

CHAPTER TWO

Multiparty Democratisation Process in Africa, The Kenyan Experience

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Introduction

The Repeal of *Article 2A* of the Constitution accepting the multiparty system was a sign that gave so much hope to the Kenyan people that many thought then, and still think today, that such a constitutional amendment was equivalent to the establishment of democracy. But the multiparty system does not necessarily bring democracy.

(Pastoral letter by Kenya Catholic Episcopal Conference: 12 March 1994).

Adequate documentation and a general consensus now exists on the historical conditions and structural forms and processes that led African countries to the sorry state of autocracy, bad governance and poverty (*Hyden: 1983 and 1992, Sandbrook: 1985, Chabal: 1986, Turok: 1991, Anyang' Nyong'o: 1982, Muigai: 1992* etc.) that has characterised most of the continent for at least the past three decades before the onset of the new wave of multiparty democratic processes that began in early 1990. In part, the problem has been that many African countries came to independence with no experience of managing a modern nation state, as the colonial state had excluded them from any significant participation in the governance of their countries, having relegated them to the status of third class citizens in their own countries. Consequently, the whole question of organising and managing political parties was completely alien to them. This, to some extent, also explains why most African

countries quickly abandoned the multiparty political arrangements they had inherited from their colonisers at the time of independence. Indeed, most African leaders and even some intellectuals glorified and rationalized what they viewed as the "Africanness" of the so called *one party democracy*. Using justifications derived from pre-colonial African traditional society, Nyerere of Tanzania for example, argued for the classlessness of African society and hence the irrelevance of opposition parties in matters of governance (*Nyerere: 1966, 1968*). Many African leaders concurred with Mwalimu Nyerere, with the result that, over three decades since most of Africa attained independence, the continent has experienced the institutionalization of single partyism, personal rule and autocracy.¹

With the institutionalization of one-party system, an attendant monolithic culture emerged that not only stifled the growth of civic institutions; legislatures where they existed were relegated to rubber stamping executive decisions, the independence of the judiciary was often compromised as Presidents appointed and fired judicial officers at will and the media where it existed outside the government's direct control, was rendered ineffective. Furthermore, the centralisation of political power within the one-party system exhibited a high degree of concentration of economic power in the government's hands. Needless to mention, this hegemonic control of economic resources was to be the driving wheel of the patronage system which African autocrats used alternately with the repression to consolidate power and enjoy unchallenged authoritarian rule.

With the 'new' wave of multipartism and democratization efforts sweeping through Africa in the 1990s, there is on the one hand the feeling of euphoria and optimism about the future of this troubled continent, and on the other, a sense of uncertainty and fear of possible reversals into the era of darkness and gloom that has characterised most of post-colonial Africa in the past three decades or so. The mixed feelings and uncertainty are justified, given the equally mixed nature and different patterns of democratic transitions taking place in different countries. One scholar has in fact identified up to five types of democratic transitions taking place in Africa,² and has then concluded that "The final outcome of these on-going processes of democratic

transition in Africa is uncertain at best, and experts' analyses and predictions range from guarded optimism to frank pessimism" (*Guy Martin: Issue: 1993:6*). Le Marchand belongs to the pessimistic school and his prognosis of the current democratic transition in Africa is that, "there are compelling reasons to fear that the movement towards democracy may contain within itself the seed of its own undoing"

But for a Continent that experienced an average of sixty years of colonial exploitation and ruthless forms of political, economic and social oppression, which has since been followed by another thirty years or so of post-colonial autocracy, authoritarianism and gross mismanagement and destruction of public institutions and resources, it would be foolhardy to expect the democratic³ transition to be either smooth or without setbacks and resistance from those social forces that are the beneficiaries of the undemocratic status quo. Furthermore, even in the absence of resistance from African dictators, the task of building viable democratic structures where they do not exist, strengthening those democratic institution that do exist, managing ethnic diversities and other sectoral demands and most of all, attaining economic recovery in an environment of global recession, retraction and foreign aid conditionalities, is as challenging as it is important.

For those few African countries therefore that have undergone multiparty elections and are relatively free of civic strife and resistance of former single party personal rulers, the long road towards democratization of politics and society has perhaps just begun. For the majority of the others, resistance and obstruction by the authoritarian African leaders of the single or no party era, fragmentation of opposition forces, civil strife and economic crisis, may delay or derail the democratic transition, increase socio-economic and political instabilities in the short term and make the outcome uncertain. Nevertheless, the general mood among African citizenry everywhere is one of democratically elected governments. Towards this end, the mass demand for political change and democracy is quite logically being linked with and sometimes erroneously viewed as being synonymous with multipartyism and "free elections". But past experience globally, has demonstrated that multipartism does not necessary bring about democracy. And even when free and fair multiparty elections have been

held, they can only constitute the first step for building viable democratic structures.

Kenya is among those African countries that have already undergone the first multiparty general elections in this new era which is variously being dubbed as the "second independence" or "second liberation". One would then assume that Kenya has made the first step forward and is now proceeding as would be logically expected on the democratization path. But is it?

In an attempt to answer this question, we are reviewing the democratic transition in Kenya since the first multi-party elections held on December 29th, 1992 to March 1994. We are arguing inter alia, that among the major factors that have derailed the transition in Kenya have been the following: (i) *Flawed electoral structures and processes* (ii) *Undemocratic institutions of governance*, (iii) *fragility of the opposition* and (iv) *unempowered civil society*.

In conclusion we are suggesting some of the actions that need to be adopted and implemented to facilitate the development of multiparty democracy in Kenya.

Flawed Electoral Structures and Processes

As demonstrated elsewhere, (*Nzomo: 1993 d. e. and f.*) multi-party elections in Kenya failed to meet the minimum standards of "free and fair" elections because the incumbent government refused to comply with demands from opposition parties and civic society groups, to put in place the necessary electoral structures and processes that would ensure enforcement of the fundamental rules for free and fair elections. In particular, the failure to carry out a comprehensive reform of the constitution in order to make it consistent with multiparty democratic ideals and values, was a major omission.

In this case, the failure to democratically establish an *Independent Electoral Commission (EC)*, capable of competently and impartially managing and conducting simultaneously *three* different elections: *civic*, *parliamentary* and *presidential* within a multiparty context, plagued the entire electoral process and seriously compromised the proper

management of the 1992 elections on polling day. Indeed since its establishment, the EC has never gained public credibility as an electoral body, that can manage and conduct democratically multiparty elections. Because the EC was appointed by the President without involving opposition political parties and other interest groups in the body politic, it is likely to continue to be held in suspicion and hence to lack legitimacy and acceptability by the entire electorate, who understandably view the constituent members of the *EC* as incapable of being non-partisan and transparent in the performance of their duties. Indeed, the *EC* repeatedly demonstrated during the *1992 elections* and in the *by-elections* that have since taken place, of being unable to take action against the President and his ruling party KANU, in regard to incidents during the electoral process, of misuse of state apparatuses to promote the ruling party and to harass and obstruct opposition parties, from campaigning and promoting their party programmes.

Indeed the *EC* which has a life span of five years dating from its establishment in April 1992, continues to be viewed as an important impediment to a positive democratic transition in Kenya. Opposition leaders have dubbed the *EC* as a "*Commission of Shame*" because it is blatantly biased" in favour of KANU (*Sunday Nation*, March 20, 1994:11). For example in all the six by-elections that have been held so far, reports from electoral observers have produced evidence that place a large part of blame on the *EC* for its failure to control the glaring electoral malpractice and excesses of the ruling party in its bid to win the by-elections. In one such report, it was noted that:

The provincial administration together with the police ensured that KANU parliamentary candidates carried out their campaigns without any impediment which was not the case with the candidates from the opposition Licences to hold political rallies were frequently denied whilst there were a number of incidents of harassment and intimidation perpetrated against opposition parliamentary candidates either by the state machinery or sanctioned by it. Coupled with this, was the refusal by the state for the candidates from the other parties to use the publicly owned media - the radio and television. Inflammatory statements ... aimed at intimidating voters who were perceived to be pro-opposition (and) unreliable registers of voters (were all) issues on which we could not get a satisfactory answer from the Electoral Commission ... *That the Electoral Commission has not put its foot down with regard to the*

foregoing is a situation which in our view amounts to dereliction of duty (Institute for Democracy: January 1994, Emphasis added).

The sixth and latest by-election of Lugari Constituency held in March 1994, was not only marred by a lot of violence but by high level government interference. For three consecutive days, the President himself was said to have personally "campaigned" from house to house. This by-election which attracted a lot of attention from the media, election observers and even foreign Embassies based in Kenya was described by one local weekly magazine as representing *an anatomy of rigging*. Summarising the events of the Lugari by-election the magazine noted:

The massive police presence in Lugari to instil fear in the people, President Moi's strange campaign tactics, substantial amounts of money changing hands, harassment of opposition figures by the provincial administration, the creation of three new polling stations and a myriad of other irregularities that characterised the poll, are the nearest one could get to an election riggers paradise. (*Society* March 28, 1994:15)

Another observer of the Lugari and other by-elections in the same magazine notes of the role of the EC.

Presently, the Electoral Commission is watching helplessly as democratic election processes which Kenyans bitterly fought for and achieved are abused and systematically eroded by the authoritarian executive arm of the government. It is a gross mistake to allow the partisan and autocratic provincial administration to involve itself in the elections under the false pretext of maintaining security (*Society: Ibid: 24, 25*).

The Chairman of the EC has since the Lugari by-election reaffirmed his Commission's powerlessness to control political thuggery and intimidation of candidates and the electorate, but has also attempted to absolve his Commission of partisanship or any collusion in rigging this and other by-elections:

Sometimes we have no control over some of the things that affect how we conduct elections Maintenance of law and order is the duty of the Kenya government, which has the police force and the security machinery. The

Electoral Commission does not have its own police force or army to enforce law and order. (*Sunday Nation* March 29, 1994:10).

But there are many Kenyans who remain unconvinced, especially by the merits for the creation of three new polling stations in that Constituency at the eve of the by-election. Significantly, these polling stations ended up having the highest voter turn out and the source of the overwhelming majority of votes for the KANU candidate, who incidentally won the by-election by a narrow margin.

The by-elections in Kenya thus far indicate two important concerns pertinent to the development of democracy in Kenya: (i) the electoral laws and institutions need major overhaul to ensure the holding of free and fair elections. The Electoral Commission need to be strengthened and the laws are hostile to free and fair elections such as the *Public Order Act*, *Chief's Authority Act*, and the *Preservation of Public Security Act* be repealed, and electoral laws reformed to reflect multiparty democratic requirements. In other words, in order to rectify the flawed electoral structures and processes, of necessity, the issue of developing viable democratic institutions of political participation and governance takes centre stage, and with it, the need to effect comprehensive constitutional reforms as we briefly discuss in the next section.

Undemocratic Institutions of Governance

Kenya seems to fit within the cluster of countries that Guy Martin describes as having experienced a *coopted transition to democracy*. This type of transition is one where the incumbent president has allowed multiparty election, but through the control over the media, manipulation of electoral machinery and superior financial resources, has been able to defeat the opposition at the ballot box, although fraudulently (*Martin G.*: 1993:6). Having won the elections, the former single party ruler, then retains and continues to utilise the autocratic governance structures, while blaming the opposition for failure of multipartyism to take root.

The reintroduction of multi-partyism in Kenya has not been accompanied by a programme for fundamental change of the undemocratic structures that had been put in place over thirty years of post-independence existence. That is hardly surprising since the same

government and party that had institutionalised single party autocracy is the one that "won" the 1992 multi-party elections. That being the case, one can hardly have expected yesterday's dictators to become today's democrats. Indeed, it is important to remember, that in repealing the infamous Section 2A of the constitution that had in 1982 made Kenya a *de jure one party state*, President Moi was making an *exploitable political concession*. The KANU government was begrudgingly allowing pluralistic democracy but with the intention of capitalising on this concession and power of incumbency, to obtain, through the electoral process, legitimacy to continue to rule. In other words, the government was merely making a tactical move in a country that was becoming ungovernable and in a situation whereby government repressive measures were no longer an effective deterrence against the demand for pluralism and democratic change.

Thus, although multipartism was legalised by the repeal of Section 2A of the Constitution, President Moi and some in the government have continued to hold on to the view that multiparty politics cannot work in Kenya, arguing that it would enhance national divisions along tribal lines. In this connection, it is believed in some Kenyan and International circles (*Africa Watch*: 1993) that it is the KANU government that has continued to encourage the escalation of the politically instigated "ethnic clashes" in certain regions of the country, in order to prove that multipartism cannot work. The government has repeatedly denied this allegation and blamed those in the opposition for the clashes. That aside, there are infact many in the ruling party who seem to believe that allowing multi-party democracy to germinate is tantamount to committing *political suicide*. Indeed, the current power holders seem to believe their interests, especially economic interests, are threatened by democracy, accountability and transparency in the governance structures, and hence seek to preserve the status quo at all costs.

The issue of *Constitutional reform* is therefore central to any discussion on democratisation of institutions and processes of governance, electoral laws, human right, gender and minority rights etc. Repeated demands by opposition parties and civil society groups for a comprehensive constitutional reform, have however been dismissed or ignored by a government that prefers piecemeal constitutional reviews,

most of which are intended to buy KANU political time in office. The mushrooming *Task Forces being created by the Attorney General to review various Laws* are viewed with scepticism by many critical analysts, who would prefer comprehensive and well coordinated constitutional reform.

The three key institutions of governance — the *Executive*, the *Judiciary* and the *Legislature* — all require legal restructuring to make them compatible with multi-party democratic principles. The *Executive* especially the *Presidency* requires substantial trimming down of its excessive powers, *Parliament* needs to be strengthened and the *Judiciary* needs to have its independence restored.

The unbalanced powers of these institutions of governance with an overly powerful Presidency, has been at the centre of demands for democratisation and constitutional reform, even before the onset of multipartyism. But with the return to multipartyism, the demand has become more urgent and persistent. In this context, the most contentious issue has been the *limitless powers of the Presidency*, which have tended to increase with each of the many constitutional amendments effected in the last thirty years since independence. Indeed, some observers of Kenya's constitutional changes hold the view that past constitutional changes were mainly aimed at buttressing the powers of the Presidency. It needs to be noted in this regard, that Kenyan Presidents like those elsewhere on the continent not only love power, but they like it in large and unlimited doses, preferably without a prescription as to duration and frequency with which it should be exercised.

In the latest debate on constitutional reform therefore, the issue of the need to limit the powers of the presidency has come to the fore. One observer noted in this regard that:

The powers vested in the highest office in the land are enormous and monumental ... it is virtually impossible to unseat a sitting President in an election, no matter how free and fair it may be. (*Sunda Nation*. March 20 1994:8)

Numerous proposals have been made on limiting presidential powers, including limiting of Presidential term of office to a maximum of two - five year terms and providing for *impeachment* of a sitting President.

Some have even suggested the creation of the position of *Prime Minister* - who would be the head of *government* and the President as head of *State*.

Apart from laws affecting the institutions of governance, there are many other undemocratic laws in Kenya's statute books including laws that violate human rights of women and laws governing elections, that need reform. In this latter regard, constitutional Lawyers in Kenya who closely monitored the constitutional amendments and reforms made in the one year period leading to the 1992 General Elections, have generally concurred that the electoral reforms undertaken by the Moi government were inadequate for the purpose of ensuring competitive multiparty elections, then or in future:

The ruling party manipulated its control of the legislative process to promulgate "little and partial law", in this sphere whose object was to afford it a competitive edge in the electoral contest. Electoral law reform then, it appears, was used as a long range electoral rigging mechanism as opposed to the heavy handed polling day manipulation of the electoral process (K. Kibwana: 1993:3).

Over the last three years opposition parties, legal professionals, human rights and other enlightened Kenyans, have been urging the government to facilitate the holding of a *national convention conference* with a view to seeking the participation of a wide cross section of Kenyans in rewriting a new constitution, compatible with multiparty democracy. The government has resisted these demands arguing that (i) *Section 47* of the Constitution has vested in the Members of Parliament alone, the power to rewrite the constitution or fundamental reforms and (ii) a national conference/convention is not good for Kenya at the present time. These excuses have so far failed to garner national support.

The Catholic Church which has the largest following in the country has sent the latest reminder to the Moi government that democratisation process in Kenya is not happening and major structural and institutional reforms must be effected now, if the derailed democratisation process is to get back on rails. In a lengthy pastoral letter entitled: *On the Road to Democracy* issued on 12 March, 1994, by the Kenya Catholic Bishop

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Conference, comprising of the head of the Catholic Church in Kenya, all Arch-Bishops, the Catholic Clergy categorically stated that there was no significant positive change that had taken place in Kenya since, the December 1992 Multiparty elections. The clergy noted that the ruling party continued to treat other parties as if they did not exist. Kenyans who were not KANU members or rhetorical supporters, were governed as if they were enemies of the government. In the pastoral letter, the Clergy urged the President to initiate a complete revision of the Constitution to make it compatible with Kenya's multiparty democratic ideals.

As expected, the government's reaction which was conveyed through KANU's Secretary General, was to dismiss the pastoral letter as *just another piece of political incitement* of "peace - loving" Kenyans and as ill intentioned to malign the "good government" of President Moi. The KANU Secretary General also reaffirmed the legal position, that only Parliament can change the Constitution. Though this is the legal position, the government is aware that (i) Parliament as is currently constituted may not be able to pass any amendment, let alone effect fundamental reforms to the constitution, due to the 60% member support required for constitutional amendments and (ii) it is not entirely true that only parliament can change a constitution. According to some Kenyan constitutional experts, when great constitutional changes are needed, such as in the Kenyan case, a *national convention* is the method that has been adopted in other countries, to constitute the body to rewrite the constitution (Kuria: 1993:9).

The pastoral letter cited echoed the sentiments of many Kenyans, especially on the issue of a national convention, and was publicly supported by civil society groups especially lawyers and human rights groups. At any event, it is utterly untenable for any government to pretend that it can preside over a democratic transition, without the necessary constitutional instruments to guide the process. Government rhetoric aside therefore, the need for constitutional review in Kenya cannot be overemphasised, as a first step towards operationalising multiparty democracy in Kenya. Indeed it was a gross mistake on the part of the progressive forces in Kenya to accept to hold multi-party elections before the constitutional reform issue had been resolved. In so

doing, the opposition political parties played into the hands of KANU politicians who had no intention of littering the single party constitution that was useful to maintain autocracy in a multiparty context. With hindsight now, observers accuse the opposition leaders of having been in too great a hurry to get into positions of leadership, at the expense of the greater collective good for the people as a whole.

Fragile Opposition Parties⁴

Most opposition political parties in Kenya were only in existence for an average of about nine months by the time the December 1992 elections were held. Those were the nine months that they were busy recruiting members, writing out party programmes and manifestos, establishing offices throughout the country and of course, engaging in political electoral campaigns and other matters pertaining to electoral preparations. In addition, a lot of time was spent in endless wrangles with an intransigent and obstructive KANU government that used the power of incumbency to frustrate opposition political activities. A lot of time was also spent in fruitless meetings that attempted to work out strategies aimed at uniting the opposition in readiness for the multiparty elections.

Time therefore became a very scarce commodity that greatly hampered the preparedness of the opposition for the 1992 elections. The ruling party on the other hand, already had the advantage of thirty years of incumbency, was already registered, had already well established grassroots structures to facilitate its campaign process and had the entire state machinery at its disposal. Based on the time available to all parties before the 1992 elections, one can argue that the opposition parties had very short time to adequately prepare to contest a multiparty election. In addition, the use of powers of incumbency by the ruling party to promote itself and to deny other parties access even to such publicly owned facilities as the media, security system, etc. can be counted as another good reason why the opposition parties were underdogs in the December 1992 elections and with little chance of winning those elections.

The above notwithstanding, the opposition parties lost valuable time wrangling among themselves over power struggles. The fact that they failed to form a *coalition* as a strategy to defeat KANU at the polls, is

indicative of the fact that the leaders of opposition parties, just like those in the ruling party, were not genuinely committed to democratic change aimed at emancipation of all citizens, but rather in their own personal empowerment, to be attained through occupation of State House. In this regard, many civil society leaders did all they could to persuade the opposition parties to unite, if only for the sole purpose of winning the 1992 elections, but all their efforts were in vain. As the country approached the elections, the opposition was more divided than they were in the first half of the year 1992.

The opposition also failed to capitalise on the overwhelming desire of the majority of Kenyans for *democratic change*, which was viewed popularly as synonymous with *multipartyism* and *opposition politics*. KANU on the other hand, capitalised on the *fragility* and *divisions* in the opposition camp to put in place its propaganda and rigging machinery, that ultimately secured it electoral victory. Thus, even as the country went to the polls, those who had followed closely political developments in Kenya during the second half of 1992, could already predict Moi's victory. One political analyst summarised this position as follows:-

The polarization of the domestic opposition movement along ethnically and personality lines before and after elections only strengthened Moi's hold on the political system and rendered domestic pressure largely ineffective in the face of an institutionalised and experienced personality of Moi. In particular, in the countdown to elections the opposition was so divided that many critical observers, domestic and foreign, had foretold Moi's victory well before the ballot day (Nying'uro: 1993:39).

Another analyst arrives at a similar assessment of Kenya's opposition, but also draws attention to the weak organisational linkage between the political elite and ordinary citizens:

As far as the opposition was concerned, due to the weak organizational linkage between elite and mass, especially those which flow upward, decisions made within the general opposition movement relating to the choices to be offered to the masses were very remote from the masses themselves. In this sense, unless new forms of communication and control are developed, political elites will continue to be 'shocked' at the electoral behaviour of voters. Yet instituting such links could jeopardize the superior position of the elite, which

generally has used the masses to further its own class, not even ethnic, ends.
(Wolf: 1993:59)

Yet another analyst places the major weakness of all political parties including KANU, on ethnicity. "*All the political parties as currently constituted are essentially ethnic parties*" and because of that, they are incapable of being facilitators of democratization, and hence their participation in the 1992 elections, "*instead of pushing the democratization clock ahead, merely disturbed its rhythm.*" (Oyigi: 1993:23). Ethnicity has indeed been an important factor both during and after the 1992 elections.

The *Post-Election* developments have not improved the image or the political capacity of the opposition political parties. First, the Moi government has taken an openly hostile position towards the opposition, both in terms of its representatives in parliament and its work in the countryside. This has not augured well for the opposition's ability to strengthen its institutional and political capacity, as well as its grassroots linkage with the electorate.

In a seminar held in September 1993, to review the democratisation process in Kenya in the multiparty era, Paul Muite, who was at the time the first Vice-Chairman of one of three major opposition parties - *Ford (K)*, echoed the general feeling of helplessness and despair about the political capacity of the Kenyan opposition to guide the country through the difficult democratic transition:

Looking around us, we see little that inspires hope and much that causes fear ... Parliament is legally pluralistic, but structurally monolithic ... ill conceived standing orders have effectively destroyed the opposition's influence on Government policy. *Sunday Standard*: (September 19 1993:14).

Many of the other speakers at the seminar who came from the leadership of opposition parties, civic and human rights groups, expressed their frustration and disappointment with the opposition parties. Some accused the opposition leaders of being authoritarian and autocratic and of having betrayed the aspirations of the Kenyan people, and for being more

preoccupied with their own personal political agendas rather than promoting multiparty democracy. One speaker noted for example that:

The opposition parties failed to press for a comprehensive constitutional and policy discussions with the government prior to the elections ... This poverty of thought within the opposition parties was a reflection of their narrow agendas. All the parties including KANU, were merely vehicles for the personal ambitions of the their leaders. (*Ibid*).

The weakness of the opposition and their poor linkage with the grassroots has best been demonstrated by the repeated failure of opposition parties to mobilize Kenyans for civil disobedience against the government.

The opposition MPs are also loosing credibility among the electorate through the habit they have developed of defecting to the ruling party. In this regard, it is significant to note that *five* out of the *six* by-elections that have been held thus far have been occasioned by opposition MPs defecting from the political parties that originally sponsored them to parliament, to the ruling party KANU. The reasons for this may be varied. But the most commonly expressed is that the ruling party is taking advantage of the opposition MP's economic vulnerability, by luring them to KANU in exchange of sizable amounts of cash money. The immediate aim of KANU in this regard is to increase its majority in parliament, so that it can be in a position to garner a two thirds majority to effect constitutional amendments. An opposition MP recently expounded on this financial vulnerability:

Members of Parliament cannot effectively represent their constituents when they are themselves financially and politically insecure ... Financial hardships have also made poor, highly indebted opposition MPs victims of Kanu's politics of bribery, defection, and intimidation. There is a general feeling among MPs that there is a strategy to control them through impoverishment ... there is (therefore), urgent need to improve the basic emoluments and allowances of MPs as a strategy to enhance their independence and effectiveness (*Daily Nation*, February 26, 1994:19).

In a nutshell then, what we have in Kenya as of March 1994, is an extremely fragile and divided opposition movement that has spent most of the past year in parliament hatching uncoordinated plans on how to overthrow the "illegitimate KANU government while at the same time engaged in name-calling and personalised power struggles within its ranks. In the meantime, President Moi who seems determined to "teach the opposition a lesson" and to further solidify his immense presidential powers, is doing precisely that, as the country sinks deeper into economic crisis and social disintegration. In the meantime most of the civil society groups that had mushroomed during the elections and become highly vibrant and vocal advocates for democratic change, appear to be losing steam or to be developing "cold feet" as the culture of fear returns to the country, in the face of the growing repressive tendencies by the state.

Unempowered Civil Society

As criticism of incumbent government and "*governments in waiting*" (in form of opposition parties) has mounted, many have turned attention to *Civil Society*, in an attempt to identify possible sources of political renewal and democratic potential in Africa. The term: *Civil Society*, has been used rather loosely and indiscriminately to cover a wide array of groups and organisations including *civic* and *professional organisations*, *trade unions*, *religious* groups, *women's* groups etc. In this era of multipartyism, and democratisation, the tendency is to put a blanket cover on all civil society groups, and to view them as being a *like minded*" category of people that together comprise the so called "*pro-democracy*" movement. This conception while to some extent justifiable, often ignores the fact that civil society groups, because of their different and diverse sectoral interests based on class, ethnic, racial, gender, religious or even ideology, are likely to display equally different varieties of responses and levels of commitment and visions to democratic change. (Schmitz and Hutchful: 1992, Tambila: 1993:22).

The conceptual diversities aside, civil society groups provide an important Forum for organizing African citizens to influence incumbent political power holders. Indeed, an empowered civil society can play an

important role in enhancing popular participation, which is vital for democracy to take root. Nyong'o put it rather accurately when he noted that, *Democracy is not about what governments do, it is about what the people do to make their governments accomplish people oriented activities. But the people must first of all have power to make their governments do what they want, before they can expect these governments to rule democratically.* In other words, democracy is not given by the government to the people; it is possessed by the people in their productive activities, political organizations and ideological orientations. (*Anyang Nyong'o*); 1992:4) The blatant and unchecked corruption of African governments for example, is a clear indication that African people have been governed but they have not yet been able to control their governors.

In Kenya, the muzzling of civil society groups that had characterised the thirty years of post-colonial rule, eased off during the election year - 1992. One could safely argue then, that there was adequate State tolerance of political activities of diverse civil society groups including the media, church groups, women's organisations, professional groups and a whole array of human rights groups. Although there was still state control but relatively speaking, there was more *Freedom of Expression, Assembly and Association* than in the pre-multiparty era. Civic groups could afford to be critical of the status quo without being threatened with detention without trial for example. Even women groups and organisations that previously never articulated any political agenda, became extremely vocal and critical of government. They vigorously lobbied all political parties to integrate gender issues within the context of their democratic agendas and programmes. (*Nzomo*: 1993: (a) and (*Nzomo and Kibwana*: 1993: (g). Religious groups also utilized to the maximum their moral authority and their large mass following, to pressurise for public morality to be integrated in democratic change. The print media flourished and competed with each other on radicalism, and the most catchy headlines. Numerous workshops and seminars on democratization and empowerment were held by women's organization and human rights groups, all over the country and most of them received significant coverage by the print media. Ambitious Civic Education programmes were set up on gender, civic and legal rights awareness of

the people. But these programmes hardly scratched the surface before the general elections, were called. There were therefore high hopes and expectations that the rights awareness project would continue after the elections as part and parcel of the continuing democratisation progress.

After the elections however, the political landscape changed very rapidly, with some of the political gains made to empower civil society being lost, as government reverted back to its repressive style of governance, reminiscent of the single party era. Indeed the hope and enthusiasm with which all Kenyans welcomed the return to multi-party politics in December 1991, seems to be slowly being eroded and replaced by a sense of hopelessness and despair. Violence of all types, rising levels of crime and deterioration in the economic conditions, have all reached alarming proportions; political clashes that began in Rift Valley and Western Kenya three years ago, have since spread to other parts of the country, while corruption has pervaded the entire fabric of society, as epitomised by the revelations of the *Goldenberg Scan*, in early 1993, whose major perpetrators were said to be individuals holding high political office. Freedom of expression is also diminishing as exemplified by harassment and muzzling of the independent media channels including seizures of various issues of local magazines such as *Finance* and *Society* and even completely disabling a printing press - *Fotoform* in mid 1993, and arresting of senior journalists of the *Standard Newspapers* in March 1994, and charging them with engaging in subversive activities. (*Standard*: March 24, 94:2). Furthermore, government refusal to register the proposed *Universities Academic Staff Union (UASU)*, and the continuing harassment and intimidation of the leadership of the university dons who have been on strike since November 1993, raises serious doubts of the existence of academic freedom of association.

Civic education and cultural activities are also highly controlled despite their importance for people's empowerment and democratic development. For example, on several occasions, individuals and groups regarded as 'radical' or *anti establishment*, have been stopped from even holding seminars and workshops on issues of public concern. Even foreign envoys accredited to Kenya and Human Rights International Foundations have been warned to keep off Kenya's domestic affairs. In this connection, the government expelled from Kenya, in March 1994,

the Nairobi based Permanent Representative of Friedrich-Neumann Foundation in East, Central and West Africa, for allegedly supporting opposition parties in Kenya. The government is also unhappy with critical religious groups, such as the Catholic Church, as discussed earlier in this paper.

The *opposition parties* themselves appear to be in no position to 'protect' their 'people' against this repression, as they are also subject to similar treatment. Some opposition MPs continue to be denied licenses to address meetings or to hold educational seminars in their constituencies. They are even arrested for allegedly making statements interpreted as "seditious". A case in point is Prof. Anyang Nyong'o of Ford (K), who was arrested briefly in March (*Daily Nation*): 12 March 1994). Subsequently, some opposition MPs wrote an open letter to President Moi, protesting against what they terms as a "campaign of terror" aimed at reversing the democratisation process and removing the opposition. (*Daily nation*: March 22, 1994: 1 & 2).

The *Women Movement in Kenya* put up remarkable pressure for women's political empowerment and the respect of women's human rights in 1992. The six women in parliament, the largest number of women ever in Kenya's parliament, owe their electoral victory as much to their own efforts and competence, as to the tremendous lobbying and support they received from women's groups during the electoral process. But now, the women's movement appears to be loosing steam, as other civic groups in the current political environment. As for the six women MPs, even if the political environment was right, are still too few to influence policy change in a 200 member parliament. Consequently, while women's voices in the civil society continue to be audible in the post-election era, they are not as loud and forceful as they were during the election year. Women are no longer for instance, issuing threats to gender insensitive policymakers. A combination of the repressive political environment, with the election fatigue and disappointment with the election outcome, have led many women activists to retreat to the less politically overt activities, of "civic education and awareness raising".

But in my view, because women in Kenya and Africa in general, suffer more than other vulnerable groups from multiple sources of

discrimination and denial of rights - in the family, economy and law they have more reason to persist in exploiting whatever political space is available to push for democratic change. Some women's organisations are still making some attempts to sustain the political momentum of 1992 - notably, the *National Commission on the Status of Women* (NCSW), the *International Federation of Women Lawyers* (FIDA) - Kenya Chapter, and the *Anti-Rape Organisation*. Most of the large umbrella women's organisations have on the other hand, found convenient diversion in the rising fever of global preparations for the International Women Conferences in *Dakar (1994)* and *Beijing (1995)*. Other women leaders have been assigned by the Attorney General the rather challenging task of reviewing all laws (*Statutory, Customary and Religious*), that relate to women, with a view to recommending to the government, necessary changes that can promote the Status of Women. The *Task Force on Laws Relating to Women* is at one level a very significant and positive development. But seen within the framework of the government's piecemeal strategy of reforming the Constitution through Task Forces, there is reason to doubt whether the recommendations that will come out of this and other Task forces, in the first instance will be implemented, and even then, whether such uncoordinated amendments can constitute an adequate constitutional reform.

Conclusion

As stated earlier on democracy and its various components does not occur merely because multi-party elections have been held-especially when their 'freeness' and 'fairness' is in great doubt. At any event, the building of democratic viable structures, also requisite culture and institutions require popular will and a commitment by people's representatives to change the undemocratic structures. The building of viable democratic structures also require popular participation of the civil society and the building of their capacity to enable them to effectively apply themselves to the process of democratic restructuring and the development process in general. Unfortunately, the democratization process as is currently shaping in Kenya is not taking

this form. The current crop of political leadership, especially those within the government, do not seem to have the necessary political will to effect political transformation of the country.

In fact to a certain extent, one could argue that the major problem in Kenya is not one of complete lack of institutions for governance but rather one of misuse or muzzling of public institutions, private and civil society organizations. The problem in Kenya is not one of lack of skilled and qualified human capital that can preside over the political and economic transformation of the country; but rather one of selfishness and insensitivity, especially of the political leadership both within the government and the opposition. The problem is not one of a docile, apolitical and ignorant population; the problem is one of political intimidation of the citizens by their rulers, and denial of an enabling and empowering environment to facilitate their political and democratic participation.

It is therefore our view that for democracy to develop in Kenya, there is need for political leaders both within the government and the opposition to accept multipartism and the basic principles of competitive politics, and for the government to facilitate the building of democratic institutions within the civil society. In particular the government should allow free and autonomous operations of *NGOs*, the *media*, *church* and *labour organisations* such as Central Organisation of Trade Unions (COTU).

In addition, given the ethnic diversities of the Kenyan people, good governance in a multiparty context requires the devising of a mechanism for managing ethnic diversities and conflicts, equitable sharing of power between various minority and other interest groups. For ethnic peace, tolerance and cooperation among the multi-ethnic communities of Kenya to take root, the political leaders should themselves demonstrate statesmanship, project a national image and not tribal chief's image. Most of all, they should desist from manipulating ethnicity for political gain, and creating ethnic animosities where they do not exist, as in the case of the *ethnic clashes* that have been going on for nearly three years now.

Furthermore, given that many Kenyans, especially women, are illiterate and unaware of their civic duties and rights as citizens, human

rights groups and various women NGOs, should make a concerted effort to take civic and gender awareness education to all women and men countrywide, starting from the grassroots to the national level. Recognizing the vital role women play in all aspects of public life and their historical marginalization, the envisaged democratisation process should endeavour to create structures and conditions that would facilitate full, equitable and more effective participation of women at all levels of decision-making, including affirmative action and the repeal of gender discriminative laws and inclusion of new laws that guarantee women's demarginalisation and empowerment.

Another issue that we did not address ourselves to but which requires urgent attention is that of *economic development*. Democracy cannot take root in the absence of economic growth and development. Democratic culture cannot develop when the majority of people live below the poverty line, and where funds earmarked for national development are misappropriated and mismanaged through corruption. Appropriate economic policies therefore need to be devised, including the creation of safeguards to stamp out corruption, as a necessary prerequisite for development. There is also need to enhance people's productivity and self reliance, while gradually reducing external dependence on foreign assistance, with a view to eradicating the external dependency syndrome. Structural Adjustment Programmes (SAPS) as designed by the Bank and the Fund, have contributed to increasing impoverishment of the poor and other vulnerable groups, and hence need to be thoroughly reviewed and restructured to make them less economistic and more humane.

But as a first step towards the building of a viable democratic system, there is need to consider holding a national convention to debate constitutional and other matters of national importance, pertinent to democratic change.

Notes

¹Many African leaders, including Nyerere of Tanzania, have in the 1990'2 experienced a change of heart. Whether out of conviction or political expedience, they have accepted multipartyism.

²The five types of democratic transition identified are: (i) *government change via a national Conference* (e.g. Benin, Congo, Gabon, Mali and Niger), (ii) *Government change via multiparty elections* (Senegal (1988), Cape Verde & Sao Tome & Principe (March 1991), Zambia (October 1991)), (iii) *"Coopted" Transitions* (Cote d'Ivoire (October 1990), Gabon (September - October 1990) Ethiopia (June 1991-2), Kenya (December 1992), Togo and Zaire (1993)), (iv) *Guided Democratization* (Burkina Faso, Ghana and Mauritania) and (v) *Authoritarian Reaction Subnational Conflict* (Malawi, Algeria, Angola, Burundi, Chad, Kenya, Liberia, Mozambique, Rwanda, Somali and Tunisia).

³Rene Le Marchand, "Africa's Troubled Transitions" *Journal of Democracy* Vol.3, No. Oct. 1992, pp 98-100).

⁴There are currently 6 opposition parties represented in Kenya's 7th and first multi-party parliament. Between them they control 85 parliamentary seats, while the ruling party KANU control 115 parliamentary seats. A two-thirds majority is required to effect a constitutional amendment.

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