

THE LEGALITY OF PRESSURE GROUPS AS WATCHDOGS OF
POLITICAL ORDER IN A CIVIL SOCIETY
THE KENYAN CONTEXT

A DISSERTATION SUBMITTED IN PARTIAL FULFILMENT
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(i)

DEDICATION

To my dear parents Joyce and Kithu Mugo with all the gratitude of a well-loved daughter. A token of appreciation for being a gift of their Love.

To Brother Duncan Magara, an indispensable pillar of my academic life.

And to 'Pressure Group' Activists.

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Finally, but not least, I thank Mrs. Kinuthia, who devotedly and neatly reduced the mass of my hand-written draft into a legible state. All the fallacies and errors in this work are entirely mine.

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TABLE OF ABBREVIATIONS

A.I.R.	All Indian Reports
Cap.	Chapter
E.A.A.	East African Association
F.I.D.A.	Federation of Women Lawyers
F.O.R.D.	Forum for Restoration of Democracy
I.C.J.	International Commission of Jurists
Inc.	Incorporation
K.A.D.U.	Kenya African Democratic Union
K.A.N.U.	Kenya African National Union
K.A.S.U.	Kenya African Study Union
K.A.U.	Kenya African Union
K.C.A.	Kikuyu Central Association
L.T.D.	Limited
N.C.C.K.	National Council of Churches of Kenya
N.G.W.K.	National Council of Women of Kenya
N.I.Y.C.	National Interparty Youth Congress
R.P.P.	Release Political Prisoners

TABLE OF CASES

INTROD

Gitobu Imanyara poli v	Civil application number 7 of 1991.
Attorney General	
Europa	
Rama Krishnaiah	(1952) A.I.R., Madras 256
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The President	
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Salim Ndamwe and three others v the Attorney General and the Registrar.	High Court of Kenya at Nairobi, Civil application number 253 of 1991.

TABLE OF STATUTES

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The Societies Act (Chapter 108 Laws of Kenya)

TABLE OF INTERNATIONAL INSTRUMENTS

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INTRODUCTION

Kenya, like most countries is not exempt from the need for political change, which has thrown many of the governments in turmoil following the collapse of communism ideologies in Eastern Europe. Indeed, the political history in Kenya in the 1990's has seen a mushrooming of institutions called pressure groups. These have acquired a militancy and sense of purpose hitherto unknown. Obviously, the new multi-party era has encouraged this new development. Owing to the abrupt change of the political scenario, pressure groups had to fight for recognition both by the general populace and the government, since they are concerned about the government of the day. This was only possible due to the legal agility and imagination of the key activists of these groups.¹

Although the constitution and other statutes dealing with human rights, imply that people should associate for the protection of their interests, practice in Kenya before the 1990's has shown that politics was a reserve of a few groups in power, and government was not with the consent of the governed. There was virtually nothing one could call participatory democracy. There was no recourse for the people when the law or the policies were oppressive.

Since this study considers the institution of pressure groups as supplements of the representation process, it is realised that pressure groups must operate within a legal framework. The work looks into other institutions which perform a representative function such as interest groups and political

parties. The relationship between these three institutions is given a brief treatment.

1.0 Our concern also is with the historical background of pressure groups in Kenya, giving the groups in the colonial period and immediately after independence, considerable treatment. There has been an argument put forward in the wake of the multi-party debate, that pressure groups are unknown in Kenya.²

The work looks at this denial of pressure groups to exist legally by the court, digging deeper to establish the reason why the court had to interpret the law so narrowly to deny pressure groups a right to exist in Kenya. In looking at the relationship between the pressure groups and the courts, the thesis delves into a few cases which touched on the matter. The thesis also gives fundamental liberties and especially the right to freedom of association a detailed treatment. It clearly claim's for the institution of pressure groups their right to exist legally in Kenya, outlining the role they play in the representative process. It concerns itself with the role of pressure groups acting as checks against abuse of power by those holding power bearing offices.

Footnotes

1. See The Nairobi Law Monthly number 39, December 1991 at p. 15.
2. As per N. Dugdale in the case of Salim Ndamwe and three others v the Attorney General and the Registrar. High Court of Kenya at Nairobi, Civil application number 253 of 1991.

CHAPTER ONE

1.0 MEANING AND EVOLUTION OF PRESSURE GROUPS

1.1 Pressure group defined

The term pressure group is far from being an immaculate conception. It has been used to denote different things at different times. Indeed, there are variations, inconsistencies as well as overlaps with words akin to it like interest groups and political parties, which makes it very hard to draw a distinction between these terms. This has made this concept to remain fuzzy and at times confusing as everybody seems to give it the name he likes either in disrepute or in respect. Pressure groups have frequently been condemned as delectrious elements in the governmental process. This distortion is brought out by Schattschneider who reported that in the economy of democracy and democratic government, the pressure group is defined as a parasite on the wastage of power exercise by the sovereign majority¹. He therefore depicts a pressure group as being inimical to the proper running of the government.

The same view was expressed by one Justice Hugo L. Black when he was dealing with a case on lobby and pressure politics. He observed thus,

"Contrary to tradition, against public morals and hostile to good governance, itself, its

size, its power, its capacity to evil, its greed, trickery, deception, and fraud condemns it to the death it deserves"²

Hence the views expressed by the two writers above gives us, the idea that a pressure group is something evil and unwanted in the society.

Their views precludes the possible existence of any agencies which logically should be classified as pressure groups, but which might also be viewed as beneficial elements in the democratic process.

A perusal of the existing literature on the subject does not reveal a general standard definition of what a pressure group is. Nevertheless, it has been defined as "any association of persons having similar interests and seeking to influence legislation and other political decisions favourable to its cause, but without seeking formal control of the government".³

Mary E. Dillon, defines a pressure group as,

" a non-partism organization of the people formed to exert influence upon the legislature, the executive or other governmental agency through public opinion for the enactment or the adoption, modification or discontinuation of a public policy".⁴

Mary E. Dillons idea was developed further by professor J.W. Grove who explained interalia that the term pressure group defines a class of activity rather than a species of association.⁵ In England, however, where the systematic study of pressure groups has been carried out, the concept has been viewed as connoting 'organized groups' possessing both formal structure and

real interest, in so far as they influence the decisions of public bodies.⁶ He identifies the group with the element of 'real common interest,' which he views as the building block of a pressure group.

The concept has been defined, as an organised interest group, in which members share common views and objectives. They actively carry out programmes to influence government officials and policies.⁷ Webster.⁸ M. describes it as a minority group seeking to influence legislation in its own interests, that is as by propaganda or lobbying.

From these definitions, three major features emerge clearly as being characteristics of pressure groups. First, they are groups of individuals who share common or similar interests. The members are thus brought together by a common cause. Secondly, the individuals make claims upon society through a variety of techniques and operate through many social institutions to make such claims. Thirdly, pressure groups are generally concerned with certain aspects of the government's work. They do not seek formal control of government, but aim at influencing certain government's decisions and policies.

Ultimately, the definitions bring out the idea that pressure groups are a manifestation of the upshot of the power relationships in the society. The aspect of non-recognition of the minority rights in the

society, stimulates these groups to demand that their interests be looked at by the government or other public bodies. These pressure groups could correctly be referred to as barometers of political situations in any state. In this connection, Richard Paves⁷ calls it a 'new and indispensable adjunct to our political life'. The voluntary association for common objectives by means of public pressure upon parliament.' It is for the same reason, that is, the realization that the pressure groups measure the political status of a state, that Schattschneider¹⁰, talking of the American situation holds the view that, pressure groups are the highest form of political organization of which Americans are capable. He also views it as a 'sundry organization, organized to resist government' or to bring pressure upon it. These are but some of the views denoting the fact that the existence of the pressure group as an institution has a bearing on the power relations in the said government. It suffices to say that 'pressure' as used in the concept of a pressure group can be used to uncover the evolving of the 'thing' meaning either the group or their increasing institutionalized activity.

Taking a closer look at the word pressure, it suggests the existence of a method or category of methods, that may be used by a pressure group to achieve its objectives¹¹. We should keep in mind,

however, that the term pressure does not necessarily involve turning the heat on the government. Their objectives spread over a wide spectrum of good and 'evil' as do the motives of mankind generally. the view that pressure groups are "pathological" growths in the body politics is likewise more picturesque than accurate. We could hold that these groups develop to fill up gaps in the political system¹². Only from this assumption, can we erase the misconception that the term indicates a value judgement concerning those groups which are disapproved.

To that extent, the word 'pressure' has never been exclusively used to refer to either a campaign or cause group, or an occupational or professional body, distinctions between types that many a present day definitions ascribes. We should warn ourselves against the danger of identifying the pressure group with the method it employs nor by certain characteristics, as these groups do not have a precise or distinct characteristics peculiar to them alone. They may be innocuous or very harmful in real life, to the extent that they are termed as real danger to the society or public security.

These groups vary in size, wealth, power and objectives. They may seek to pursue issues to benefit the community as a whole¹³ or have some specific

issues to benefit a particular section of the community¹⁴. In most cases, better governance may be the end sought.

Since these groups do not operate in a vacuum, a question arises as to who the group activities are targeted. It has been observed that members of parliament, individually or collectively, parliament as a whole, the government, its departments and ministries are the major targets. With the growing complexity of government, legislators have as of necessity, had to delegate authority to administrative agencies to make rules. Administrators by virtue of this delegated duty, become legislators, and pressure groups inevitably direct their activities to the point at which power rests¹⁵. Where authority to make decisions is lodged, there influence will be brought to bear. It is therefore, not unusual to find a pressure group mounting propoganda campaign, culculated to discredit an administrative agency and to influence its decision.

Theoretically therefore, neither members of parliament nor civil servants should be though of as forming pressure groups. They may influence policy, may speak for pressure group, but are to be regarded as instruments of pressure groups, but not pressure groups themselves. Likewise, the press, Television and Radio

influence 'Policy' but they are to be regarded as instruments of these groups.

One of the features that emerge from the definition of a pressure group, is that pressure groups are generally concerned with certain aspects of the governments work. In actual fact, parliament is the body supposed to represent the interests of the individual. However, with the tremendous increase in the scope of government activity in the social and economic affairs, parliament has become virtually inadequate in playing this role. The party, as an institution supposed to represent these interests, has also failed due to some disadvantages in its operation machinery. Pressure groups, then supplement the formal apparatus of the government¹⁶. V.O.Key¹⁷ points out that these pressure groups perform a representative function by communicating the wishes of the people to the public authorities. Their influence upon the government may be so potent that they may perform creative functions in the contrivance of proposals for public policy. Indeed, much of the policies emerge from deliberations and experiences within the pressure groups, as well as from friction, attention and agreement among them. It is the duty of the government to regulate the conflicting interests emanating from these groups in the society¹⁸. This the government does by proposing Laws, which in substance reflect the

effort of one group trying to demand for the recognition or protection of its interests. When the proposed Law impinges upon a class of individuals, the group will come up in defence or offence depending on what their common interest is.

Practically defined, a pressure group therefore rests on some shared attitudes of the members. This attitude may or may not be associated with a common economic interest. In either case, the basis of the group is the shared attitude and not the objective economic interest, since people may have different attitudes about the same economic concern. These shared attitudes, which are seen as the building blocks of the group, could also be based on beliefs, aspirations, memories, prejudices, generousities and hatreds.

The above, explains the different faces of pressure groups found in different governments. These governments, depending on their level of democracy will either try to contain, restrain or tolerate these shared attitudes. Hence pressure groups do exist even in dictatorial governments but they are highly circumscribed. In a democratic government, the governing authorities seek to draw certain pressure groups into public administration in order to ensure acceptance and implementation of the Law. Some governing authorities will try and affiliate some

pressure groups to their ruling party or parties to ensure that the dominance of the party power is not challenged¹⁹. An example is Kenya 'Maendeleo ya Wanawake' a woman's movement as it then was, which was affiliated with the dominant ruling party to become 'Kanu Maendeleo ya Wanawake.

On the issue of drawing groups into the ruling party or party in power, H. Abraham observed.

"In some cases, pressure groups are cloaked with the authority of the state in order to carry out its functions....

This is particularly so in case of Medical and Legal Bodies,... groups which regulate their own profession in the name of the state and the general welfare"²⁰

This, therefore, depicts that pressure groups either join the government to ensure that political power is not abused. In this way, the government of the day is constantly reminded of the wishes of its people and even criticized if and when it goes wrong or when its policies are not desirable.

In conclusion, we could say that, pressure groups are umbrella institutions, which come up in many colours. Their functions and aims are directed towards a particular institution. This is meant to listen and act accordingly.

Pressure groups are more of an American institutions than Kenyan. However, the 1992 wind of change has not left Kenya intact. These institutions

have acquired a militancy and sense of purpose, quite different from that which used to be known before. This change has been quite drastic, so much linked with the political changes, experienced in the country during this period, such that an examination of those akin organizations such as political parties and Interest groups is quite in order.

The use of the word "party" or "pressure" in naming a group, should not mislead us. It is possible for a pressure group to outgrow its pressure group status and transform itself into a political party. An illustrative example is the Kenyan Pressure group 'FORD' which urged the adoption of political pluralism. Once it achieved its goal, it converted into and registered itself as a political party ²¹. A party on the other hand could just be a pressure group in essence ²².

Another difference between partner and pressure groups can be derived from Dillons definition of a pressure group, namely that pressure groups seek to influence legislation and other political decisions favourable to their cause without seeking formal control of the government, whereas political parties seek to come to power and carry out their policies through constitutional or peaceful means ²³. A pressure group seeking the release of political prisoners and any other issues connected therewith or

relevant thereto, but does not seek to capture of the political power to effect overall change, is a good illustration of this difference.

On the other hand, a party is disadvantaged in performing the role of representing peoples interest. This is best derived from the words of once and two important leaders in the Kenyan government namely J. Karimi and P. Ochieng. They referred to KANU's problems in the following words.

"One of the central characteristic of the party was that it was little more than an electioneering machine, roaring like a blast furnace during an election year, but forgotten and without steam as soon as the new parliament was inaugurated. Whereupon it lapsed into a deep and imperturbable hibernation, being roused once again only by the warmth, five years later of the next election campaign period"²⁴

However, the above ideas presented of the Kenyan situation does not offer us a substantive and detailed explanation of this disadvantage. Indeed, it is challengable in a state with many opposition parties, as there could be no difference from this premise, between the party in the opposition and pressure groups.

A better view, is that presented by V.O. Key when he concludes,

"One difficulty of party representation of interest is/the lack of continuity. Swings of the electoral pendulum take parties out and in office".²⁵

Therefore, pressure groups do and are able to press for the people interest in a continuous manner irrespective

of the party in power. From the nature of their organization, Political parties concentrate on the broadest of problems and are mainly concerned with the selection and promotion of candidates for election and their organization once in parliament.²⁶

Moreover, there are legal requirements, for a political party which do not have to be fulfilled by a pressure group. These involve public support and organizational structure. Usually, a party will lose its legal status as a political party, therefore, forfeiting its right to offer candidates for public office if it receives insufficient number of signatures on a particular election. A pressure group does not have to meet such rigorous legal requirement in order to organise, operate and influence government.²⁷

Another term, closely related to pressure groups is an 'interest group'. Many writers have used it as a synonym for a pressure group. However, the two differ in the sense that interest groups are usually groups of people pursuing a certain interest for their own good and for the benefits of their members only.

Truman²⁸ defines an interest group as any group that on the basis of one or more shared attitudes, make certain claims upon other groups in the society for the establishment or enhancement of forms of behaviour. These behaviours are implied by the shared attitudes. He goes on to indicate that these groups afford the

participants frames of reference for interpreting and evaluating events and behaviours. What emerges from this definition is a situation where one is forced to draw a conclusion that all groups in the society are interest groups, since they are drawn to associate, and form groups by a common attitude.

The drawback in Truman's definition of an interest group was removed by J. Berry.²⁹ From his argument, the distinction between the two terms emerges clearly. He develops the idea that a pressure group is a group which seeks the collective good, the achievement of which will not selectively and materially benefit the members only, or activities of the organization whereas an interest group endeavours to protect or claim interests for the members only. These groups are formed to promote and protect partisan interests. This is purely true of women groups in rural areas which are usually loose co-operatives for economic gain.

From the above definition ; three major features emerge clearly as being the distinctive features. Firstly, they will differ in what they are agitating for. Secondly, their target will also differ. Mainly pressure groups make their demands upon the government. Thirdly, they will differ in, who are the beneficiaries of their activities. Indeed, many a times the membership of the two do overlap.

Therefore, we may conclude that it is not practicable to draw a catalogue of pressure groups. Some pressure groups are permanent organizations that act as pressure groups from time to time as public issues of their concern arise. They could also be ad-hoc organizations, created to agitate for or against specific proposals, which dissolve after their objectives have been achieved. These groups may be registered as societies, Limited liability companies, non governmental organizations, or they could be affiliates to such entities³⁰. They could also be interest groups formed basically to agitate for the welfare of their membership, but turn out to take up the role of pressure groups as and to when need be. There are no outstanding characteristics which can be attributed to pressure groups alone, but once they play a role of a pressure group, they will always strick out.

In summary, we define a presure group to be an non-partisam organization, brought together by shared attitudes, which exert influence upon the legislature, the executive and other governmental agency, for the enactment or rejection of certain legislation or for the modification, rejection or discontinuation of a public policy. They develop to fill up gaps in the political system. They perform a representative function by communicating the wishes of the people to the public authorities. However, they do not seek

formal control of the government. they come up in many colours, 'dressed' in welfare, professional, political and religious, garbs. For many of them who express concern for their fellow country men and women, and for mankind at large, better governance is the end sought.

1.2

THE EVOLUTION OF PRESSURE GROUPS IN SOCIETY.

There is no specific literature laying down the evolution of pressure groups. There is only scanty work, touching on possible reasons why groups develop in the society. It is these work which we will rely on in this section to try and lay down the possible evolution of pressure groups in the society.

The presence of pressure groups in the society may be looked at from the nature of man. Man is a social animal. In his very nature, he combines with others to achieve his goals. If he is a small farmer, who grows coffee or tea, he finds it necessary to join others in order to market his produce. If he is a factory worker, he finds it necessary to join others in forming a trade union. In politics too, individuals will operate in groups. James Madison, in the federalist papers discribes this trait of men as follows;

"As long as the reason of man continues fallible and he is at liberty to exercise it, different opinions will be formed. As long as the connection subsists between his reason and his self love, his opinions and his passions will have a reciprocal influence on each other and the

former will be the objects to which the latter will attach themselves. It is this diversity in the faculties of men, from which the rights to property originate,... From the protects of these facilities of acquiring property... the possession of different degrees and kinds of property immediately result. From the influence of these on the sentiments and views of the prospective proprietor, ensures a division of the society into different interests and parties..."³¹

The above quotation, outlines that the causes of groups are sown in the nature of man and are manifest in the different activities carried out in the civil society. These groups are centrally created by different economic status. The groups will lay demands on the government, either for protection of their already achieved economic interests or in a bid to press for their realization. These powers rested in the individual, and which are enhanced by his joining others in a group are recognised under section 80 (1) of the Kenya Constitution.³² It denotes that the individual has a right to assemble freely with others and to participate or belong to trade unions or other associations for the protection of his interests.

According to the arguments advanced by Madison, the very nature of man explains the various and unequal distribution of property found within the society. Those who hold and those who are without property have formed distinct interests in the society, dictated by what economic power they possess. Madison explains that those who are creditors and those who are debtors

fall under a like discrimination dictated by their economic powers. He concludes that many Lesser interests grow up of necessity in the society and divide them into different classes actuated by different sentiments and views.³³

Therefore, on the grassroot level, economic power is one aspect that dictates and initiates groupings in the society. However, there are other factors within the society which dictate the formation of small groups within the society. We need to bear in mind that at this stage, many of the groups are pure interest groups. Other factors, which produce groups, bound together by common interests other than economic power have been described by Madison thus;

"... A zeal for different opinions concerning government, as well of speculations regarding practice and attachment to... persons of other descriptions, whose fortunes have been interesting to the human passions, have, in turn, divided mankind into parties and groups [Emphasis added].³⁴

These reasons, advanced by Madison, lays a foundation as to why groups come up within the society. The nature of man, which leads him to form groups, also explains why there are different attitudes within the society. Those with similar attitudes, will naturally join together, and when need arises, they advance to the stage of a pressure group, since shared attitudes are the building blocks for any pressure group; as the above quotation implies. The attitudes could rest on

believes, aspirations memories, prejudices, generosities and even hatred.

In essence therefore, the formation of groups in the society, could be seen as the first step in the rise of pressure groups. Madison theory, though not directly adopted, seem to agree with the theory advanced by Jerry M. Berry.³⁵ He puts forward two theories to explain how groups come up in the society. He calls them the "disturbance theory" and the "exchange theory", described by Truman and Salisbury respectively.

The 'disturbance' theory looks at the interests found in the society. It states that interest groups develop in the society as society becomes complex. J. Truman observes that this complexity is best illustrated by the differentiation in the division of labour. According to his theory, as technology changes as well as changes in the economy, new skills, are acquired and thus, there develops new groupings of people according to their skills. The theory states that people are generally stipulated to organize because they undergo a disturbance that alters their relationship with other groups or institutions. This disturbance which Truman see as a 'force' changes the existing equilibrium of the groups with other elements of the society. Groups come up to try and stabilize the relations within the environment so as to reach a

new equilibrium. In this way, a fairly stable pattern tends to develop in the relationship between groups and its environment. According to this theory, at times this relationship becomes one of flux, with bursts of efforts, either by a particular group or by elements of its environment to alter the position of a particular interest in the society. Increased complexity in the society, therefore calls for private organization that change the social order. New political needs are created that are met only inadequately by the older political institutions and procedures. It is this increased specialization which calls for governmental intervention to control the relationships among groups. This intervention in turn stimulates the formation of organized groups by those who have a shared concern. There then appears a chain of reaction, where one group organizes to press its claims through the government upon other groups. These in turn organizes in self defence. This theoretically explains the group activities within the society.

Adopting the 'disturbance' theory and interpreting it for the purposes of this work, we would say that after groups form within the society as madison X describes them, they are purely interest groups. However, needs arise within the society. In the operation process of these groups in answer to particular needs within the society, these groups

develop into pressure groups. They could become groups of specialist such as professional bodies, which could take up the activities of pressure groups. It is the increased needs in the society, which make these groups initially formed for basic interest within the society, develop to pressure groups, as the disturbance theory explains.

Another theory explaining the possible source and activities of groups in the society in the 'exchange theory'. It stipulates that individuals enter into interpersonal relationship because they derive some benefit from the relationship. According to Salisbury,³⁶ the 'exchange theory' resembling the reasons given by Madison on the "zeal for different opinions", focuses on the role of political organizer. He says the organizer must organize the political members who are aware of the benefits they may receive by joining his or her organization. Salisbury develops ideas presented by Peter B. Clark³⁷ of organization incentive system to explain what these benefits could be. These are;

- (a) "Material incentives, under which he includes tangible goods such as jobs, taxes, and market opportunities.
- (b) Solitary incentive's refers to those rewards obtained from the socialising and friendships involved in actional group interaction.
- (c) Purposive incentives are those benefits that one receives from the point of non-divisible goods. It is the ideological satisfaction associated with the organizations efforts to achieve any

collective goods. The goods do not benefit the members in any direct or tangible way.

This exchange theory given by Salisbury concentrates on one aspect which may be seen to stimulate people to form groups. That is the leadership aspect which ties with Madison's view that people associate because they feel "attached" to different leaders. The exchange theory may be said to supplement the two theories explained above.

What emerges from these theories, is that in the evolution of pressure groups in the society the first reason is that dictated by the economic needs of man. This is shown in the very nature of man. As an individual, he realises the need to protect his economic interest. It is in an effort to protect this interest that he joins others in a group to achieve more protective power, as Madison tries to evaluate. Once these small groups are formed, which we shall call interest groups, the society changes, as we know very well that any society is a dynamic phenomenon. New needs come up in the society. They are stipulated by economic, political and even religious reasons to mention a few. In a responsive move from these groups, they come up to fill in the needs, hence, partly taking up the status of pressure groups. As Truman explains in his theory, more complex skills are needed in all aspects of life, so we find groups forming according to

their specialization. We have in mind professional bodies such as the legal or medical associations. Advance in the society, then bring in the exchange theory. These groups then come up to defend their interest or those interests they hold in common. At this stage, is when we talk of the pressure group coming up in the power relations.

In conclusion therefore, we would say that the element of change, whether gradual or rapid affects the evolution and continuous existence of pressure groups in the society. This change may be caused and accelerated by serious fluctuation in the economy, passage of laws by legislature and authoritative decision by the administrative agents and courts Likewise, international or domestic conflicts, formation of adversary groups and rapid changes in technology also fall under the category of changes which enhance the evolution of pressure groups in the society.

FOOTNOTES

1. See the contribution of Schattschneider cited in the American Political Science Review, Vol. XXXVI June, 1942. A Journal by M.E. Dillon.
2. Dillon M.E. American political Science Review Vol. xxxvi, June, 1942.
3. The new Encyclopedia Britanica volume 9
4. Supra Footnote 2.

5. G. Wootton. Pressure groups in Britain, 1720 - 1970 London. Penguin Books. 1975 at P.7
6. Mackenzie W.J. British journal of Sociology. Vol.VI, June 1955.
7. See The American political dictionary. Philadelphia Winston Inc. 8th Edition
8. Webster M. Third new international Dictionary. Massachussets. Mitrian Webster Inc.
9. Supra footnote 5 at p.6.
10. Ibid at P.6.
11. V.O. Key Jr. Politics, Parties and Pressure Groups. New York, Thomas Y. Crowell Inc. 1964 at P. 130.
12. Ibid at P.130.
13. H.L. Peacock. A History of Modern Europe, 1789-1981, Nairobi. Heinemann (K) Ltd. 1982, at P1-19.
14. See The Standard Newspaper, April 27th 1992, On the role played by the Release Political Prisoners pressure group (RPP) in Kenya.
15. Supra footnote 5 at P.8
16. Supra footnote 11 at p. 81-87.
17. Ibid
18. Ibid at P. 143-154.
19. The Nairobi Law Monthly. Issue number 25, September 1990.
20. H. Abraham. Interest groups and Lobbying. London, collier Macmillan Inc. 1969 at P.1.
21. The weekly Review Magazine. December 6th at P.5.
22. Supra footnote 5 at P. 329.
23. H.B. Ndoria and Kabuya Miano, A textbook of the Constitution and Government of Kenya for Secondary School. New Delhi, Sterling publishers private Limited 1987.
24. J.B. Cjwang, Constitutional development in Kenya. Nairobi. Acts Press, 1990 at P.56.
25. Supra footnote 11 at P.257

26. See The Society Magazine. March 23, 1992. Issue No.4 at P.11. The mother to one of the political prisoners Mrs. Wamwere, reported that she lost faith in Ford and joined a pressure group because 'FORD' promised that if the 'KANU' government failed to release the political prisoners 'FORD' would release them when it came to power.
27. Supra footnote 2
28. D.B. Truman. The governmental Process. New York Alfred Knopf Inc. 1951 at P.34
29. J.M. Berry. Lobbying for the people. New Jersey Princeton University press - 1977.
30. See Supra footnote 14
31. The Nairobi Law monthly. Issue No.24, September 1990 at P.29.
32. The constitution of Kenya, Section 80 (1).
33. Supra note 11.
34. Ibid at p. 17-18.
35. Supra, footnote 29.
36. Supra footnote 28 at P.32
37. Supra footnote 29

CHAPTER TWO

2.0 THE HISTORICAL BACKGROUND OF PRESSURE GROUPS IN KENYA

they consist of

into The role of pressure groups in Kenya has changed drastically in the 1990's. There has been a mushrooming of pressure groups which have acquired a militancy and sense of purpose hitherto unknown. Obviously the new multi-party era has encouraged this new development. If we are to understand the present trends, patterns and activities of these groups, a closer look at the background of these movements in Kenya is quite in order. In this chapter, we will look closely at the pressure groups which did exist in the colonial period those which existed after independence and also those which exist in the 1990's. A mere glance at the historical setting of Kenya, reveals that these institutions have existed in different faces, in these different eras. Nevertheless, they are pressure groups as they suit our description and definition of these institutions. The different economic political and social settings of the different times, made these groups assume the roles which they did.

An examination of the pressure groups we have today makes a person looking back into the Kenyan history deny that these institutions did exist in the history of Kenya. This is largely because they are very different from the groupings which existed in the colonial periods. We nevertheless hold that there were pressure groups even in the Colonial setting. We base our holding on what we

2.10 defined a pressure group to be. In essence, we said that they consist of individuals who share common or similar interests. The members are thus brought together by a common cause. They make claims upon the Society through a variety of techniques and operate through many social institutions to make such claims. These groups are generally concerned with certain aspects of the governments work¹. We should bear in mind that they do not seek formal control of the government but aim at influencing certain government decisions and policies, though, ultimately after they achieve their objectives, they may transform themselves so as to take up the control of the government².

The foregoing brings out the idea that pressure groups will and do exist in almost all kinds of governments. This unfortunately has not been the case in Kenya. The institution of a pressure group has been misconceived in the historical past. When Kenya was a one party state, the courts gave the law such a restricted interpretation denying the fact that pressure groups did exist in this country. In one notorious case, the court stated thus;

"The court has previously held in another case that pressure groups... are not known in Kenya.... It is known that such groups are said to exist in some countries, but this court is only concerned with Kenya"³.

It is in a bid to negate this statement, and remove this misconception that we endeavour to examine the rise and development of pressure groups in Kenya.

2.1 THE COLONIAL SETTING

Kenya is a creature of the economic and political forces in Europe at the turn of the century. This is particularly so with British imperialism and colonialism⁴. Pre-colonial Kenya consisted of tribal groups, which lacked the oppressive political apparatus of the modern state. They were generally characterised by a substantial level of social and political participation⁵. However, the European settlers who came to Kenya at the turn of the century established themselves as though the white settlement was being created in an uninhabited land. An entirely new society was established as if none had existed there before. Indeed, immediately after they began to arrive in 1902, the settlers formed 'the Farmers and Planters Association'. This Association demanded the 'Ancient Liberties' of every Briton⁶.

In 1906, the British government gave in to their wishes and introduced a legislative council. This was composed of five officials and three nominated European members. By 1911, there were so many settler pressure groups that they were federated under the 'Convention of Association'⁷. Their policies were directed towards keeping the Highlands 'reserved' for whites; Organising African Labour for the benefit of the settlers; developing an acceptable system of Land tenure and creating a legislative council of elected Europeans.

Therefore we see that from the onset of Colonialism, the institution of pressure groups as an informal institution of representing peoples interest was present. Their demands, mainly for the protection of the Europeans interests were directed towards their home government and the colonial administration.

It was clear that the white settlers were out to protect their interest at the expense of the other communities. These interests had to conflict. The first group which was affected by this system were the Asians. We pointed earlier in chapter one that one major source of pressure group activities is the conflict of interests within groups. Here was a situation in which a small but politically very vocal group of crude settlers were given maximum liberty to criticise policy while the remaining communities, that is the Africans and the Asians were deprived of any chance even of raising their grievances. In these circumstances, friction was bound to arise. It is therefore not surprising that in the period upto 1923 the Indians came forward to challenge both the Kenyan settlers and the colonial government for equal opportunities^o.

On their part, however, Africans began to view both Indians and the Europeans as dangerous and permanent enemies. They did not participate fully. They watched the dialogue between these two alien races with keen interest but from the sidelines.

We indicated that one of the stimulating factor which make people organise, is the introduction of a Law which forces the people to whom this Law applies to organise either in defence or in offence. The Africans were not spared of this agony. Indeed,

by 1915, they were already becoming restless. They expressed concern over the ever mounting taxes imposed on them by the colonial government. They hated the 'Kipande' pass system which the labour commission had recommended to curb desertion. One Kenyan ethnic group, the Kikuyu, complained bitterly about the Land and Forest Lands and the continued Land alienation. The Luos, another ethnic tribe, were equally alarmed when Land alienation started at Miwani and Muhoroni⁹. In general, all Africans in the protectorate complained about Labour Laws, mounting taxation and the ferocity and corruption of colonial African chiefs. Often, it was the missionaries who stood up for the rights of the Africans when they appeared to be treated unjustly; for they had grown to know and understand them¹⁰.

Colonial Logic demanded that the indigenous culture and social patterns which hindered the creation of Labour be done away with. To do this they relied on force, Coercion and repressive Laws, Africans had to be excluded from participating in their government, because permitting any meaningful popular participation would have threatened their very survival¹¹.

The above state of affairs could not go on for a longtime. After the Africans participated in the first world war. They acquired a very helpful experience. This opened their eyes to the realization that part of the Europeans success in dominating them was due to the later political organization into Associations¹². Coupled with the above realization was the bitterness harboured by many soldiers and Poters who had been lucky to have returned from the first world war alive. They

complained about the hardship they had been subjected and also about their unpaid wages.

Another major source of bitterness for the Africans after the first world war was the decision in 1921, to adopt a new currency [the shilling based on sterling] owing to the fluctuating value of the Indian Rupee. On 7th February the then Kenyan colonial government decreed that Indian Rupee was no longer valid. Both Labourers and ex-service men had been paid in this money only days before. Yet they were given no warning of the change nor any subsequent compensation¹³.

The existence of the colonial laws and the oppression they imposed on the Africans agitated in the mind of the Africans a feeling of hatred towards the colonists. This was the basis of their shared attitudes, which is the building block of pressure groups. These attitudes have to be directed towards some social institutions which in many cases is the governing machinery. Since pressure groups are concerned with certain aspects of the governments work, a look at the colonial government is essential at this point.

Although the governing machinery of the colonial state Kenya, passed through various forms of organization until the very threshold of independence, to the Africans, it remained an alien totalitarian state¹⁴. At the apex was a dictatorial governor. Hurley Elspeth has described the state thus;

"The state was supreme, and its servants like the communist party were absolute dictators of the countries economic life.... Laws were made and amended by single proclamation of the dictator and behind him the secretary of state without even the form of previous

the white consultation with any of the people who had to obey them. Justice was dispensed largely by officers of the executive. All taxation was imposed without representation. The private citizen had no say at all in any of the matters that affected him. He could only shout in the hope that if he did so loudly enough, someone would hear and pay attention"¹⁵.

The foregoing depicts a dictatorial type of government where the European settlers were permitted to participate in the government, but the Africans continued to be oppressed under this regime.

Below the Governor, there were the British provincial commissioners, British District Commissioners and British District Officer, whose middle-class tradition and sense of racial superiority largely kept them out of touch with Africans. They could occasionally go to meet the Africans in Public meetings organised by the chiefs¹⁶. Even these chiefs were conferred with dictatorial powers. The exercise of these powers was buttressed by a militarised 'police' force and rationalised by civil servants and judges¹⁷. No mechanism whatsoever for political participation by the Africans was provided.

Judging from the colonial government setting, governance was neither with the consent of the governed nor with the initiative of the governed. This mechanism, left out so many gaps which called for reaction from the affected people. The new organization, which in essence dismantled the old order, eventually called for counter organization, in a bid to protect the interests of those who had been left out. Pressure was imposed on the Africans by the administration in order to work on

the white settlers farms. This policy of economic dominance was designed for the interests of settlers and was complemented by their dominant role in the government. Pressure begets pressure, and indeed, it was not surprising that Africans political and economic oppressions, manifest in their grievances had to find an outlet. This was after

The Pressure groups are a manifestation of power relationship in the society. The colonial repressive Laws, and their form of administration, coupled with the experience the Africans got from the first world war, moulded the Africans to form Associations based on the European 'Convention of Associations'.

Common economic interests, were the basis upon which the first association was formed. In order to prevent Kikuyu Land from being taken over by the settlers a group of chiefs headmen and workers formed the Kikuyu Association in 1920. among the membership of this Association, were the then colonial chiefs, Koinange wa Mbiu, Josiah Njonjo, Kinyanjui wa Gathirimu and other christian converts. With the encouragement and support of Cannon Leaky¹⁸. in the

Their first objective was discussing the question of Christian representation on the 'Kiamas' (Chief's Council) that settled Land cases in the districts. They aimed at improving their material conditions within the colonial set up. This was through a petition, a polite request to the governor. They petitioned him to convert title deeds on native Lands owners as he had done with the European Land owners¹⁹.

Formation of this group pressing for the recognition of

their demands opened the eyes of the young urban population. They too had their own interests and soon they developed a sense of oneness, joined together by their grevances they had against the colonial administration. The young people were embittered by the introduction of the 'Kipande' pass Laws and the cut of their wages. This was after the post Armistice commodity boom²⁰. The collapse of this boom, after the first world war forced the colonial administration to cut the African wages by one third to ease the situation. This was contained in a circular issued by the colonial government after being pressurised by the then "Thika Farmers Association belonging to the white settlers²¹.

This necessitated the emergence of the young Kikuyu Association led by a young elite Harry Thuku. A week later this young Kikuyu Association (Y.K.A) changed its name to East Africa Associationn (E.A.A). The organization attracted an urban membership drawn from various East African Communities residing in Nairobi including Indians. The organization held several Meetings in Nairobi which opposed Inter alia the reduction of wages, increases in tax, the 'Kipande' (pass) system and demanded the right to elected political leadership²².

What emerges from the foregoing order of events, is that conflicting interests within the society are major contribute factors for groups in the society. This generate groups bound together for protection of their interests. The formation of the East African Association was a reaction of the conflicting interests between the African urban population and the interests of the 'Thika Farmers Association' as they then were.

The Africans were becoming politically aware of their rights. A gap had already developed created by the settlers dominance in all the political economic fields, leaving out the Africans. It would have been very difficult to persuade the natives to entrust important deliberations to selected representatives who did not share in their attitudes. Indeed a missionary in central province, Reverend H.D Hopper urged the government to allow Kikuyus to form local association²³. These were essentially supposed to represent the African interests.

Between 1920 and 1940 the colonial government tolerated these groups but they were largely ethnic 'welfare' associations dealing with specific localised issues within the then framework of colonial rule. East Africa Association had been proscribed in 1922 for having contravened the rules under which it had been created. This was by engaging in political matters.

The trend of events favoured the grouping of individuals into groups to demand for attention the proscription of 'Thukus' Association led to the formation of the Kikuyu Central Association²⁴. The group was formed with the approval of the government. It petitioned the governor to appoint a Kikuyu paramount chief, Permission for Africans to grow coffee, publication of Laws in Kikuyu and for the release of Harry Thuku. This organization provided an umbrella, under which other organizations were formed. Though generally speaking they were welfare interest groups in the outlook, the need to demand for change transformed these associations into strong pressure

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Under these groups saw the formation of groups such as the Young Kavirondo Association, a group particularly concerned with the abuse of African Labour²⁵. Other Welfare Associations included the native Catholic Union, Kikuyu Provincial Association, Meru better club, Meru Teachers Union, and Taita Hills Association²⁶. It suffices to say that what made these groups change from their 'Welfare' status to strong groups demanding change in the status quo was the nature under which the repressive colonial Laws were administered and the way the colonial settlers policy affected them. A change was inevitable, and forming groups was one sure way of effecting this change.

A good example of this change of a group from an interest 'welfare' group to one agitating for protection of broader interests was the Ukamba Members Association. ^{26(a)} This was a group formed to resist the unpopular destocking campaign by the colonial government. There were plans by the colonial government to establish a commercial beef export industry at Athi River. The source of the raw materials would have been the confiscation of the Wakamba cattle. This threat, to the economic interests of the Wakamba made their association to come up strongly in opposition to the colonial policy. They organised an unprecedented March of three thousand Wakamba under the Leadership of Muindi Mbingu. They marched to Nairobi to demand the return of their cattle from the governor. They had even hired a Lawyer (the late Chief Justice Madan) to draft petitions and telegrams to the colonial office and the British media²⁷.

After the second world war, the colonial government changed its tactics. In order to understand the trend of events; a look at the colonial economic and political status is inevitable. The European settlers, though they did not achieve the full control of government, their demands were mostly heeded. Government policies on land labour and distribution of services favoured the Europeans at the expense of the African majority.²⁸ Thus the presence of Europeans created acute social and economic grievances which led Africans as early as 1920, to demand a share of political power, as we saw earlier in this chapter. This, to them, was a sure method of removing some if not all these grievances. Only with this fact in mind can we understand the events which followed. They were demanding change in the political circles. Their grievances were actuated by the harsh land policies which greatly undermined the African economic interests. They were held together by the shared attitude of wanting to redress their grievances.

Events took a different turn after the world war II. Most of the African groups joined to form the nationalist movement. Tom Mboya describes the movement to mean, the mobilization of all available groups of people in a single struggle. ²⁹ It is within this movement that most pressure groups were drawn, though viewed from the outside, it took up the look of a political struggle. Their demands were geared towards the colonial government to listen to their grievances and change to protect the interests of the Africans. We should point out that, the different interests, partly historical, relating to the uneven

political development of the different peoples in Kenya, made this nationalist movement to be fragmented.

The colonial government sought to co-opt and canalise African political participation into official channels through local native tribunals and through token symbolic nomination of an African Mr. Eliud Mathu in 1944, into the Legislative Council. On the advice of the governor, a pan-tribal committee of the thirty three educated African Members named Kenya African Study Union (KASU) was formed. This was a colony wide African body with which the one African member would consult. This was in an effort to channel the emergent voice of African nationalism towards the support of the colonial administration³⁰. Initially, the aim and objectives of the organization were; to unite the Africans towards an African nation and to foster social economic and political interests of the Africans. It was not long before the radical members of the organization dropped the word 'Study' in their name to become KAU. They asked each other 'What are we to study about our grievances'³¹.

From the foregoing, what emerges is that the African grievances were the basis on which the nationalist movement was founded. They were concerned with the governments work to that extent. The activities of Kenya African Union (K.A.U) soon went overboard the Limits under which the colonial government had intended. This culminated in its proscription in 1953.³²

We saw in chapter one that pressure groups come up to fill up the gaps in the representation system. The Proscription of this group left a vacuum, which had to be filled. The political

social and economic demands of the Africans had to be represented.⁴⁰ This role was taken up by young trade unions. Every problem became a workers problem primarily because there was no other group capable of shouldering the burden.³³ The Kenya Federation of Registered Trade Unions in particular took up the battle. Its leaders questioned the government about the conduct of the emergency, the conditions in the detention camps, the injustices of the screening methods and the social implication of the large scale arrests that took place. The late Tom Mboya emerged as the dominant personality in this field.³⁴

At this juncture in history, group activities were very dull. It is not easy to pinpoint at a particular pressure group save the nationalist movement. The role of pressure groups and in particular the nationalist movement was taken up by the trade unions. Hence turning them to strong pressure groups. Other trade unions included Fred Kubais Kenya African Road Transport and Mechanics Union, Bildad Kaggias clerks and commercial worker's union, Chege Kibachias African Workers Federation and Makhan Singhs East Africa Trade Union Congress. These groups all eschewed the traditional distinctions between labour and politics and became powerful vehicles for political articulation and mobilization especially in the urban areas.³⁵

Other remarkable groups at this time were those formed by the ex-servicemen. The soldiers had travelled widely and had seen the Europeans weaknesses. Some like Bildad Kaggia had found acceptance abroad and could no longer accept the belief that a European was better than an African. The growth of the general

feeling helped to bring about the formation of organizations such as the '40 group' which was widely made up of ex-sarvicemen. They opposed the trench and road digging which was going on at that time. They began a campaign to liberate the masses of their fears of the white man³⁶ reflect in Kaggias words, thus

"People need to be told that Africans were equal to whites and that given the education and opportunity, were capable of doing everything that the European did."³⁷

All these groups were pressurising the colonial government for political charge, that is to afford the Africans, a channel to redress their grievances.

Thus political development therefore credits the argument that the presence of pressure groups, and their activities in the society is a manifestation of upshots of power relations "in that society". This logical view was also advanced by the then secretary of state for colonies Mr. Oliver Littelton when he visited Kenya in 1954. He told the Europeans thus;

"Sixty Europeans cannot expect to hold all political power and to exclude Africans from the legislature and the government." The end of that would be to build pressure which will built into rebellion and bloodshed".³⁸

This pressure mounted over the years, the Africans were being oppressed economically and even politically. Hence their decision to engage in the 'Maumau' revolt. 'Maumau' was a child of the economic and social problems which had accumulated over the years and which had not found any solution through constitutional channels.³⁹ Their shared attitude was based on the hatred they had towards the whole economic set up';

○ We should bear in mind that a pressure group may transform itself into a political party. Once its objectives are achieved. During the struggle for freedom. 'Maumau' as a group fell under the purview of a pressure group since its aim was to achieve freedom. The leaders of the former group Kenya African Union were also in the front line. The reasons why the nationalist movement took this turn - to violence, has remained a controversial issue. We do not wish to endeavour to remove these confusions either, as this falls outside our concern. It suffices to say therefore that though the movement was defeated by the capture of their leader Dedan Kimathi in 1957, the activities of the 'Maumau' boosted the nationalist movement steps ahead. The activities of the 'Maumau' hastened the granting of rapid constitutional changes and reforms by the British Government in the administration of the Kenyan Colony. These changes improved the welfare of the Africans within the Kenyan colony. The colour-bar began to disappear, racial discrimination in the civil services was ruled out by the Lidbury Report in 1955, wages improved and in many other ways, Africans were given fuller recognition. The Littelton constitution in 1954, brought in the first six African elected members of the legislative councils and the LennoxBoyd Plan in 1957 increased them to fourteen. There was also the Royal Commission on Land in East Africa of 1953 to 1955 and the Swynnerton Plan which followed to accelerate the development of African agriculture.⁴⁰

Through the claims of the nationalist movements were being effected, they were not being done so in full. All significant

turn in the nationalist⁴¹ movement came in with the march 1957 elections. The newly elected Africans on the legislative Council included Mboya, Ronald Ngala and Odinga, personalities who had led the nationalist movement for a long time. Since the struggle for representation into the council had been rejected way back in the 1920s, Africans agitation for change had been conducted outside the legislative council all through. But with the 1957 elections, the new African nationalist leadership was placed within the council. These young nationalists got a chance of being able to lobby for the Africans interest on a better platform than before. This was put forward by Odinga in these words.

"We had gone into the legislative council with a clear set of aims. These were to make the council a platform from which settlers and government of Kenya and Britain could hear African opinion Above all we could use the legislative council as a National Platform to build national unity."⁴²

These assets were very helpful because they aided the next move in the nationalist movement.

It should be clear in our minds that pressure groups do get interwoven in the governing machinery. After all they are concerned with certain aspects of the governments work. These elected Africans formed the elected member organisation. This organization was better placed to put forward the demands for the Africans, Moreover, they got a platform on which to educate people on better ways of achieving national unity. They late Mboya put it more clearly thus;

"we knew we would not win the vote, but we wanted to use the legislative council as a platform"⁴³

Indeed they did use it as a platform not only to attack the colonial executive but also to publicise the grievances and fears of the Africans. African opinion was and could only be advanced through this group of the Elected Members Organization. It is during this period that the African members pressed the government hard to enact political reform.

The first major fruits of this movement, which we have been considering as a pressure group, came in with the holding of the Kenyan constitutional conference, which took place in Lancaster house in early 1960. The Conference according to Mboya brought the declaration which the nationalist movement had been seeking that Kenya was to be an African country.⁴⁴ The ban on creating national wide organizations was lifted which led to the creation of the first party. The aims and objectives of the nationalist movement having been achieved, those who were steering it, transformed to form a political party, a transformation which does not concern us here.

Unfortunately the interests of the new African communities had to be clearly defined with the first goal achieved, the interests of the individual Africans started to conflict. They changed in outlook.

We need to remember that people tend to group up depending on the economic interest, which they hold in the community. As the white highlands' were opened up to Africans, the question of who should own and settle in the Rift Valley areas, caused a

division. The interest in land was the major dividing factor between the Kikuyus and the Kalenjins. Fears about future economic positions were the source of grouping among the coastal people. The land ownership conflict was mainly between the Africans and the Arabs⁴⁵

Moreover, the coast people developed a fear of economic domination by the 'up country' those who formed the bulk of the coastal labour force. Fears of this kind, created something of a community of interests among the Kalenjins and the coastal people as against the larger dominant ethnic groups⁴⁶. This alignment of the tribal and economic interest was probably the single most important factor leading to the division between the parties after independence, but we shall leave this discussion out because it is not important for our purposes;

What emerges from this section is that the group activities bracketed under the nationalist movement, were the major activities of what fell under the purview of pressure groups of the colonial time. The Africans realised that their grievances created by the presence of colonial government and the white settlers could only be redressed by getting a share in the power relationship, dominated by the Europeans. This realization forced them many groups to pull up together, whose efforts culminated in the achievement of independence. Their demands and claims were realized in this way. The interest, of the individual in the new, state, had to be protected, but their goals changed. It is from this premise that we look at the history of pressure groups in the independent setting.

PRESSURE GROUPS. INDEPENDENCE AND AFTER

On acquiring its independence status, Kenya was faced with the big task of nation-building. Amidst these tasks, were demands by the settlers, that the new government should provide constitutional protection of their interests. They demanded that the new constitution provide for a judicial protection of human rights. Their fears were manifest in the influence they had on the legislative council. This has been expressed by Odinga as follows;

"... when the settlers groups could no longer protect their interests in the name of the white parties from the bench of the legislature, they switched to lobby causus and back room activity and then used African political movements ... to protect settlers interest...."⁴⁷

These words support the fact that pressure groups will liase with a party which holds their interest at heart, in order to ensure that they are protected.

The same influence was also exerted by the National Council of the churches of Kenya (N.C.C.K) which even sent a memorandum to the Lancaster house conference requesting fundamental rights including freedom of worship to be provided for in the new constitution.⁴⁸

However, the development of pressure groups does not have much history in the period immediately after independence. There was a young government in power. The shared attitudes and common interests that used to hold people together during the colonial period had to change. This included a change in the activities of these groups which had spear-headed the nationalist movement. The roles of the groups had also to change to reflect

the needs of the young state. They were to work together to boost and build the new state. Unity was to be jealously guarded in order to build the new nation. Those groups which pressed on to the attainment of independence had to support the new state. This new attitude was expressed by the late Mboya. He wrote of trade unions thus;

"we welcome its continued co-operation in the inspiring task of nation-building which now faces us ... Attitudes that were appropriate when we were fighting for independence have to be revised ... The guarantees for the preservation of the rights of trade union lie in their recognition of the responsible role they have to play in building a prosperous Kenya"⁴⁹

What emerges from the quotation is that the recognition of the interests of the different groups in the society depended on whether they supported the government. Everything had to be geared towards nation-building, hence the high degree of corporation. These groups had to be within the government, the reason why there were no pressure groups pressing hard for the recognition of their interest. Any group holding a different view, or which pressed for something outside the mainstream of the immediate concern was seen as a nuisance.

Ghai Y.P⁵⁰ referring to the state of Lawyers at the time expressed the above view. He saw the role of Lawyers, acting as a pressure group only as a future concern. He wrote thus;

(SIC)"... Lawyers may be regarded as a potential pressure group for Liberal democracy. In a society which the values have not in the past had a firm hold, and one in a constant pressure in practice and in discussion."⁵¹

This depicts a state very delicate and in the formation state, hence, the Lawyers could not as of the time, challenge concepts, which had not even acquired a strong foundation.

The immediate needs were also seen and given recognition within the women groups 'Maendeleo ya Wanawake' a women's organization which had started as a white womans club, back in 1950, committed to socialization as well as the goals of improving the women's families health and welfare changed⁵². After independence middle class women were incorporated into the organization to ensure they were trained for leadership roles. A necessity for the new state.

One of the roles of pressure groups is to criticize the government, and to make sure that it is kept on its toes to the needs of its people. Since there were no concrete pressure groups outside the government to perform this role, the government had to do with the hand-hitting attacks from the legislature, a tactic the Elected Members Organization had offered to the colonial government.

Between 1963 and 1965 there were no outstanding pressure groups. There was need to remind the government of its duties, 'Kanus' backbenchers became vigorous critics of certain of their own government policies. They challenged these policies as departures from the policy on which they had been elected. Their activities brought them under the category of a pressure group, brought together by their shared attitudes. Their attitude based on the frustration caused by the cabinet's domination over the parliament, caused the formation of a strong group, to criticize

the government on some of its policies which did not seem to auger well with the expected norms of the time. The issue was expressed by one of the then backbenchers, Mr. Maisori Itumbo when he said thus;

"It is time we were told whether this is a dictatorial type of government, or are we also having a share in forming the government of this country".⁵³

This group, composed of some backbenchers and members of the then opposition party K.A.D.U., performed the role of a pressure group. There was a need to criticize the government, and since the opposition had failed to do so, this group filled this gap. They insisted that they did not want to moderate its actions. They sought to use the pivotal position in the party House to influence the executive to adopt the policies that they regarded as closer to the national interests. This emerges clearly from the words of Mr. Wariithi, the then Chairman of the group in 1964, when he said;

"The backbenchers 'group' has no grudge against our prime minister. This group supports our prime minister and his government.... But the backbenchers... take a different line from that taken by the ministers. They may vote against the government. We have an opposition which can never hope to win a motion unless the backbenchers support them; and this should not be underrated. My group, knowing this has to be a kind of a watchdog or a pressure group to our government."⁵⁴

This pressure group, though it did challenge the government and kept it on its toes, it was disbanded just after a few months.

After the disbanding of the above group, there was still need to represent the people on a more elaborate scale. We

pointed out earlier that pressure groups rise in answer to certain needs in the society concerning the government.⁵⁵ This need was taken up by the church which provided some co-ordination for national unity.⁵⁶ The (N.C.C.K.) National Council of the Churches of Kenya, though a religious body, did perform the role of a pressure group, filling in the gap in the political representation. In 1974, the N.C.C.K. strongly opposed the proposal to have the constitution changed to bar the then Vice-President (Arap Moi) from assuming the presidency in the event it was vacated by the then incumbent president. The group was concerned with the welfare of the fellow countrymen and women. It played a very vital role in organising of several consultations throughout the country to make people understand the constitution and to prepare them to honour and respect the Kenyan constitution. The N.C.C.K. felt that the "Change the constitution group was going to confuse" the people.⁵⁷ We have already seen that pressure groups within most governments, work together with the government. The Kenyan government went beyond mere co-operation to drawing these groups into the ruling party, a tactic employed to evade any form of opposition from any group. Indeed, in 1965, all the trade unions were brought together to create an umbrella union the Central Organization of Trade Unions (COTU).⁵⁸ In the 1980's these groups were affiliated into the ruling party Kanu, groups, which for a long time had an independent status. This was the case with "Maendeleo ya Wanawake" which became 'Kanu Maendeleo ya Wanawake'.

3 The groups, which by then were strong interest groups and would have become pressure groups for political change given the chance, were banned and ceased to exist. These included among others, the Kenya Coffee Growers Association which was proscribed in March 1989, the Matatu Vehicle Owners Association (M.V.O.A.) which was also proscribed in 1988 after a series of confrontation with the government. The same fate befell the Students Organization of Nairobi University (SONU) which was proscribed in 1987, following a major students riot.⁵⁹ These are but some of the groups which existed at a national level and which given the chance, would have been very strong pressure groups for agitating and influencing policies affecting them. This would have gone a long way to ensure that their interests are protected by the state.

2.3 Pressure groups in the 1990's

During the 1990's, Kenya has seen a turn in the historical development of pressure groups. A mere glance at the society reveals an upsurge of pressure groups in all spheres of life. Obviously, this changed state of things is an indication that the society is moving towards a more elaborate kind of democracy. The fetters that prevented these groups from existing openly have been relaxed if not removed altogether. The social needs of the Kenyan community have changed with the ushering in of the multi-party era. This has brought in new matters which the society needs to be educated on.

The change, as it really is, has not been achieved without struggle. Groups in the Kenyan society have played a major role in pressurising the government to institute change and political reform, which in essence was the major block into the existence of pressure groups in Kenya.

Among the groups, was a group of lawyers who acted as pressure group for constitutionalism and the rule of law. The Lawyers expressed their views in the radical Nairobi Law Monthly. They wanted a legal basis for this change, but this could not be achieved with the then section 2(A) of the constitution being in existence.⁴⁰ The Lawyers through the Editor of the Nairobi Law Monthly Mr. Gitobu Imanyara, instituted a suit demanding the scrapping of Section 2A. This bold challenge to the constitution set the ball rolling culminating in the scrapping of the said section in December 1991.⁴¹ There were other activists in the struggle for change, but for our purposes, we will look at the development of pressure groups as from the time that change became eminent.

One major actor in the heated debate for change to multi-party was a group led by an elderly Kenyan politician Oginga Odinga.⁴² In his struggle for change, he formed the (FORD) Forum for Restoration of Democracy pressure group. The groups main objective was to demand for change and reforms through a peaceful, constitutional and lawful process. The efforts of this group were rewarded with the scrapping of Section 2A of the constitution. This provided a legal basis for challenging the

before as inter-

'KANU' monolith. Eventually, the group transformed itself into a political party which we shall not deal with here.

With Kenya, going Multi-party, came the reawakening of the political awareness in the country. New gates were opened for more parties. New Laws had to be set for election, in a multi-party state. There was need to educate the masses on their role in the new forthcoming elections. The different groups in the society needed to be educated on their role and the need to have their rights and interests protected in the many parties constitutions. Hence, the need to have pressure groups to agitate for the different group interests in the new multi-party era.

We should keep in mind that pressure groups are a manifestation of power relations in the community. The new role of pressure groups in a state faced with the task of boosting democracy, included making sure that the government or the parties in power do not abuse their powers. To do this pressure groups normally criticize the government or support it in the formation and implementation of its policies. They make sure that the government is constantly reminded of it's role in representing and taking care of the citizen's interests. The 1992 political changes saw a new dimension in people's participation in the democratization process. The heed was taken by pressure groups.

In the above role, the womens movement has produced some of the strongest pressure groups. These groups, though they existed before as interest groups, changed their role and are now

pressurizing for the recognition of the womens rights and participation in government. They are not seeking to have a formal control of the government, but they are seeking to influence government policy and Legislation to promote their interests.⁴⁴ The ushering in of multi-party democracy made Kenyan women discover that the best way in which they can lobby for their interests is by participating in politics and in the democratization process. In this process, women pressure groups have had an upper hand as we shall see in chapter three. The strongest actors in this field have been the National council of women of Kenya (N.C.W.K.) a womens group founded in 1964. Its major objective at the time was to be a voluntary co-ordinating body of womens organizations in Kenya.⁴⁵ This has changed with the new political changes; making this body to play an important role in the womens movement as a pressure group.

Other women groups, forming the women's movement are the National Committee on the status of women, League of Kenyan women voters and Mothers in Action. The movement also has recruited groups such as African Women's Development and Communication network (Femnet) Kenya Chapter, International federation of women Lawyers (FIDA), Kenyan Chapter and the professional and Business Women Association. These groups, sheltered under the womens movement to pressure for their common cause, that is to ensure protection and recognition of their rights by the government⁴⁶.

We should point out that, most of these groups have existed in the Kenyan history, but only as interest groups pursuing different interests, but basically seeking to promote womens

Welfare in Kenya. With their union to form the Womens movement during the multi-party era, they have emerged as a strong pressure group in the democratization process.

A group which needs special mention is the Release Political prisoners (R.P.P) Pressure group. This group came into existence through the initiative of mothers of political prisoners'. They felt that, those people who had been arrested detained or imprisoned due to their political stands should be let out to enjoy the fruits of their struggle in the multi-party era⁶⁷. Their major objective was to pressurise the 'KANU' government to release these people. Though not all political prisoners have been released at the time of writing this work, the efforts of this pressure group opened the eyes of the state managers to scrutinise the conditions of these prisoners and the prisons in general, an issue they could not have thought of were it not for this pressure group. The group was able to concentrate on the issue of political prisoners alone, an issue which the many political parties which came up in 1992 did not address themselves to⁶⁸.

The political changes and reforms called for the formation of groups representing the interests of the different interest groups in the governing machinery. Among these groups was the National Interparty Youth Congress (N.I.Y.C)⁶⁹. This was a pressure group whose major objective was to Lobby for the rights of the Youth irrespective of their political affiliations. The 'Alliance for New Approach to Democracy' was another pressure group which came up in early 1992⁷⁰. It aimed at educating

Kenyans on a line of democracy based on the Switzerland Model. The 'Common Mans Union'⁷¹ was yet another pressure group whose aims were and still are geared towards reminding the political parties that in a healthy democratic state, issues affecting the basic human needs are paramount.

The rising trend of pressure groups in the multi-party era has opened the eyes of the state managers to the costly blunders they made by restricting freedom of association and expression. The same government, which disbanded some of the interest groups has silently been supporting their revival. This is perhaps in a bid to win sympathy from their fraternity. Though these groups were purely interest groups they harboured traces of turning into strong pressure groups if need arose. To the government they presented powerful pockets of opposition which could precipitate countrywide problems, an excuse the government often gave to curtail the existence of strong pressure groups. Among the groups which were proscribed included the matatu owners Association (M.V.D.A) and the Kenya Coffee Growers Association. The two association championed opposition to undesirable government schemes in the 1980's⁷².

The year 1992, saw the revival of the two bodies though with new names which we shall not deal with here. The same government has even encouraged the formation of pressure groups. A good example was the 'Youth for KANU 92'. It is aimed at popularising Kanu to help it win a landslide victory in the next elections during the multi-party era⁷³. The success of these

which it did indeed win it

bodies to agitate for the protection and achievement of their aims can only be appreciated with time.

FOOTNOTES

1. See Chapter one on definition of a pressure group.
2. The Weekly Review Magazine. December 6'1991.
3. Per Norbury Dugdale in Misc. Application, 253 of 1991.
4. Y.P. Ghai and J.P.W.B. McAnslan. Public Law and Political Change in Kenya. Nairobi, Oxford University Press at P 335.
5. Ogot D.A. Kenya before 1900. Eight Regional Studies. Nairobi East African Publishing House. 1976.
6. W.R Ochieng. A History of Kenya. Nairobi Macmillan Publishers Ltd., at P.105.
7. Ibid at P.106.
8. Ibid at P.106.
9. Ake.C. Revolutionary Pressure in Africa. London, Zed Press. 1978 at P.82 to 89.
10. J. Spenser. The Kenya African Union. P.H.D. Thesis. Columbia University, 1977 at P.6.
11. Supra Footnote 9 at P.82.
12. Supra Footnote 6 at P.112.
13. Ibid at P. 112.
14. Dilley R.M. British Policy in Kenya Colony. New York. Thomas Nelson 1937. at P.20-33.
15. Huxley E. The Whitemans Country - Lord Delamare and the making of Kenya. Vol 1. London 1953 at P.181-182
16. Supra Footnote 10 at P. 4-5.
17. See Githu Muigai's article on "The judiciary in Kenya and search for a philosophy of Law" - Presented at the I.C.J Kenya section seminar in Nairobi, June 15 to 17 1990.
18. Supra Footnote 10 at P.25.

19. Ibid at P.26.
20. Ibid at P.26.
21. Ibid at P.27.
22. Thuku H. Autobiography. Nairobi oxford University Press, at P. 20.
23. Ibid at P.21.
24. Supra Footnote 10 at P. 30.
25. Oginga Odinga, Not yet Uhuru. Nairobi, Oxford University Press 1967 at P. 250.
26. Supra Footnote 10 at P.31.
26. (a) Ibid
27. Supra Footnote 6.
28. Gertzel c. The politics of independent Kenya, Nairobi East African Publishing house 1970 at p.2.
29. Mboya T.J. Freedom and After. The challenges of nationhood. London. Andre Deutsh Ltd. 1963 at p.161
30. Supra Footnote 28 at P. 7.
31. Supra Footnote 6 at P. 129-130.
32. Ibid at p. 126.
33. Supra footnote 28 at p. 9.
34. See Supra footnote 29.
35. See Bildad Kaggia, Roots of freedom Nairobi. East African Publishing House at p. 63.
36. Ibid at P.78 - 79
37. Furedi F. The 'Maumau' war in perspective. Nairobi. East African Publishing House. 1975 at P.161.
38. See Supra footnote 29 at P.46.
39. Ibid at P.51
40. Supra footnote 28 at P.12.
41. Ibid at P.13.

42. Ibid at P.14^{note}
43. Supra footnote 6 at P.140.
44. Supra foornote 2E at P.13.
45. Ibid at P.13
46. Supra. footnote 25 at P.255.
47. See The Nairobi Law Monthly. Issue number 25. September 1990 at P.11-15.
48. See article by T.J. Mboya on "Labour policy and Federation" in C. Leys and R. Robson. Federation in East Africa, Opportunities and problems: Nairobi Oxford University press; 1965 at P.105
49. Supra footnot 4 at P.335
50. Ibid at P.135.
51. See a paper by K. Kibwana. Celestine. N. and Ann. N. on "The Role of pressure groups in the promotion and preservation of democracy in Kenya". The case of the womans movement presented in the I.C.J Kenya Section, seminar at Mombasa. May 6 to 9 1992.
52. Supra Footnote 28 at P.38.
53. Ibid at P. 38.
54. See The Nairobi Law Monthly. Issue number 24 September 1990 at p.29.
55. Supra footnote 51.
56. Ibid at p.13
57. Supra footnote 29 at p.161
58. Supra footnote 51.
59. See The Peter Warutere column. "Revival of Lobby groups Welcome" in the Daily Nation. Monday January 20 1992.
60. See Supra footnote 2 at p.8-9.
61. Ibid at p.9.
62. See The Kenya Times . Saturdday, August 3, 1991.

63. Supra footnote 2 at p.9.
64. The example of Mothers in Action Pressure group. Kenya women in democratization process (information brochule).
65. POLITICAL ORDER.
66. Supra footnote 51.
67. Ibid prior to.
68. The Society Magazine weekly issue No. 4 March 23, 1992.
69. The words of Monica Wangu Wamwere, Mother of Koigi Wa Wamwere, one of the political prisoners reported in Ibid. at p. 11. and
70. See The Sunday Nation February 9, 1992.
71. Ibid at p.4.
72. Supra footnote 64.
73. Supra footnote 59.

These groups

Kenya (therein)

CHAPTER THREE

3.0 PRESSURE GROUPS AND THE LAW. THEIR ROLE AS WATCHDOGS OF POLITICAL ORDER IN A CIVIL SOCIETY

3.1 NATIONAL AND INTERNATIONAL DIMENSION

obj: Prior to the adoption of a multi-party system in Kenya, several pressure groups were formed. They came up in different colours, "dressed" in welfare, professional, political and religious garbs. Most of them expressed concern for their fellow country men and women, and for mankind at large. ¹The basis of their concern was that the one party system was undemocratic and oppressive, and that adoption of a pluralistic government would eventually remove this oppressive scenario and enhance the democratization process. This would enable the government to embrace wider tenets of liberal democracy. Indeed, democracy by its very premise should provide some method of effective representation for all groups, no matter how small or unpopular. This then, would make it less necessary for them to engage in demonstrations or violence to get attention, forms of political access which are much less convenient to the general citizenry. ²

The groups which steered Kenya into multi-party did not have solid characteristics, but they ranged from professional bodies to ad-hoc political organizations. However, they fall under our definition of a pressure group as we shall see here below.

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These groups included, the National Democratic Party of Kenya (hereinafter referred to as N.D.P). In actual sense, the group did not even bear the name a pressure group, but from its manifesto, we get the idea that it was a strong pressure group with a political inclination.³ The major objective, which was to campaign for the repeal of the then section 2A of the constitution, after which they would transform into a political party explains the foregoing. Although they did not achieve their objectives, their successor that is forum for restoration of democracy (hereinafter referred to as FORD), did achieve this objective.⁴

The Law Society of Kenya, basically a professional body, took up the role of a strong pressure group, for constitutionalism and the rule of Law. One section of this body consisting of the executive body of the Law Society in 1991; came up strongly in performing this role⁵

They particularly advocated for constitutionalism and the rule of Law, although they were also concerned with issues touching on the individual human rights.

The church also, harboured some organizations who came up to agitate for political change for the welfare of the Kenyans. Through the peace, justice and reconciliation section of the National Council of Churches of Kenya, (N.C.C.K.), this body proved to be a strong pressure group for political change. From the church, saw the emergent of the Moral Alliance for peace (MAP) Pressure group.

This group, which termed itself as 'Gods instrument of peaceful change and reconciliations', called for a change in the Kenyan political stand through prayer. It also called for the scrapping of the then section 2A of the constitution, so as to allow for peaceful change in Kenya.⁶

What emerges from a look at these groups is that they realised that there was a gap in the political system. There was a need for political change. So their activities and goals were geared towards this objectives that is political change.

The mushrooming of these groups, taking up the role of pressure groups, raises the question of under what legal basis did they exist. A look at the Laws of Kenya reveals that, there is no Law which expressly provide for the formation of pressure groups. However, interpretation of several provisions of the Law, affords pressure groups a strong legal basis to exist and operate in Kenya.

The constitution impliedly provides for the existence of pressure groups. The fact that fundamental human rights are protected under the constitution, enhances the issue⁷. More emphatically put, the constitution is the basis upon which the political institutions of the country are built. Upon it, a civil society finds a strong foundation. In effect therefore the constitution embodies critical rights expectations which the citizens are anxious to see indicated.⁸ The right to associate finds protection under the constitution and provides as follows:

"Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to trade unions' or other associations for the protection of his interests".⁹ (Emphasis added).

From this provision which guarantees to the individual the right to associate with others and particularly to form other associations. It emerges clearly that Kenyans have a right in law to form pressure groups.

The societies Act, defines a society as;

"any club, company, partnership or other associations of ten, or more persons whatever its nature or objective established in Kenya".¹⁰ (Emphasis added)

Looking at these provisions, one could promptly conclude that pressure groups have a legal basis in Kenya, especially if seen as falling under the term, "other associations" in both the above cited provisions. The term 'whatever its nature', under the societies Act, encompasses Many associations, a phrase under which pressure groups would be seen to fall under.

A look at what we have termed as pressure groups in Kenya in the 1990s, Leaves us with a feeling, of uncertainty as to the distinctions between interest groups and pressure groups. The category contained groups which took up the role of agitating for political change. However, we need to understand that pressure groups come up in answer to certain needs. Kenya before the multi-party era needed to amend the constitution, especially the then section 2A, a section which illegalised the formation of pressure groups,

and any other groups with political inclinations. This explains why some groups which transformed into strong pressure group for political change had a long existence as interest groups. This took up the form of professional bodies or church organizations to mention but a few. They diverted their attention to demand for change, as a response to the political needs of the Kenyans. Political changes were taking place in many of the African countries. There was need for states to go multi-party and in this reawakening, the role of pressure groups could not be left out. They initiated, in most cases, the road towards multi-party democracy. They were the main activists in the democratization process.

Under the Law, pressure groups may be registered, as societies, limited liability companies or non-governmental organization.¹¹ This depends on whether they fall under the categories of societies, as required by the societies Act, or whether they are non-governmental organizations. They could also be affiliates to such entities or branches of the above bodies. A good example is the justice, peace, and reconciliation group a section of the national Council of Churches of Kenya, a group which played a great role in the agitation for the adoption of multi-party rule in Kenya. The registration requirement will be found in the relevant statutes. An example is the Law Society a body registered under the law Society Act.¹²

The other groups ad-hoc in nature, which came up in

response to the need to pressure for the adoptions of political pluralism had to find a legal basis for existence and to avoid contravening the provisions of the Law - such as the societies Act.¹³

Ford pressure group as it then was, was able to evade registration requirements through a legal technicality. It limited its membership to less than ten, a requisite for any group to be registered as a society under the societies Act.¹⁴ The Moral Alliance for Peace (M.A.P) a pressure group founded by a church reverend one Timothy Njoya, used the same technique. Its initial membership was only five. When the necessity arose to have a wide membership, the group avoided the requirement for registration, through an operational technique. It provided that for one to be a member, the requirement was 'devoting a minute every morning and every evening to commit Kenya to God'. We need to point out that the group realised the difficulties it would have had to encounter, in its efforts to be registered under the societies Act.¹⁵ The unfair judgement against the National Democratic Party of Kenya had opened the eyes of most of the leaders who formed or steered these pressure groups.

Pressure groups supplement political parties in the political representation system. During the colonial period, after the colonial government banned all political groups, trade unions, groups which were basically meant to represent the interests of the workers, turned into very strong political forums under which the political interests

of the Africans found proper expression.¹⁶ In the 1990's, most interest groups and other social organizations took up the role of representing peoples interest to the higher authorities. The womens movements,¹⁷ professional bodies, particularly the Law Society of Kenya, and some groups within the church, became strong pressure groups for the democratization process.¹⁸

The constitutional basis of pressure groups, maybe implied from the existence of the bill of rights, entrenched in the constitution. The bill of rights embodies, inter alia, the right to associate. Taking a leaf from the words of Jagadish swamp,¹⁹ a former Solicitor General of the Republic of India, he said of the freedom of association thus;

The right of the people freely to assemble for lawful purposes is and always has been one of the attributes of citizenship; under a free government. The very idea of a government republic in form implies a right on the part of the citizens to meet freely for consultation in respect of public affairs. Freedom of association is an essential element of a democtatic system of government".²⁰

From the foregoing statement, what emerges, clearly is that the freedom of association is an essential element of citizenship. That it should be embraced by any Republic which espouses free government status and principles of democracy. If a government stands at such a status therefore, outomatically the right to associate will include the formation of pressure groups. If such a state entertains laws and policies, which infringe on these right to associate, it would be undermining those tenets

which warrants it to exist as a democratic Republican states; Thus is bearing in mind that a democratic state means a free society in which government is based upon consent of an informed citizenry, and dedicated to the protection of the rights of all even the "most despised minorities".²¹

The Kenyan, perspective, reveals a state founded on a constitution which inter alia provides for the protection of human rights, where in the right to associate is also included. Kenya cannot be heard, therefore, to deny pressure groups their right to exist, as this would be contradicting its own municipal laws. Unfortunately, this has been a controversial areas which we shall deal with later on, as practice has shown otherwise, at least in the period before the adoption of political pluralism.

At the international level, freedom of association has been seen as extending to the formation of political associations, labour associations, pressure groups and all forms of associations. Myres McDougal et al²², in discussing the emergent advocacy and demands for human rights explores the necessity for freedom to establish and join groups and private freedom, falling under the freedom of associations. He includes the freedom to join pressure groups in his list of demands from the government relating to power.

The universal declaration for Human rights, protects freedom of association²³. It states that everyone has the right to freedom of peaceful assembly and association. The international covenant for civil and political rights echoes this

protection.²⁴ Thus Kenya, being a state party to this covenant has an obligation to take the necessary measures to bring her Laws in line with the provisions of this covenant, and to give effect to the rights recognised by the covenant. Any discrepancies between her Laws and the covenant constitutes, a breach of international obligations which is not righted by relying on her municipal Law or deficiencies therein to escape from her obligation" under international Law.²⁵

This obligation is enhanced further by the presence of among others, non-governmental organizations concerned with issues of Human rights. They include inter alia; the international league for Human rights. The international commission of Jurists - Kenya Chapter, Amnesty International, and International Council of Women, all groups which are represented by a section or Chapter in Kenya.²⁶ These groups, though of international status, their presence in Kenya, in form of sections or chapters representing these major bodies, constituted a strong source of pressure groups for the democratization process. They act as checks on the government by which they check on the abuse of the human rights by those in power.²⁷

Therefore, pressure groups, have a legal base for existence in Kenya. Any Legislature passed touching on the freedom of association, must not make it unduly costly to exercise this right. However, the constitution contains provisions, which appear to limit the right to assembly and association. It provides inter alia that the right to associate may be interfered with in the interest of defence; Public Health; Public order;

public safety and for the purpose of protecting the rights or freedoms of other persons.²⁸ However, we should note that these exceptions will only operate if it is shown that the provisions or the act done under these exceptions is reasonably justifiable in a democratic society.

From the reading of the constitution Section 80, we conclude that pressure groups have a constitutional base for their operation and existence. Unfortunately, before the adoption of multi-party system, the then Section 2A of the constitution made Section 80 (1) inoperative. If anything, it was given such a restrictive interpretation, making it very hard, and unduly costly to exercise the freedom to associate. This was mainly used adversely to terminate any legal base for pressure groups.

The enjoyment of the right to associate should not depend on the whims of public officers. The operation of pressure groups should not depend on the discretion vested in any officer of the government. This emerges from a Sri-Lankan case where the section under interpretation, which resembles the Kenyan section 80 (1), read as follows;

"In the Republic of Sri-Lanka, all citizens shall have a right to freedom of peaceful assembly and association".²⁹

In this case, the court accepted as correct the following statement of Law from Rama Krishnaiah v The President:³⁰

"It is well established that the exercise of any of the fundamental rights like the right of freedom of association... Cannot be subject to the discretionary control of administrative or executive authority which can grant or withhold permission to exercise such right at its discretion... The guaranteed freedom cannot be abridged or abrogated by the exercise of official discretion".³¹

Despite the clear provisions in the Law for the freedom to associate, the Kenyan scenario has shown that the enjoyment of this right depended on the whims of those in power. The amending of the constitution to introduce a provision therein which favoured the dominance of one party is a prove of this. This is clear from the reasons given for making Kenya a de-jure one party state.³² The amendment rendered Section 80 (1) of the constitution seem "an invalid Legislation."³³ The 1982, constitutional amendment (Act No. 7) which made Kenya a one party state, by introducing the now repealed section 2A of the constitution, deeply curtailed the freedom of association in Kenya. The section had the effect of imposing severe restrictions on all those groups who would have participated effectively in the power process to enhance the growth of a healthy democratic state. The amendment was based on invidious grounds through the intolerance of political non conformists, reason not justifiable in a democratic state as required by section 80 (2) of the constitution. This state of affairs, where the rights of pressure groups to exist in Kenya, depended on the whims of the executive, and who manipulated the Laws to ensure that their positions in power was not challenged, presented the most difficult factor, for those who fought for the openly and rightful existence of pressure group in Kenya. A task made even more difficult by the courts. We therefore, endeavour to bring out some of the issues in which the Kenyan courts had to deal with, either the pressure groups themselves or some members belonging to these pressure groups.

3.2 PRESSURE GROUPS AND THE COURTS

When Kenya was a one party state, the courts gave the Law such a restricted interpretation thereby denying pressure groups Legal existence. Indeed, a look at the cases which the courts had to deal with at the time, pertaining to these groups, reveals that the courts were being used by the government to suppress those holding divergent views. It was not suprising therefore, where in one case, the court stated that "Pressure groups are not known in Kenya"³⁴. This move by the court was meant to defend the one-party system in the country by discouraging the establishment and operation of politically oriented pressure groups in Kenya. What the court was saying was that, the freedom of association did not extend to pressure groups, merely because they are not expressly mentioned under Section 80 of the constitution. The court was denying all forms of non-political party association in Kenya their Legal existence save trade unions.

The Kenyan Judiciary was being manipulated by those in power to block the demoncratization process. The 'KANU' government used the expatriate judges and judges an contract to preside over "politically sensitive cases". The result was that in most of these cases, the judgements, were in favour of the state. This, could be implied from cases, such as the N.D.P. case, wherein, even after the counsel of the applicants requesting that the judge disqualify himself on grounds of bias, such a request only led to his being warned that he was being in contempt of court. "One more word" said Dugdale "and you have had it".³⁵

A look back at the recent past, before the adoption of multi-partism, reveals a struggle between pressure groups, their leaders on one hand, and the government using the courts on the other hand. The groups, through their leaders, were battling the 'KANU' government for the recognition of the right of Kenyans to associate and assemble freely, without interference. The Legal agility and imagination of these key activists, saw the recognition of some formal associations, which associations we have drawn into the category of pressure groups. This was by the repeal of the then Section 2A of the Constitution which move allowed Section 80 (1) of the constitution to operate. The achievement, however, of this repeal had an opportunity cost on the part of the groups and their Leaders, as manifest in some of the cases which we shall address ourselves to herebelow.

The challenge was taken up by the Law Society clique. The constitutional matter was openly challenged in court, by one Lawyer in the case of Gitobu Imanyara vs Attorney General³⁶. The applicant was a Lawyer, and an Editor-in-Chief of the Nairobi Law monthly magazine, a piece of publication in which the views of the Law Society of Kenya found expression. The facts were as follows;

On January 7th 1991, Gitobu Imanyara filed an application in court alleging that Section 2A as amended in 1982 was inherently unconstitutional. He based his argument on a reading of Section 80 of the constitution. That section is a guarantee of the freedom to assembly and it places a bar on attempts to hinder the enjoyment of the right to assembly except with the consent of the

citizen. However Section 80 qualifies the right to assembly and association if it is shown that any Law that takes away the right is necessary for,

- (i) Defence, public safety, public health, public order and public morality.
- (ii) The purpose of protecting the freedom of other persons.
- (iii) Imposing restrictions upon public officers, members of the disciplined forces or persons in the service of a Local government authority.
- (iv) The registration of trade unions and associations of trade unions or membership in the trade unions.

There is a further requirement that the Law that takes away the right of assembly even if it fulfils the criteria set out in (i) to (iv), must also be reasonably justified in a democratic society.

Imanyara argued that the Memorandum of objects and reasons for the 1982 amendment to the constitution does not cite any of the exceptions listed in section 80 and is therefore an invalid derogation from that right. Further that even if that amendment could fulfill the criteria set out by the exceptions to Section 80, it still was not reasonably justifiable in a democratic society. And that therefore Section 2A was unconstitutional, null and void.

In essence therefore, the case was considering whether Section 2A of the Constitution was inconsistent with the freedom of association Under Section 80. The response of the court to this application, manifestly brought out the opposition mounted

on the members of the Law Society chique-constituting a pressure group for the rule of law and constitutionalism. The statement of the judge brought out the bias emanating from the judiciary in favour of the state. He stated thus

"When the applicant referred....in his affidavit that he believed that there are millions of Kenyans who are not by choice members of Kanu, the contents are irrelevant for the reason 'that his belief is irrelevant because he is the only applicant.... The statement is made for propaganda purposes and to stir up and excite the public. It cannot be said that the few millions of Kenyans bring to mind a splendid and exciting picture but this part of the technique to falsely give the impression that he is fighting for millions of Kenyans, when he in fact, he would like them to fight for him... here we have an individual who seeks to alter or amend or overthrow the constitution for his own benefit".³⁷

This in essence, was an attack by the court of this courageous Leader. The activist of the pressure group for constitutionalism and the rule of Law, as he really was, was bold enough to challenge the constitutional provisions, which blocked the democracization process. This shows how the courts were being used to silence the people who challenged the one party rule in Kenya. They had to fight, a struggle which explains the abrupt, mushrooming of pressure groups. The activists were not in good terms with the KANU' government, which in turn used the courts to fight the activists.

The heights of the confrontation between pressure groups and the court was the case of Salim Ndamwe and three others v The Attorney General and the Registrar.³⁸ The presiding judge in the case did not think much of the case, because he knew exactly whose interests he was protecting. Indeed, he interpreted the

Law narrowly to suit the interests of the state as he had done in many cases touching on the state political matters. He outrightly denied pressure groups their Legal existence by stating that they are "Unknown in Kenya". After a long disagreement with the counsel appearing for the N.D.P., Mr. Orengo, he delivered a hasty Judgement stating Inter alia, that the intention to campaign for the repeal of a section of the constitution "Is a political intention."³⁹ The courts gave the Law such a restrictive interpretation denying pressure groups existence for fear that this would challenge the power of the state, whose interests they were protecting.

In our definition of a pressure group, we indicated that pressure groups are necessary institution for effecting change in any society.⁴⁰ The Law Society chique, realised this necessity. They used the same Law, which had been used to deny pressure groups their Legal existence to secure a right of existence for these groups, Section 2 of the societies Act; was given a practical approach. The section provides that for a group to be registered under the societies Acts, it must have ten or more persons. Therefore, if a group has less than ten members, then it does not need to be registered, according to this provision. It can still operate, to achieve its purposes. This section was used by the pressure groups such as the Law Society. They interpreted it to allow for the existence of the Forum for restoration of democracy pressure group. It claimed to have had a membership of only six, hence having a right to exist as a pressure group, without being registered. This afforded it

a base to exist without offending the Law, which in this case were the provisions of the societies Act.

Religion is very pervasive in Kenya Society; and therefore, any group operating along this line was bound to have a far reaching effect right down the social structure. This was exploited by these groups in the formation of the Justice and Peace Convention (Kenya) JPC-K⁴¹. This was an alliance of the Justice and Peace Commission of the Church Province of Kenya (C.P.K.), the Justice Peace and reconciliation commission of the N.C.C.K. and the Law Society of Kenya. The convention intended to 'hold prayers symposia,' in all provincial headquarters or other locations for the purpose of intercession and confession and to discuss the process of establishing and sustaining justice and peace in a democratic Kenya. Were it not for other factors, the group had a basis to exist and its influence would have been great.⁴²

The same technique was employed by the Moral Alliance for Peace (MAP) pressure group. It managed to keep its initial membership to five; hence evading the need to be registered. When its membership became wide, it went under the guise that the requirement for operation was only "devoting one minute in the morning and one in the evening to commit Kenya to God".⁴³

These struggles were rewarded in the scrapping of Section 2A of the constitution as it then was, an achievement which opened the gates for the mushrooming of pressure groups in Kenya.⁴⁴ With the repeal of Section 2A, of the constitution and the

adoption of political pluralism the courts may be better placed to give the Law its proper and reasonable interpretation.

3.3 PRESSURE GROUPS AND POLITICAL ORDER

The presence of pressure groups in the society represent a healthy democratic state. They provide an essential link between the governed and the government. Being but one strong means of formulating public sentiments in the society, they supplement the political parties in the representation process especially in a multi-party system. Pressure groups are therefore part of the political system. They permit a new kind of participation of the people in effecting Legislation and administration of policies. In essence, they provide people with a continuous interest in the governing process not only at elections time but even between elections. Indeed, they mould public opinion into a dynamic force for the shaping of government policy. They are the modern expression of democracy by the people and for the people.⁴⁵

Pressure groups, which are but organised groups seeking particular power objectives without presenting comprehensive programmes and candidates for office, play a great role in checking the power at the disposal of the government and the parties, by ensuring that it is not abused. They levy criticism on the government especially when it perpetrates itself in power by use of Laws, which in effect rendered in-operative the principles of human rights. The efforts of the Law Society clique partly led to the scrapping of section 2A of the Constitution, a section which had the effect of rendering section

80(1) of the constitution inoperative. Section 2A abrogated the citizens right to associate freely as guaranteed under section 80 of the constitution. We therefore, attribute the scrapping of section 2A of the constitution, as it then was, to the work of pressure groups, and especially the Law Society, though we cannot rule out the work of other factors within the society. This opened the road towards a fuller kind of democracy, a step taken by many pressure groups today, in enhancing democracy.

Pressure group may sometimes aid and influence the government in the formation and implementation of its policies. Since most of them concentrate on specific issues affecting the individual or a group of individuals, they draw the attention of the governing authorities to formulate and implement policies affecting them to their advantage. An active player has been the women's movement in Kenya. Before the adoption of the multiparty era, women's interests were marginalised by those in power. Though there was the 'Maendeleo ya Wanawake' group, which was supposed to represent the interests of women, they were just a rubber stamp, an instrument which was being used by the 'KANU' government. Kenyan Laws, in many areas, discriminated women on the ground of sex. Women were left out in the major decision making bodies, and even their interests were not given complete attention in the implementation stages of these policies. The women movement is therefore geared towards ensuring that the women's interests are taken care of in the formulation and implementation stages of any important matters affecting women. In doing this, the women have taken to themselves the task of

educating women on their right to vote, bearing in mind that women form more than half of the Kenyan population, being about (51%) of the voting population.⁴⁶ The women are also campaigning against discrimination on the ground of sex. As a result of this, their interests have been given paramount importance in the drafting of the constitutions of the new parties.⁴⁷ This will ensure that they take part in the decision making process, a step which will boost far ahead the democratization process.

The democratization process, is partly aimed at ensuring that the right of all, even the most despised minorities is given equal attention by those in power.⁴⁸ This realization will produce a government dedicated to the protection of human rights as laid down in the constitution. The government will only exist so long as the people have confidence in it so long as pressure group activities exist, then the government will remain alert to the needs of the citizen. However, the success of the democratization process can only be judged with time.

Pressure groups provide continuity in the representation process, an advantage which political parties are devoid of pressure groups do not offer candidates for the management of the government, if they do this, then they cease to be pure pressure groups, and turn to political parties. However, in practice the members of a certain pressure group may still be members of a strong political party. We need to remember that pressure groups aim at influencing the government, a device which make them suitable instruments to represent peoples interests than

political parties. They are the institutions where ordinary citizens find their true representation.⁴⁹ This is because pressure groups are able to concentrate on issues more attentively than political parties. An example is the Release Political Prisoner Pressure Group in Kenya. Though it was not expressly said that the review of the prison conditions, which led to the release of many prisoners and the recent release of many prisoners,⁵⁰ who were taken in for political crimes was due to the activities of this pressure group, we would evidently conclude that the constant efforts of this pressure group drew the attention of those in authority to look into the conditions of these prisoners, and particularly accept that there were people who had been held for political reasons, a fact which the government had denied⁵¹ vehemently before the formation of this pressure group. The R.P.P. pressure group offered constant pressure for the release of prisoners, a task which the Forum for Restoration of Democracy (FORD) was unable to accomplish after it became a full fledged political party.

Pressure groups, in most of the cases, keep those in power alert on issues of fundamental human rights. Many of the human rights recommendations and decisions within the United Nations body (UN), are as a result of direct or indirect efforts by transnational pressure groups under the United Nation. We have bodies such as the Amnesty International, Human rights committee, groups which constantly talked of the state of human rights in Kenya and how they were being abused. Their work, contributed a lot in the move towards a fuller democracy. They were on the

front line in the democratization process.⁵²

In effect therefore, pressure groups being bodies which seek particular power objectives without representing comprehensive programs and candidates for office, are but necessary adjuncts in the political environment. They are effective checks on the power process. This emerges from the words of one American Lecturer, who said thus⁵³

"Pressure groups that had been formed during the democratization process, a stage which Kenya is undergoing, could help keep the current and any future government in check against abuse of power".⁵⁴

For the Kenyan scenario checks directed towards those in power will ensure a regular process of change, as the country evolves through history. Pressure groups, provide avenues for open criticism and dialogue, essential, elements in ensuring a state of participatory democracy.

3.4 RECOMMENDATIONS

1. There should be complete independence of the Judiciary to enable them dispense their duties well. This will ensure that the Laws are accorded their proper interpretation and meaning, in order to allow the institutions of pressure groups to exist freely for the betterment of the society. This will make those in power respond to the needs of the citizens, according to the social contract. Hence the

individual will be accorded the dignity he is entitled to as a human being.

2. In the recent past, the political scenerio has shown that better services have been rendered to the citizens in the governing process. We attribute this fact to the institution of pressure groups. The initiative and progress of the democralization process, which has been mainly the concern of pressure groups in an indication that Kenya is capable of achieving wider leaps of democracy. We therefore recommend that pressure groups should continue with the role they are playing in the democratization process, and that many more should come up to deal with matters affecting the common man in the governing process.
3. The institution of pressure groups should not be viewed as an undesirable institution by those in power. Criticism and even open protest, characteristics more often than not emanating from pressure groups towards those in power, should be viewed as healthy factors for any government. In any case, a government devoted to the needs of its people should accept healthy criticism. This is bearing in mind that pressure groups also help in the formulation and implimentation of policies. Those in the offices of power should accept their shortcomings and inadequacies. Only in this way, can we proudly say, we are a government by the people and for the people. This is because pressure groups are modern expressions of democracy by the people and for the people. The institutions through which the common

citizen finds his true representation. Indeed, pressure groups permit a new kind of participation by the people in effecting Legislation and administration of policies.

FOOTNOTES

1. The Daily Nation, Wednesday, July 22, 1992 "Wednesday Magazine" P.1
2. See Lawrence W. Beer. Freedon of expression in Japan A study in comparative Law, Politics and Society. Kodansa international Ltd. New York and Tokyo. 1984
3. See. The Weekly Review Magazine. July 26, 1991 at P.13
4. See The Weekly Review Magazine. December 6, 1991 at P.5: whereby, the 'FORD' pressure group, after the repeal of section 2A of the constitution, transformed into a strong political party.
5. The Nairobi Law Monthly number 39. December 1991 at P.15.
6. See Ibid at P.17
7. See Chapter V of the Kenya constitution. Revised edition 1987. The section basically contains the bill or rights.
8. See an article by Murungi K. On "Constitution. Construction and Human rights in Kenya" (unpublished).
9. See Section 80 (1) of the Kenya Constitution.
10. See section 2 of the societies Act cap. 108.
11. See The Daily Nation, February 24 1991. at P.4.
12. Chapter 18 of the Laws of Kenya.
13. The Societies Act, Cap 108, requires that every society with more than 10 persons should be registered s4(1) provides that every society which is not a registered society or an exempted society is an unlwaful society.
14. Section 2(1) of the societies Act Cap 108, provides that for any group to be registered as a society, it must have ten or more persons.
15. S.11 of the societies Act gives the Registrar a wide discretion to choose which society to register.

16. See T. Mboya Freedom and After. Heinemann Kenya Limited. Nairobi', 1986.
17. See Article by K.Kibwana, Celestine N. and Ann M. on " The role of pressure groups in the promotion, and presevation of democracy in Kenya. The case of the women's movement." A paper presented in the I.C.J. Kenya section - seminar in Mombasa May 6th to 9th, 1992.
18. See Supra footnote 5 at P.15.
19. The Nairobi Law Monthly, Number 20 of 1990 at p. 27.
20. Ibid.
21. Supra footnote 8.
22. In Human Rights and World Public Order. Yale University Press. New Haven and London at p. 8 and 17.
23. See Article 20 "Universal Declaration of Human rights".
24. Article 22. "International Covenant on civil and political rights" which Kenya ratified in 1972.
25. See James B. Shimanyula. Elijah Masinde and 'Dini ya Musambwa.' TransAfrica, Nairobi; 1978 at. p. 11.
26. These are the local chapters and sections representing the International organizations, especially the United Nations. See Supra footnote 22 at p. 17.
27. See The standard, May 2, 1992 at p. 13. The Local Chapters of Alternative View and Human rights committee campaigned for the registration of an umbrella organisation to represent the students body of the University of Nairobi.
28. See Section 80 (2) of the Constitution, 1987 edition.
29. The Nairobi Law Monthly, Supra footnote 19 at p. 27.
30. A.I.R. (1952) Madras 256. Also cited in the Nairobi Law Monthly Supra footnote 19 at p. 27.
31. Ibid.
32. Set the Case of G. Imanyara vs The Attorney General reported in the Nairobi Law Monthly Supra, footnote 5. He explain that the reasons given in the memorandum of objects for the amendment were not justifiable in a demostratic society.
33. See Y. Ghai and McAuslan. Public Law and Political change. Oxford University Press, Nairobi 1970 at p. 444.

34. As per N. Dugdale in the case of Salim Ndamwe and three others v the Attorney General and the Registrar. High court of Kenya at Nairobi, Civil application number 253 of 1991. (unreported).
35. See The Nairobi Law Monthly. No. 38, November, 1991 at p. 10.
36. Civil application No. 7 of 1991.
37. As per Justice N. Dugdale in Imanyara vs the AG. cited in the Nairobi Law Monthly number 34 July 1991 at p. 16.
38. See Supra footnote 34.
39. See The Weekly Review Magazine, July 26, 1991, at p. 8.
40. See Chapter on the definition of a pressure group.
41. See Supra footnote 5 at p. 15
42. Ibid. Consistent warning from top government officials led to the cancellation of J.P.C.K. Reported at p. 14.
43. Supra footnote 35 at page 10.
44. Many pressure groups were formed and even some interest groups which had been proscribed were revived. They took the form of pressure groups. See Daily Nation January 20 at p. 14.
45. Reported in Mary E. Dillon. American Political Science Review Vol. 36 No. 3 (June 1942) at p. 481.
46. The I.C.J paper, Supra footnote 17.
47. The Mothers in action pressure group, information brochures. (unreported).
48. See words of D.H. Odegard in the American Political Science Review volume 36, No 3. (June 1942) at P.481.
49. Ibid at P.480.
50. The government released many prisoners and some who had been accused of engaging in political matters. The reason for the release as given on the Local Press was that the president was exercising his prerogative of mercy, powers confined to him by the constitution.
51. See The Society Magazine. Weekly issue no. 4 March 23, 1992 at p. 14.

52. Supra footnote 5 at p. 9.
53. See Lecture by professor Henry Steiner, delivered in a seminar organised by the Kenya Chapter of the I.C.J. Reported in the Daily Nation Saturday, July 11, 1992 at p. 5.
54. Ibid. ,

CONCLUSION

This thesis has looked at the state of pressure groups. It has defined a pressure group to mean a non-partisan organization brought together by shared attitudes which exerts influence upon the Legislature, the executive and other governmental organs, for the enactment or rejection of certain Legislations or for the modification, rejection or discontinuation of a public policy. They develop to fill up the gaps in the political, system. They perform a representative function by communicating the wishes of the people to the public authorities. However, they do not seek formal control of the government. They come up in many colours "dressed" in welfare professional, political, and religions garbs.¹ For many of them, better governance is the end sought. This definition is however, not conclusive.

We have also looked at other groups akin to the term pressure group. These are political parties and interest groups. We have indicated that pressure groups supplement the political representation system in the governing process. We have seen that pressure groups are necessary adjuncts in our political system. The study has dealt with the part played by pressure groups in the representation process. During the colonial period, these institutions responded to the representation needs of the society at that time. They represented the interests of the governed to the higher offices of the government. The groups took the form of political bodies, welfare associations, trade unions and religions groups.²

The thesis has also established that these groups behave differently according to the political climate in a given time. This explains the different faces portrayed by pressure groups in different eras in history.

In discussing the institution of a pressure group, much has been done to try and reclaim the institution from some of the misconceptions about pressure groups. In Kenya, it has been alleged that some founder members of some of the pressure groups are interested in donor funds or popularity.³ Though this motive cannot be ruled out, that is the exception than the rule. When pressure groups check on the abuse of power and criticise the holders of this power, they are bound to be misunderstood. This eventually explains the upsurge of pressure groups in the multi-party era after they had been denied existence for a long time.

The element of change is a contributing factor in the formation of pressure groups. There is very little resemblance between those pressure groups which fought for multi-party democracy and those groups which fought for independence. What emerges from these groups is that they are avenues through which the common citizen finds true representation.

We also dealt with the legal basis of pressure groups in Kenya. The Kenyan courts have in the recent past denied these institutions the right to exist freely in the society. This has been by strongly restricting the interpretation of the Law, which has actually infringed on the freedom of association.⁴ It is therefore clear that pressure groups have a strong constitutional

base to exist founded on the bill of rights which Kenya has adopted in Chapter Five of the constitution. The very fact that Chapter five contains the bill of rights, entails an international status under which the formation of pressure groups is recognised. Provisions of the societies Act, impliedly allows pressure groups to exist and operate in Kenya. We are of the view that the trend of pressure groups in supplementing political parties in the presentation process should not be hindered in future. They should alert the present and future power holders to avoid the danger which come with the abuse of power. Indeed, pressure groups should articulate and activate issues on behalf of the masses, hence broadening participatory democracy.

However, pressure groups being but one avenue through which public sentiments are expressed, this area remains an open field for research on the mechanisms open to the people to check against the abuse of power by those who hold it.

FOOTNOTES

1. See The 'Wednesday Magazine' in the Daily Nation; Wednesday July 22, 1992.
2. See Generally Chapter Two.
3. Supra footnote 1.
4. See the judgement in the case of Salim Ndamwe and three others v The Attorney General and the Registrar. High Court the Weekly Review Magazine, July 26, 1991.

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