POLITICAL TRANSITION, GOVERNANCE AND HUMAN RIGHTS IN KENYA

A Political Context Study

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Research Project:

Human Rights, Power and Civic Action (RIPOCA): Comparative Analyses of Civic Struggle in Developing Societies

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1. Introduction

Kenya, with a population of 36 million (2006), is composed of approximately forty different ethnic groups made up mainly of the Kikuyu (21 percent), the Luhya (14 percent) and Luo (13 percent). Other smaller ethnic groups include Kamba, Kalenjin, Kisi, Meru, Maasai, Turkana, Mijikenda and Teso, who, together with immigrant settlers such as Indians, Arabs and Europeans, constitute the rest of the population. Since independence, the Kenyan political scene has been a struggle on how to share the ‘national cake’, which unfortunately has been directly proportional to regional political affiliation and support for the government. Regions that have produced most influential national leaders aligned to the government of the day have been rewarded by a larger share of the cake, by getting big projects financed by the government; people from those regions have had better employment opportunities than their counterparts from other regions. This is surely ironic in view of the fact that the so-called ‘national cake’ is a product of the revenue collected from all tax payers and stem from natural resources in the entire country. It is often conceived by the public that opportunities to make concrete an agenda of social justice and ethnic tolerance have been wasted by non-responsive governments composed of self-serving politicians. The argument for change has not quite been adhered to in spite of successive governments riding into power on the high tide of change. In part, this is seen as result of the bankruptcy of economic theories and governance practice of the politics that care not to ameliorate the subjugated conditions of the poor masses.

Resistance to non-responsive government has persisted despite the government’s efforts to suppress initiatives aimed at addressing critical reform areas such as the constitution, land and infrastructure. As part of reform efforts, Kenya restored political pluralism in 1991. This was seen as a paradigm shift from what had largely been a de jure one party state since 1982 and a de facto one-party state since 1969. With the legislation of alternative political parties in 1991, political parties have increasingly shaped the Kenyan political landscape, a landscape that has been anything but transformative. Ethnic clashes, which first broke out in 1991, have emerged as one of the most serious human rights issues in Kenya. Such clashes have always characterized every general election since the 1992 elections with the 2002 elections being a positive exception (Andreassen et al 2008).

Troubled multi-ethnic interaction and exchange arising from years of political repression, poor economic management, poverty and inequality face a myriad of institutional, governance and systematic challenges to the Kenyan nation. These challenges are largely rooted in the personalities entrusted to leadership (Nguzo za Haki 2007). It remains clear that even the distribution of public service appointments has generally been skewed in favor of the regions that provide political support to the government of the day.
The rise of political parties in Kenya can be seen in the wider context of the reaction by Kenyans to colonial rule. Ideally, political parties were at that time formed to revolt against colonial patronage and rule. Right from the introduction of multi-party politics in 1992 through the 1997 general election, the number of political parties in Kenya went up to 27 in 1997 partly because of the pre-election agreement by the Inter-Parties Parliamentary Group (IPPG in 1996). In December 2008, registered political parties were as many as 300, most of which never had representation in parliament. With the introduction of the new Political Parties Act of 2008, which came into force in January 2009, the number of parties that have so far met the requirements of the Act are at around 47 parties.

Accordingly, with the legislation of the Political Parties Act, the role and management of political parties in Kenya seems to be significantly changing owing to requirements the parties have to meet, or if failing to meet them they will be de-registered. An important requirement is that political parties need to have offices in all districts and have a physical address. This follows of the Act, which, provides that political parties shall be funded by the government, and all parties shall be expected to file annual reports.

The methodology used in this study is qualitative and it involves document analysis, collection, collation and analysis of other secondary data. The main sources of information have been:

- Policy papers
- Government of Kenya Statutes
- Commission reports and other publications of NGOs engaged in democratization and civic education
- Organizational journals and magazines
- Discussion papers series
- The Kenyan constitution
- Magazines and newspapers

Commentaries from the newspapers do not include writers’ opinions but critical editorial analyses in view of accuracy of data.

The report addresses Kenya’s political system from the 1990’s, and particularly political transformations experienced, constitutional and legal reforms, nature and transformations in the three arms of the Government, as well as local and regional government, and how governance at these levels has influenced the development of human, civil and political rights in Kenya. The report also addresses the state and nature of political parties in Kenya; links of rights to political development over time; the quagmire of constitution making and power structures and the political crisis that ensued after the disputed 2007 election result. We make a brief on the findings of the commissions of inquiry established after the 2007 elections and subsequent developments, not least the instability and violence caused by existing militia and vigilante groups (in particular the Mungiki’s and local vigilante groups that react to the Mungiki). A serious human rights problem in Kenya and one which has been clearly
deposed and demonstrated after the 2007 election is the culture of impunity for human rights violations. We address that in context of the vigilante groups, and the state’s ways of handling this problem, leading to massive extrajudicial and arbitrary executions. In many local communities, notably in Central province, local vigilante (“self defense”) groups operate in large scale in a response to the failure of state institutions to uphold law and order.

2. Kenya’s Governance Structure

The current governance structure of Kenya is a new set up of compromised interests arrived at with the introduction of the National Accord of 2008, brokered by an international group of “eminent persons” under the leadership of Kofi Annan in early 2008. Among other provisions, the Accord established the position of the Prime Minister and the sharing of power between the President and the Prime Minister. According to the Accord both the President and the Prime Minister should consult each other on the various important decisions such as appointment of senior government officials to the public office and endorsement of Bills. These constitutional initiatives changed the original structure of government where the president was the head of state and government and had all the executive powers.

Kenya has a unicameral National Assembly consisting of 210 members elected to a term of up to five years from single-member constituencies, plus 12 members nominated by political parties according to their proportional support in the elections.

In Kenya, the powers of government are traditionally separated into three main categories namely: the Executive, the Legislature and the Judiciary. The separation of powers makes the judiciary more independent. However, the legislature, which makes the laws, contains members of the executive (President and the Cabinet Ministers) who are responsible for carrying out the laws. This is not unusual since the Ministers who are elected Members of Parliament, are responsible both individually and collectively to the legislature for the administration of their Ministries. Barasa (2007) contends that although Kenya has a liberal democratic system of government with clear features of the presidential model, its political system remains ambiguous. It also reflects some features of the classical Westminster model adopted on the eve of Kenya’s independence in 1963. The section below presents a brief description of the three arms of government.

2.1 Executive

Since the 2008 Accord, the executive power is held by both the President and the Prime Minister. Given that the Kenyan constitution is under review and the Grand Coalition Government is faced with serious legitimacy problems, many issues are still unclear and it is not possible to describe with certainty the form and nature of the Kenya’s executive
power. The President is usually assisted by an appointed Vice-President and a Cabinet. Under the current constitution, the winning candidate at Presidential elections must receive no less than 25% of the votes in at least five of Kenya’s eight Provinces. A critical view of Kenya’s political history and elections reveals that ethnicity and the tribal card are always played by politicians during elections.

Since independence, the Kenyan state has been governed by a very strong Presidency. Both President Jomo Kenyatta, the first president of Kenya and Daniel Arap Moi ruled Kenya in a neo-patrimonial or clientelistic manner. Their reign was characterized by suppression of freedom of speech, limitation of political space, flagrant abuse of human rights, disrespect for rule of law and consolidation of ethnic politics.

The 2002 general elections removed President Moi from power as the elections also coincided with the end of his second term as the president of Kenya after the re-introduction of multi-party politics in 1991. After election victory in 2002, Mwai Kibaki of National Rainbow Coalition (NARC), became the third president of the republic and formed a coalition government that lasted for less than a year before disintegrating into two factions due to a failure to honor a Memorandum of Understanding (MoU) between President Kibaki’s faction and Raila Odinga’s faction (the Liberal Democratic Party, LDP) in the Government. Given that Kibaki was the elected president he had an advantage over Raila. This enabled him to reconstitute a government without support from Odinga’s faction. His new government survived until the 2007 disputed general election results that sparked off violence countrywide. To end unprecedented violence, a national accord was signed between Kibaki and Raila to pave way for the formation of the Grand coalition government with Mwai Kibaki as the President and Raila Odinga as the Prime Minister. The Grand coalition government is a placebo to governance crisis in Kenya. The executive president and the executive prime minister are bound to agree on matters pertaining to policy in order to “hold together”. If the government breaks down, a political crisis would ensue, with high risk of the outbreak of violence and destabilization. Despite the creation of the office of the prime minister, the president is still very powerful. A new constitution-making process, supposed to address the structure of governance, is still not in process (June 2009) in spite of the election promise of Kibaki that a new Constitution should be introduced within six months after the elections.

### 2.2 Legislature

A cornerstone of all consolidated democracies is an independent and effective legislature where all or nearly all of the members of the legislature are directly elected in free, fair, and legitimate elections.

In Kenya, legislative power is vested in the unicameral National Assembly with 224 members (210 elected, 12 nominated MPs, the Attorney-General, and the House Speaker as ex-officio members). They serve a term of 5 years, subject to dissolution of parliament. The maximum term of the National Assembly is five years but can be
extended. The President can dissolve it at any time. The National Assembly may also force its own dissolution by a vote of 2/3 majority vote.

Pursuant to section 30 of the Constitution, the Parliament of Kenya consists of the President and the National Assembly. The National Assembly, pursuant to section 31 of the Constitution, consists of Elected and Nominated Members; who are currently 210 and 12 respectively. In the exercise of the legislative power of the Republic of Kenya, bills are passed by the National Assembly and become law on the President giving his assent, thus becoming Acts of Parliament. Similarly, in its deliberative role and oversight of the Executive, resolutions adopted by the National Assembly are implemented by the Executive, headed by the President. Thus, use of the term Parliament refers to an institution larger than the National Assembly and the President in their separate entities.

The Kenyan legislature has undergone gradual reforms aimed at empowering the legislature to provide oversight function over the government. Such reforms have focused on reviewing the house rules or standing orders, capacity building of parliamentarians in the area of public policy formulation, implementation and evaluation of performances.

Since 1999, subsequent Kenyan parliaments have gradually introduced changes in their legislative practice. The Eighth Parliament took definite practical steps aimed at implementing resolutions and the law to attain an autonomous and independent status. Steps to take definite legal measures began with the introduction and subsequent enactment of the Constitution of Kenya (Amendment) Act on November 11, 1999, which was accented by the President on November 17, 1999 and came into effect on November 19, 1999. This move was followed by the introduction and enactment of the Parliamentary Service Act On November 28, 2000. This concluded the planting of the embryo of the autonomy of Parliament, which had, began on March 20, 1970 when a motion for a resolution by Parliament to give such autonomy was brought to the House for debate by the late Hon. Jean Marie Seroney. The parliamentary business is now guided by the new Standing Orders, which among other things empowers the parliament to determine its own calendar and provides the Prime Minister’s time for making a statement and answering questions.

2.3 Judiciary

Kenya’s justice sector is an important arena in the transition to a more democratic model of governance. An independent judiciary is the principal defense against undue exercise of power by the Executive or a legislature operating outside its legitimate and legal, constitutional mandate. It also ensures an avenue for citizens to protect their rights and property.
The High Court of Kenya

The High Court has unlimited criminal and civil jurisdiction in the first instance and sits as a Court of appeal for subordinate courts in both criminal and civil cases. The High Court is also a Court of admiralty, with jurisdiction in all matters arising on the high seas or in territorial waters, or upon any lake or navigable inland waters in Kenya. This relates to incidents such as boundary disputes between Kenya and any other country with regard to territorial waters, Kenya’s Exclusive Economic Zone with regard to the coastline and any acts of piracy on the high seas.

Resident Magistrates Courts

These courts have countrywide jurisdiction with powers of punishment by imprisonment of up to five years or by fine up to KES500. If presided over by a Chief Magistrate or Senior Resident Magistrate, the Court is empowered to pass any sentence authorized by Law. A Resident Magistrate may pass minimum sentences authorized by law.

District Magistrate Courts

These are Courts of First, Second and Third Class. They have jurisdiction within the Districts and powers of punishment by imprisonment for up to five years or by fines of up to KES500.

Kadhis Courts have jurisdiction within districts, to determine questions of Islamic Law.

The judiciary has over the years been accused of corruption. When the NARC government came into power in 2003, it promised a radical surgery on the judiciary. A comprehensive reform program on the Governance, Justice and Legal Order Sector (the so-called GJLOS reform) was introduced in 1998. In spite the investment of large amount of resources, the reform has not achieved according to expectations, and major donors started to withdraw from funding due to poor performance. The reform process has suffered from among others, poor coordination among the government departments and semi-autonomous agencies. From......

In late 2008 the judiciary was accused of widespread corruption and the failure to administer justice and embrace the principle of equality of the law in the country. Prime Minister Raila Odinga reiterated his position that the judges would have to sign performance contracts for the institution to be efficient. "The government's aim is not to interfere with the independence of the judiciary but to ensure impartial, accountable justice to all citizens," Odinga said when he opened the ninth International Conference of National Human Rights Institutions (NHRIs) in Nairobi.
The judiciary has lost credibility due to the delays and ineffectiveness in carrying out trials over the years. Prime Minister Odinga has publicly supported the national human rights institutions in Kenya for keeping their attention focused and fighting to hold to account the perpetrators of human rights abuses in the country despite the adverse conditions they face such as personal threats or intolerable pressures from the system. For effective functioning of the judiciary, there is need for clear-cut independence, from the executive. Calls for radical judicial reforms have been heightened by both local actors and international actors. The extra-judicial killings by the police force and the failure of the Attorney General’s office to act on the impunity are examples of two critical issues that have rocked both the judiciary and the Attorney General’s Office with Alston’s report calling for the resignation of the Commander of Police, Chief Justice and the Attorney General.

2.4 Local and Regional Government

Local government in Kenya is complex and can be described in three separate but overlapping systems. These are the provincial administration, the local authorities and the constituencies.

2.4.1 Provincial Administration

The Provincial Administration (PA) existed prior to independence. The main functions of PAs were control, coordination and mobilization of the public for development. The Provincial Administrators have acted in an executive capacity as agents of the governor or the president. The provincial administration has been and continues to be a dominant institution that provides essential services to both rural and urban inhabitants in Kenya. Getzel (1970) observed that the PA was considerably expanded during the colonial period to help crackdown the Nationalist African rebellion. Kuria (1973) and Hyden (1970) observed that there was expansion in the post-independence period to help contain the growing political opposition to the First (1963-1978) and Second Republic (1979-2002). The PAs involvement in law and order functions both during the colonial and post-independence periods badly tainted its image (Tostensen, 1987). Due to this bad image, abuses of human rights by some staff and the absence of such administrations in devolved systems of government that led the Constitution of Kenya Review Commission (CKRC) Bomas Draft and Wako Draft recommended and endorsed the scrapping of the provincial administration. The current Grand Coalition Government continue to use and sustain the PA system.

The structure of the PA is directly proportionate to the size and number of administrative areas that range from villages, sub-locations, locations, divisions, districts, provinces to the headquarters in the Office of the President and parallels that of other government ministries (Chitere, 2005). Currently there are 8 provinces in Kenya each headed by a Provincial Commissioner (PC); 209 districts each headed by a District Commissioner (DC); and several divisions each headed by a Divisional Officer (DO).
locations each headed by a Chief, sub-locations each headed by a Sub-chief and villages each headed by a Village Headman.

The DCs, chiefs and village headmen and women command a lot of influence and sit in most of the public committees within their territories. For instance, they sit in local education and local development committees. This privilege enables them to influence decisions at the local level without many difficulties.

Apparently, the first decentralization efforts that were initiated during the Second Republic in the name of the District Focus for Rural Development (DFRD) and subsequent renewed efforts, have established a strong institutional base at the district level and weak regional and lower levels. Each district has a District Commissioner (DC) as head of the district. It has a coordinator of all technical ministries and development activities at this level, a planning section headed by the District Development Officer (DDO), personnel and accounts sections within the PA, the district treasury and a tendering system. The same arrangement with minimum modifications exists at the provincial and lower levels. It is unfortunate that the PA is the core of this institutional base and yet with the exception of chiefs whose positions are established by the Chief’s Act, the rest of the PA is neither provided for by the Constitution nor established by an Act of Parliament. Its operations parallel or duplicate those of local authorities and the police.

Decentralization initiatives at the district level are beginning to show positive change in the districts and in local communities. These efforts include the poverty alleviation Fund established in 2000/1, and the Roads Maintenance Fuel Levy Fund established in 2000/1. However, main challenges constraining realization of more benefits include weak accountability systems, inadequate funds and political interference especially, from the local members of parliament.

2.4.2 Constituencies

There are 210 constituencies in Kenya and each represented in the National Assembly by a local member of Parliament. In Kenya constituencies are also units of development hence some of the ongoing decentralization efforts have targeted constituencies as units of decentralization.

The Government now sends funds directly to the constituencies for development and service delivery purposes. Examples of these funds are the Constituency Development Fund (CDF) established in 2003/4; Constituency HIV/AIDS Fund established in 2001/2, and the Constituency Schools Bursary Fund established in 2003 (Mapesa and Kibua, 2006). Management committees were also established to manage the funds both at the national and local levels. The management committees at both levels are usually well constituted as committee members are drawn from both the government and civil society including the local communities and local church communities.
The funds have made positive impact in the sense that some communities have witnessed delivery of services, which used to be beyond their reach, for instance for children from poor families getting financial support to continue with their studies (Oyugi, Riechi and Anupi, 2008), communities getting clean water, or community members infected and affected by HIV/AIDS getting support.

The main challenges the funds are facing include inadequate accountability mechanisms. There is also reportedly funds wastage, inadequate funds for the many needs at local level, limited participation of other stakeholders (businesspersons and women, religious communities, Community Based Organizations (CBOs), NGOs) and too much political interference especially by the local Members of Parliament, the chiefs and councilors. Although MPs should be involved in the CDF handling, there is a perception that they are too dominant and exercise too much interference in the governance of the funds. The Member of Parliament commands large powers at the constituency level. His or her influence is felt in all sectors of the local economy and social sector.

2.4.3 Local Authorities

The local government in Kenya is governed by the Local Government Act CAP 265 of the Laws of Kenya. The Act creates three categories of local authorities: the municipal councils; the county councils; and the town councils. Members to the councils are elected during the general election and a few are nominated after the election. There are currently 175 Local Authorities (LAs) in Kenya including Nairobi City Council. Recent reforms have seen the creation of the Metropolitan Ministry in charge of Nairobi city.

County councils are local authorities that cover the rural countryside and they reside within the district administrative boundaries. Their main functions are to provide regulatory services, planning business and provision of services such as rural access roads, rural markets, and co-ordination of development through representation in the various district organs. The county councils also provide support to the needy especially through education bursary scheme. The most important service provided by the county councils is opening up and maintaining local access roads, which, form about three quarters of roads in the county.

Town councils are small local authorities with less physical structures and low populations. Town councils can be elevated to the status of municipals councils if their physical structures are improved and the population size increased. Town councils have less urban coverage, inferior infrastructure; and less civil and administrative facilities.

Municipal councils are urban local authorities that are bigger than the town council. Most municipal councils in Kenya have better infrastructure compared to town councils. Most municipals councils have evolved as townships and started as urban centers during the colonial period serving as administrative and commercial centers.
The Local Government Act provides immense powers to the Minister for Local Government to the extent that he has to approve virtually all matters resolved by local authorities.

Local authorities in Kenya have a distinct structure provided for under the Local Government Act merging civil and administrative functions. The civil function is vested in the elected and nominated councilors. The law provides that those nominated as councilors do not exceed one third of the total. Municipal councils are headed by mayors while county and Town councils are headed by council Chairmen.

Administrative function is performed by qualified technocrats under the leadership of the town clerk in municipals and town councils and county clerks in county councils. Their mandates are provided for under the Local Government Act.

Other key officials working in the local authorities include the treasurers, engineers, public health officers among others. The number of departments in local authorities varies according to the size of the local authority. All local authorities have at least the Clerk’s Department, Treasury department, work department, and environmental department. In small local authorities social services departments are merged with the Clerk’s department.

The Local Authorities work through committees consisting members of the councils. Committees deliberate issues affecting the councils in search of solutions. The procedures for conducting debates in the councils are provided for in the Act to ensure consistency and uniformity among all councils. Resolutions made in the committees are tabled before a full council meeting which is the highest organ in the council under the Chairmanship of the Mayor or Council Chairman. The resolutions once adopted at the full council meeting become a policy at the Local Authority level. However, the policies have to be approved by the Minister for Local Government. The clerks play very vital roles in the councils, including convening meetings and coordinating councils meetings and implementation of the policy.

*By-Laws*

The supervisory and regulatory role of the council is performed through the application of by-laws. The by-laws are rules and provisions enacted by local authorities to govern the activities of the residents. They are mainly prohibitions of acts or omissions that may injure order and smooth running of socio-economic activities, health, environment and conduct of business.

*Local government reform?*
Reforms in local government is underway namely, decentralization that is, the redistribution of decision-making responsibility between the centre and lower tiers of government. In general, it involves redistribution of decision making power and authority between the headquarters of the national government (the central government) and the field units such as districts, provinces, regions or local councils. Popular participation in decision making is an important aspect of decentralization. The case of CDF program involves redistribution of decision making responsibilities for project planning and implementation from the central government ministries and departments to the constituencies.

Decentralization can take two broad models: de-concentration and devolution. De-concentration involves redistribution of power from the center to the subordinate levels within the same organization. It is affected through internal and administrative procedures and does not involve legislation. It can therefore be reversed without the need to change or breach the law. The CDF program has been established through an Act of Parliament; through legislation and does not therefore fit perfectly in the category of de-concentration.

Devolution on the other hand involves redistribution of decision making power and authority through legislation (an act of parliament or the constitution) and characteristically involves the creation of political decision making units, mostly elected councils. The CDF program partially fits in the devolution model in the sense that it has been established through legislation and the MP who is responsible for the program in the constituency is an elected official. However, the CDF program does not fit in the devolution model well because the CDF program is not managed through an elected council such as in the case of local authorities.

Kenya’s Constituency Development Fund (CDF) is one of the ingenious innovations of the National Rainbow Coalition (NARC) Government of Kenya. Unlike other development funds that filter from the central government through larger and more layers of administrative organs and bureaucracies, funds under this program go directly to local levels and thus provide people at the grassroots the opportunity to make expenditure decisions that maximize their welfare consistent with the theoretical predictions of decentralization theory (Kimenyi, 2005). Increasingly, however, as reported above, concerns about the utilization of funds under this program are emerging. Most of the concerns revolve around issues of a locative efficiency.

The CDF program has not achieved its full potential over the years because of fiscal illusion and reduced local fiscal effort. Members of Parliament too use this facility to fight off their political rivals at the constituency level, and at times acting as though it was their own program offered to the local community.

The CDF program was created in Kenya in 2003 through an Act of Parliament called “The Constituencies Development Fund Act, 2003”. The initial amount of money paid
into the fund was 2.5 per cent of all the Government ordinary revenue collected in every financial year and any moneys accruing to or received by the national committee from any other sources. This money has been growing and currently it stands at 12 per cent of the Government revenue. The fund was intended to fight poverty at the grassroots level through the implementation of community-based projects which have long term effects of improving the peoples’ economic well being in addition, to relieving members of parliament from the heavy demands of fund-raising for projects which ought to be financed through the Consolidated Fund (The Constituency Development Fund Act, 2003). The legal provision of the establishment and operation of the Act suggests that the fund is essentially a model for decentralization of development planning and implementation. In this case, the organization and operation of the fund lies squarely within the domain of administrative decentralization.

Decentralization as a means for fostering development has been a focus of intense academic, policy and even popular debate in Africa in general and Kenya in particular. On the policy front, the government has formulated a series of decentralization programs, although their implementation has in all cases fallen far short of expectation. The most notable of the decentralization programs that have been attempted in the past include the majimbo system (entrenched in the Independence Constitution of 1963), District Development Grant Program (1966), the Special Rural Development Program (1969/70), the Rural Development Fund, District Development Planning (1971), and the District Focus for Rural Development (1983/84). The CDF is arguably the new kid on the block in terms of attempts to decentralize decision-making. The primary argument for decentralization is that it enhances the process and speed of development through the “provision of social and economic services, “although this meaning of development has been found to be weak because it creates a society that heavily depends on the direct provisions from its Government. Development must therefore mean enhancing the capacity of the society to cope with challenges and meet its needs. The contribution of the CDF program must therefore be assessed against the background of the latter meaning of development.

This discussion of the institutional arrangement of the CDF program can appropriately commence with the relationship between the program and the central government. The initial 2.5 per cent has gradually been raised to 12 per cent. The financial relationship between the central government and the CDF program is quite appropriate in the sense that the exact size of the grant to be remitted to the CDF is predetermined in law. The central government may not therefore renege on its obligation as happened in previous decentralization programs that were not rooted in the law.

The NMC is composed of representatives of relevant central government ministries at the level of Permanent Secretary (Finance, agriculture, health, roads, housing and public works), technically competent officers appointed by the Minister of Finance, representatives from civil society, mostly religious organizations, and the manager of the fund. The function of the NMC is to disburse the funds and oversee their efficient
utilization, by receiving and checking reports and returns from the constituencies. The NMC is dominated by the central government officials and thus undermines the essence of decentralization especially, the hallowed element of popular participation. In addition, the importance of religious organizations as the core of civil society participation in the NMC overemphasizes the representative character of the three religious organizations mentioned in the Act namely; the Catholic Church, the Supreme Council of the Kenya Muslims (SUPKEM) and the National Council of Churches of Kenya (N.C.C.K). (The Constituencies Development Fund Act, 2003)

In 1999/2000, the Government of Kenya established the Local Authority Transfer Fund (LATF) to enable local authorities improve local service delivery, improve financial management accountability systems and reduce local authority’s outstanding dates. Consequently, the Government also established Local Authorities Service Delivery Action Plan (LASDAP). Evaluation of LATF has shown that LAs are struggling to meet LATF objectives and that the expected results have not been achieved yet (Republic of Kenya 2008 (1)). The LASDAP is the only official framework available for local communities to interact with the LAs. The LASDAP is a three-year rolling programme of activities/projects that sets out a local authority’s priorities for improving provision of local facilities and services (Oyugi and Kibua, 2006). This framework is meant to provide different kinds of information to the local communities to enable them participate effectively in the decision making process at the LAs level.

However, recent studies and evaluations have shown that there is very little information availed to the communities hence constraining their participation in decision-making process (National Taxpayers Association, 2009). In addition, the councilors dominate the decision making process hence limiting the participation of the communities (Republic of Kenya, 2009 (1)). The public image of the LAs has therefore been negative. The councilors are perceived to be corrupt, ineffective, unqualified and opportunistic, enriching themselves at the expense of the communities they purport to serve.

The services provided by the LAs include creation and maintenance of roads, municipal markets, garbage collection among others. A quick tour around most of the LAs in the country will show that service delivered by the LAs is poor, uncoordinated, and inadequate. Most Kenyan towns have littered streets, open sewers, and poor roads.

The main challenges constraining the performance of LAs in Kenya include Lack of technical capacity to implement reforms, including adequate financial and administrative skills; lack of adequate systems in place to implement reforms, or more specifically administrative systems, accountability systems and information systems. There is also a lack of political will to implement reforms. Both councilors and local politicians are reluctant to implement reforms in LAs because they believe this will minimize opportunities for private benefits. There is also weak community participation in the reform process and project implementation due to the councilors intentionally locking out community participation. Large sections of local communities are also not
sufficiently aware of the reforms being undertaken in the Las. There is a lack of monitoring and evaluation framework in the Ministry of Local Government as the Ministry has not developed a monitoring and evaluation framework for Las. Finally, there is frequent political interference when local members of parliament greatly influence decisions about project priorities.

2.5 Which system will the reforms adopt?

The system most likely to be dropped when the constitutional reforms are finally accepted and the new constitutions endorsed is the provincial administration. It is still not clear whether both the district and the constituency will be accepted as units of devolution of power in Kenya. Retaining the two units will still complicate governance and development at the local level. The district as a unit of devolution has the following advantages:

- it is close to the people,
- has an established working system
- and has a direct relationship with central government.

Most of the districts however, are inhabited by people from one ethnic group and have parallel departments representing most ministries. This implies that more personnel are also required at the district level.

The constituency on the other hand is organized in a very simple way and does not have many personnel working in different departments representing ministries at central level. The management committees established to manage the funds are also not composed of many members. One most unfortunate reality is that constituencies are heavily controlled by the area MPs and the community to large extent “fears” the area MP. The fear, which usually ends during the election period, arises from the perception that the MP may decline to assist his constituents when they are faced with serious problems such as death of a relative, or lack of school fees for the children.

Majority of the LAs have not quite clearly understood the current form of decentralization being implemented in the country. They are faced with challenges such as inadequate capacity to implement reforms; transparency and accountability issues; and political interference by local members of parliament. It would be good to identify LAs that have demonstrated commitment to reforms and have a record of accomplishment of success story. These LAs could qualify for donor support especially in the areas of community’s participation in decision-making process, sharing of information relating to projects, financial management system and monitoring and evaluation.

3. Regional Integration and Corporation
Kenya is a member of the East African Community, which is an intergovernmental organization that comprises of the five East African countries namely; Kenya, Tanzania, Uganda, Rwanda and Burundi. The respective governments have worked and still collaborate to fast track the integration process to establish an East African Federation. The EAC was originally founded in 1967, but collapsed in 1977 and it constitutes the East African Customs Union, the East African Court of Justice, East African Legislative Assembly, just to mention a few. Kenya is also a member of wider regional arrangements such as Common Market for Eastern and Southern Africa (COMESA) and Inter-Governmental Authority on Development (IGAD). The first major step in establishing the East African Federation was the customs union in East Africa signed in 2004, which commenced on 1 January 2005. Under the terms of the treaty, Kenya, the region's largest exporter, will continue to pay duties on its goods entering the other four countries until 2010, based on a declining scale. The Treaty re-establishing the East African Community (EAC) was signed in November 1999.

3.1 The East African Court of Justice

This is the judicial arm of the Community. The court has original jurisdiction over the interpretation and application of the 1999 Treaty that re-established the EAC and in the future may have other original, appellate, human rights or other jurisdiction upon conclusion of a protocol to realise such extended jurisdiction. It is temporarily based in Arusha, Tanzania. This court has heard important cases and made rulings that have seen the member countries respect the rulings. Such rulings include the ruling on proposed Kenya’s legislators to the East African legislative Assembly where the court ruled that Kenya must re-submit new names of her representatives to the Assembly because the selection procedure was not followed.

3.2 The East Africa Legislative Assembly (EALA)

The (EALA) is the legislative arm of the Community. The EALA has 27 members who are all elected by the National Assemblies of the member states of the Community. The EALA has oversight functions on all matters that fall within the Community’s work and its functions include debating and approving the budget of the Community, discussing all matters pertaining to the Community and making recommendations to the Council as it may deem necessary for the implementation of the Treaty, liaising with National Assemblies on matters pertaining to the Community and establishing committees for such purposes as it deems necessary.
4. Political transition from the early 1990’s

4.1 Regime and election analysis 1990-2007

The Republic of Kenya has been dominated by a strong executive presidency since the country’s independence. Prior to 1992, the general elections in Kenya were dominated by KANU the only existing political party with the leadership of former President, Daniel Arap Moi. The 1992 general election were the first competitive multiparty democratic elections in Kenya that saw Moi emerge a winner. Allegations of rigging did not stop him for ruling the country for the next five years. The 1997 general election were not different either. Moi still emerged a winner despite allegations of rigging. Moi once more beat all the opposition candidates who were represented by different ethnicised political parties. Finally, there was change in 2002 general election, which saw opposition parties come together under a new party called National Rainbow Coalition (NARC) to support one presidential candidate. Mwai Kibaki of formally Democratic Party of Kenya (DP) was proposed and accepted as the presidential flag bearer for NARC. He was overwhelmingly elected as the president in the 2002 general election (the main competing candidate was Uhuru Kenyatta, then a member of KANU). The manner in which elections were conducted and the results of the election demonstrated that Kenyans wanted a different leadership in place to spearhead the much-needed reforms. Similarly, observers concluded that the elections broadly reflected the popular will and were free and fair. However, the 2007 general elections were unique hence; they merit a more in-depth discussion.

4.1.1 The 2007 Elections and the Disputed Presidential Results

Kenya had since Independence been regarded one of the most stable and relatively prospering countries in Africa until late 2007. It was in that former regard that Kenya effectively functioned as East and Central Africa is financial and communications hub, as well as the headquarters of many non-governmental organizations. This good and progressive image had a shadow of violence and election malpractice cast over it in late 2007 through February 2008.

In the run-up to the elections, two main coalitions dominated the scene: the Party of National Unity (PNU) of incumbent President Kibaki and the Orange Democratic Movement (ODM) of his main contender, Raila Odinga. The alliances were largely formed on ethnic lines, with the opposition accusing the government of privileging the dominant Kikuyu population over other ethnic groups.

In view of the Kriegler report, during the electoral period, parties consistently lacked respect for laws or regulations and the Electoral Code of Conduct was blatantly violated. The commission learned that the few politicians who were fined for breaches under the code in the run-up to the 2007 general elections refused to pay the fines. This goes a long way to demonstrate that that the ECK as an electoral body, lacked prosecutorial
powers, or even power to impel defaulters to pay or face prosecution. That is why the Kriegler report recommended the establishment of a new electoral body, independent and with more powers. This could give it more power and authority, and beyond state manipulation.

Following the disputed polls, the KNCHR, NORDEM report (Andreassen et al, 2008) and IPAR studies, the Kriegler report and other studies indicated that the ECK by way of its operations and composition (owing to manner of appointing commissioners), conduced for the irregularities that took place, Kriegler Report. Thus, various recommendations have been put forth so as to curtail a recurrence of the December 2007 (and subsequent) crisis. Andreassen et al (2008) observe that the lack of ECK independence became much of a controversy in the crisis that ensued in the aftermath of the 2007 election.

Both the Party of National Unity and the ODM attracted huge support across the country. In the end, the Electoral Commission of Kenya released the results of only 207 constituencies (following nullification of the results in 3 constituencies), indicating that the president had won with about 200,000 votes ahead of the ODM presidential candidate, Raila Odinga, and this was largely contested by the ODM party, which claimed to have consummately carried out its parallel vote counting from the eight provinces and was convinced of a commanding lead in votes. ODM contested the results forthwith.

The year 2007 came across as politically charged in respect to the light of preparations for the presidential and parliamentary elections of 27 December. There was a record voter turnout of 70%, with credible outcomes of the parliamentary elections. However, the Electoral Commission’s tallying of the presidential election votes was severely flawed (according to the IREC/Kriegler report), which sparked political violence in Kenya.

While the main national media (notably the Daily Nation, Standard, the KTV and E24) reported balanced and in fact made strong appeals to leaders and the public to restore peace and stop violence, many media took sides, perceivably to serve ethnic interests in the campaigns. Camouflages of such ethnic interests abet serious frustrations and spread hate propaganda and became a war-mongering tool. Accordingly, some of Kenya’s local (and ethnicized) media stations remained culpable for stoking negative ethnic emotions throughout this period.

It is still important that credible and formidable solutions be found to avert a repetition of similar scenes in Kenya’s future elections. As part of the crisis resolution and the Accord referred to above, suggestion to deal with matters of transitional justice, and the need for a justice, truth, and reconciliation organ, was part of the formal agreement, remains still necessary and urgent yet not implemented by June 2009. Nevertheless, call to establish such an organ; including a local Kenyan tribunal to deal with the perpetrators of the post-election violence is a repeatedly voiced in the public. In June
2009, Kofi Annan stated that the tribunal was an imminent part of the post-election pact and urgently needs to be implemented; if the Kenyan government fails to set up a local tribunal, he would refer the case to the International Criminal Court (ICC) in The Hague.

4.2 Post-election violence after the 2007 election

The disputed presidential results saw the country swiftly sink into vicious acts of violence and ethnic cleansing countrywide. Journalists, news reporters and observers were quick to brand the violence that followed the contested presidential results as tribal. It may have taken that dimension because some villages and hamlets were marred with ethnic cleansing; brutal executions along tribal inclinations. This was witnessed in Rift Valley province, Nyanza province, and Western province and slum settlements within Nairobi province. Even though it is terrifically awful to postulate that the violence was aimed at individuals of the 'unwanted' tribe(s), it is clear that the violence was not instigated by tribal jingoism.

Ethnicity has been an undercurrent of Kenyan politics back to independence. In spite of rhetoric to the opposite, Kenyans have – in additional to a sense of nationalism and allegiance to the Kenyan nation - identified themselves by ethnic groupings. In spite of extensive inter-tribal exchange, economic relations have often taken the form of the economy of affection (Hyden,), and political office has been a means of securing resources to one’s own tribe and community. At the same time, leading rights groups in the ranks of Human Rights Watch, Amnesty International, Kenya Human Rights Commission, and Kenya National Commission on Human Rights have reported a large extent of state-sponsored nature of the post-election violence, particularly after 1992; as well as the negligence of the state to act in time on the intelligence data provided by NSIS. According to many reports, much of the violence, which erupted after the 2007 polls, was politically instigated using tribe and ethnicity as a rallying avenue in local communities.

According to Afro barometer (PDF), independent public opinion in sub-Saharan Africa depicts that in 2005 66% of Kenyans feared that strong competition between major political parties “often” or “always” leads to violent conflict. The 2003 Afro barometer survey revealed that 70% of Kenyans would choose to be “Kenyan” if faced with a hard choice between national identity and ethnic grouping/inclination while 28% refused to identify themselves as anything but Kenyan.

Numerous reports in respect to the post-election violence by commissions such as KNCHR and CIPEV as well as media reports contain evidence of the torture and atrocities committed by the police force in the aftermath of the 2007 elections. The violence is deemed to have been two-fold. While some was spontaneous, other was planned in due course. The Police’s implication and execution of post election violence as well as incapacity to contain and stop it implied a grave violation of Kenya’s obligations under
the International Covenant on Civil and Political Rights as well as the African Charter on Human and People’s Rights.

The violence that erupted after the December elections was largely a consequence of the mismanaged and biased tallying process. The PEV reports identified state failures in the immediate context of the violence and recommend measures to prevent future failures; identify the underlying causes of the violence and recommend measures to address them; and recommend accountability measures to effectively redress these violations and to deter future violations. The report faulted the state in its obligation to protect citizens, the church and faith based organization in taking sides and the media for fueling violence and hatred (KNCHR’s report on the PEV, 2008).

5. Political Parties

At independence Kenya was a multi-party political state before the constitutional amendment of 1982 that introduced one party state during the Kenyatta administration. In 1991, this amendment was repealed to pave way for the re-introduction of a multi party state. After the enactment of Political Parties Act 2008, there are currently about 30 registered political parties.

In Kenya, political parties have shown little progress in developing authentic distinct party ideologies or policy development. Party manifestos have few fundamental differences, and perpetual internal wrangles and jostling for leadership positions mar parties due to personal/self aggrandizement. In fact, in 1998, the Institute of Education for Democracy postulated that it is difficult for voters to distinguish what the different parties stand for, far from the aspiration to form a government (IED, 1998). According to the IED Election Report (2002) parties are often endowed with financial muscle and individuals with economic might do not hesitate to buy voters. This discredits development of sound policies or credible manifestos on which individuals and parties can mobilize.

A number of political parties are formed along ethnic orientations/leanings or regional structuring. The Political Parties Act 2008 is bound to foster transparency and accountability in the management of political parties, and create constructive policy commitments given that all registered parties need to have a national outlook and image as one of the requirements for funding besides filing annual returns with the registrar of societies. The funding shall be from the exchequer. However, not all political parties are represented in the present (10th) parliament. Upon the enactment of the Political Parties Act of 2008, parties will be funded mainly based on their representation in Parliament. The current 10th Parliament is composed of the following political parties:

<table>
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<th>The Grand Coalition parties</th>
<th>Abbreviations</th>
<th>Names</th>
<th>Seats</th>
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<tr>
<td>ODM</td>
<td>Orange Democratic Movement</td>
<td>99</td>
<td></td>
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All the parties constitute the Grand Coalition government, but there are two principal partners in the Grand coalition: The ODM and the PNU each composed of a host of small parties. While ODM consists of 16 parties as reported in the table.

ODM’s constituent parties are few but popular in six out of eight provinces, and includes Western, Nyanza, Rift Valley, Nairobi, North Eastern, Coast. PNU’ stronghold regions are Central, Eastern, and parts of Nairobi.

Investing in the development of identity and ideology for political parties, together with depersonalization through the increase of internal party democracy, remains critically
important in order to de-ethnicize politics. Many unstable political parties and coalitions emerged and dissolved in 2007, including the ruling party under the National Rainbow Coalition (NARC). Some of the parties and coalitions earned a reputation for pragmatism but most were vehicles for personal interests, entrenching a trend of ethnicization and regionalization in Kenyan politics (IED 1998).

The Centre for Multiparty Democracy in Kenya (CMD-Kenya) played a pivotal role to facilitate the debate between the political parties and to include civil society organizations in the process. A strong multi-party democracy requires functional political parties. Political parties form part of the instruments at play in a democratic society. The CMD-K played a pivotal role in the debate on reforms such as the assent of the Political Parties Act. Such reforms shall go a long way to create more collective interests within parties because political parties have always been used to perpetuate political interests at the expense of substantive national interest and political justice. It will be proper that the Political Parties Act practically works to limit the number of political parties to either two or three, to ensure effective and adequate funding of parties (Barasa, 2006).

6. Civil society

One hallmark of a democratic society is the freedom of individuals to associate, express their views publicly, and openly debate public policy. Civil society organizations (CSOs) feature prominently in Kenya’s Democracy and Governance programs since they have effectively provided a voice for Kenyans in public policy formulation. Organizations including human rights groups, professional associations, religious institutions, pro-democracy and peace building groups, business associations, media organizations, and think tanks continue to play a vital role in educating the public and the government on important national issues.

The civil society in Kenya can be characterized as vibrant, highly professional, and highly fragmented and donor-dependent, during the early nineties in the transition period from one to several parties from 1991, the civil society became very active, and demanded political rights and multi-party democracy. Since then, the civil society in Kenya has remained vibrant and relevant to democratic processes in Kenya. This does not mean that the civil society has not experienced internal challenges that have negatively influenced its progress. The civil society in Kenya is highly professional consisting of academia, lawyers, economists, political scientists, policy scientists, education experts, sociologists, among others. This pool of professionals has the ability to engage the state actors in an informed manner and in so doing, the civil society is able to influence change in government policy and to less extent the behavior of the political elite. There are also trade unions and farmers who focus on issues that affect their members directly, in most cases these are bread and butter issues for trade unions and subsidies advocated for by farmers unions.
Despite being highly professional, the civil society in Kenya is fragmented. This fragmentation is a result of diverse and dynamic nature of the Kenyan society. The number of NGO’s, CBOs and FBOs operating in Kenya is unknown. Organizations that are known at the national and international levels are quite visible and operate mainly in urban areas such as Nairobi, Mombasa, Kisumu, Nakuru and Eldoret. These include organizations whose agenda are human rights, governance and democratization, natural resources and environment, gender and rights of women, child rights, transparency and accountability, poverty and socio-economic growth, HIV/AIDS, among others.

Funds for projects and programs undertaken by the civil society organizations come from donor communities. Donor dependency is quite significant to the extent that lack of it or less support for the civil society will cripple the civil society activities and render it invisible and insignificant in governance and democratization process in Kenya. Local financial support for the civil society is minimal, unrealizable and it mainly comes through consultancies undertaken by individual organizations.

The main challenges affecting civil society in Kenya include poor leadership in many organizations, weak organizational structure, lack of specific analytical skills in certain areas such budget analysis and policy drafting, inadequate agenda and weak focus and inadequate funding. During the last six years, a number of organizations have experienced internal conflicts arising from poor leadership of the organization. Many organizations do not separate the functions of the board and the management. The management does not operate freely without fear of the board’s influence. A clear structure showing the role of the board and that of management is lacking in many organizations. This results in conflict between the board and management and high turnover or personnel in many organizations. Civil society input into national budgeting process is quite insignificant due to the lack of budget analytical skills by many civil society organizations (Barasa, 2007 and Barasa and Inonda Mwanje, 2008). Alternative policy drafts that can be used to sustain debate between the state actors and non-state actors are insufficient as the many civil society organizations lack skills in drafting. Isolated specific contributions to policy formulation process are often ignored by the legislators for lack of clear focus and comprehensiveness. The funding problem has been quite evident between 2002 and 2008, as most donors have drastically reduced funding to the civil society organizations. This has led much organization to having minimal positive impact on governance and democratization process in Kenya. Within this period grand corruption has escalated, the state has become less responsive to its citizens and it has lost its legitimacy. The trend is a current issue of concern for both the state and non-state actors and it requires immediate workable intervention.

7. Politicization of resource distribution and corruption

Corruption clearly threatens and violates the rule of law, democracy, human rights, undermines governance, and fairness and social justice. It distorts fair competition,
hampers economic growth and endangers institutions and the moral foundation of a society (KNCHR 2006).

Investigations into two main grand corruption cases, the Anglo Leasing and Goldenberg preoccupied the country for so long a time, yet the findings left much to be desired. The recommendations remain wanting, and the culprits have not phased legal charges. After the 2002 elections, most Kenyans were enthusiastic that the new government would bring the main culprits to book. The Goldenberg fraud took place in the early 1990’s, under the Moi regime that reigned for over two decades. The Anglo Leasing scandal took place early in the period of the government formed by NARC. In 2009, in the phase of massive food shortage, there are maize and oil scandals that plague the Grand Coalition Government. Over the last year, corruption among government officials seems to have reached an all time high.

After every election, the war against corruption gets complicated by the transition process. For instance, after the National Alliance Rainbow Coalition victory brought into power a government made up of political parties with diverse interests, political agenda and vision. Soon after almost a year in power, it became apparent how diverse the political interests of the coalition partners were. There were those who stood on the way of fighting corruption; those who had corruption cases pending against them, or were being investigated for economic crimes.

8. Constitutional and Legal Reforms

When the infamous section 2(A) of the Constitution of Kenya was repealed in December 1991, the Parliament elected in 1992 was largely expected to revise the constitution and amend the laws to give room to the new trend of multiparty politics, constitutional reforms and participatory democracy in Kenya. There is overwhelming consensus within and without Kenya that there is need for novel constitutional reform and dispensation. The agitation for a new constitutional order in Kenya dates back to 1991. Yet all that has been happening has been piece-meal incremental reform. The major reforms yearned for have never been seen kindly by the influential political class with government for years on end. At present, Kenya is governed by a coalition government. How to conduct constitutional reforms in the prevailing political setting stays unclear, though all parties have demonstrated their desire to foster a new constitutional order in which power shall be devolved.

Kenya held its first ever referendum in November 2005 on whether or not to accept a new Constitution.. Muyeshi(2008) indicates that the process of negotiating the Draft constitution was marred with mistrust in the political class, with some politicians arguing that the proposed new constitution would be a consummate preservation of the status quo, which Kenyans were seeking to change. Earlier attempts to resolve the contentious matters in Naivasha retreat through the chair of Bishop Sulumeti floundered. The draft constitution adopted at the Bomas Conference was modified and
presented at the referendum as the proposed new constitution. This was labeled the "Wako Draft."

In the run up to the referendum, aggressive campaigns were conducted by the two principle sides; one for and the other against the proposed new constitution. The referendum campaign promulgated deep-seated political and ethnic divisions as politicians took sides on the constitutional debate that the Electoral Commission was not able to deal with.

After a long-lasting public debate, the government-supported draft constitution was rejected with a 57-43 majority "no" vote in the historical November 21 referendum. Research by independent observer groups indicated that the majority of voters were oblivious of the proposed constitution’s content owing largely to the tribal voting lines that leaders propagated and partly to a failed civic education program. The president never actively involved himself in the referendum process and instead insisted on letting Kenyans make an independent decision free from political influence. The defeat however created a political vacuum, as Kibaki responded to calls from the Orange Democratic Movement (supporters of the "no" vote) for his resignation, and dissolving his cabinet. The president reconstituted his cabinet in a televised broadcast on 7 December. His new line up excluded members who had opposed the constitution in the referendum but retained some allies from the official opposition party KANU and loyalists.

9. Economic and Social Development

The economic and structural reforms implemented by the Government since 2003 saw Kenya’s economy experience a recovery over the period 2003-2007, and real Gross Domestic Product (GDP) grow steadily from 2.9 per cent in 2003 to 7.0 per cent in 2007. On average real GDP expanded by 5.3 per cent over the period 2003-2007 (Republic of Kenya, 2008). This growth was evident in all sectors of the economy. Agriculture grew by 3.6 per cent over the period 2003-2007. This was a result of Government’s initiative to revitalize production in coffee, dairy and livestock sectors. Prices of commodities were also favorable leading to improved income and greater incentives for farmers to expand production. Industrial output also grew by 5.3 per cent over the period 2003-2007 due to strengthened domestic and external demand (Ibid). Domestic demand was strengthened by rising incomes and strong domestic credit expansion, while external demand was due to growth in regional trading partners within East African Community (EAC) and Common Market for Eastern and Southern Africa (COMESA). The service sector grew by 5.3 per cent over the period 2003-2007 and rose to 5.9 per cent in 2007 (Ibid). This was due to growth in tourism sector, which recorded an increased rate of arrivals, improved transport communication infrastructure.

Overall, economic expansion was supported by stable macroeconomic conditions with the underlying rate of inflation at 5.0 per cent and overall rate at 11.1 per cent over the
The overall budget deficit on fiscal year was 2 per cent of GDP over the period 2003-2007 while, the ration of domestic debt to GDP declined from 26.8 per cent in 2002 to 23.6 per cent in June 2007 and net domestic borrowing has been contained at 1.8 per cent of GDP in 2006-2007 down from 3.6 per cent of GDP in 2002-2003 (Ibid). The external balance of payment position has remained constant reflecting partly the diversified sources of foreign exchange due large inflows of remittances from Kenyans in the Diaspora and higher receipts from tourism. As at the end of December 2007, gross official foreign exchange reserves held by the Central Bank of Kenya stood at USD 3,355 million up from USD 1,067 million at the end of December 2002. The exchange rate remained stable against the US dollar for a greater part of the period with tendencies to appreciate in 2007. The shilling exchanged at 75.7 against the US dollar in the period 2003-2006, before appreciating to 63.0 at the end of 2007. The strengthening of the shilling against the US dollar reflected a strong balance of payments position and the general weakening of the US dollar.

These positive results according to the Government statistics increased welfare of Kenya. Growth per capita income increased from a decline of 2.5 per cent in 2002 by 4.1 per cent in 2007. The overall indices of poverty declined from 56.8 per cent in 2000 to 46 percent in 2006. However, these indices were disputed by UNDP indices which showed otherwise citing increased inequality and rural poverty among households.

It should also not be neglected that they are significant regional variations in distribution of income, growth and poverty. For instance, the North Eastern Province, Nyanza Province and Western Province have suffered from government neglect in respect to government funded projects and resource allocation.

10. Structures and Institutions of Economic and Social Power

10.1 Formal structures

The Kenyan state has undergone significant transformations, marked by suppression of political space, freedom of expression and massive human rights violations through the three administrations since Independence. During the 2002 elections, coalition politics tried to transform the Kenyan political landscape. The realization had come that working as coalition partners is far much easier in terms of accessing power than working separately. The Grand Coalition government after the post-election violence is only the latest. Its formation was an important step toward establishing and institutionalizing distribution of power, by reducing some of the president's powers and distributing it within the executive. The position of Prime Minister, which was not initially enshrined in the constitution, was created. This however, has slowly degenerated into constant wrangles among the coalition partners, and the Prime minister and the President. One source of this problem (apart from power struggles9 was that the Accord did not clearly allocate powers between the President and the Prime Minster. It was silent on whether the President should remain the head of State and Government or whether he should be the Head of State only and the Prime Minister the Head of Government. The Accord
did not clearly state who should appoint senior government officials, chairs of committees and Boards. The Accord did not clearly stipulate the distinction in roles between the office of the Prime Minister, and that of the Head of Public Service. Previously, the head of public service has worked on instructions and delegation from the President, and doubling up as secretary to the cabinet. This has made the Head of public Service a crucial figure in government business. Thus, roles played by the office of the head of public service commission (who is on the PNU side of the coalition) seem to be largely duplicated by those of the Prime Minister (who is the leader of ODM part of the coalition), co-ordinates and supervises ministries’ duties, and hence the wrangles. The fact that this role conflict was unforeseen has strained relations between the coalition partners. The two principal partners i.e. ODM and PNU thus jostle in the power exercise.

10.2 Informal structures
Civil society and community based organizations form a major portion of the informal structures that exist in Kenya. This comprises of faith-based organizations, religious organization, community based organizations, student movements, and individuals that have over time agitated for societal changes right from post-independence Kenya, through multi-party reactionary forces and pursuit of a new constitutional order. Most individuals who were in the vibrant social and civil society movements have ended up as politicians, often centrally placed and powerful, and ironically, thanks to the trappings of power, some have been resistant to change.

10.3 Politics of ethnicity, clanism
Ethnicity is a politically relevant signifier in contemporary Kenya, and especially drawing on evidence from Kenya’s expansive Rift Valley Province and Nyanza Province. Kenyans can, and do, contest, revive, create, negotiate and renegotiate their ethnic identity. The existence of human rights - civil/political or economic/social and cultural is one thing; far from their accessibility and enjoyment by the potential beneficiaries is a totally different matter. For instance, in the human rights sphere, Kenya is party to some seventeen international human rights conventions. These include, the 1948 Genocide Convention; 1952 Convention on the Political Rights of Women, 1954 Convention on the Status of Stateless Persons, the Convention Abolishing Slavery (1956); Convention on the Elimination of Racial Discrimination (1965), the Covenant on Economic, Social and Cultural Rights (1966), the Covenant on Civil and Political Rights (1966), the Convention on the Elimination of all Forms of discrimination Against Women (1979), the Convention Against Torture (1984) the Convention on the Rights of the Child (1989), the African Charter on Human and people’s Rights (1992) and the African Charter on the Rights and Welfare of the Child.1

1Despite ratification of the foregoing instruments by Kenya, the provisions therein are of little consequence to the operation of the rule of law, and political institutions. This is partly due to the lack of
While some complaints by various ethnic groups are genuine concerns in terms of deprivation and destitution they suffer in the hands of the state, a major factor behind these problems lies with the use of political power in Kenya. Through abuse of power, decisions have been made in the past that subject whole communities to suffering, crime, and evictions from settlements. These among other concerns directly link the struggle for political power to ethnic politics whose outcome is malicious for democratic development in the country. It has framed political parties to leadership wrangles and internal struggles of power, which has not helped nurturing a democratic political culture. The ethnic dimensions to the abuse of political power in Kenya, is therefore a key factor contributing to the heightened levels of ethnic division that play out during elections, or even in the process of forming political parties and distribution of party positions.

Problems with politicised ethnicity and abuse of power has permeated the spheres of political life to such an extent that, political institutions and actors have been affected by these tendencies to the detriment of democratic gains made so far since the introduction of multi-parties in Kenya in the early 90s. However if the events prior to after recent general elections are signs enough to read from, some changes different from that during the advent of multiparty era in the political landscape in Kenya is worth recognizing, namely that coalition building seems to have taken some hold in politics. This may have positive political impact in the longer run.

10.4 Kitchen cabinets under Kenyatta, Moi, Kibaki?
Since the Kenyatta administration, kitchen cabinets have been initiated and maintained for the chief purpose of political expediency. The kitchen cabinet also comprises of the president’s loyalists, strategists, think tanks and vanguards of his administration. Thus, they share a special friendship with the president and have earned his trust, and keep his administration’s secrets. Simultaneously, they work to out maneuver political opponents on behalf of the president, as they protect and or try to spruce up his political image. From the time of President Kenyatta, president Moi and now president Kibaki, is mostly made up of members to constitute a part of the cabinet.

10.5 A fellowship of thugs
The coalition government has well been described as a “fellowship of thugs” (Ngunyi, 2009 (Source?)). Since the institutionalization of the grand coalition government, two serious scandals have come to the surface: the maize scandal, and the oil scandal. All
the parties in the coalition have been actively involved. The members of parliament, even those who have dubbed themselves the “public watchdogs”, seem immersed in the corruption.

10.6 Militia and Vigilante groups

The use of militia to instigate violence on behalf of KANU and the government began with the 1991-1993 ethnic clashes. To attack opposition groups, "Kalenjin warriors" donned traditional attire and used bows and arrows. Political violence also occurred in 1997 and 1998 in the Rift Valley Province, particularly in Trans Nzoia and Nakuru Districts. As in the 1992 ethnic clashes, the conflict was between pro-KANU supporters and ethnic communities that were deemed sympathetic to the opposition. Hence, Kenyans have suffered the wrath of militia and vigilante groups over the whole period of multi-party democracy. The vigilante groups include Jeshi la Mzee, Baghdad boys, Kamjesh, cattle raiders, Mungiki, and the recent being the Sabaot Land Defence Force (SLDF) in Mt. Elgon, which is claimed to have emerged owing to a history of the land in contention and the subsequent conflicts. While there is a governmental responsibility to protect citizens from vigilante group and all other form of security and crime, the Kenyan government has been accused to employ illegal methods of extrajudicial, summary or arbitrary execution in attempts to crack down these groups (Alston, 2009).

For instance, in March 2008, the army was deployed to Mt Elgon in an operation dubbed "Operation Okoa Maisha" to track down the SDLF, a group of young men who had armed themselves and taken to the forest ostensibly to resist government attempts to evict squatters in the Chebyuk area of Mt. Elgon District. SDLF, according KNCHR and media reports, maimed, tortured, killed Mt Elgon residents and extorted money from the locals. The military operation too came under scrutiny for allegedly committing numerous atrocities inclined to human rights abuses inflicted by the military against the Mt Elgon locals. Explicit KNCHR investigations presented disturbing evidence of these allegations.

10.7 Trade Unions

The Central Organization of Trade unions (COTU-Kenya) is the umbrella body for all trade unions in Kenya. It was founded and registered in 1965 and operates within the provisions of Trade Unions Act CAP 233 of the Laws of Kenya. The COTU has approximately 36 registered trade unions and has a membership of about 1 million workers countrywide. The COTU’s mandate is to create, develop and maintain a comprehensive social framework for championing the rights of workers and advocating for humane and productive working conditions of freedom, equity, security and dignity. Members of COTU are individual workers unions such as Engineering Workers Union; Domestic Workers Union, among others. There are other workers unions who are not members of COTU but who have a large representation and wide coverage in the country. These include the Kenya National Teachers Union (KNUT), the Kenya Union of Post Primary Education Teachers (KUPPET) and Civil Servants Union.
All registered trade unions can yield power. However, they can be looked at in terms of the sectors they are representing and/or the proportion of membership to total employees. The Kenya National Union Teachers (KNUT) is one of the largest trade unions in the country, mainly representing teachers in public primary schools. The Union of Kenya Civil Servants is arguably the 2nd largest in the country. It organizes civil servants in job groups A-L. The two unions are distributed countrywide, with presence in literally all the districts in Kenya. They also have branches in all the parts of the country.

Trade unions in Kenya have similar organizational structure because they operate on a similar constitution. They have a delegate’s conference as the supreme decision making authority. Below it is the council, which in many unions is composed of all the national officials of the union, the branch officials and representatives of various interest groups e.g. gender/women, youth, and other interest groups. Some unions have a national executive board hierarchically below the governing council, then the secretariat and staff. The Secretary General is the leader of trade unions in Kenya. He presides over the delegates conference composed of national officials and representatives from affiliate unions. There is an Executive Board and the Secretariat composed of national officials, secretary general, deputy secretary general, Chairman of the Board, Assistant Chairman, Treasury, Assistant Treasury and 3 Trustees. The main department which facilitate the functions of the union include Administration and Finance; Child Labour; Gender; Education, Research and Economics; and HIV/AIDS.

Although trade unions have power to influence positive change in Kenya, but they have not exercised this power on crucial agenda of the nation apart from ordinary bread and butter issues affecting their members. By virtue of their mandates, trade unions have much power to cause positive impact in the reform agenda of Kenya. Trade unions have representation in many public institutions and agencies including the National Economic Council, Electricity Regulatory Board, National Social Security Fund, National Labour Board, Wages and Advisory Board, Directorate of Industrial Training, Productivity center and Kenya Anti-Corruption Commission. Nevertheless, limited understanding of their mandates and narrow focus undermine trade unions’ ability to influence positive change in Kenya. In addition, trade unions lack adequate capacity in form of competent staff, departments are personalized and ethnicised, and the workers voices are not well defined.

Trade unions in Kenya have not yet developed any working relationship with political parties and politicians. This may be attributed to the fact that the political parties have not defined in concrete terms their agenda/ideals, which the unions can subscribe. If the political parties have an agenda, the agenda does not deeply reflect workers issues. Apparently, the trade unions/their leaders have not yet realized the complementarities that exist between them and other non-state actors in building national agenda.

10.8 The Media
The media in Kenya has continued to enjoy free working environment since the late 1990s. Press freedom is visible in the manner in which journalists conducts themselves while on duty and the governments relates with the media. The relationship between the government and the media can be described as cordial. The main media houses in Kenya include the Nation Group which owns a television station, three newspapers and an FM radio station; Standard Group which owns a television station and a newspaper; Royal Media which owns a television station, a newspaper and several vernacular FM stations; Kenya Broadcasting Cooperation which is a government owned media house with a television station and a radio station which enjoys countrywide listenership.

The media has a good public image given that it plays a very important role of informing the public about the current issues as they unfold on the daily basis. Its role during the general elections has been quite impressive, as it has kept the citizens informed on the election events, the process, the results and the reactions coming from different actors. However, the media has many occasions under performed particularly, during the post election violence when local media was blamed for fueling violence in some regions of the country given that the content aired was inflammatory and lacked credibility. This has been blamed on inadequate training of journalists and media personnel in the country.

11. Conclusion

(To be inserted)
References


