

PREFACE

Much has been written on political parties by Political Scientists. The abundance of these works makes it appear as if this paper is a duplicate of what has already been done. But a second glance at the work will reveal that this is not so. While other works deal with political parties in the realm of Kenya's political development generally, ours is an attempt to see political parties in the light of a multi-party system as an institution of our constitutional theory. The aim of this paper is to explore the history of the multi-party system in Kenya with a view to establishing its viability or non-viability in our constitutional framework.

CONSTITUTIONAL LAW AND GOVERNMENT

THE CASE OF THE MULTI-PARTY SYSTEM

IN KENYA

A DISSERTATION SUBMITTED IN PARTIAL

FULFILLMENT OF THE REQUIREMENTS FOR

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BY

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PREFACE

Much has been written on political parties by Political Scientists. The abundance of these works makes it appear as if this paper is a duplicate of what has already been done. But a second glance at our work will reveal that this is not so. **While** other works deal with political parties in the realm of Kenya's political development generally, ours is an attempt to see political parties in the light of a multi-party system as an institution of our constitutional theory. The aim of this paper is to explore the history of the multi-party system in Kenya with a view to establishing its viability or non-viability in our constitutional framework.

In embarking on this research we were intrigued by the status quo in Kenya. We noticed that though the constitution allows for a multi-party system, Kenya is today a one party state. We therefore set out to see why this is so or whether the multi-party system has outlived its usefulness. We gauged the usefulness of each political party by the services it has rendered to constitutionalism.

In this research we adopted the method of re-examining the published material on political parties. These we blended with contemporary unpublished material from Newspapers and our own observation. Therefore the conclusions arrived at or errors made in so doing are **ours** alone. We had to forgo certain details. The omission was both deliberate and necessary. This is because we are writing a constitutional law dissertation and not a political science thesis. Secondly the faculty of law fixed a word limit which we found difficult to abide with. This paper does not therefore boast of being exhaustive. Despite the shortcomings we feel that it will excite interest in critics to do a more thorough research.

I am much indebted to my supervisor Mr. Farouk Muslim who guided me when writing this paper. Without his help, in giving editorial advice and in lending me books, this paper would not be what it is. I am also

indebted to my brother Mr. Teresius C. Muchira who secured a secretary to type this paper. Much thanks to the secretary Mrs. Margaret Munyao who typed this dissertation. Without her help this paper couldn't have been ready in time. Finally I acknowledge my indebtedness to my comrades in this University who gave me useful ideas here and there.

Muchira Peter Mwangi

March, 1977

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INTRODUCTION

With the banning of Kenya Peoples Union, K.P.U, on October 30th 1969¹, Kenya became a defacto one party state. Unlike other developing countries neighbouring Kenya², the Kenyan Legislature hasn't passed an act of Parliament proclaiming the country a one party state. Instead, the situation as it exists now³, there is one ruling party, Kenya National Union, KANU which has not outlawed the existence of other political parties. Our assertion is that the climate, as concerns political activity in Kenya, allows the existence of many parties. This assertion can be supported by the Kenya Constitution and other statutes which deal with political participation of Kenyan Peoples.

THE CONSTITUTION⁴

The Republican constitution of Kenya, which is the supreme law of the land, does not expressly recognise an opposition party. But as contended by Y. P. Ghai & J. P. W. McAuslan

"the cumulative effect of the Bill of Rights is to prohibit a one party state"⁵

The relevant sections of the Bill of Rights which deal with opposition parties are sections 79 and 80. Section 79 deals with freedom of Expression. In part section 79 [1] reads

"Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, . . . , freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (. . . to the public generally or any person or class of persons) and freedom from interference with his correspondence"

From this definition we can argue that persons are allowed to hold ideas and opinions which are similar or which differ from those of their neighbours without interference. The differences might among other things include political differences. These political convictions are usually the germ of political parties. That persons are allowed to

communicate these ideas and convictions to others means that political convictions can be disseminated. Dissemination of these ideas to other persons brings in the possibility of other persons holding the same convictions. It is from this group that the nucleus of a new political party forms. Section 80 of the constitution facilitates the coming together of like minded persons in an association. Freedom of assembly, inter alia, includes the right to assemble freely and associate with other persons, to form or belong to trade unions and other associations for the protection of ones interests⁶. Though the only type of association expressly provided for by the constitution is a trade union other facts show that a political party is also one such association. Section 123 of the constitution requires a political party to be duly registered⁷. This requirement makes us refer to the Societies Act⁸ to ascertain whether the associations to be registered include political ones. The definition section of this act does not also expressly include a political party. But the definition⁹ of the word society is wide enough to include a political party or any branch of it.

The constitution takes the existence of multi-parties for granted once registration has been effected; a further reason to suggest that the word association includes political parties. The parties are allowed to participate in the elections for all offices. Section 5 of the constitution which deals the election of the President says that one candidate for President shall be nominated in such a manner as may be prescribed by or under an act of Parliament by each political party taking part in the general election¹⁰. This section clearly envisages the existence of many political parties each producing a candidate to contest the Presidency. Members of the National assembly are also required to be nominees of a political party^{10(b)}. In addition to the above, section 40 of the constitution recognises the existence of multi-party system in the House. This section says that an M.P can lose his seat if he resigns

from one party to join another when that party from which he resigns is a parliamentary party.

The Electoral system is also geared towards a multi-party system of government. The relevant act here is the National Assembly and Presidential Elections Act^{1(a)}. Firstly the act caters for elections on two levels; one at party level and another on multi-party level. The election on the party level is a preliminary Election in which interested party members compete among themselves to win the party's nomination to stand for the parliamentary election in various constituencies. Candidates from all the parties contesting who have been validly nominated as required by Section 17 [17]^{11(b)} of the act then contest for seats in the National Assembly in what we have called parliamentary election. This election is on the multi-party level and is contested by candidates from different parties. But in Kenya today, due to the demise of ^{the} multi-party ^{SP} system only primary or preliminary elections take place. Interested KANU members seek the mandate of the people, who, incidentally are all presumed to be KANU members and competent to vote, to win the majority vote, Legally the Victor has only won KANU's nomination. Since no other party competes with KANU, the KANU nominee is declared validly elected as an M.P after presenting his nomination papers to the returning officer on a subsequent date. It should be noted that no person can be nominated by a political party at a primary election, unless he has complied with the provisions of the constitution or rules of the political party concerned¹². The effect of this requirement and section 40 of the constitution, discussed above, is to kill out the adventurous spirit of the independents. The field is left clear only for members of a political party. The legal entity of a political party is further underlined by the regulations appended to this act. Regulation 5 [17]

allows a political party to choose its party colour and symbol which is quite distinctive from those of other parties. The above facts show that though the Bill of Rights is vague on the aspect of political parties, others sections of the constitution and other statutes provide for a multi-party system of government in Kenya.

WHAT THE MULTI-PARTY SYSTEM IS DESIGNED TO ACHIEVE

Our constitution is drafted on the West Minister Model¹³. The author therefore feels that a brief discussion of the role of Multi-party system will help the reader to understand the role intended to be performed by Multi-parties in Kenya.

At present three political parties exist in Britain¹⁴. According to British conventions the party which polls the largest number of seats in the House of Commons forms the government of the day. The other parties, except in cases of a coalition government are relegated to the position of an opposition. The institution of a parliamentary opposition is well rooted in British conventions, so much so that, it is called the Queen's SP Opposition. The leader of the Queen's opposition is legally entitled to a salary for acting as **such**. This is because he and his party have a formidable task to perform. Firstly during the life of the government of the winning party, the opposition forms a shadow government. Ministerial posts are allocated to its Parliamentary members which are equivalent to those of the government in power. The Parliamentary Secretary of the shadow government organises the line of attack on criticism to be levelled on the corresponding parliamentary secretary of the government in power. This organisation makes effective criticism, levelled against unpopular policies of the government in power. In the event of the government in power resigning after being defeated on policy motions in

in the House of Commons, or as a result of a vote of no confidence, the shadow government is more likely to form the succeeding government. Its Parliamentary Secretaries will be well informed about various ministries due to the criticism they initiated when in the shadow government.

Secondly the leader of the Queens opposition is the Chairman of the Public Accounts Committee which deals with the expenditure of public money. He *SP* can therefore check on the government's spending. Thirdly the opposition party is supposed to cater for the interests of the minority. Democracy which has been defined as "government of the people by the people for the people"^{15(a)} demands that the views of the minority be listened to whenever laws which affect it are passed. When effectively performed the above three roles, help in fostering the existence of a responsible government. By responsible we mean a government which is not arbitrary; a government which is careful not to let the other 'side' in; and one *not clear* which takes into consideration the views of the minority.

In countries where the constitution is supreme, an opposition party, acting as described above, would be said to further constitutionalism.

A leading constitutional Lawyer is quoted to have said,

"I am willing to concede that constitutionalism is practised in a country where the government is genuinely accountable to an entity or organ distinct from itself where elections are freely held on a wide franchise at frequent intervals, where political groups are free to organise and campaign in between as well as immediately before elections with a view to presenting themselves as an alternative government."^{15(b)}

Critically analysed this proposition goes a long way to show that constitutionalism envisages the existence of a multi-party system of government. In accordance with the doctrine of separation of powers the executive arm of government is supposed to be accountable to Parliament. *not necessary*
A strong and free Parliament can only exist where criticism is organised on an opposition party level. The opposition party in such a Parliament can act as a watchdog over the constitution to ensure that elections are *done*

regularly held. The aim is to have only the best people in the leadership.

The roles which are intended to be performed by an opposition party in Britain are the same roles, to some extent, which are intended for an opposition party in Kenya. This assertion can be backed by the attitude of Kenya government towards an opposition party in post-independence Kenya. In 1966 a group of M.P.s sought the speaker's recognition of their status as a formal opposition party. The speaker found that the members

"Intend to function not merely as a group of independent individuals but as a definite opposition in the true sense, . . . offering to the house and to the Nation an alternative government with definite alternative policy and with their leader as an alternative President of the Republic."¹⁶

We are bold enough to admit that an opposition party cannot form a shadow government in Kenya¹⁷ but the basic idea of offering themselves as an alternative government is there. Opposition parties can also offer constructive criticism to the policies of the government in power. In the event of not heeding to their criticism, the government in power can find itself in an awkward position if an opposition party brings into the House a vote of no confidence.¹⁸ Fair criticism and a vote of no confidence are designed to achieve what has been called checks and balances in constitutional law.

// why not clear

A separate nation in which members of other tribes were prohibited from voting. To facilitate this, the government had to register political parties and to ensure that only those parties which were tribal in nature were allowed. In fact, these associations were originally registered as welfare organizations. This policy therefore explains the reemergence of tribal political associations. The effect of the policy was to create mistrust among different tribes of Kenya. This mistrust continued even on the eve of Kenya's independence. It is against this background that we examine the relationship of the two political parties which led Kenya to independence. These two parties were Kenya African Democratic Union (KADU) and

CHAPTER 1

In this chapter we trace the development of the multi-party system in Kenya and the factors which led to this development. In addition we seek to analyse the relationship between the parties formed and constitutionalism. 11 SP

DEVELOPMENT OF MULTI-PARTY SYSTEM IN KENYA

The history of multi-party system of government in Kenya dates back to 1963 when Kenya became independent. That Kenya became independent as a two party state and not a one party state can be explained partly by its colonial past and partly by the ideas of what was fashionable at that time¹.

Throughout Her colonial history Kenya developed as a racialist society. The three races which formed her inhabitants were supposed to develop along their separate lines. Therefore it was found plausible to set up reserves for the Africans, white highlands for the whites and "dukas" for the Indians. Among the Africans the policy of developing along different lines was accentuated by the fact that reserves were organised on tribal basis. Each tribe in every reserve was to develop as a separate nation in which members of other tribes were prohibited from entering. To facilitate this transkei-type policy nationwide political parties were discouraged by non-registration². The only parties allowed were those which were tribal in nature. In fact these associations were originally registered as welfare associations. This policy therefore explains the emergence of tribal political associations³. The effect of the policy was to create mistrust among different tribes of Kenya⁴. This mistrust continued even on the eve of Kenya's independence. It is against this background that we examine the emergence of the two political parties which led Kenya to Independence.

These two parties were Kenya African Democratic Union [KADU] and

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Kenya African National Union KANU which were formed in 1960. It will be noted that these parties with nationwide political following were formed after the 1960 Lancaster House Conference. African representatives at this conference asked the British government to relax the ban on nationwide political parties, a plea which was assented to by the White Hall. The need to form a nationwide political movement had been felt so as to allow the african delegates to speak with one voice at the 1960 conference. At first african representatives in the legislative council wanted to form district associations into one nationwide convention of african parties. But this was refused registration. Masinde Muliro duped the colonial government by forming Kenya National Party which purported to be multi-racial and was registered. Unfortunately Mboya and four others refused to join it and formed the Kenya Independence Movement under the leadership of Oginga Odinga and Mboya was the Secretary. The K.N.P and K.I.M were the nucleus of the two parties KADU and KANU respectively which led Kenya to independence.

KANU was the first nationwide party to come into existence on 27th March, 1960 after a conference at Kiambu. It was intended to embrace all peoples of Kenya and its executive was drawn from the leaders of district-wide political parties of early fifties⁵. The executive included Gichuru as the Acting President⁶, Oginga as the Deputy President, Mboya as the Secretary-General, Ngala as the treasurer and D. Arap Moi as the Vice-treasurer. The need to co-opt all Kenyan tribes into KANU is underlined by the fact that the last two officials were elected in absentia. With its simple slogan "Uhuru Sasa" or freedom now⁷ KANU believed that political independence was a guarantee for everything a state could aspire for⁷. It was felt that only a mass movement could lead Kenya to the attainment of this political Kingdom. KANU

". . . stood out as an orthodox nationalistic party which was

advocating pan-africanism and socialism and dedicated to organising a strong central government and promoting sweeping changes in Education."8

But other sections of the country were not satisfied with KANU. The mistrust we alluded to earlier broke loose and resulted in the formation of KADU on 26th June, 1960. Muliro, the founder of K.N.P was not one of the KANU executives. He refused to join its rank and file. Instead he formed the Kenya African Peoples Party. Ngala and Moi though elected in absentia into KANU's executive, refused to take up their seats. Instead they went back to their home areas and formed tribal parties. Moi masterminded the union of Baringo, Kericho, Nandi and Elgeyo-Marakwet peoples to form the Kalenjin Political Alliance. The Alliance invited

"gentle and other well-behaved africans to join them and develop a nationwide party."9

Their invitation was acknowledged by the Masai United Front, the Coast African People's Union and the Somali National Association. These association with Muliro's K.A.P.P formed KADU. The grudge against KANU which had led to the formation of KADU was that KANU was dominated by the Luos and the Kikuyus. The less politically conscious communities felt that their interests would be sub-ordinated to those of the more politically militant Kikuyus and Luos. By coincidence, it also happened that the latter were the biggest tribes in Kenya while the former were minority tribes. In addition to the fear of domination of smaller tribes the KADU executive feared the eventual ability of KANU executive to dominate their areas and usurp their established positions. As a party for the minority tribe KADU received further encouragement by the support it was given by European and Asian minority races.¹⁰

The third party with which we shall concern ourselves with is K.P.U. The Kenya Peoples' Union was formed after the Limuru KANU Conference of April 1966 when Oginga Odinga and a group of others M.P's broke away from the ruling party KANU. There are many factors which could be cited as

having led to the breakaway and the subsequent formation of K.P.U. Firstly K.P.U was formed as a result of Oginga Odinga being outmanouvered from his office as KANU's National Vice-President. The Limuru conference ratified the establishment of eight vice-presidency party posts instead of one national post. Oginga and his supporters apparently didn't win any of these newly created posts¹¹. The outmanouvering of Oginga from KANU leadership was the culmination of power struggle which had engulfed the party after KADU was absolved in it¹². The political frustration comes out clearly in his letter of resignation. In part the letter reads

not clear

"You have not given any consideration to me as your No. 2 in state affairs"¹³

A similar feeling was felt by Achieng Oneko then Minister of Information and Broadcasting¹⁴.

Secondly K.P.U was formed by persons who felt that KANU, the national mass movement had been undermined. The K.P.U executive felt that KANU had digressed from the goals it had set for itself at Independence. For example the founders of K.P.U asserted that KANU had digressed from its socialist setting. Instead the leaders

"... began to use their positions in politics to entrench themselves as a propertied economic group."¹⁵

The resultant effect of KANU's economic policy was the growth of a class of politician-businessmen in the cities and land-owning elitist class in the rural areas. This was tantamount to labeling the Sessional Paper No. 10, KANU's economic bible, as a front behind which capitalism was practised. K.P.U aimed at avoiding this error of capitalism masquerading as African socialism. The new party wanted to go socialist which implied greater state participation in the economic affairs of the country. The whole exercise of founding a new party was given respectability by the principles which most of its executive seemed to eschew.¹⁶

Sessional Paper SP

African SP

MULTI-PARTY SYSTEM AND CONSTITUTIONALISM

The first attempt at a multi-party system was after independence. In the election preceding the formal granting of independence KANU won with an overwhelming majority over its rival K.A.D.U.¹⁷ KADU was therefore forced into the opposition. As we shall see later KADU existed as a viable opposition party for less than one year.¹⁸ Its contribution to constitutionalism¹⁹ was therefore nothing to be proud of. But one of its greatest contributions was during the drafting of the 1963 independence constitution.

In forming KADU, as we have shown above, its executive wanted to protect the interests of the minority. The minority in this context included the small tribes and minority races of Europeans and Asians. KADU believed that the dignity of man is inviolable and to protect it must be the prime duty of the state. KADU suspected that left on its own, KANU would submerge the dignity of man under the aura of a mass movement. In any case KANU aimed at building a society which was democratic, African and socialistic. Ngala had in mind liberal nations in which an individual's interest came before those of the state as contrasted with KANU's socialism in which the interests of the state would be paramount. Therefore to ensure that the rights of the minority were safeguarded KADU clamoured for the inclusion of a Bill of Rights in the 1963 independence constitution. The Bill of Rights was among the provisions of the constitution which required a special amendment. It could only be amended if 90% of the members of the senate and 75% the members of the lower-House assented to the amendment.

K.A.D.U. was also opposed to KANU's idea of a strong central government. KADU felt that ideal democracy could only be achieved by having people at the smallest administrative unit initiate political action. KADU therefore built its basic unit on the locational or ward

structure. KANU on the other hand built its basic unit on the district basis. The idea of a weak central government was in keeping with its aim of protecting the minorities. These fears as contended by Getzel,

"... persuaded the minority based KADU to demand a quasi-federal division of power that would leave an african majority government less omnipotent than its predecessor."²⁰

The federal system of government campaigned for by KADU was part of the 1963 Independence constitution. This federal system earned the 1963 constitution the name of "Majimbo" constitution. Power was to be shared between the central government and seven regions, Majimbos, in which the country was divided. The legislative power was to be shared between the Lower House and the senate²¹ at the center and the Regional assemblies in the regions. As drafted the independence constitution left the central government with limited powers. As Ghai and MacAuslan point out the powers which could be exercised by either the center or the regions were so detailed even to provide as to who could "... provide for public lavatories and refuse."²² It will be appreciated that in insisting on details KADU, believed that the constitution itself would act as a neutral umpire in all functions of the state. Their belief was that no one political party would take advantage of the other through the constitution. This is not what events have shown. SP

Earlier on in this chapter we alluded to the fact that KADU's history as an opposition party was shortlived and uneventful. This was because KANU and KADU were not ideologically different. KADU's goal was the establishment of a welfare democratic state. KANU's goal was the establishment of a society which was democratic african and socialist. Except for socialism the two parties were the same. But KANU's socialism was only a front. The sessional paper No. 10 of 1965 which embodied KANU's socialism,

"sounded as if it had been drafted by neither an african nor

a socialist."²³

It does not even conform to the present day Kenya which is capitalistic. The lack of clear-cut ideological differences between the two parties resulted in useless debates in the Legislative bodies.²⁴ The conclusion we arrive at is that KADU contributed to constitutionalism during the drafting of the 1963 Independence Constitution but not so much in the House.

not clear what was done

The only party which ideologically differed from KANU was K.P.U. As a party ideologically opposed to KANU, K.P.U was able to point out the shortcomings of the capitalist system. Odinga succinctly revealed that what Kenya had got in 1963 was nothing more than flag independence. In his book he says,

"Not only are many European settlers still sitting on big farms but we are getting a new class of Blundells Dalameres and Briggs deliberately created."²⁵

He called for equitable distribution of the national cake through fixing of ceilings on land granting of loans to small scale farmers and establishment of co-operative farming where possible. K.P.U also pointed at corruption and called for austerity and sacrifice by the leaders, instead of using their positions to grab all the fruits of independence. We submit that all these corrections can be done within a one party state but the K.P.U did well in pointing them out. If not rectified the wronged sections of the community can contemplate violent overthrowal of a government; a measure which is incompatible with constitutionalism.

But more than KADU, K.P.U contributed much to the debates in the National Assembly. At one time, before a standing order made the practice impossible,²⁶ the President of K.P.U was the chairman of the Public Accounts Committee. As chairman of this committee the leader of the opposition is in good position to scrutinise and criticise the expenditure of the government. Maybe the effect of such criticism can be seen in the perspective of the debate which ensued after a backbencher pointed out

misuse of government funds by civil servants last year.²⁷ The impression one gets after such disclosures, when our country is a one party state, is that the office of the chairman to this committee has been left to whoever feels like making him self chairman. K.P.U members also contributed effectively in the debates of the House. They particularly opposed the extension of Public Security Act²⁸ which in effect gave the executive wide powers to detain persons considered as security risks. At one time they even tried to bring into the house a vote of no confidence against the government.²⁹ These and many other contributions show that though they were in a small minority, K.P.U M.Ps tried against all odds to advance the cause of constitutionalism. Their determination is all the more evident since they could never hope to organise enough support for their motions.³⁰

been described as a 'iriskin', finally in a torrent it's wave of flood of their party and joined KANU. The assimilation of KADU into KANU can be attributed to a number of factors. Firstly KADU was disbanded due to the frustration of its executive after the 1963 general election. The overwhelming victory of KANU during the 1963 election, allowed the KADU executive that what they could hope to obtain in independent Kenya was a small minority party with no hope of ever forming a government. The executive's hope of national recognition, and of their class in foreign KADU, could therefore not materialise. But national recognition was guaranteed in KANU which was desirous of governing the country through one national party. This was proved true when, after the assimilation of KADU into KANU, leading figures of KADU executive were given ministerial posts in KANU government.² This was in keeping with patronage accorded to all those who support the government in power, the world over.

Secondly KADU was easily absorbed into KANU because there was no

CHAPTER II

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DEMISE OF MULTI-PARTY SYSTEM OF

GOVERNMENT IN KENYA

From the foregoing, we have attempted to discuss the basis and the establishment of a multi-party system in Kenya. As noted in the last chapter the system was attempted at two different times: first when KADU was in the opposition and secondly when K.P.U was in the opposition. Both attempts collapsed. This chapter is a post mortem of the factors leading to the demise of the two parties, hence the demise of the multi-party system in Kenya.

KENYA AFRICAN DEMOCRATIC UNION

KADU ceased to exist as an official opposition party on 10th November, 1964. Its members who had started drifting into KANU in what has often been described as a 'trickle', finally in a torrent like move disbanded their party and joined KANU. The assimilation of KADU into KANU can be attributed to a number of factors. Firstly KADU was disbanded due to the frustration of its executive after the 1963 general election. The overwhelming Victory of KANU during the 1963 elections¹ showed the KADU executive that what they could hope to attain in independent Kenya was a small minority party with no hope of ever forming a government. The executive's hope of national recognition, one of their aims in forming KADU, could therefore not materialise. But national recognition was guaranteed in KANU which was desirous of governing the country through one national party. This was proved true when, after the assimilation of KADU into KANU, leading figures of KADU executive were given ministerial posts, in KANU government.² This was in keeping with patronage accorded to all those who support the government in power, the world over.

Secondly KADU was easily absorbed into KANU because there was no

ideological rift between the two parties. As shown in the previous chapter the two parties had similar policies which differed only in approach. The situation before KADU was absorbed into KANU was akin to what Nyerere calls group politics as opposed to national politics.³ As it will be recalled KADU was ostensibly formed to fight for a group.⁴ Therefore if the group could be guaranteed protection along with other groups, differences between the groups could be easily solved within the framework of one party. KANU was wise enough to endorse the Bill of rights which was supposed to guarantee people of equal protection before the law, for their lives and property.⁵ sp

Thirdly the KANU government made the Majimbo constitution, which purported to divide the country into seven regions, unworkable. The KANU government refused to sanction the Expenditure of the regions. This made them unable to function. The KANU government was of the view that KADU and its Majimbo constitution only served the interests of imperialists desirous of seeing a faction ridden nation. At the same time, an incident occurred which brought to the forefront the weakness of the executive when faced with grave national issues.⁶ As Okoth-Ogendo notes,

"The government suddenly became attracted to the one party system both as an answer to the weaknesses of the executive power and as an end to eliminating trivalities in serious national issues."⁷

That this was the government's intention is shown by the declaration of Kenya as a Republic, less than a month after the dissolution of KADU. The KANU government introduced a presidential government devised in such a way as to,

through " . . . embody the fact of national leadership as seen in the eyes of the people, the concept of collective ministerial responsibility and . . . supremacy of Parliament."⁸

Such changes struck at the root of KADU's intentions of a relatively weak central government. KADU had to go if KANU's aims were to be realised

hence the absorption.

KENYA PEOPLES UNION

The relative ease with which KADU was disbanded was not forthcoming when K.P.U was banned. This was due to several factors. Firstly, KANU and K.P.U were divided by a wide ideological rift. While KANU was committed to a capitalistic mode of production K.P.U intended, if elected, to lead the country towards socialism. Though K.P.U's socialistic convictions have been seen as those of petty bourgeois,⁹ still the party's leanings were more towards the East than to the West.

Secondly the K.P.U leadership was composed of radicals who had resigned from KANU. They saw KANU as a party of conservatives. In this respect they differed from the KADU leadership, a factor which made their re-absorption into KANU both tricky and difficult. The KADU members who crossed the floor to join KANU, could be taken into KANU's Confidence as having realised their mistakes and repented. The same was not possible for K.P.U members who had crossed the floor to form an opposition party and now wanted to recross back to KANU. The situation was put in a nutshell by a K.P.U member who commented on Kaggias recrossing to KANU . He observed

"Mr. Kaggia has not told us the new method he has discovered to influence changes in KANU which he could not use before the formation of K.P.U."¹⁰

The above two factors influenced very much the method adopted to disband K.P.U.

The iron fist method used in banning K.P.U was a measure the government resorted to after failing to stifle the opposition party through electoral and administrative measures. From its inception, the KANU government registered its discontent by a series of measures designed to discourage the K.P.U from becoming too strong. The first step taken was to oust the radical K.P.U MPs from Parliament. This was done through

a constitutional amendment¹¹ which today is Section 40 of the Kenya Constitution. By this amendment a member of the National Assembly who resigns from a party when that party is a parliamentary party loses his seat in Parliament. The amendment made twenty-nine defecting MPs to lose their seats in Parliament. The official justification for the amendment was to . . . stop these political acrobats from fooling about with the public." This justification is suspect in view of the government's reaction when KADU members crossed the floor to KANU in 1964. We submit that the true justification of the amendment was political expediency. The true aim was to intimidate more MPs who were dissatisfied with KANU, from crossing over to the K.P.U side. The truth of this assertion is manifested by the action taken by thirteen of the twenty-nine defecting MPs. They rejoined KANU to be welcomed by the President. That the bill was motivated by political expediency is borne out further by the fact that the bill was published, tabled, debated, passed through all its stages and given presidential assent in less than 48 hours.¹² The act was later amended to apply retrospectively.¹³ The events in the House led to the May 1966 'Little General Election'. In this election only nine K.P.U members won seats in the National Assembly. The first step of reducing the K.P.U membership in the House had been accomplished, a feat which also intimidated the would-have-been KANU defectors.

Intimidation of K.P.U did not end here. In 1966 the constitutional provisions relating to the preservation of public security were amended to give the government more power to deal with dissidents. Section 85 of the Kenya Constitution authorises the President to bring into operation part III of the Preservation of Public Security Act¹⁴ or any of the provisions of that part of the Act. This Act under part III empowers the President to make regulations for the preservation of public security. Among others the regulations may make provision for detention^{15(a)} and

restriction of persons.^{15(b)} An order made under Section 85 of the constitution requires parliamentary approval only in the first twenty-eight days of its being published.¹⁶ Thereafter the order can only be revoked by the President¹⁷ or by a resolution of the assembly which is supported by a majority of all members of the assembly.¹⁸ Initially before S 29 of the 1963 constitution was amended, an order for the preservation of public security required the approval of Parliament every eight months.¹⁹ Soon after the amendment part III of the public security act was brought into operation for purposes specified under Section 4 [27](a) and (b), to apply throughout Kenya.²⁰ Under this act a number of K.P.U holding important posts were detained in 1966.²¹ The same action was taken after K.P.U was banned.²² We agree with the assertion of Ghai & McAuslan that

"The very existence of these powers has an inhibiting and unhealthy effect on the assertion of democratic rights, and their prolonged use is clearly inimical to the growth of democratic institution."²³

The application of the Preservation of Public Security Act is made worse by the wide definition of what is included in the term "the preservation of public security." The term is defined²⁴ to include anything from turmoil as a result of natural causes to subversion. The case of Ooko V Republic²⁵ shows the extent to which the government can go to justify detentions of members of an opposition party. Defined so widely and vaguely we submit that any move to form a new opposition party can be termed as an act against the preservation of public security. The Preservation of Public Security Act, therefore, was a strong instrument in controlling K.P.U members.

This device was supplemented by other administrative measures aimed at curbing the growth of K.P.U. Firstly the party's branches were refused registration required under the Societies Act to enable them to operate legally.²⁶ Secondly the Public Order Act was used to prevent K.P.U holding

meetings. Under this act no public meeting can be advertised to take place unless it has been licensed. Refusal of license means that no meeting can be held. The licensers of these meetings are usually the civil servants. It would therefore be futile to expect them to license a meeting of the opposition party if the government feels that such a meeting shouldn't be held. This measure effectively reduced the K.P.U impact on the masses. It could not get its message across to the electorate.²⁷ Its President complained **that** even the Voice of Kenya was ignoring him and his party in its bulletins.²⁸ As if this was not enough, a standing order²⁹ in the National Assembly was passed which reduced K.P.U from the status of an official opposition party to a status of parliamentary opposition party.

The Kisumu incident³⁰ which provoked the KANU government into banning K.P.U has been subjected to different observations. One school³¹ has it that the K.P.U got what was coming. The KANU government had succeeded in restraining the activities of K.P.U to Kenya's Western region. Though ^{sp} representing the aspirations of the poor in society K.P.U was therefore branded as a tribal organisation. Secondly K.P.U had some inner contradictions in itself. While its policies were socialist orientated it tried to appease the propertied peasantry by declaring that it would only nationalise property owned by foreigners.³² As such the K.P.U was not ready to take its policies to their logical conclusion, leaving itself open to the accusation that it would pay only lip service to socialism as KANU was doing. Therefore this school is of the view that the K.P.U was a dying horse.

A second school is of the view that the Kisumu incident just gave the KANU government a chance to do what it had set out to do. This school is of the view that the KANU government was not ready to go to

the polls with K.P.U in the opposition. They argue that KANU called for the 1969 General elections when it did only after it had banned K.P.U. Initially these elections were scheduled for 1970. This school, to which we subscribe, blames the leaders of the opposition party for having given the government a chance of banning K.P.U.³³

has remained a de-facto one party state. This state of affairs has been buttressed up by several reasons.

Firstly it is argued that emergent nations need strong political parties to put the nation on the road of national reconstruction. The basis of the argument is that emergent nations are faced with vast poverty, disease and ignorance which must be eradicated if the citizens are to be given any meaningful life. Therefore, the whole of the national effort must be streamlined in one political organization for the realization of one development plan. This argument is incompatible with the existence of a multi-party system of government. This point was alluded to by KANU's President in 1961 on the eve of KADU's absorption into KANU. President Kenyatta said,

"Events have shown that not only was a one party system inevitable but it was also the most prudent method of attaining those aims and objects which our people hold so dear. The evils of colonialism and imperialism in Kenya were poverty, illiteracy, disease and ignorance in our midst."

In addition to eradicating the evils of colonial aftermath, a centralized political organization is said to be the best weapon for the eradication of neo-colonialism from without and subversion from within. It is important to note that opposition parties have been described as both stages of neo-colonialism and the cause of subversion. As we have noted elsewhere KANU was branded as a vehicle for neo-colonialism and imperialism.²

CHAPTER III

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THE STATUS QUO - ONE PARTY STATE

In the previous chapter we discussed the demise of multi-party system in Kenya. By 1969 opposition parties had been driven out of existence by electoral and administrative methods. As from that time Kenya became and has remained a de-facto one party state. This state of affairs has been bolstered up by several reasons.

Firstly it's argued that emergent nations need strong political parties to put the nation on the road of national reconstruction. The basis of the argument is that emergent nations are faced with mass poverty, disease and ignorance which must be eradicated if the citizens are to be given any meaningful life. Therefore, the whole of the national effort must be streamlined in one political organisation for the realisation of one development plan. This argument is incompatible with the existence of a multi-party system of government. This point was alluded to by KANU's President in 1964 on the eve of KADU's absorption into KANU. President Kenyatta said,

"Events have shown that not only was a one party system inevitable but it was also the most prudent method of attaining those aims and objects which our people hold so dear. The evils of colonialism and imperialism left mass poverty, illiteracy, disease and ignorance in our midst."¹

In addition to eradicating the evils of colonial aftermath, a concerted political organisation is said to be the best weapon for the eradication of neo-colonialism from without and subversion from within. It is important to note that opposition parties have been described as both stooges of neo-colonialism and the cause of subversion. As we have noted elsewhere, KADU was branded as a vehicle for neo-colonialism and imperialism.² Similarly K.P.U in its heydays was connected with the communism cult.³

The kind of political organisation envisaged to eradicate the above

being formed to challenge the monopoly of political power by some autocratic or capitalistic group."⁷

In addition the african society is classless due to the fact that africans are socialist in nature.⁸ Socialism is associated with anti-pluralism of thought consequently the multi-party system is rejected as irrelevant and incompatible with africanism.

DOES THE DEFACTO ONE PARTY SYSTEM
SERVE A COUNTRY WHICH IS IN THEORY A
MULTI-PARTY STATE ?

From its inception, KANU was unable to achieve its inspirations and intentions of building an all embracing and unitary type of mass party. The first desertion from KANU resulted in the formation of KADU. As noted by the Weekly Review this was not the only threat KANU faced. In addition,

"KANU had several ideological factions within its ranks. There was a radical left-wing associated with Kenya's former Vice-President Mr Oginga Odinga . . . Mr. Achieng Oneko . . . Mr. Bildad Kaggia and the late party functionary and . . . nominated MP Mr. Pio Gama Pinto. At the other end were conservative though progressive elements associated with the late KANU Secretary-General . . . Mr. Tom Mboya."⁹

Feuding within KANU continued even after the assimilation of KADU in KANU. 118
The KADU assimilados joined forces with the KANU conservatives to force out from the party's fold, the KANU radicals. Therefore, it is clear that between 1964 and 1966, though operating under a one party system, KANU did not become a unified mass party.

The situation has not improved much after the proscription of K.P.U. During the 1969 General elections all ex-K.P.U members were barred from contesting seats in the National Assembly. KANU was not ready to nominate them unless they could show that they were KANU members for the past six months before nomination.¹⁰ Again during the 1974 General elections KANU barred all ex-K.P.U detainees, from nomination on KANU ticket, unless they

had been out of detention for three years and that they had proved themselves ideologically rehabilitated.¹¹ Recently the KANU party headquarters have decreed that no ex-KPU detainee could hold office at any level of the party.¹² In view of the fact that KANU is the only party in Kenya, we submit that the above decisions have either left Ex-KPU detainees partyless or relegated the detainees to second class party members. In this respect KANU has failed to serve adequately the political needs of all Kenya citizens.

Secondly a major problem with Kenya's ruling party is the lack of popular participation by the masses. A mass political movement is expected to frame national policy and to be a bridge upon which communications from the top hierarchy can be passed to the masses and Vice Versa. KANU has not acquired such a role. In the formulation of national policy KANU has been superseded by the government. In the execution of this policy the civil service has been found more reliable than the party. The civil service is also used for passing communications between the top hierarchy and the masses. Bienen is of the view that Kenyans in the rural areas seek advice and solve their problems through their Chiefs and District Officers rather than through the party bosses.¹³

The lack of mass participation in KANU is demonstrated by the fact that elections in the party, were held for the second time since independence only last December. At the time of going to the polls the party's acting Secretary-General could not tell for sure the number of registered members in KANU.¹⁴ It will also be noted that there are two forms of membership; life and casual. A fee of £.50 is payable before one becomes KANU life member. This amount is more than per capita income of some families. The fact that only life members of KANU can present themselves either for nomination in general elections or for party elections has left KANU as a party of the elite. The common man does not even feel obliged to pay Shs.2/- which is the subscription for casual

membership.¹⁵

That KANU has survived in its present form is attributed to two factors. Firstly the credit goes to its President H. E. Mzee Jomo Kenyatta who with his charismatic qualities has ruled above the party. Thanks to the colonial government Kenyatta today has acquired the mantle of "He who suffered for the Kenyan Nation". Kenyatta as the Mzee or Father of the Nation is seen as the epitome of the Nation. He has succeeded in ruling above the party politics by his reliance on a relatively strong civil service.¹⁶ In his position Kenyatta acts as an umpire in party squabbles which seem to have engulfed the party and its machinery.¹⁷ His major use of KANU has been ^{as} an arena in which to let others struggle for control of subsidiary resources. In most cases KANU becomes active only during election time after which it is shelved until the next election. A prominent MP once remarked of KANU,

"The party functions only when an election takes place. Then all that remains of it is the song 'KANU Yajenga Nchi' . . . "18

EFFECTS OF ONE-PARTY SYSTEM ON

CONSTITUTIONALISM

One major effect of the one party system is the emergence of an unofficial opposition party within the ruling party KANU. Membership of this unofficial opposition is drawn mainly from back-benchers and a few frontbenchers in Parliament.¹⁹ This 'Club' has allocated to itself the task of criticising both the governments policy and motions. In this respect the 'Club' attempts to fill the vacuum left by the official opposition party. In addition, the MPs who see themselves as delegates of their constituencies bring to the attention of the government the problems facing the electorate. Outside the House members of this unofficial opposition party are just as vocal. Documents which can rightly be attributed to official opposition parties are attributed to members of

this club.²⁰

But unlike the official opposition party, the criticism of the of the unofficial opposition is not thorough. Firstly the government may not feel obliged to take account of the criticism of an unofficial opposition as it would take the criticism of an official opposition party. The government knows that there is no risk of its being ousted. Secondly the scope of the 'club's' power to criticise is limited. For example, a motion attacking a minister in his official capacity can only be brought as a substantive motion critical to the whole government.²¹ Such a motion can be construed as an act of disloyalty towards the Head of state who also is the Head of government. In addition, bringing to Parliament, a motion critical to the government of the party which nominated him an MP would be killing the duck which lays the golden eggs. These factors considerably limit the power of the unofficial opposition to criticise.

The second effect of the one party system is the re-orientation of institutions which were intended for a multi-party system. The first institution undergoing such reorientation is the National Assembly. In the last paragraph we saw how Parliament has reshaped itself to do the work of an official opposition party. But more than ever before, freedom of speech in the House is being curbed to the extent that an MP can only say those things which he can say outside Parliament. This aspect came clearly after an MP asserted that KANU is Dead.^{22(a)} Along with a Deputy-Speaker who ruled that this allegation didn't need to be substantiated, the MP was detained.^{22(b)} This was done despite the provisions of The National Assembly (Powers and Privileges) Act²³ which protect the freedom of speech in the National Assembly. Such limitation on the freedom of speech makes a mockery of provisions such as those providing for a vote of no confidence in the government.

Another institution which is undergoing reorientation is the civil

service. As we noted earlier in this chapter, Kenyatta in maintaining the stability that he has maintained up to now, has found the civil service more reliable than KANU. Of late, it has been found expedient to formalise the politicisation of the civil service by asking civil servants to be members of KANU.²⁴ This move is clearly a reaction against the British traditions which Kenya has been following. According to British traditions of government the civil service is supposed to be neutral so as to serve successive governments irrespective of parties which form them.

Following from the above, what is likely to emerge in Kenya is a praetorian society.²⁵ A Praetorian Society is one in which there is general politicisation of social forces and institutions. In Kenya failure to contain politics in the Assembly has resulted in the outflow of political 'payukaring' into the church, the University, the army and other social institutions. To quote but a few examples of praetorian symptoms: the Target once a religious newspaper has taken a stand similar to that of a political party newspaper; the University of Nairobi was closed in 1975 due to political squabbles; and the 1971 sedition /conspiracy trials are clear examples of politicisation in the army. Praetorianism in states where political activity is not channelled through a strong mass movement or a multi-party system does not augur well for constitutionalism. In de jure one party states the degree of politicisation can be controlled by the mass movement which is the beginning of all activities in the state. On the other hand in a multi-party system the general populace can leave politics to the politicians. The breakdown of constitutionalism in states which follow neither of the above two systems results because there are no agreed rules to the game. This is especially so where elections bring about changes only in personalities and not in the government. Colin Leys has observed that

"Parliamentary Elections are reduced to a choice between

individuals all of whom are pledged to support the President and his government.²⁶

ON LIVED ?'S IMPROVEMENT ?

In the previous chapter we discussed the one party system of government in Kenya. It is its major characteristic that it has "closed" the door to mass movement interfering with the work of the Kenya Society. This aspect is contrary to contrary with the party system which is not possible in Kenya. Secondly the ruling party has been used as a mere rubber stamp an end in itself. By this we mean that instead of the party providing guidance to the people and the government, the government provides guidance and support to the party. This was made possible by the role of the party being played by the civil service. Thirdly the KANU government has pursued an economic policy which allows a large amount of private enterprise and enterprise. As it has been pointed out in this paper, private enterprise brings with it the division of society into classes. Class division in all other generate class conflict. It is in the light of these facts that we discuss the role of the multi party system of government.

In the present Kenyan situation the multi party system has not been fully established. Parties in opposition to KANU could be formed without an expression of class conflict generated by the economic and social policy adopted by KANU, or by other means. It is for this reason that the multi party system is not fully established in Kenya. In any case the constitution in Kenya does not provide for a one party system. But, these opposition parties are not fully allowed. The arrival of the multi party system would be a major step during the reign of President Kenyatta. It is to be expected that it will be avoided.

²⁶Kenyatta has been known to be accepted as the "Father of the Nation" a figure greater than any political party.

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CHAPTER IV

CONCLUSION

HAS THE MULTI-PARTY SYSTEM OF GOVERNMENT
OUTLIVED ITS USEFULNESS ?

In the previous chapter¹ we discussed the one party system of government in Kenya. Among its major shortcomings we noted that it has failed to become a mass movement incorporating all members of the Kenyan Society. This aspect is common to countries with one party system and is not unique in Kenya.² Secondly the ruling party KANU has been used as a means rather than an end in itself. By this we mean that instead of the party providing guidance to the people and the government, the government provides guidance and support to the party. This has been made possible by the role of the party being usurped by the civil service. Thirdly the KANU government has pursued an economic policy which allows a large measure of private investment and enterprise. As it has been constantly asserted in this paper, private enterprise brings with it the division of society into classes. Classes in their turn generate class conflict. It is in the light of these facts that we discuss the fate of the multi-party system of government.

In the present Kenyan situation the multi-party system has not outlived its usefulness. Parties in opposition to KANU could be formed either as an expression of class conflicts generated by the economic trend and ideology adopted by KANU, or to absorb elements who find themselves partyless. In any case the constitution in force in Kenya today prohibits a de jure one party system. But, though opposition parties are constitutionally allowed, the revival of the multi-party system cannot be foreseen during the reign of President Kenyatta. Firstly as contended by Guy Anold

"Kenyatta has . . . come to be accepted in Kenya as the 'Father of the Nation' a figure greater than any political party"³

This figure head status coupled with his charismatic qualities has enabled

him to outmanoeuvre all his opponents. There are no chances that this trend will change. As the Attorney-General remarked in Parliament in 1975,

"We . . . should all forget this matter from now on because the President of this country is alive and there is no vacancy in the Presidency and he will go on being the President until some of those who think they will become President have perhaps died while he is still going on with his duties as President of this country."⁴

In addition to the Presidential Charisma,

" . . . many of the rules of public law have discouraged the expression of dissent or the formation of political groups opposing KANU."⁵

Likewise the multi-party system of Government is not likely to be outlawed during the reign of Kenyatta. As observed by Ghai and MacAuslan

"To introduce a one party state by law, to ban all opposition parties and proclaim KANU as the one lawful party would be to alter drastically Kenya's image as an evolutionary mature state and it is therefore opposed by the government."⁶

As the letter of the Kenya Constitution stands today Kenya is a liberal democracy. This factor helps in courting aid from Western Liberal democratic countries. Secondly, in allowing a large measure of private enterprise, the KANU government has no moral basis upon which it can outlaw the multi-party system. Another salient factor which we advance for the existence of the status quo is the benefit reaped by the KANU government under the present constitutional arrangement. By ruling in a setting where two or more parties are constitutionally allowed, the KANU party has escaped the necessity of strong foundations necessary for a mass movement. At the same time KANU has used the legal infrastructure to eliminate and discourage opposition parties. These tools are usually available for a de jure one party state. KANU has therefore succeeded in keeping and at the same time eating its cake. This assertion is a credit to its incumbent President, a credit which is not likely to be won by his successor.

RECOMMENDATIONS

We are of the opinion that KANU needs to be revitalised if the status

quo is to be maintained. Revitalisation to be meaningful must be directed towards the involvement of the citizens in the party affairs. This aspect can only be possible if membership is left open to all citizens irrespective of their past records. The membership fee should be lowered so that all members can participate in the affairs of the party on an equal footing. If revitalisation is not effected then prospects of a looming opposition party can't be lightly brushed off. At least this is an aspect which Kenyatta's successor will face. Kenyatta's successor will not be endowed with the halo of "the Father of the Nation". Therefore he will have to choose between making use of the multi-party system or strengthening KANU as to incorporate all Kenyans. Kenyatta himself in 1964 said,

"Should relevant grounds for a multi-party state evolve in future, it is not the intention of my government to block such a trend through prohibitive legislation."

8. Cap 107 of the Laws of Kenya.
9. Section 2 defines society to include any club, company, association or other association of law or more persons whatsoever, its officers or object established in Kenya and any branch of a society.
10. (a) Section 3 (3)(a) of the constitution
10. (b) Section 34 (d) of the constitution
11. (a) Cap 7 of the Laws of Kenya
- (b) According to S 17 (1) of this act a person shall be deemed to be nominated by a political party if he is declared to have received the greatest number of votes at a poll there. Section
12. Section 17 (2) (b) of Cap 7 of the laws of Kenya.
13. The Westminster Model constitutions are those constitutions

FOOTNOTES

INTRODUCTION

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1. L. N. 239/1969
2. Tanzania, Zambia, Uganda and Somalia
3. March, 1977
4. Act 3 of 1969
5. Public Law and Political change in Kenya
Oxford University Press Nairobi 1970 Page 352.
6. Section 80 of the constitution in part reads,
"Except with his own consent no person shall be hindered in the enjoyment of his freedom of assembly and association . . . , 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."
7. Section 123 of the constitution defines a political party as . . . party which is duly registered under any law which requires any political parties to be registered and which has complied with the requirements of any law as to the constitution or rules of political parties nominating candidates for the National Assembly.
8. Cap 108 of the Laws of Kenya.
9. Section 2 defines society to include any club company partnership or other association of ten or more persons whatever its nature or object established in Kenya and any branch of a society . . .
10. (a) Section 5 (3)(a) of the constitution
10. (b) Section 34 (d) of the constitution
11. (a) Cap 7 of the Laws of Kenya
(b) According to S 17 (1) of this act a person shall be deemed to be nominated by a political party if he is declared to have received the greatest number of votes at a preliminary Election.
12. Section 17 (2) (b) of Cap 7 of the laws of Kenya.
13. The West-Minister Model constitutions are those constitutions

which are derived from British conventions and traditions of government.

14. The Labour, Conservative and Liberal Parties.
15. (b) Prof S. A. De Smith, in (1962) 4 Malaya Law Reports.
 - (a) Abraham Lincoln's speech at Gettysburg.
16. Public Law and Political change in Kenya
 1. Erwin op. cit P. 352
17. Formation of a shadow government can be construed as imagining the overthrow by unlawful means of the Government
 2. Section 40 (1) (a) (iii) of the Penal Code terms such conduct as an offence of treason.
18. Section 59 (3) of the constitution.
 1. These included:
 - Nairobi District Congress
 - Nairobi Peoples Convention party
 - Mombasa African Democratic party
 - Coast African District party
 - The Kiell Highlands Association
 2. Gichuru was keeping the seat warm for Kenyatta.
 3. Like Mwangi KANI believed in "Work you first the political Kingdom and the seat will be given unto you."
 4. Department of Political Science - East African Study Materials (unpublished) Page 17
 5. East African Study Materials: Page 14 supra.
 6. The Europeans and Asians thought that they could influence KANI. See generally Claude Sauger and John Poltinghouse.

CHAPTER I

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1. Government on the threshold of independence cherish the idea of a multi-party system of government - see generally KAUNDA, K
The Future of Democracy in Africa.
The Transition NO. 15 1964
2. Argwin's Kodhek's nationwide Kenya African Congress was refused registration. KAU was banned ostensibly for arousing nationalistic feelings throughout the Kenya Colony.
3. The earliest of these was the Kikuyu Central Association of 1921 followed by others in Luo and Luyhia reserves.
4. The extent to which parochialism was encouraged is manifested by the Masai plea to the British to remain in Masailand after the lest of the colony was granted independence.
5. These included,
 - Nairobi District Congress
 - Nairobi Peoples Convention party
 - Mombasa African Democratic party
 - Coast African District party
 - The Kisii Highlands Association
6. Gichuru was keeping the seat warm for Kenyatta.
7. Like Nkrumah KANU believed in
"Seek yee first the political Kingdom and the rest
will be given unto you."
8. Department of Political Science - East African Study Materials
(unpublished) Page 7
9. East African Study Materials Page 14 supra.
10. The Europeans and Asians thought that they could influence KADU
see generally Claude Sauger and John Nottingham.

The Kenya General Election of 1963

- Journal of Modern African studies March 1964 Cambridge University Press.
11. Kaggia's election as vice-president of KANU was nullified. The post was taken by Gichuru at a second poll.
 12. By 1966 Oginga's post as the Vice-President of Kenya had been whittled of all its junctions. His office was only incharge of the National Assembly, Africanisation and training, and public holidays. Okoth-Ogendo's paper P.24 infra.
 13. Odinga, O Not yet Uhuru
New York Hill and Wang 1967
P. 300 see also Chapter 3 (i) of this paper.
 14. Ochieng Oneko alleged that the radio network of his own Ministry was being used daily to **attack** him personally through innuendo.
 15. Not yet Uhuru op. cit. p. 282
 16. In his letter of resignation Odinga Oginga said,

"I have a conscience and this pricks me when I earn public money but with no job to do . . . I am worried lest the future generations questions my sincerity, when they would learn that I allowed myself to hold a sinecure post in the midst of poverty and misery in our own country."

Not yet Uhuru op. cit p.300
 17. In the House of Representatives KANU won 64 seats to KADUS 32. In the senate KANU won 18 seats to KADU 18
E.A.S May 29 1963
 18. See chapter three of this paper.
 19. As far as debates in the house were concerned.
 20. Cherry Getzel, The Politics of Independent Kenya
E.A. Publishing House 1970 p. 20
 21. Like the House of Lords in Britain the senate was created as a check on legislative power of the lower house.

22. Ghai and MacAuslan op. cit. 197
 23. Tanzania's Nationalist Newspaper.
 24. This is evident in the debate of the R.L.A in which KADU opposed the bill mainly because they claimed that it was Imperialistic National Assembly Debates 1963.
 25. Not yet Uhuru supra p. 303
 26. See standing order No. 2
 27. Weekly Review No. 97 December 20th 1976
This issue gives account at a lone back bencher Mr. George Anyona MP taking the Commissioner of Prisons and a Provincial Commissioner to task for allegedly misusing government funds.
 28. Kenya Debates vol. 9 Part II col. 2118 - 2156
21st July, 1966 and in vol. 10 Part I col. 552 to col. 580
7th October, 1966.
 - 29 This is referred to in Ghai & MacAuslan's book 'Public law and Political change in Kenya supra.
 30. K.P.U had only nine members in the House of 158.
- and Association and to respect the rule of law and human dignity."
- KADU refused to vote for the government measure of declaring a state of emergency in the R.F.D. area. The only excuse they gave was that they had not been consulted. This incident is quoted by Othman Othman in his unpublished paper, "The Politics of Constitutional change in Kenya Since Independence."
- The Politics of Constitutional change in Kenya Since Independence p. 19
- Kenyatta when introducing the 6th Kenya Debates vol. II Part II col. 196
14th August, 1964

CHAPTER II

1. Footnote 17
2. KADU leaders like Daniel Arap Moi, Ronald Ngala and Masinde Muliro became Ministers in the KANU government. Moi was included in the Republic's first Cabinet.
3. Nyerere J.K. Freedom and Unity
Oxford Univeristy Press (Dar-es-Salaam)
Pp 196 - 197
Nyerere says,
"If . . . you have a two party system where the differences between the parties are not fundermental you immediately reduce politics to the level of a football match."
4. The group consisted of Euro-Asian minorities and the tribes from which the KADU executive came.
5. In K.N.A Handont No. 1414 infra
Kenyatta said,
"Be it as it may, my government is pledged to uphold the four traditional freedoms; the freedom of speech and Association and to respect the rule of law and human dignity."
6. KADU refused to vote for the government measure of declaring a state of emergency in the N.F.D. area. The only excuse they gave was that they had not been consulted. This incident is quoted by Okoth-Ogendo in his unpublished paper,
"The Politics of Constitutional change in Kenya since Independence."
7. The Politics of Constitutional change in Kenya since Independence
p. 19
8. Kenyatta when introducing the amendment Kenya Debates vol. II
Part II col. 1208
14th August, 1964

9. See Criticism of Wananchi Manifesto of 1969 in Leys, Colins?
Under development in Kenya
Heinemann - London Pp.224 - 225
10. Mak'Anyengo's rejoinder to Kaggia
Letter to the Sunday Nation
14th September, 1969
11. Acts No. 17 of 1966 and No. 4 of 1967 make up 540 of the Kenya Constitution.
12. Normally a bill takes fourteen days in the National Assembly.
13. This was to bar litigation pending in the High Court by which a number of MPs who had crossed the floor, sought a declaration that they were still MPs since the amendment was passed after they had crossed the floor.
14. Cap. 57 of the laws of Kenya
15. a) Section 4 (2) (a) of cap. 57
b) Section 4 (2) (b) of cap. 57
16. Section 85 (2) (a)
17. Section 85 (3)
18. Section 85 (4)
19. See Section 29 of the 1963 constitution
The Kenya Independence Order in Council 1963 statutory instrument 1968.
20. L. N. 212 of 1966
21. By L. N. Nos. 2983 - 8 2094 - 5 and 4101 of 1966
2 **Administrative Secretaries** 3 **Executive members**. The youth Wing leader and orgnaiser of the K.P.U and the party's President Private Secretary and bodyguard were detained.
22. E.A.S of 30th October 1969 gives a list of those detained.
23. Public law and Political change in Kenya op. cit. p. 258

24. Section 2 of cap. 57
25. Ooko alleged that in the statement of grounds upon which he had been detained, furnished by the government, contained even his activities as a trade unionist before Independence.
[1966] unreported. For facts see Ghai & MacAuslan supra p. 437
26. Colin Leys op. cit. p. 226
27. This point is illustrated by Kaggia V Republic [1968] unreported.
Kaggia was convicted and sentenced for holding a 'public' meeting in a shop.
Ghai & MacAuslan op. cit. Pp. 449 - 450.
28. Kenya Debates vol. 9 Part II 8th July, 1977
col. 1596 - 1619
29. Standing Order No. 2
Under this standing order a party is defined as a parliamentary party consisting of not less than seven members. The order also contemplates an official opposition party whose membership in the house must be a minimum of thirty members. It is only the leader of the latter who is entitled to a special salary and to the chairmanship of the Public Accounts Committee. The standing order relegated K.P.U which had only nine members to the status of the former.
30. See Daily Nation of 30th October, 1969
31. The views expressed here are conclusions drawn by the author from a cross-section of students at the University.
32. Wananchi Declaration 1968
33. With more tact the President of K.P.U could have calmed the tempers of his supporters.

CHAPTER III

1. Extract from a statement issued by the President of KANU Mr. Jomo Kenyatta on 13th August, 1964,
"Toward a one party system"
K.N.A. Handout No. 1414
2. The Majimbo constitution was branded by Oginga Odinga as
"the wicked design of imperialists and their stooges". KADU
advocated Majimboism.
3. See generally Oginga Odinga's book, Not yet Uhuru supra.
4. Report of the Presidential Commission on the Establishment of a
Democratic One Party State. 1965
Government Printer Tanzania Dar-es-Salaam
Art. 18 (1) of the Report
5. Not yet Uhuru op. cit p. 269
6. K. N. A. Handout No. 1414
7. Nyerere J. K. Democracy and Party System
Pp. 18 - 21
8. Nyerere is of the view that there is no Equipment for the word classes
in any indigenous african language.
9. Weekly Review No. 21 June,30 1975 at p. 4
10. Only two ex-K.P.U members were excepted from this ruling; Mrs. Grace
Onyango and Mr. Bildad Kaggia.
11. Weekly Review No. 99 January,3 1977 P. 11 col. 3
12. East African Standard December 1976
13. Bienen. H. The Politics of Participation and Control in Kenya
Priceton University Press 1974 P. 70.
14. Sunday Nationa Interview "Matano on KANU Elections" December 12,
1976 at p. 22.
15. Weekly Review No. 100 January, 10 1977 says that candidates for

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KANU Elections bought the party's membership cards which they later distributed among their supporters.

16. On this aspect Shikuku MP. said,

"I said that this is a political government but the power has been **usurped** by civil servants. The letter on this table is not signed by a politician but is signed by a civil servant."

Kenya Debates 1973 at col. 261 but see generally col 259-col. 262.

17. For reference to party squabbles see Weekly Review No. 100

18. The late John O'Washika MP. E.A.S 3rd July, 1971

Note also that when Martin Shikuku said that 'KANU was dead' cabinet ministers symbolically resorted to the same song.

19. The frontbenchers are mainly Assistant Ministers. Notable among them were Shikuku, Kariuki, Rubia and Keen. Muliro, a member of the Cabinet once associated himself with this group.

20. The Nandi Hills Declaration by J. M. Seroney in substance said that all settler held land in Nandi Hills belonged to the Nandis alone. The Ol Kalou Declaration by J. M. Kariuki called for primaries in the KANU party nominations. Both of these declarations are dated 1969.

21. Nation Assembly Debates vol. XII Part II col. 1853

22. (a) See KANU is Dead uproar, Weekly Review No. 37 October, 20th 1975.

(b) J. M. Shikuku MP for Butere and J. M. Seroney Deputy Speaker and MP for Tinderet.

23. Section 3 of cap. 6 Laws of Kenya.

24. See Personnel Circular No. 5

Ref. No. D/P 16/1/8/4A vol. 4

"Civil servants and KANU"

25. According to Huntington's Characterisation,

"Praetorian Societies are countries with political armies, political universities, political bureaucracies . . ."

- Bienen, H The Politics of Participation and Control in Kenya
op cit. p. 115
26. Leys, C. Underdevelopment in Kenya supra p. 210

CHAPTER IV

1. Chapter 3
2. Martin. R Personal Freedom and the Law in Tanzania
supra P. 52
Martin gives an incident in which seven MPs were expelled from TANU
the ruling and the only party in Tanzania.
3. Anold. G Kenyatta and the Politics of Kenya
J. M. Dent & Sons Ltd, London 1974 P. 161
4. Weekly Review No. 38 October, 27 1975 P. 9 col. 3
5. Ghai & MacAuslan Public law and Political Change in Kenya supra P.512
6. Ibid
7. K.N.A. Handout No. 1414

STATUTES

1. The Constitution of Kenya Act 3 of 1969
2. The National Assembly (Powers and Privileges) Act

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4. Public Order Act, Cap 56 of the Laws of Kenya
5. The Preservation of Public Security Act, Cap 57 of the Laws of Kenya.
6. Penal Code, Cap 63 Laws of Kenya
7. The Societies Act, Cap 108 Laws of Kenya

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