalist

<sup>127</sup> Gordon F D 1994, 'International Economic Relations: Regional Cooperation and Foreign Policy' In Joel Barkan (ed.) Beyond Capitalism vs. Socialism in Kenya and Tanzania Lynne Rienner Publishers, London, p.248

ideals with a focus on democratic governance in developing countries as a means towards international peace and order. Consequently, President Bush's envoy in Nairobi Amb Smith Hempstone was crucial in pressuring the Moi administration into allowing pluralist politics and ending human rights violations. The US was also a key player when Kenya regressed on its democratic gains and fell into the chaos in 2007-8 with key personalities in the Bush administration were key in the mediation and reconciliation process.

While American ambassadors – and foreign missions at large- implement the political component of their foreign policy, the United States Agency for International Development (USAID) is key implementation agency for American aid. As such, USAID undertakes democratic assistance programmes that take up between \$5 million and \$8 million each year (15–20% of its budget).<sup>128</sup> This programming as from 2002 when Kenya had a successful transition from autocratic rule; has been defined into strengthening electoral processes, supporting the development of the rule of law, strengthening public participation through civil societies and the media and supporting institutional governance reforms.<sup>129</sup> The next section provides an overview of some of the democracy promotion projects undertaken by the US government and its agencies.

The American agency supports technical support, capacity building and election monitoring support. In 2002, USAID supported a three-year project by the International Foundation of Election Systems (IFES) to strengthen the technical capacity of the electoral agency.<sup>130</sup>

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<sup>128</sup> Zeeuw, de Jeroen, 'Assessing Democracy Assistance: Kenya', *Project Report: Assessing Democracy Assistance*; May 2010, Madrid., p 6

<sup>129</sup> US State Department, *Supporting human rights and democracy: The United States Record, 2003-2004*; Bureau of Democracy, Human Rights and Labor Government Printing Office, p. 35

<sup>130</sup> Ibid, US State Department , p.36

#### **4.2.1.1 Civil Society:**

The American policymakers regard civil society as an important medium of implementing its foreign policy as reflected in the percentage of democratic assistance directed to civil society organisations. As such, during the Moi regime USAID gave direct grants to local pressure groups that were crucial to the opening of the democratic space. After the election of Mwai Kibaki, the US started engaging with the government while still maintaining support for civil societies.

In 2006, following a period of weakened civil society advocacy as the Kibaki administration co-opted activists for its pro-reform agenda, and the impending constitutional process; USAID launched the Kenya Civil Society Strengthening Program (KCSSP). The KCSSP was designed as a 7-year project (2006-2013) to support capacity building of over 260 Non-state actors by PACT Kenya at a cost of \$35.5million. The programme helped strengthen the capacity of the civil society to participate in the input, advocacy and civic education during and after the promulgation of the new Constitution in 2010 and the activities thereafter.<sup>131</sup>

#### **4.2.1.2 Institutional Reforms**

While most bilateral donors have opted to fund their support for the judicial and anti-corruption programmes through the Governance, Justice, Law & Order (GJLOS) programme basket fund, USAID established a direct support programme with the Department for Public Prosecutions (DPP) and with the Judicial Service Commission.

Within the rule of law programme, in 2003, USAID supported the International Commission of Jurists (ICJ) advocacy work on judicial integrity-focused reforms to a tune of \$225, 000 in 2003 and the Federation of Women Lawyers work on affirmative legislation at a cost of

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<sup>131</sup> The Kenya Civil Society Strengthening Program; USAID, retrieved September 1, 2014. Available: <http://portfolio.usaid.gov/PublicProjectDetail?id=a0cd000000am0IAAA>

\$144,000.<sup>132</sup> The agency also supported the State University of New York (SUNY-Kenya) program on parliamentary strengthening in 2003 to a tune of \$600, 000; offering technical assistance and training to legislators and Parliamentary staff on law-making, rules of procedure, policy research, budget analysis, and tracking public resources.<sup>133</sup>

#### **4.2.2 The United Kingdom**

The United Kingdom and Kenya share strong historical, commercial and development ties dating from the colonial era. The British government amended its development cooperation policy in the early 1990s to explicitly include promotion of principles of good governance among them economic management, accountability and the rule of law.<sup>134</sup>

The UK's programmatic activities to support democratic governance abroad includes a commitment of 30 per cent of its ODA to mitigating conflict in fragile states, Support to security and justice chain institutions, assistance for elections, accountability, civil society and public participation as well as public sector reforms to enhance accountability and reduce corruption.<sup>135</sup>

A systemic review of the transmission of British policy on Kenya's democratic trajectory indicates that Kenya's colonial masters were cautionary in attaching negative conditionalities to spur political reforms. For instance during intense donor pressure on Moi to re-introduce multipartyism, the British preferred to make their displeasure known to the Kenyan

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<sup>132</sup> US State Department, *Supporting human rights and democracy: The United States Record*, 2003-2004; Bureau of Democracy, Human Rights and Labor Government Printing Office pp. 36

<sup>133</sup> USAID/Kenya, (2011) *Annual Report 2010: USAID Kenya in Action* Nairobi: USAID Kenya p. 8

<sup>134</sup> Crawford, G., *Foreign Aid and Political Reform: A Comparative Analysis of Democracy Assistance and Political Conditionality*, 2001. Palgrave: Basingstoke. pp.59-61

<sup>135</sup> DFID Policy, available on: <https://www.gov.uk/government/policies/helping-developing-countries-to-be-better-run-and-more-accountable> . Accessed on September 2, 2014.

government through its High Commission in London rather than making public pronouncements as was common with the American envoys.<sup>136</sup>

In programming assistance to Kenya, the UK's Department for International development (DfID) has an annual budget averaging GBP 50 million whose spending, according to the 1998-2003 and the 2004-2007 strategy papers, prioritises economic growth, health, pro-poor development, strengthening civil service and accountability.<sup>137</sup>

DFID views promotion of good governance as the primary theme guiding its programs in Kenya which it executes through strengthening civil society organisations to educate and execute accountability over state institutions. It also promotes public financial management reforms under the country strategy papers such as the Public Expenditure Management Assessment and Action Plan (PEMAAP) and the 2003 Enhanced Financial Management Action Plan (EFMAP).<sup>138</sup>

Apart from the mainstream support, DFID offered the Kenyan government GBP 10 million in emergency relief following the 2007-8 post-election chaos. DfID contributes to the GJLOS basket funding for institutional reforms with an allocation of GBP 5 million in the 2008/9 year, civic education through the National Civic Education Project (NCEP 1 by UNDP-2001/2). Towards the 2007 elections DfID supported the UNDP's Elections Assistance Programme basket (GBP 7.5millionn) and the Political Empowerment Programme (PEP, 2000-07).following the promulgation of the new constitution in Kenya in 2010, DfID committed support to the UNDP basket on the Drivers of Accountability Programme (DAP)

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<sup>136</sup> Brown, S., "Changing Donor Roles in Kenya's Democratization Process", in Murunga, G. R. & Nasong'o, S. W. eds. *Kenya: The Struggle for Democracy*. London & Dakar: Zed Books and Council for the Development of Social Science Research in Africa, 2007, pp 303-31:310

<sup>137</sup> Poate D., et al, 'Evaluation of DFID Country Programmes Country Study: Kenya Final Report', February 2007, London: Department for International Development: pp 10-12

<sup>138</sup> *ibid*

2010-2015 which is intended to promote accountability on the constitution implementation; pooling GBP 20million.<sup>139</sup>

Table 6: Governance Component of DFID Support in Kenya; 2000-2006

Spend £	2000	2001	2002	2003	2004	2005
Governance Support	1,702,151	1,331,364	2,374,908	2,982,413	3,957,638	5,830,898
Number of Projects	17	12	12	11	11	11
Grand Total- Annual disbursement	28,858,986	22,522,358	25,718,688	36,639,857	36,477,967	62,095,321
Total Number of Projects	102	84	76	56	45	43

Source: Poate D., et al, 'Evaluation of DFID Country Programmes Country Study: Kenya Final Report', February 2007, London: Department for International Development: pp 14-15

### **4.2.3 Japan**

Japan's democracy assistance is viewed as a form of development aid rather than as an instrument for political empowerment and thus does not explicitly foster democracy abroad but instead provides aid to governments attempting to democratize or consolidate democracy as a development goal.

International and domestic factors directed Japan's aid policy to democracy assistance in the late 1980s –early 1990s, when the world was taking lessons on the third wave of democracy, the bipolar world order was collapsing and European donors were reviewing their cooperation policies in Africa to respond to governance challenges. The international situation and domestic pressure calling for a national policy on the Japanese aid system

<sup>139</sup> Zeeuw, de Jeroen, *Assessing Democracy Assistance: Kenya; Project report: Assessing Democracy Assistance*; May 2010, Madrid., pp 6-7



culminated in the ODA charter, which was approved in June 1992 and provided that Japanese aid should be seen to promote the growth of democracy. This provision was better defined during the 1996 G7 summit in Lyon in 2006.<sup>140</sup>

Japan has long been one of Kenya's major development partners disbursing more than 306 billion Yen of aid to Kenya. Along Kenya's democracy milestones, Japan coordinated its political statements with other major donors in the Donor Coordination Group. Following the disputed 2007 presidential election, Japan explicitly criticised the vote tallying process and the declaration of Kibaki's win. In a statement by Foreign Minister Masahiko Koumura, Japan supported the AU-led mediation process and extended an emergency relief grant of about 478 million yen (\$4.12 million) to provide humanitarian assistance to persons displaced in the conflict.<sup>141</sup>

However, in light of its governance policy framework, Japan aligns its support to national development plans, including the Kenya Vision 2030, on argument that they include principles of democratic governance such as eliminating corruption and promoting human rights.<sup>142</sup>

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<sup>140</sup> Maiko Ichihara, Understanding Japanese Democracy Assistance, Paper March 25, 2013, Carnegie Endowment. Available on: <http://carnegieendowment.org/2013/03/25/understanding-japanese-democracy-assistance#>. Accessed September 1, 2014

<sup>141</sup> Ministry of Foreign Affairs of Japan. Press statements available on: <http://www.mofa.go.jp/announce/announce/index.html>; Accessed August 17, 2014

<sup>142</sup> Country Assistance Program for Kenya, Government of Japan, 2000. Available on: <http://www.ke.emb-japan.go.jp/Japan-CAS-to-Kenya.pdf> ; Accessed September 5, 2014

## **4.3 Multilateral Donors' Approach to Democracy**

### **4.3.1 The European Union (EU)**

The delegation of the EU in Kenya undertakes programme implementation for the EU which focuses on agriculture and rural development, roads and transport and macro-economic support despite the fact that the Cotonou Agreement recognised democratic governance as a right and is one of the key policies of the EU strategy.

In the EU programme work in governance projects were allocated between three and five percent of the total assistance budget until 2008 when the programme expanded its work with respect to the Cotonou agreement; to allocate 7% of its total assistance to justice and good governance programmes<sup>143</sup>.

In the 1995-2000 European Development Fund (EDF), the EU committed EUR 6.6 million to a Democratic Governance Support Programme (DGSP) which focused on empowering civil societies to monitor development projects and advocate for human rights. The next EDF which was implemented between 2003 and 2007 provided EUR 6 million for the support of the Non-State Actors programme (NSA-NET). This included the monitoring of the 2007 elections under the Kenyan Elections Domestic Observers Forum (KEDOF). The EU also provided support to the KNDR process after the bungled 2007 elections.<sup>144</sup>

In the latest EF, the EU commits EUR 9.2million to assisting components of democratic governance on elections, anti-corruption projects, support to elections and civic education and a component for improving access to justice through the GJLOS basket fund.

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<sup>143</sup> European Union Aid In Kenya

<sup>144</sup> Zeeuw, de Jeroen, *Assessing Democracy Assistance: Kenya; Project report: Assessing Democracy Assistance*; May 2010, Madrid. pp 4-5

### **4.3.2 The United Nations**

Democratic governance programmes by the UN in Kenya primarily takes place through the UNDP and is aimed at “building institutions and processes that are more responsive to the needs of citizens especially the poor and marginalized, and that ensure fidelity to the rule of law.”<sup>145</sup>

UNDP’s governance-related programmes cover thematic areas of public sector reforms, civic education, Support to Electoral Reforms and Processes, civil society capacity-building, and human rights. The programs are executed through both state and non-state actors with the financial support from the Target for Resource Assignments from the Core (TRAC) or from a basket fund within which UNDP acts manages financial support for governance projects from various donors.<sup>146</sup>

### **4.4 Harmonising Democratic Assistance**

Uncoordinated donor support leads to unpredictability of funding threatening the sustainability of projects as donors intermittently divert support to projects that favour their bilateral interests. In Kenya, donor support was destabilised by the imposition of aid conditionalities in the 1980s and 1990s and efforts to reconcile the fragmentation of donor only started after the end of the Moi regime.

When President Mwai Kibaki took office under the NARC coalition, his government enjoyed overwhelming support from both the international community and Kenyans who had elected him on pledges of reforms and development. In reckoning the need to coordinate donor support for efficiency and harmonised spending across all sectors. In light of this, the

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<sup>145</sup> UNDP work in Democratic Governance; Available on: [http://www.ke.undp.org/content/kenya/en/home/ourwork/democraticgovernance/in\\_depth/#](http://www.ke.undp.org/content/kenya/en/home/ourwork/democraticgovernance/in_depth/#) Accessed August 28, 2014

<sup>146</sup> Zeeuw, de Jeroen, Assessing Democracy Assistance: Kenya; Project Report: *Assessing Democracy Assistance*; May 2010, Madrid. p 6

Harmonisation, Alignment and Coordination (HAC) initiative was established in 2003 and thereafter developed the Kenya Joint Assistance Strategy (KJAS) setting the framework for cooperation between the government and development partners in implementing national development strategies including vision 2013. The KJAS links national development goals with the Millennium Development Goals (MDGs), promotes aid harmonization and coordination and seeks the effective use of aid.<sup>147</sup>

#### **4.4.1 The GJLOS Reform Programme**

The Governance, Justice, Law and Order Sector (GJLOS) reform programme was launched in 2004 by the NARC government in whose victory against Moi was hinged on a reformist platform. The programme, reckoning systemic interdependencies of over 30 government institutions, seeks to reform and strengthen a wide range of public sector institutions with the aim of promoting good governance, accountability, the rule of law and respect for human rights.<sup>148</sup>

The principal memorandum of understanding (MoU) between the government of Kenya and the development partners on the GJLOS Programme provides for both bilateral and basket funding options for assistance.<sup>149</sup> The GJLOS program seeks a democratic participatory approach by providing for the participation of the private sector and civil society organizations. The program has the gained the support of 15 development partners and has a donor basket fund of approximately EUR 44million.<sup>150</sup> The project has been successful in harmonising and coordination of donor support to the institutions in the justice chain and providing a multi-partner engagement platform; its intended reform agenda ran into trouble

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<sup>147</sup> Mbote, P. & Akech. M., 'Kenya: Justice Sector And The Rule Of Law', March 2011, Johannesburg: Open Society Initiative for Eastern Africa, pp 178-179

<sup>148</sup> Ibid Mbote P., & Akech, M., p 179

<sup>149</sup> Ibid Mbote P., & Akech, M., pp 181-184

<sup>150</sup> Zeeuw, de Jeroen, *Assessing Democracy Assistance: Kenya*; Project Report: *Assessing Democracy Assistance*; May 2010, Madrid. p 18

due to mistrust between the government and donors with the former citing too much involvement in the program details and the latter lamenting over the slow pace of reforms.<sup>151</sup>

## **4.5 Evaluating Progress towards Democratic Governance**

### **4.5.1 Freedom in the World Report:**

The annually produced report, since 2003, by US-based Freedom House attempts to assess the state of political and civil liberties across the world annually and ranking individual state's performance on a scale of 1 to 7; with incremental ranking inverse to the level of freedom.<sup>152</sup> It's criteria of assessment takes a minimalist conceptualisation of democracy measuring public participation, multi-partyism and free and fair elections.<sup>153</sup> The Report's judgements have however been criticised of bias towards the US's perception of democracy regardless of contextual differences in application of democracy across states of the world. As indicated in the data below, Kenya had the highest degree of freedom for both civil and political liberties during the Kibaki regime.

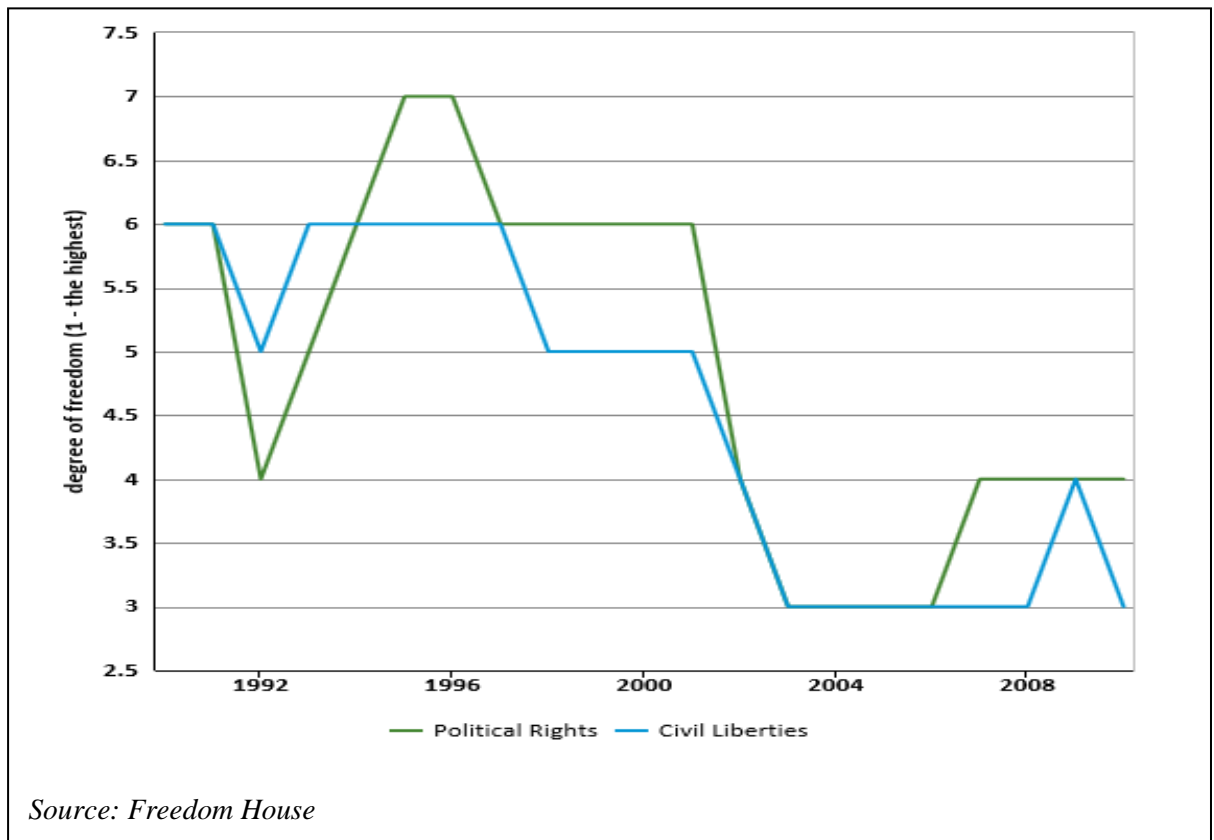
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<sup>151</sup> Mbote, P. & Akech. M., 'Kenya: Justice Sector And The Rule Of Law', March 2011, Johannesburg: Open Society Initiative for Eastern Africa, pp 184-186

<sup>152</sup> Freedom House, Freedom in the World: Methodology, retrieved July, 10th 2014 from [http://www.freedomhouse.org/uploads/fiw09/FIW\\_MethodologySummary\\_ForWeb.pdf](http://www.freedomhouse.org/uploads/fiw09/FIW_MethodologySummary_ForWeb.pdf)

<sup>153</sup> Freedom House, Freedom in the World: Methodology

Figure 2: Freedom in the World Kenya 1992-2008

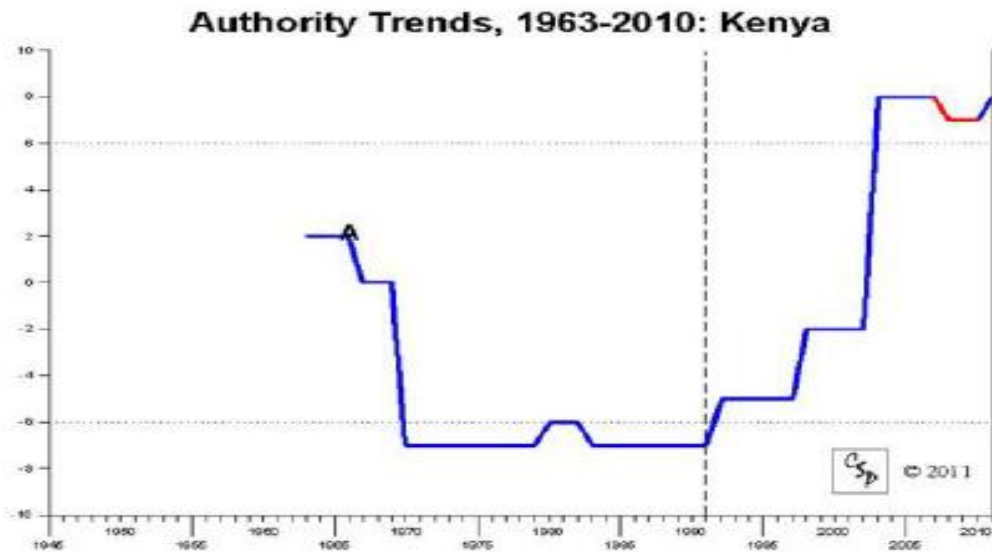


#### 4.5.2 The Polity Data Series:

This index, produced since the 1970s, uses a 21-point scale to rank “regime change and the effects of regime authority” by “coding the authority characteristics [...] for purposes of comparative, quantitative analysis”. The classifications range from -10 to +10 with autocracies, scoring from -10 to -6 on the used scale, anocracies, explained as “mixed, or incoherent authority regimes”, with assigned values of -5 to +5 and, finally, democracies, scoring +6 to +10.<sup>154</sup>

<sup>154</sup> Polity Data Series, retrieved August, 10th 2014 from <http://www.systemicpeace.org/polity/polity4.htm>

Figure 3: Polity IV data for Kenya 1963-2010



#### 4.6 Conclusion:

Bilateral and multilateral donors alike pursue individual and collective programs aimed at promoting democratic governance. The UNDP joint donor “basket fund” system has provided a platform for addressing fragmentation of democracy assistance which enhances donor coordination and effectiveness of the programs.

Development partners were able to effectively cajole the Moi administration's direction of government policy in regard to democratic governance due to the regime's dependency on foreign aid. However, this role was increasingly weakened after Kenya's first successful democratic elections in 2002 as the Kibaki regime co-opted activists who had been crucial to domestic pressure group and the administration reduced reliance on donor funding for budgetary programmes. Thus, as Kenya moves to restructuring state institutions in light of the new Constitution, donors' role is limited to support the implementation of reforms and empowering the citizenry to increase oversight over state organs and to lobby the direction of reforms.

## CHAPTER FIVE

### 5.0 CONCLUSIONS AND RECOMMENDATIONS

#### 5.1 Conclusions

This study has demonstrated that characteristic donor involvement in the Kenya's democratization process oscillated between elections; withdrawing from the political arena to focus on economic reforms between elections. Nonetheless, the Kenyan case indicates that economic reforms intervened by international actors such as the Structural Adjustment Programs (SAPs) did not improve the economic path. The domestic economy continued to decline throughout the transition period until when President Kibaki took office in the first truly democratic elections on Kenya and enacted a raft of reforms with support from both non-state actors and donors.

This study also shows an overly concentration on elections by donors rather than on the entire substance of the electoral process and other democratic ideals such as observance of the rule of law and human rights. This inconsistency in pressing for democratization undermined the positive trajectory of democracy that had been launched by the breakthrough in the 1992. Arguably, they also contributed to the democratic stagnation by endorsing the 1992 and 1997 elections despite evidence of massive malpractices; and even undermined efforts by domestic actors to press for more political reforms in the precedence for stability. In retrospect, US envoy Smith Hempstone admitted the international community's decision to endorsed flawed polls due to fear of civil unrest undermined the development of the growth of democracy in Kenya.<sup>155</sup>

There was euphoria locally and internationally at the election of Mwai Kibaki in 2002 and the peaceful transition coupled with the smooth referendum in 2005 created an impression of

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<sup>155</sup> Hempstone, S., *The Rogue Ambassador: An African Memoir*, 1997, Tennessee, University of the South Press., pp 266–267, 272, 301–302, 309



stability in the country, ignoring underlying protracted governance challenges that would be inflamed by the disputed 2007 election.

Donor behaviour following the crisis of 2007/8 is characteristically an application of the international doctrine of Responsibility to Protect adopted at the 2005 World Summit; in which the international community adopted a diplomatic, rather than military, approach to address the political, security and humanitarian predicament. The impressive coherence of donor action during the process and recognition of the need to support the AU efforts resonates with the OECD DAC ‘Principles for Good International Engagement in Fragile States and Situations’. The Principles which were adopted in 1997 require development partners to redefine comprehensive situation-specific mechanisms in conflict situations. Among the values it highlights as crucial to effective engagement in fragile states is the need to coordinate response, prevent conflict escalation, to consider context specific socio-economic, political, security and development objectives, and then support state building.<sup>156</sup>

As Carothers<sup>157</sup> posits democratising states usually undergo four main stages, the opening, breakthrough, transition and eventually consolidation. The breakthrough is marked by the collapse of dictatorship and entrenchment of an electoral system, basic freedoms more often than not through a new constitution. The re-alignment of political institutions to the new law or rather within democratic values is regarded as the transition phase and normally takes more than a decade; with most democratizing states experiencing a regression in their progress. While the last phase of the process is consolidation during which democratic values

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<sup>156</sup> Organisation of Economic Cooperation and Development (OECD) Development Assistance Committee (DAC), 2007: 1–3

<sup>157</sup> Carothers, T., “The End of the Transition Paradigm” *Journal of Democracy* 2002, Vol 13:1 pp 5-21; 12

and processes are accepted and observed as the only legitimate form of political organisation. It is a slow process marked by institutional reforms and development of civil society.<sup>158</sup>

From the analyses provided herein of the democratic phases marked by elections since 1992, I posit that Kenya has fully undergone through three of the four stages of democratization as categorised above. Based on the understanding that opening of democratic space is marked the crumbling of an authoritarian regime and ends when a popularly elected government takes office or when the old political elite is legitimized in an electoral process<sup>159</sup>, the 1992 elections marks Kenya's democratic opening. During the period leading to the 1992 elections, the international community played an active role in the creation of a liberal political platform in Kenya following decades of authoritarianism. Where domestic actors had failed to induce change in the political organisation and the regime continued to change the rules for its political survival, donors succeed in using aid as leverage to coerce the government to review the Constitution and allow the return of minimalist democracy through multiparty elections. Brown compares the donors' role during this period as a demiurge- facilitating the realisation of basic democratic rules as a prelude for liberal choice of leadership.<sup>160</sup>

As demiurge (named for a deity that created material things), donors plays an active role in ensuring basic common goods, recognizing that no other actor is able to produce them and acting as a substitute for them.

The period of electoral authoritarianism by the KANU government and its retention of power in the 1997 elections will be touted as a period of democratic stagnation during which efforts

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<sup>158</sup> Ibid

<sup>159</sup> O'Donnell G. et al., *Transitions from Authoritarian Rule: Comparative Perspectives*, John Hopkins University Press, 1986 pp 6

<sup>160</sup> Brown, S., "Changing Donor Roles in Kenya's Democratization Process", in Murunga, G. R. & Nasong'o, S. W. eds. *Kenya: The Struggle for Democracy*. London & Dakar: Zed Books and Council for the Development of Social Science Research in Africa, 2007, pp. 303-331: 314

towards strengthening democracy bore little short –term benefits. The ground work done during this period on strengthening of political parties, restoring media freedom and civic education has however been attributed to the democratic breakthrough in the 2002 elections during which a new political elite was elected to power ending nearly 40years of KANU rule. Carothers notes that a breakthrough is marked by the collapse of dictatorship and entrenchment of an electoral system, basic freedoms more often than not through a new constitution.<sup>161</sup>

The period after the 2002 elections is in my opinion the transition phase which was marked with heightened activities in the search for a new Constitution that would entrench basic freedoms and rights in a democratic system. The 2007 elections marked the regression of democratic gains made in the previous years with the post-election violence that left hundreds dead and thousands displaced. Subsequent efforts by both the government and international actors bore the 2010 constitution.

The promulgation of the Constitution embedded competitive elections as the ‘only game in town’, offered separation of powers between the three levels of government to provide for their independence and interdependence, entrenched basic human and civil liberties, media freedom, and accountability mechanisms. I view the promulgation of this Constitution as marking the end of the transition to democracy for Kenya and the period of its implementation thereafter as the stage of consolidation. Carothers notes that the consolidation stage is a protracted period of deepening democratic ideals through; ‘the reform of state institutions, the regularization of elections, the strengthening of civil society, and the overall habituation of the society to the new “democratic rules of the game”’<sup>162</sup>

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<sup>161</sup> Carothers, T., “The End of the Transition Paradigm”. *Journal of Democracy*, 2002 Vol.13 (1): pp. 4-21: 12

<sup>162</sup> Ibid

## 5.2 Recommendation

In light of donor experiences along the democratization process, this study recommends the coordination of donor support in prompting the institutional building process based on the new Constitution. There is evidence from this study that governance reforms and an expanded democratic space that allows accountability and transparency of government is proportionate to economic growth.

The new Constitution offers the framework for democratic governance including reforms to key state institutions, provisions for human rights- civil and political, a fair playing field for electoral processes and provides for the representation of the citizens in the governance system and their participation in public affairs<sup>163</sup>.

To enhance the effectiveness of the wide-range of reforms anticipated in the Constitution, this study recommends that donors adopt a coordinate approach to supporting institutional reforms to enhance accountability. For instance, the devolved system of government established in Chapter 2 of the Constitution provides a more localised approach to promoting accountability and political participation by the public. The implementation of the new Constitution will also require support to the Parliament to promote its role in processing new laws to effect the provisions of the new Constitution as well as amending existing ones to ensure they comply with the new dispensation.

Drawing from the challenges of the GJLOS programme, it is important that all actors – government, donors, non-state actors – have a well-defined framework on the consultative forums, each parties' roles and lines of accountability to avoid misunderstandings and power turfs.

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<sup>163</sup> See The Constitution of Kenya, 2010

Alongside these measures, there is need to enhance civic education programs on political tolerance to reduce instances of electoral-related violence. While this aspect is closely related to electoral processes, this study recommends that owing to the fragile nature of the country as seen in the 2007 post-election violence, that alongside championing for political liberalisation and supporting electoral processes, civic education should be a continued process.

This study also calls for the inclusion of African countries in the democratization process to offer a better contextual understanding of democratic processes in the region; to the Western dominated donor community. To this end, such relationships could be enhanced by integrating domestic staff into donor policy-making to offer institutional memory and help to better forecast political behaviour and forestall democratic regressions.

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